

## BACK-DOOR ENTRY TO THE MINISTRY

The council of ministers, under a parliamentary system of government, is the pivot around which the whole political machinery revolves. The Constitution of India also has provided for the formation of a council of ministers at the centre as well as in the states. With regard to the composition of the council of ministers, the Constitution provides that "the Prime Minister shall be appointed by the President and the other ministers shall be appointed by the President on the advice of the Prime Minister."<sup>1</sup> The Constitution does not lay down any criteria regarding the selection of the Prime Minister and other ministers; instead, it leaves it to the discretion of the President and the Prime Minister respectively. Of course, the Constitution has laid down a restriction on the appointment of ministers, namely that "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 Minister."<sup>2</sup> A similar provision has been made in article 164(4) which deals with the composition of the council of ministers in the states.

The above provisions of the Constitution, on the one hand ensure that the council of ministers at the centre as well as in the states should be constituted only of the members of the legislature, and on the other, have left the doors of the council of ministers open for the entry of outsiders as well. Under the present circumstances, it would be very easy for a Prime Minister/chief minister to manage entry of his "favourites" to the ministry, no matter if they have been defeated in the election or have not contested the election at all

The provision, though not very widely used, has been employed, curiously enough, for filling up the office of the chief minister, let alone for appointment of ministers. It was for the first time in 1953 that the provision was set in motion by Sardar Gian Singh Rarewala, the then Chief Minister of the erstwhile state of PEPSU, whose election had been declared void by the Election Tribunal.<sup>3</sup> Shri Rarewala after being unseated by the

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1. Article 75(1).

2. Article 75(5), 164(4).

3. While dealing with Article 75(5) in his "*Commentary on the Constitution of India*", Basu has cited the case of Rajagopalachari as the first appointment made under this provision which seems incorrect. It appears from the records that Rajagopalachari had been nominated to the Legis-

Tribunal refused to resign his office, taking advantage of article 164(4) of the Constitution.<sup>4</sup> Later political development, however, forced him to tender his resignation.<sup>5</sup>

Dr. K. N. Katju was the first chief minister in the country who was not a member of the legislature when he assumed the office of the chief minister in Madhya Pradesh in 1957. Dr. Katju, Defence Minister at that time, was elected as leader of the Madhya Pradesh Congress Legislature Party on 8th January, 1957.<sup>6</sup> He resigned the office of the Defence Minister and swore in as the Chief Minister of Madhya Pradesh on 31st January 1957.<sup>7</sup> He was elected to the Madhya Pradesh Legislative Assembly in the Second General Elections from the Jaora Constituency.<sup>8</sup> Thus he acted as chief minister for about a month without being a member of the state legislature.

This precedent was followed by Shri C. B. Gupta in Uttar Pradesh who took over as the Chief Minister of Uttar Pradesh on 7 December 1960.<sup>9</sup> He was not a member of either House of the Uttar Pradesh legislature at the time of his taking over as chief minister, though he was nominated to the Legislative Council

It would not be incorrect to say that Uttar Pradesh has created history in making use of back-doors for letting outsiders in the ministry, not only as ministers, but strangely enough, as chief ministers too. It was for the second time in 1970 that non-member, Shri T. N. Singh, was elevated to the office of the chief minister when the Uttar Pradesh legislature failed to elect its leader from within its own ranks. Shri T. N. Singh was sworn in as the Chief Minister of Uttar Pradesh on 18th October 1970.<sup>11</sup> That he was a member of the Rajya Sabha is entirely without relevance. In order to regularize his appointment as chief minister, he contested a by-election at Maniram and was badly defeated by a Congress (R) candidate.<sup>12</sup> This was the first case of a chief minister who lost an election while in office. It was also for the first time in history that a chief minister, even after being defeated

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lative Council before he took oath of the office (See "State Politics in India", edited by Dr. Iqbal Narain) p. 61; *The Statesman*, April 1, 1952.

4. *The Statesman*, Feb. 23, 1953.
5. *The Statesman*, March 6, 1953.
6. *National Herald*; Jan. 9, 1957.
7. *The Statesman*; Feb. 1, 1957.
8. *The Statesman*, March 1, 1957.
9. *The Statesman*, Dec. 8, 1960
10. Nominated on Jan. 28, 1961.
11. *The Statesman*, Oct. 19, 1970.
12. *National Herald*, Jan. 26, 1971.

in the election, refused to resign his office and, taking advantage of the ambiguities of article 164(4), declared that he would contest another election before the expiry of his six months' period. However, the subsequent political developments, more particularly the astonishing victory of the Congress in the midterm polls, prevented the chief minister from contesting the election for a second time, as he had announced earlier. He tendered his resignation on 30th March 1971.<sup>13</sup>

Again, in Uttar Pradesh, there were two instances of ministers appointed in the council of ministers from outside the legislature. Shri Man Singh Jatav, a non-member, was taken in the S.V.D. Ministry as transport minister on 6th April 1967.<sup>14</sup> He continued as minister till 10 July 1967 when he resigned after being defeated in the elections to the Legislative Council.<sup>15</sup> Shri Sripat Misra, a member of the Lok Sabha, was appointed in the council of ministers in Uttar Pradesh on 17th February 1970.<sup>16</sup> Later on, he was elected to the Legislative Council on 6th May 1970.<sup>17</sup>

Apart from the obvious dubitations about the justifiability of the above appointments, a fundamental question emerges as to why at all did the Constitution-makers allow such a way of accommodating outsiders in the ministry. Why not should these back-doors be sealed for ever? These questions lead us to undertake a thorough study of the provision under reference.

This question was raised in the Constituent Assembly also. Some members had strongly demanded that the membership of the council of ministers should be restricted to the members of the legislature and there should be no provision for the appointment of outsiders in the council of ministers. While the above article came up before the Assembly for discussion, Shri Mohd. Tahir, a member of the Constituent Assembly, moved an amendment suggesting that "a Minister shall, at the time of his ap-

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13. *National Herald*, March 31, 1971.

14. *The Statesman*; April 7, 1967.

15. *The Statesman*. July 11, 1967.

16. *The Hindustan Times*, Feb. 18, 1970.

17. Besides the above appointments, Mr. Rajagopalachari (1952), Mr. Kamaraj (1954) and Mr. Annadurai (1967) in Madras; Mr. B. P. Mandal (1968) in Bihar; Mr. Morarji Desai (1952) in Bombay and B. Mehta (1963) in Gujarat were also appointed Chief Ministers from outside the legislature. But the nature of these appointments was different from those referred to above in the sense that all these Chief Ministers were nominated to the Legislative Council before they took the oath of the office. (See "Journal of the Society for Study of State Governments," October-Dec. 1970, p. 228).

pointment as such, be a member of the Parliament.”<sup>18</sup> Moving this amendment in the Constituent Assembly, the Honourable Member had observed:

It cannot be imagined that out of a total of 300 or 400 members of the Parliament, the President and the Leader of the Party will not be able to find out a suitable person to be taken into the Ministry and, hence, he will be forced to choose a Minister who is not a member of the Parliament. I think, it goes against the spirit of democracy; rather it cuts at the very root of democracy not to choose a Minister from out of the members of the Parliament, chosen by the people of the country.<sup>19</sup>

Similar views were expressed by another prominent member, Shri R. K. Sidhwa, who remarked:

Such a clause existed in the 1935 Act and it has been borrowed from there. I wish that such a clause should not exist in our Constitution, for the simple reason that in our new legislature there will be above five hundred members, and if we cannot secure a Minister with technical or expert knowledge that may be necessary, it would be a slur on the legislature if it does not contain a single person with the requisite expert knowledge.<sup>20</sup>

Shri Shibban Lal Saksena, supporting the above view, remarked:

According to this clause (5) as it stands, members who have not been returned by the electorate shall be able to be permanent Ministers of the Government. This is altogether against all democratic methods.<sup>21</sup>

Despite the opposition of these members to the original provision of the Draft Constitution, the amendment moved by Shri Tahir could not be carried in the Assembly and the majority of the members of the Constituent Assembly preferred, for no sound reasons, to keep the back-doors of the ministry open for the entry of non-members. It is curious that most of the members who

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18. *Constituent Assembly Debates*, Vol. VII, p. 1172; Vol. VIII, p. 505.

19. *Constituent Assembly Debates*, Vol. VII, p. 1172.

20. *Id.* at 1181.

21. *Id.* at 1174.

spoke on article 62<sup>22</sup> of the Draft Constitution did not touch this important aspect of the composition of the ministry, and voted against the amendment without giving their own arguments in favour of the existing provisions of the Constitution.

It is revealed by the proceedings of the Constituent Assembly that Dr. Ambedkar was the only member who expressly favoured the incorporation of this provision in the Constitution. Speaking on this occasion, Dr. Ambedkar observed:

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 not be permitted to be appointed a member of the Cabinet on 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.<sup>23</sup>

The above observations of Dr. Ambedkar make it clear that clause (5) of article 75 was incorporated in the Constitution with the only end to accommodate defeated persons in the council of ministers. This can in no way be regarded a democratic method of constituting a democratic institution. Why should the defeated candidates be provided with a second chance to try their luck for their inclusion in the ministry and the legislature?

Apparently, there can be no other purpose of this provision except that it facilitates the inclusion of such important members of the party or other persons of extraordinary merit who, for some reason or the other, could not be elected to the legislature. But it would really be a slur on the legislature to say that it does not have persons of suitable qualifications required for the office of a minister. The problem of paucity of suitable persons for the ministry might have arisen if the size of the legislature had been small, say one hundred members or so. But, in the presence of several hundred members duly elected by the people, it would be unjust for the Prime Minister/Chief Minister

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22. Article of the Draft Constitution, dealing with the composition of the Council of Ministers.

23. *Constituent Assembly Debates*, Vol. VII, p. 1186.

to go outside the ranks of members for filling up the posts of ministers.

The argument that this provision enables the Prime Minister/ chief minister to take persons of extraordinary merit into the council of ministers does not appear convincing for two reasons. Firstly, the political parties are supposed to set up their best candidates in the election and if there are really some persons of extraordinary calibre, why should they be lost sight of by the party bosses at the time of a general election? Secondly, in a representative government, it is the electorate who are the final authority to adjudge the merits of the various candidates taking part in the elections. Thus, if a person, howsoever competent he may be, has been rejected at the polls, he, in no case, should be allowed to be included in the ministry. The appointment of defeated candidates on the council of ministers would certainly amount to encroachment on the sovereignty of the people.

The adoption of the above provision, on the one hand, would result in transgressing the will of the people, and on the other, would lower the sanctity and dignity of the legislature. With a view to accommodating an outsider in the ministry, the Prime Minister/ chief minister will have to "open" a constituency by asking a member of his party to resign his seat in the legislature. Thus, a member duly elected by the people will be deprived of his membership by the Prime Minister/ chief minister and a "pet" of the Prime Minister/ chief minister, most probably a defeated candidate, will be imposed upon that particular constituency. The electorate, under these circumstances, will have only two options: either to elect the person being imposed upon them by the party in power or to change their loyalty in favour of any other party. Would it not be an utter disregard of the electorate if a member elected by the sovereign people is made to resign his seat in favour of a rejected candidate being favoured by the Prime Minister/ chief minister? Would it not be a mockery of the principle of sovereignty of the people, if the Prime Minister/ chief minister ousts a member most acceptable to the people and places a rotten candidate before the electorate to accept him as an alternative?

Further, a minister appointed under this provision will hold not only an executive office in the ministry but will also act as a member of the legislature. He, like other elected members, will participate in the proceedings of the legislature and enjoy enormous rights and privileges. Thus, an outsider will acquire the status of an elected member at least for a period of six months. How far the entry of outsiders in the legislature is congenial to the democratic character of the legislature is a question of prime

constitutional importance.

This procedure is bound to entail the encouragement to corruption and misuse of public money for selfish interests. It is obvious that no sitting member of the legislature would like to vacate his seat unless he is offered a refined bribe, in cash or in kind, for his "political sacrifice." The Prime Minister/chief minister will have to appoint the resigning member to some lucrative office not less paying than the membership of the legislature. Thus, the Prime Minister/chief minister, if he has to regularise the appointment of an outsider in the ministry, will have no option but to accede to the "demands" of the member he ousts.

On the other hand, the newly appointed minister will have ample opportunities to make use of the governmental resources to feed up his constituency and he would naturally oblige the influential persons of his proposed constituency by fair or foul means. This would obviously enhance the chances of victory of the minister, howsoever weak a candidate he may be. Under these circumstances, it is also doubtful that the elections will be fair and free from pressure of the government. Because, on the one hand, there will be a minister having all governmental resources at his disposal, and on the other hand, ordinary candidates with their limited resources. How far this "political bargaining" at the cost of public money is justified and how far it is in conformity with the principles of morality and justice are the questions worth considering.

From the financial point of view too, the procedure of appointing ministers from outside the legislature appears to be expensive and it is bound to result in extravagant expenditure of public money. As a result of the resignation of a sitting member of the legislature, the government will have to hold by-elections and this will obviously involve considerable expenditure. The state treasury may be saved from such unnecessary burden, if the entry of outsiders to the council of ministers is completely banned by deleting the above provision from the Constitution.

The provision under discussion appears to be ambiguous and may be misused in another way. The Constitution allows six months' time for the continuance of an outsider in the ministry, but it does not impose any limitation on the number of elections that a minister, thus appointed, may contest within this period of time. Hence, there is every possibility that such a minister, even after being defeated at the polls, may not resign from the ministry and may seek re-election from some other constituency.<sup>24</sup>

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24. It should be recalled that Mr. T. N. Singh, a former Chief Minister in U.P., after his defeat at Maniram had announced his decision to contest another election.

Thus, he without violating any provisions of the Constitution, may go on contesting elections till he is elected to the legislature and his appointment as minister is regularised. As a matter of fact, the entire system of elections would lose their value if defeated candidates are put up before the electorate again and again and are made to enter the legislature in this manner.

Similarly, the Constitution does not lay down any restriction on the reappointment of a minister appointed under the above-mentioned provision of the Constitution. Owing to this lacuna, the Prime Minister/chief minister can carry on an outsider in his ministry for years without asking him to face the elections. It is obvious that such a minister would automatically cease to be a minister after the expiry of six months' period. But the Prime Minister/chief minister may go on re-appointing that minister after every six months, giving a gap of one or two days between each spell.

The provision under discussion may be misused on a large scale by the Prime Minister/chief minister at the time when he is heading a coalition government having little chances of stability. In such a situation the Prime Minister/chief minister would naturally try to oblige his favourites by appointing them to his council of ministers and thereby providing them with an opportunity to administer the state and to take full advantage of their ministership. Since the Constitution has not prescribed the maximum size of a ministry, it would not be difficult for the Prime Minister/ chief minister to include a good number of outsiders in his council of ministers. How such misuse of powers conferred upon the Prime Minister/chief minister can be checked is a question-mark for the constitutionalists.

Even if it is admitted that the above provision is necessary for acquiring the services of experienced and competent persons, a question still remains to be answered. Why should such a person be appointed minister first and then asked to seek election? Why should not a reverse procedure be adopted? If the Prime Minister/chief minister is interested in appointing a minister from outside the legislature, he should get a constituency "opened" and ask the chosen person to contest the elections first and include him in the ministry only when he is returned by the people. Thus, the procedure adopted after the appointment of a non-member on the ministry, will have to be followed at the initial stage. This change, on the one hand, would check the entry of outsiders into the legislature through an undemocratic procedure, and on the other, would reduce the chances of the use of corrupt practices and undue pressure of government in the elections.



The above discussion makes it clear that the procedure of appointing ministers from outside the legislature is not consistent with the spirit of democracy and it stigmatizes the representative character of the council of ministers as well as of the legislature.

Thus, there is no reason to disbelieve that clause (5) of article 75 and clause (4) of article 164 are nothing but back-doors for the entry of outsiders into the council of ministers. It would further be a democratic step if these back-doors are closed for ever and legislatures' representative character strengthened by refusing outsiders to enter it even for one day, let alone for six months.

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