S.R. CHAUDHURI

v.

STATE OF PUNJAB AND ORS.

AUGUST 17, 2001

[DR. A.S. ANAND, CJ, R.C. LAHOTI AND K.G. BALAKRISHNAN, JJ.]

Constitution of India, 1950

Article 164—Scope of—Non-legislator—Appointment as Minister—Failure to get elected within six consecutive months—Re-appointment as Minister during the term of same Legislative Assembly—Held, such re-appointment is improper, undemocratic, invalid and unconstitutional—The privilege to continue as Minister for six months is only one time slot—The provision is an exception to the normal rule—Not an enabling provision for appointment of non-legislator as a Minister.

Interpretation of Constitution

Constitution is required to be interpreted with an object oriented approach in accordance with the intention of the framers of the Constitution—Not in narrow and pedantic sense—Debates in the Constituent Assembly may be relied upon as an aid to interpret—Interpretation must be such that the expectation of founding fathers and constitutionalists are fulfilled rather than frustrated—Constitutionalism.

Constitutional Authorities—Duty to maintain constitutional restraint—Held, such restraint must not be ignored or bypassed if found inconvenient or bent to suit political expediency.

Words & Phrases

"Six consecutive months"—Meaning of—In the context of Constitution of India—Article 164(4).

Respondent, a non-legislator, who was appointed as a Minister, later resigned on the ground that he failed to get himself elected within a period of six months. He was re-appointed as Minister without being elected to the

A legislature during the term of same Legislative Assembly.

Appellant filed writ petition, seeking writ of *quo warranto* against the respondent on the ground that his re-appointment during the term of same Legislative Assembly was violative of constitutional provisions. The respondent contended that his re-appointment was valid since Article 164 of the
B Constitution of India does not expressly bar such re-appointment.

Allowing the appeal, the Court

HELD : 1.1. Re-appointment of respondent as a Minister after his resignation from the Council of Ministers during the term of the same
C Legislative Assembly, without getting elected in the meanwhile was improper, undemocratic, invalid and unconstitutional. By permitting a non-legislator Minister to be reappointed without getting elected within the period prescribed by Article 164(4), would amount to ignoring the electorate in having its say as to who should represent it - a position which is wholly unacceptable.
[643-A-B; 645-B]

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"Constitutional Law and History of Government of India, Government of India Act, 1935 and the Constitution of India" by C.L. Anand (Seventh Edition, 1992), referred to.

Har Sharan Verma v. *Shri Tribhuvan Narain Singh Chief Minister, U.P.*
E *and Anr.*, [1971] 1 SCC 616; *Har Sharan Verma* v. *State of U.P. and Anr.*, [1985] 2 SCC 48; *Har Sharan Verma* v. *Union of India and Anr.*, [1987] Supp. SCC 310 and *S.P. Anand, Indore* v. *H.D. Deve Gowda and Ors.*, [1996] 6 SCC 734 referred to.

F 1.2 Essentials of a system of representative government, like that in our country, are that invariably all Ministers are chosen out of the members of the Legislature and only in rare-cases, a non-member is appointed as a Minister, who must get himself returned to the Legislature by direct or indirect election within a short period. He cannot be permitted to continue in office indefinitely unless he gets elected in the meanwhile. [638-E-F]

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Shamsher Singh and Anr. v. *State of Punjab,* [1975] 1 SCR 814, referred to.

Halsbury's Laws of England (Fourth Edition) Volume 8 Para 819; Para 1006 of Volume 34 of Halsbury's Laws of England (Fourth Edition)
H *Cabinet Government (Third edition page 60 by Sir Ivory Jennings;*

"Constitutional and Administrative Law" by Wade and Bradley Page 268; Constitutional Law of Canada by Peter W. Hogo; "Australian Constitutional Law" (Second Edition) by Peter Hanks, referred to. A

State of New South Wales v. *Commonwealth of Australia and Anr.*, **108 A.L.R. 577, referred to.**

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1.3. It would be subverting the Constitution to permit an individual, who is not a member of the Legislature, to be appointed a Minister *repeatedly* for a term of "six consecutive months", without getting himself elected in the meanwhile. The practice would be clearly derogatory to the constitutional scheme, improper, undemocratic and invalid. Article 164(4) is at best only in the nature of an exception to the normal rule of *only* members of the Legislature being Ministers, restricted to a short period of six consecutive months. This exception is essentially required to be used to meet every extraordinary situation and must be strictly construed and sparingly used. The clear mandate of Article 164(4) that if an individual concerned is not able to get elected to the legislature within the grace period of six consecutive months, he shall cease to be Minister, cannot be allowed to be frustrated by giving a gap of few days and reappointing the individual as a Minister, without his securing confidence of the electorate in the meanwhile. Democratic process which lies at the core of the constitutional schemes cannot be permitted to be flouted in this manner. [644-B-E] C D

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1.4. Article 164(4) is, not a source of power or an enabling provision for appointment of a non-legislator as a Minister even for a short duration. It is actually in the nature of a disqualification or restriction for a non-member, who has been appointed as a Chief Minister or a Minister, as the case may be, to continue in office without getting himself elected within a period of six consecutive months. [633-G, H] F

1.5. The "privilege" of continuing as a Minister for "six months" without being an elected member is only a one time slot for the individual concerned during the term of the concerned legislative assembly. It exhausts itself if the individual is unable to get himself elected within the period of grace of "six consecutive months". The privilege is personal for the concerned individual. It is, he who must *cease* to be a Minister, if he does not get elected during the period of six months. The 'privilege' is not of the Chief Minister on whose advice the individual is appointed. [640-D-F] G

1.6. The expression "*six consecutive months*", implies that the period of six months must run continuously and not even intermittently. It would H

A commence from the time a non-legislator is either appointed as a Minister or a Minister who becomes a non-legislator, is allowed to continue as such, and comes to an end at the expiry of that period. The use of the expression "consecutive" is significant. It cannot be defeated by interpreting Article 164(4) as permitting appointment even for a *total* period of six months, during the term of a legislative assembly let alone that the appointment of such a B non-legislator as a Minister can be for six months "at a time", without his getting mandate from the electorate in the meanwhile. [641-A-G]

1.7. Obligation of the judiciary is to administer justice according to law but the law must be one that commands legitimacy with the people and C legitimacy of the law itself would depend upon whether it accords with justice. Articles 164(1) and 164(4) have, therefore, to be so construed that they further the principles of a representative and responsible government. The legitimacy of the law would be to ensure that the role of the political sovereign—the people—is not undermined. All Ministers must always owe their power, directly or indirectly, to them, except for the short duration as D envisaged by Article 164(4). The interpretation, therefore, must be such that expectation of the Founding Fathers and constitutionalists are fulfilled rather than frustrated. [642-E, F]

"Constitution of Jammu & Kashmir—Its Development and Comments" (Third Edition—1998), referred to.

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1.8. 'Erosion of principles of constitutionalism cannot be allowed'. Actions such as in the present case, pose grave danger to foundations and principles of constitutionalism and the same must be worked off by developing right attitude towards constitutional provision. Constitutional restraints must not be ignored or by-passed if found inconvenient or bent to suit political F expediency. Chief Ministers or the Governors, as the case may be, must forever remain conscious of their constitutional obligations and not sacrifice either political responsibility or parliamentary conventions at the altar of "political expediency". [644-A, B; 643-C]

"Constitutionalism in the Emergent States" by Prof. B.O. Nwabueze, G (1973 Edition - Page 139), referred to.

2.1. A constitution must not be construed in a narrow pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Therefore, the H contention that since Article 164 does not expressly prohibit reappointment

of the Minister without being elected even repeatedly, during the term of the same Legislative Assembly cannot be agreed to. Constitutional provisions are required to be understood and interpreted with an object-oriented approach. [638-G-H; 639-A, B]

2.2. Debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution. A Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. [639-B, C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 244 of 1997.

From the Judgment and Order dated 3.12.96 of the Punjab and Haryana High Court in C.W.P. No. 18526 of 1996.

R.K. Kapoor, C.S. Ashri, Sumit Kumar, P.Verma, Gurnam Singh for Anis Ahmad Khan for the Appellant.

Lokesh Kumar and R.S. Suri for the Respondents.

The Judgment of the Court was delivered by

DR. A.S. ANAND, CJ. Respondent No.2, Shri Tej Parkash Singh, was appointed as a Minister in the State of Punjab on the advice of the Chief Minister, Sardar Harcharan Singh Barar on 9.9.1995. At the time of his appointment as a Minister, he was not a Member of Legislative Assembly in Punjab. He failed to get himself elected as a Member of the Legislature of the State of Punjab within a period of six months and submitted his resignation from the council of Ministers on 8.3.1996. During the term of the same Legislative Assembly, there was a change in the leadership of the ruling party. Smt. Rajinder Kaur Bhattal, Respondent No.3, was, on her election as Leader of the Ruling Party, appointed Chief Minister of the State of Punjab on 21.11.1996. Respondent No.2, who had not been elected as a Member of the Legislature even till then, was once again appointed as a Minister w.e.f. 23.11.1996. The Appellant filed a petition seeking writ of quo warranto against Respondent No.2. It was stated in the petition that appointment of Respondent No.2 for a second time during the term of the same legislature, without being elected as a Member of the Legislature was violative of constitutional provisions and, therefore, bad. The Division Bench of the High Court vide order dated

A 3.12.1996 dismissed the writ petition in limine. This appeal by special leave calls in question the order and judgment of the High Court dismissing the writ petition in limine.

Since, the meaningful question involved in this appeal revolves around the ambit and scope of Article 164 and in particular of Article 164(4) of the B Constitution of India - let us first examine that Article :-

> "164. Other provisions as to Ministers.—(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.
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> 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 Schedule Castes and backward classes or any other work.
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> (2) The Council of Ministers shall be collectively responsible to the Legislative Assembly of the State.
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> (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.
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> (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.
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> (5) The salaries and allowances of Ministers shall be such as the
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> 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."

Under Article 164(1), the Governor shall appoint the Chief Minister exercising his own discretion, according to established practice and G conventions. All other Ministers are to be appointed by the Governor on the Advice of the Chief Minister. In view of the provisions of Article 164(2) the Council of Ministers shall all be collectively responsible to the Legislative Assembly of the State. This provision, in a sense, indicates that members of the Council of Ministers shall all be members of the Legislature, to which the H Council of Ministers is collectively responsible. This, however, is subject to

an exception provided by Article 164(4) to meet an extra-ordinary situation, where the Chief Minister considers the inclusion of a particular person, who is not a member of the Legislature, in the Council of Ministers necessary. To take care of such a situation, Article 164(4) provides that if a non-member is appointed a Minister, he would cease to be a Minister unless in a short period of six consecutive months from the date of his appointment he gets elected to the Legislature.

Article 164(4) can in fact trace its lineage to Section 10(2) of the Government of India Act, 1935 which reads:

> 10(2). "A minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a minister."

In Prof. C.L. Anand's book "Constitutional Law and History of Government of India, Government of India Act, 1935 and the Constitution of India" (Seventh Edition, 1992) referring to the Parliamentary Debates on the enactment of clause (2) of Section 10 of Government of India Act, 1935, the author says:

> "Clause(2).-This clause follows the recent Constitutions of Australia and South Africa, but it is not in the Canadian Constitution, and is no part of the English Constitution. *As a matter of practice, however, even in England appointments are not made from outside Parliament except incase of some national emergency such as war. While the law in England does not require that a Minister must be a member of Parliament, there is a strong convention to the effect that a Minister who has not a seat in Parliament must get one*, the reason being the advantage of the interplay between the Executive and the Legislature.
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> An amendment was moved by Sir Charles Oman to leave out clause (2) of Section 10 (supra). Viscount Wolmer referred to the difficulties which made the Amendment (provision) desirable, such as the occasional practical difficulty in forming a suitable Ministry without breaking the normal practice, and emphasised the advisability of securing that elasticity in the choice of Ministers which exists under an unwritten Constitution. It was also stated that the objection to omission of the clause could not be serious in view of the fact that members of the Federal Assembly would be returned by indirect

A election. The Secretary of State opposed the Amendment on the grounds, firstly, that it was contrary to public opinion in India which regarded it as "the thin edge of the wedge for re-introducing the official block," and, secondly, all Governments in India thought that the proposal would not be acceptable to the Ministries in India. Besides the object aimed at could be secured by the Governor-General
B nominating the desired person as a member of the Upper Chamber if he failed to obtain within six months an elected seat. In reply to the view taken that members of the Federal Assembly would be returned by indirect election and, therefore, would not necessarily be representative of public opinion, it was stated that, nevertheless, it
C was on the whole more democratic to select Ministers from such persons than to nominate them from outside the Legislature. The Amendment was negatived."

Before proceeding to deal with the interpretation of the Article and consideration of various precedents, it would be useful to take note of the
D debates of the Constituent Assembly during the enactment of Article 164(4).

Article 144(3) of the Draft Constitution which corresponds to Article 164(4) of the Constitution read:

"A Minister who, for any period of six consecutive months, is not
E a member of the Legislature of the State shall at the expiration of that period cease to be a Minister."

During the debate on this Draft Article, Mr. Mohd. Tahir, M.P. proposed the following amendment: -

F "That for clause (3) of Article 144, the following be substituted:

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

G Speaking in support of the proposed amendment, Mr. Tahir said in the Constituent Assembly:

"This provision appears that it does not fit with the spirit of democracy. This is a provision which was also provided in the Government of India Act of 1935 and of course those days were the days of Imperialism
H and fortunately those days have gone. This was then provided because

if a Governor finds his choice in someone to appoint as Minister and fortunately or unfortunately if that man is not elected by the people of the country, then that man used to be appointed as Minister through the backdoor as has been provided in the Constitution and in 1935 Act. But now the people of the States will elect members of the Legislative Assembly and certainly we should think they will send the best men of the States to be their representatives in the Council or Legislative Assembly. Therefore I do not find any reason why a man who till then was not elected by the people of the States and which means that, that man was not liked by the people of the States to be their representative in the Legislative Assembly or the Council, then Sir, why that man is to be appointed as the Minister." A B C

Dr. Ambedkar opposing the amendment replied :

"Now, with regard to the first point, namely, that no person shall be entitled to be appointed a Minister unless he is at the time of his appointment an elected member of the House, I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this, - it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency. It is not a reason why a member so competent as that should be not permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all. My second submission is this, that the fact that a nominated Minister is a member of the Cabinet, does not either violate the principle of collective responsibility nor does it violate the principle of confidence, because if he is a member of the Cabinet, if he is prepared to accept the policy of the Cabinet, stands part of the Cabinet and resigns with the Cabinet, when he ceases to have the confidence of the House, his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which parliamentary government is based. " D E F G

(Emphasis supplied) H

A After the debate the proposed amendment was negatived and Article 144(3) was adopted.

The ambit and scope of Article 164(4) came up for consideration before a Constitution Bench of this Court in *Har Sharan Verma* v. *Shri Tribhuvan Narain Singh, Chief Minister, U.P. and Anr.*, [1971] 1 SCC 616. The issue B arose in connection with the appointment of Shri T.N. Singh, who was not a Member of either House of Legislature of the State of Uttar Pradesh, as Chief Minister of Uttar Pradesh. The Constitution Bench referred to the position as prevailing in England. It was observed that invariably all Ministers must be members of the Parliament but if in some exceptional case, a Minister, C is not a member of the Parliament, he can continue to be a Minister for a brief period during which he must get elected in order to continue as a Minister. This Court upholding the judgment of the High Court, rejected the challenge to the appointment of Shri T.N. Singh as Chief Minister in view of Article 164(4) of the Constitution. The Court opined that the Governor has the discretion to appoint, as a Chief Minister, a person, who is not a member of D the legislature at the time of his appointment but the Chief Minister is required, with a view to continue in office as a Chief Minister, get himself elected to the legislature within a period of six consecutive months from the date of his appointment.

E The issue was once again raised by the same writ petitioner and was considered by a Division Bench of this Court in *Har Sharan Verma* v. *State of U.P. and Anr.*, [1985] 2 SCC 48. The writ petitioner argued that a Governor cannot appoint a person, who is not a Member of the Legislature, as a Minister under Article 164(1). According to the writ petitioner Article 164(4) of the Constitution in terms would only be applicable to a person, who has F "been a Minister but who ceases to be a member of the Legislature for some reason or the other such as the setting aside of his election in any election petition". Sustenance, for this argument was sought from the provisions of amended Article 173(a) which provides :

> "Article 173. Qualification for membership of the State Legislature.- A G person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he-
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> (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 H in the Third Schedule;

Relying upon the Constitution Bench judgment in *Har Sharan Verma* v. *Shri Tribhuvan Narain Singh* (supra), the Court opined:

> "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 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.*"

An issue of interpretation of Article 75(5) which is in pari- materia to Article 164(4) came up for consideration in *Har Sharan Verma* v. *Union of India and another,* [1987] Supp. SCC 310. In this case, appointment of Shri Sita Ram Kesari, as a Minister of State in the Central Cabinet was put in issue in a writ petition filed in the Allahabad High Court, once again by the same writ petitioner, Shri Hari Sharan Verma, on the ground that since Shri Kesari was not a Member of either House of Parliament on the date of his appointment as a Minister, he could not have been appointed as a Minister of State in the Central Cabinet. The High Court dismissed the writ petition by a reasoned order though in limine. This Court agreed with the High Court and after taking note of Article 75, which makes provision for appointment of Central Ministers and particularly Clause (5) thereof, which reads:

> "A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Member."

And Article 88, which provides:

> "Every Member and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this Article be entitled to vote."

opined:

> *"The combined affect of these two articles is that a person not being a Member of either House of Parliament can be a Minister up to a period of six months. Though he would not have any right to*

A *vote, he would be entitled to participate in the proceedings thereof.* The petitioner admits that in the thirty-seven years of constitutional regime in this country there have been several instances where a person has held the office as Minister either at the Centre or in the State (there are corresponding provisions for the State), not being a member of the appropriate legislature at the time of appointment."

B (Emphasis ours)

Thus, this Court once again held that a person, not being a Member of either House of Legislature could be appointed a Minister, but he could continue as a Minister for a period of six consecutive months only during which period C he should get himself elected to the Legislature or else he must cease to be a Minister after expiry of that period.

Shri H.D. Deve Gowda, who was not a Member of either House of Parliament was appointed as the Prime Minister of India. His appointment was put in issue in *S.P. Anand, Indore* v. *H.D. Deve Gowda and Ors.*, [1996] 6 SCC D 734. After noticing various provisions of the Constitution, this Court while upholding his appointment observed:

"A Constitution Bench of this Court had occasion to consider whether a person who is not a member of either House of the State Legislature could be appointed a Minister of State and this question E was answered in the affirmative on a true interpretation of Articles 163 and 164 of the Constitution which, in material particulars, correspond to Articles 74 and 75 bearing on the question of appointment of the Prime Minister...".

and went on to say:

F "On a plain reading of Article 75(5) it is obvious that the *Constitution-makers desired to permit a person who was not a member of either House of Parliament to be appointed a Minister for a period of six consecutive months and if during the said period he was not elected to either House of Parliament, he would cease to be a* G *Minister...*". (Emphasis ours)

The Bench also repelled the argument that if a non-Member of the House is chosen as a Prime Minister, it could be against national interest and the country would be running a great risk. It was observed:

H "...Therefore, even though a Prime Minister is not a member of

either House of Parliament, once he is appointed he becomes answerable to the House and so also his Ministers and the principle of *collective responsibility* governs the democratic process. Even if a person is not a member of the House, if he has the support and confidence of the House, he can be chosen to head the Council of Ministers *without violating the norms of democracy and the requirement of being accountable to the House* would ensure the smooth functioning of the democratic process. We, therefore, find it difficult to subscribe to the petitioner's contention that if a person who is not a member of the House is chosen as Prime Minister, national interest would be jeopardised or that we would be running a great risk. The English convention that the Prime Minister should be a Member of either House, preferably House of Commons, is not our constitutional scheme since our Constitution clearly permits a non-member to be appointed a Chief Minister or a Prime Minister *for a short duration of six months...*".

Thus, we find that this Court, including its Constitution Bench, has consistently taken the view on an interpretation of Article 163, Article 164(1) and Article 164(4) that a person who is not a member of the Legislature, may be appointed a Minister for a short period, but if during the period of six consecutive months he is not elected to the Legislature, he would cease to be a Minister at the expiry of that period.

The absence of the expression "from amongst members of the legislature" in Article 164 (1) is indicative of the position that whereas under that provision a non-legislator can be appointed as a Chief Minister or a Minister but that appointment would be governed by Article 164(4), which places a restriction on such a non-member to continue as a Minister or the Chief Minister, as the case may be, unless he can get himself elected to the Legislature within the period of six consecutive months, from the date of his appointment. Article 164(4) is, therefore, not a source of power or an enabling provision for appointment of a non-legislator as a Minister even for a short duration. It is actually in the nature of a disqualification or restriction for a non-member, who has been appointed as a Chief Minister or a Minister, as the case may be, to continue in office without getting himself elected within a period of six consecutive months.

It is not the case of the appellant that respondent No.2 Shri Tej Prakash Singh suffered from any constitutional or statutory disqualification to contest

A an election on the date of his first appointment as a Minister or even on the date of his re-appointment as a Minister. The challenge is confined to the issue of re-appointment of the respondent, without getting elected within six consecutive months of his first appointment. In this view of the matter, we have declined an invitation of learned counsel for the appellant to express our opinion on the question whether a non-legislator can be appointed as a B Minster, if on the date of such appointment, he suffers from a constitutional or statutory disqualification to contest the election within the next six consecutive months. We are not expressing our opinion on the issue, as it is not directly involved in the present case and the settled practice of this Court is not to express opinion on issues which do not essentially arise in C a case under consideration.

The issue before us, however, is somewhat different. The issue is : can a non-member, who fails to get elected during the period of six consecutive months, after he is appointed as a Minister or while a Minister has ceased to be a legislator, be *reappointed* as a Minister, without being elected to the D Legislature after the expiry of the period of six consecutive months ? This issue was not considered in either of the four cases referred to above - there is no other decided case dealing with the issue brought to our notice either. With a view to consider the issue, it would, therefore, be useful to consider the constitutional scheme governing a democratic parliamentary form of E Government and interpret Article 164 (1) and 164(4) in that light.

Parliamentary democracy generally envisages (i) *representation of the people*, (ii) *responsible government* and (iii) *accountability* of the Council of Ministers to the Legislature. The essence of this is to draw a direct line of authority from the people through the Legislature to the Executive. The F character and content of parliamentary democracy in the ultimate analysis depends upon the quality of persons who man the Legislature as representative of the people. It is said that "elections are the barometer of democracy and the contestants the lifeline of the parliamentary system and its set-up".

India has to a large measure adopted Westminster form of Government. G This position was recognised in *Shamsher Singh & Anr.* v. *State of Punjab,* [1975] 1 S.C.R. 814, when Justice Krishna Iyer observed:

> "Not the Potomac, but the Thames fertilizes the flow of the Yamuna, if we may adopt a riverine imagery. In this thesis, we are fortified by the precedent of this Court, strengthened by Constituent Assembly H proceedings and reinforced by the actual working of the organs

involved for about a 'silver jubilee span of time'." A

In the Westminster system, it is an established convention that Parliament maintains its position as controller of the executive. By a well settled convention, it is the person who can rely on support of a majority in the House of Commons, who forms a government and is appointed as the Prime Minister. Generally speaking he and his Ministers must invariably all be B Members of Parliament (House of Lords or House of Commons) and they are answerable to it for their actions and policies. Appointment of a non-member as a Minister is a rare exception and if it happens it is for a short duration. Either the individual concerned gets elected or is conferred life peerage.

C

In *Halsbury's Laws of England* (Fourth Edition) Volume 8 Para 819) dealing with British conventions it is observed:

> "819. The paramount convention is that the Sovereign must act on the advice tendered to her by her ministers, in particular the Prime Minister. She must appoint as Prime Minister that member of the D House of Commons who can acquire the confidence of the House, and must appoint such persons to be members of the ministry and Cabinet as he recommends.... ... .
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> Since the Sovereign must always act upon ministerial advice, ministers are always politically responsible to the House of Commons E for their acts, even if done in her name. Their responsibility is both personal and collective. ... .
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In para 1006 of Volume 34 of *Halsbury's Laws of England* (Fourth Edition) it is recorded :

> "1006. *Effect of the presence of ministers in Parliament.* In addition G to the methods of parliamentary control, the practice and procedure of both Houses ensures that the action of the executive is always open to the criticism of Parliament. *Ministers of the Crown cannot indefinitely remain in office without being members of either the House of Lords or the House of Commons.* In either House it is permissible for members to address questions to ministers with regard H

A to the administration of their departments, and in both Houses motions may be made reflecting on the conduct of a particular minister or of the government as a whole."

Sir Ivor Jennings in his treatise on Cabinet Government, (Third edition page 60), while dealing with the convention relating to formation of Government B in England, after a Prime Minister has been appointed says:

> "*It is well-settled convention that these minister should be either peers or members of the House of Commons*. There have been occasional exceptions. Mr. Gladstone once held office out of Parliament for nine months. The Scottish law officers sometimes, as in 1923 and C 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."

D According to Wade and Bradley, "*Constitutional and Administrative Law*", page 268:

> "It is the convention that ministerial officer-holders should be members of one or other House of Parliament. Such membership is E essential to the maintenance of ministerial responsibility.....When a Prime Minister appoints to ministerial office someone who is not already in Parliament, a life peerage is usually conferred on him.

Canada as well as Australia also follow parliamentary system of government of Westminister style.

F In his treatise on the *Constitutional Law of Canada*, (4th Edition), Peter W. Hogg, Professor of Law, Osgoode Hall Law School, York University (page 243), discusses the characteristics of a responsible Government in a parliamentary system and the appointment of the Prime Minister and other Ministers of his cabinet. He says:

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> "The narrative must start with an exercise by the Governor General of one of his exceptional reserve powers or personal prerogatives. In the formation of a government it is the Governor General's duty to select the Prime Minister. He must select a person who can form a government which will enjoy the confidence of the House of Commons. H For reasons which will be explained later, *the Governor General rarely*

has any real choice as to whom to appoint: he must appoint the parliamentary leader of the political party which has a majority of seats in the House of Commons. But it is still accurate to describe the Governor General's discretion as his own, because unlike nearly all of his other decisions it is not made upon ministerial advice.

When the Prime Minister has been appointed, he selects the other ministers, and advises the Governor General to appoint them. With respect to these appointments, the Governor General reverts to his normal non-discretionary role and is obliged by convention to make the appointments advised by the Prime Minister. If the Prime Minister later wishes to make changes in the ministry, as by moving a minister from one portfolio to another, or by appointing a new minister, or by removing a minister, then the Governor General will take whatever action is advised by the Prime Minister, including if necessary the dismissal of a minister who has refused his Prime Minister's request to resign.

It is basic to the system of responsible government that the Prime Minister and all the other ministers be members of parliament. Occasionally a person who is not a member of parliament is appointed as a minister, but then he must quickly be elected to Parliament. If he fails to win election, then he must resign (or be dismissed) from the ministry. The usual practice when a non-member of parliament is appointed to the ministry is that a member of the Prime Minister's political party will be induced to resign from a 'safe seat' in Parliament, which will precipitate a by-election in which the minister will be the candidate from the Prime Minister's party." (Emphasis ours)

Clause 51 of the Australian Constitution provides *"a responsible Minister of the Crown shall not hold office for a longer period than three months unless he is or becomes a member of the Council or the Assembly"*. Dealing with conventions being followed in Australia, Mr. Peter Hanks, in his commentary "Australian Constitutional Law"; (Second Edition) says :

"*In every State we can confidently predict that ministers will be appointed from amongst the current members of parliament. Indeed the South Australian and Victorian legislation provide that ministers must be (or become within three months) members of one of the houses of parliament.*"

A The following observations of the High Court of Australia in State of New South Wales vs. Commonwealth of Australia and another, 108 A.L.R. 577, are also educative :

> "The Constitution none the less brought into existence a system of representative government in which those who exercise legislative and *executive power are directly chosen by the people.* .....The very concept of representative government and representative democracy signifies government by the people through their representatives. Translated into constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by their representatives. *The point is that the representatives who are members of Parliament and Ministers of State are not only chosen by the people but exercise their legislative and executive powers as representatives of the people.* And in the exercise of those powers the representatives of necessity are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act."

Thus, we find from the positions prevailing in England, Australia and Canada that essentials of a system of representative government, like the one we have in our country, are that invariably all Ministers are chosen out of the members of the Legislature and only in rare - cases, a non-member is appointed as a Minister, who must get himself returned to the legislature by direct or indirect election within a short period. He cannot be permitted to continue in office indefinitely unless he gets elected in the meanwhile. The scheme of Article 164 of the Constitution is no different, except that the period of grace during which the non-member may get elected has been fixed as "six consecutive months", from the date of his appointment. (In Canada he must get elected quickly and in Australia within three months). The framers of the Constitution did not visualise that a non-legislator can be repeatedly appointed as a Minister for a turn of six months each time, without getting elected because such a course strikes at the very root of parliamentary democracy. According to learned counsel for the respondent, there is no bar to this course being adopted on the 'plain language of the Article', which does not 'expressly' prohibit re-appointment of the minister, without being elected, even repeatedly, during the term of the same Legislative Assembly. We cannot persuade ourselves to agree.

H Constitutional provisions are required to be understood and interpreted

with an object oriented approach. A Constitution must not be construed in a narrow and pedantic sense. The words used may be general in terms but, their full import and true meaning, has to be appreciated considering the true context in which the same are used and the purpose which they seek to achieve. Debates in the Constituent Assembly referred to in an earlier part of this judgment clearly indicates that non-member's inclusion in the cabinet was considered to be a 'privilege' that extends only for six months', during which period the member must get elected otherwise he would cease to be a Minister. It is a settled position that debates in the Constituent Assembly may be relied upon as an aid to interpret a constitutional provision because it is the function of the Court to find out the intention of the framers of the Constitution. We must remember that a Constitution is not just a document in solemn form, but a living framework for the Government of the people exhibiting a sufficient degree of cohesion and its successful working depends upon the democratic spirit underlying it being respected in letter and in spirit. The debates clearly indicate the 'privilege' to extend "only" for six months.

The very concept of responsible Government and representative democracy signifies Government by the People. In constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by their chosen representatives and for exercise of those powers, the representatives are necessarily accountable to the people for what they do. The Members of the Legislature, thus, must owe their power directly or indirectly to the people. The Members of the State Assemblies like Lok Sabha trace their power directly as elected by the people while the Members of the Council of State like Rajya Sabha owe it to the people indirectly since they are chosen by the representative of the people. The Council of Minister of which a Chief Minister is head in the State and on whose aid and advice the Governor has to act, must, therefore, owe their *power to the people directly or indirectly.*

The sequence and scheme of Article 164, which we have referred to in an earlier part of our order, clearly suggests that ideally, every minister must be a member of the legislature at the time of his appointment, though in exceptional cases, a non-member may be given a ministerial berth or permitted to continue as a Minister, on ceasing to be a member, for a short period of six consecutive months only to enable him to get elected to the Legislature in the meanwhile. As a Member of the Council of Ministers, every Minister is collectively responsible to the Legislative Assembly. A Council of Ministers appointed during the term of a legislative assembly would continue in office

A so long as they continue to enjoy the confidence of the legislative assembly. A person appointed as a Minister, on the advice of the Chief Minister, who is not a member of the legislature, with a view to continue as a Minister must, therefore, get elected during a short period of six consecutive months after his appointment, during the term of that legislative assembly and if he fails to do so, he must cease to be a Minister. Reappointment of such a person, B who fails to get elected as a member within the period of grace of six consecutive months, would not only disrupt the sequence and scheme of Article 164 but would also defeat and subvert the basic principle of representative and responsible Government. Framers of the Constitution by prescribing the time limit of "six consecutive months" during which a non-C legislator Minister must get elected to the legislature clearly intended that a non-legislator can not be permitted to remain a minister for any period beyond six consecutive months, without getting elected in the meanwhile. Resignation by the individual concerned before the expiry of the period of six consecutive months, not followed by his election to the legislature, would not permit him to be appointed a Minister once again without getting elected to the legislature D during the term of the legislative assembly. The "privilege" of continuing as a Minister for "six months" without being an elected member is only a one time slot for the individual concerned during the term of the concerned legislative assembly. It exhausts itself if the individual is unable to get himself elected within the period of grace of "six consecutive months". The privilege E is personal for the concerned individual. It is, he who must cease to be a Minister, if he does not get elected during the period of six months. The 'privilege' is not of the Chief Minister on whose advice the individual is appointed. Therefore, it is not permissible for different Chief Ministers, to appoint the same individual as a Minister, without him getting elected, during the term of the same assembly. The individual must cease to be a Minister, F if during a period of six consecutive months, starting with his initial appointment, he is not elected to the assembly. The change of a Chief Minister, during the term of the same assembly would, therefore, be of no consequence so far as the individual is concerned. To permit the individual to be reappointed during the term of the same legislative assembly, without G getting elected during the period of six consecutive months, would be subversion of parliamentary democracy. Since Article 164(4) provides a restriction for a non-legislator Minister to continue in office, beyond a period of six consecutive months, without being elected, it clearly demonstrates that the concerned individual appointed as a Minister under Article 164(1) without being a member of the Legislature must cease to be a Minister unless elected H within six consecutive months. Re-appointing that individual without his

getting elected, would, therefore, be an abuse of Constitutional provisions and subversive of constitutional guarantees. Every Minister must draw his authority, directly or indirectly, from the political sovereign - the Electorate. Even a most liberal interpretation of Article 164(4) would show that when a person is appointed as a Minister, who at that time is not a member of the legislature, he becomes a Minister on clear constitutional terms that he shall continue as a Minister for not more than six consecutive months, unless he is able to get elected in the meanwhile. To construe this provision as permitting repeated appointments of that individual as a Minister, without getting elected in the meanwhile, would not only make Article 164(4) nugatory but would also be inconsistent with the basic premise underlying Article 164. It was not the intention of the Founding Fathers that a person could continue to be a Minister without being duly elected, by repeated appointments, each time for a period of six consecutive months. If this were permitted, a non-legislator could by repeated appointments remain a Minister even for the entire term of the Assembly - a position wholly unacceptable in any parliamentary system of government. Such a course would be contrary to the basic principles of democracy, an essential feature of our constitution. The intention of the framers of the constitution to restrict such appointment for a short period of six consecutive months, cannot be permitted to be frustrated through manipulation of "reappointment".

Framers of the Constitution have used the expression "six *consecutive* months", which implies that the period of six months must run continuously and not even intermittently. It would commence from the time a non-legislator is either appointed as a Minister or a Minister who becomes a non-legislator, is allowed to continue as such, and comes to an end at the expiry of that period. The use of the expression "consecutive" is significant. It cannot be defeated by interpreting Article 164(4) as permitting appointment even for a total period of six months, during the term of a legislative assembly, let alone, that the appointment of such a non-legislator as a minister can be for six months "at a time", without his getting mandate from the electorate in the meanwhile.

As already noticed Article 164(4) in terms provides only a disqualification or a restriction for a Minister, who for any period of six consecutive months, is not a Member of the Legislature of the State to continue as such. It expressly provides that he shall on the expiration of that period cease to be a Minister unless he gets elected during that period by direct or indirect election. We must also bear in mind that no right is conferred on the concerned

A non-member Minister even during the period of 'six months' , when he is permitted to continue in office, to vote in the House. The privilege to vote in the House is conferred only on Members of the House of the Legislature of a State (Article 189). It does not extend to non-elected ministers He may address the House but he cannot vote as an MLA. None of the powers or
B privileges of an MLA extend to that individual. Though under Article 177, the individual shall have a right to speak and to otherwise take part in the proceedings of the Legislative Assembly, he does not carry with him the usual "free speech" legislative immunity as provided by Article 194(2). The individual cannot draw any of the benefits of an MLA without getting elected. All these disabilities also clearly go to suggest that 'six months clause' in
C Article 164(4) cannot be permitted to be repeatedly used for the same individual without his getting elected in the meanwhile. It would be too superficial to say that even though the individual Minister is a person who cannot even win an election by direct or indirect means, he should be permitted to continue as a Minister for a period beyond six months, without being elected at all and represent the electorate which has not even returned him!! It would be
D subversive of the principle of representative government and undemocratic. It would be perversion of the Constitution and even a fraud on it.

Obligation of the judiciary is to administer justice according to law but the law must be one that commands legitimacy with the people and legitimacy of the law itself would depend upon whether it accords with justice. Articles
E 164(1) and 164(4) have therefore, to be so construed that they further the principles of a representative and responsible government. The legitimacy of the law would be to ensure that the role of the political sovereign - the people - is not undermined. All Ministers must always owe their power, directly or indirectly, to them, except for the short duration as envisaged by Article
F 164(4). The interpretation, therefore, must be such that expectation of the Founding Fathers and constitutionalists are fulfilled rather than frustrated. The former Chief Justice of India, Shri M.N. Venkatachaliah in his Foreword to the "Constitution of Jammu & Kashmir - Its Development and Comments" (Third Edition - 1998) said:

G > "The mere existence of a Constitution, by itself, does not ensure constitutionalism. What are important are the political traditions of the people and its spirit and determination to workout its constitutional salvation through the chosen system of its political organisation."

India is a Democratic Republic. Its chosen system of political
H organisation is reflected in The Preamble to the Constitution, which indicates

the source from which the Constitution comes, viz., "WE, THE PEOPLE OF INDIA". By permitting a non-legislator Minister to be reappointed, without getting elected within the period prescribed by Article 164(4), would amount to ignoring the electorate in having its say as to who should represent it - a position which is wholly unacceptable. The seductive temptations to cling to office regardless of constitutional restraint must be totally eschewed. Will of the people cannot be permitted to be subordinated to political expediency of the Prime Minister or the Chief Minister as the case may be, to have in his cabinet a non-legislator as a Minister for an indefinite period by repeated reappointments without the individual seeking popular mandate of the electorate.

Chief Ministers or the Governors, as the case may be, must for ever remain conscious of their constitutional obligations and not sacrifice either political responsibility or parliamentary conventions at the altar of "political expediency". Prof.. B.O. Nwabueze in his book "Constitutionalism in the Emergent States" (1973 Edition - page 139), almost thirty years ago warned:

> "Experience has amply demonstrated that *the greatest danger to constitutional government in emergent states arises from the human factor in politics, from the capacity of politicians to distort and vitiate whatever governmental forms may be devised.* Institutional forms are of course important, since they can guide for better or for worse the behaviour of the individuals who operate them. Yet, however carefully the institutional forms may have been constructed, in the final analysis, much more will turn upon the actual behaviour of these individuals - upon their willingness to observe the rules, upon a statesmanlike acceptance that the integrity of the whole governmental framework and the regularity of its procedures should transcend any personal aggrandizement. *The successful working of any constitution depends upon what has aptly been called the 'democratic spirit', that is, a spirit of fair play, of self-restraint and of mutual accommodation of differing interests and opinions. There can be no constitutional government unless the wielders of power are prepared to observe the limits upon governmental powers.*"
>
> (Emphasis ours)

Prof. Nwabueze's warning has great relevance today in the context under our consideration. For parliamentary democracy to evolve and grow certain principles and policies of public ethics must form its functioning base.

A Actions such as in the present case, pose grave danger to foundations and principles of constitutionalism and the same must be warded off by developing right attitude towards constitutional provisions. Constitutional restraints must not be ignored or bypassed if found inconvenient or bent to suit "political expediency". We should not allow erosion of principles of constitutionalism.

B We are, therefore, of the considered opinion that it would be subverting the Constitution to permit an individual, who is not a member of the Legislature, to be appointed a Minister repeatedly for a term of "six consecutive months", without his getting himself elected in the meanwhile. The practice would be clearly derogatory to the constitutional scheme, improper, undemocratic and C invalid. Article 164(4) is at best only in the nature of an exception to the normal rule of only members of the Legislature being Ministers, restricted to a short period of six consecutive months. This exception is essentially required to be used to meet very extraordinary situation and must be strictly construed and sparingly used. The clear mandate of Article 164(4) that if an individual concerned is not able to get elected to the legislature within the grace period D of six consecutive months, he shall cease to be a Minister, cannot be allowed to be frustrated by giving a gap of few days and reappointing the individual as a Minister, without his securing confidence of the electorate in the meanwhile. Democratic process which lies at the core of our Constitution schemes cannot be permitted to be flouted in this manner.

E It may be of some interest to notice certain provisions of the Constitution of Jammu & Kashmir, 1957. Section 36 of the J & K Constitution corresponds to Article 164(1) of the Constitution of India, with the difference that the expression "the Minister shall hold office during the pleasure of the Governor" is missing from Section 36. This expression has, however, been separately F incorporated in Section 39, which provides that all Ministers and Deputy Ministers shall hold office during the pleasure of the Governor. Section 37(2) corresponds to Article 164(4) of the Constitution. Section 38 of the J & K Constitution is, however, a provision which has no corresponding provision in the Constitution of India. This section reads thus:

G "38. *Deputy Ministers.—The Governor may on the advice of the Chief Minister appoint from amongst the members of either House of Legislature such number of Deputy Ministers as may be necessary.*"

If constitutional provisions of Articles 164(1) and 164(4) are permitted to be perverted or distorted in the manner as was done in the present case, Section H 38 of the Constitution of Jammu & Kashmir may require some serious

consideration by the Parliament, for adoption, notwithstanding the statement of Dr. Ambedkar (supra) against incorporation of such a restriction either in Article 164(1) or in Article 75(1) A

From the above discussion, it follows that reappointment of Shri Tej Parkash Singh, respondent, as a Minister with effect from 23.11.1996, after his resignation from the Council of Ministers on 8.3.1996, during the term of the same Legislative Assembly, without getting elected in the meanwhile was improper, undemocratic, invalid and unconstitutional. His reappointment is accordingly set aside though at this point of time, it is of no consequence. We have dealt with the issue because of its importance. The Division Bench of the High Court fell in error in dismissing the Writ Petition filed by the appellant *in limine*. B C

Since we have held that reappointment of Shri Tej Parkash Singh as a Minister in the State of Punjab with effect from 23.11.1996 was invalid and unconstitutional, we consider it appropriate to observe, with a view to avoid reopening of settled matters, that this judgment shall not render any order made or action taken by Shri Tej Parkash Singh, as a Minister, after his reappointment to the Council of Ministers, as bad or invalid only on account of his reappointment as a Minister having been found to be invalid. This appeal, therefore, succeeds and is allowed in the terms indicated above with cost. D E

K.K.T. Appeal allowed.