

(2015) 01 DEL CK 0151
In the Delhi High Court
Case No : Writ Petition (C) 5745/2014

Imran Ali

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-01-2015

Acts Referred:

Constitution of India, 1950 — Article 118, 226

Salaries and Allowances of Leaders of Opposition of Parliament Act, 1977 — Section 2, 2(b)

Citation : (2015) 01 DEL CK 0151

Hon'ble Judges : G. Rohini, C.J.; Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : Mohit Chaudhary, Damini Chawla, Advocates and Party-in-Person, for the Appellant; Sanjay Jain, ASG, Anil Soni, Saakshi Agrawal and Noor Anand, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL) by an Advocate impleading, (i) Union of India (UOI) through the Principal Secretary, Department of Legal Affairs; and, (ii) the Speaker of Lok Sabha only as the respondents thereto, seeks issuance of (a) a writ of mandamus commanding the respondents to follow mandate of law by recognizing Leader of Opposition in the 16th Lok Sabha; and, (b) a writ of certiorari quashing the directives issued by the Speaker putting rider in nature of caveat in Section 2 of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977.

2. The petition is prefaced on newspaper report dated 20th August, 2014 to the effect that the Speaker of the 16th Lok Sabha has refused to appoint / recognise any person as Leader of Opposition because no opposition party was able to secure 55 seats in the Lok Sabha. It is pleaded:

(i) that the petition is filed so as to strengthen the institution of democracy and

avoid politicization in appointing or recognizing mandatory post of Leader of Opposition at whims of Ruling Party and to declare that no custom or precedent is above the law;

(ii) that various legislations like the Protection of Human Rights Act, 1993, the Central Vigilance Commission (CVC) Act, 2003, the Right to Information Act (RTI), 2005 and the Lokpal and Lokayuktas Act, 2013 mandate the participation of Leader of Opposition, while making decisions on appointments etc.;

(iii) that the post of Leader of Opposition received statutory recognition through the Salary and Allowances of Leaders of Opposition in Parliament Act;

(iv) that after Lok Sabha Elections, 2014, Bhartiya Janta Party (BJP) has the largest number of seats i.e. 282 and is the Ruling Party of the Nation;

(v) that on 6th June, 2014, Ms. Sumitra Mahajan was elected as Speaker to preside over the 16th Lok Sabha;

(vi) that in the elections, Congress has emerged as the second largest party securing 44 number of seats in the elections;

(vii) that Congress being the oldest and having ruled this country with alliances since past ten years, is a party having status which as per Section 2 of the Salary and Allowances of Leaders of Opposition in Parliament Act is relevant, while recognizing Leader of Opposition;

(viii) that the importance of the office of Leader of Opposition goes to the fundamentals of democratic process in the society, so as to rule out any kind of arbitrariness and / or favouritism by a Ruling Party;

(ix) that though leader of opposition does not have any Veto for any process but still has been granted and recognised to have a voice towards a particular concern; various enactments have recognised the value and input of Leader of Opposition while making important policy decisions by the Government; Leader of Opposition has been empowered to participate in decision making at various levels including appointment(s) at senior level;

(x) that however the Speaker of the 16th Lok Sabha, instead of the test of the greatest numeral strength provided for in the Allowances of Leaders of Opposition in Parliament Act, imposed the test of 10% of the seats in the Parliament for recognizing the Leader of Opposition; such a rider imposed by the Speaker has led to the scenario where only upon having 55 seats would the leader of a particular party qualify to be recognised as the Leader of Opposition;

(xi) that since in the present Lok Sabha no opposition party has 55 seats, the Speaker has chosen not to recognise anyone as the Leader of Opposition.

3. The petition though listed in the past was adjourned from time to time; we have today heard the counsel for the petitioner on the aspect of entertaining the petition.

4. We have at the outset enquired from the counsel for the petitioner, as to where is the provision for appointment of the Leader of Opposition in the Lok Sabha. It may be mentioned that though the enactments aforesaid refer to the Leader of Opposition, but proceed on the premise that there is a Leader of Opposition and do not provide for appointment of Leader of Opposition.

5. The counsel for the petitioner states that there is no law or even provision in the Constitution of India for the post of Leader of Opposition. He however contends that the post of Leader of Opposition is essential for a democracy to function.

6. We have next enquired from the counsel for the petitioner, as to what is the necessity and role of the Leader of Opposition under our Constitution.

7. The counsel argues that the office of the Leader of Opposition is necessary, since appointments under the Protection of Human Rights Act, CVC Act, RTI Act and Lokpal and Lokayuktas Act have to be made with the concurrence / recommendation inter alia of the Leader of Opposition.

8. We have then enquired from the counsel for the petitioner that if he is unable to show anything for this Court to mandate the appointment of the Leader of Opposition and if the grievance is that without there being any provision requiring appointment of Leader of Opposition, the statutes aforesaid provide for involvement of Leader of Opposition in appointment to be made thereunder, whether not the petitioner should be challenging the provisions of the said statutes, insofar as providing for the participation of the Leader of Opposition in appointments to be made thereunder, rather than seeking appointment of the Leader of Opposition.

9. No answer has been forthcoming.

10. The counsel for the petitioner has however drawn our attention to Article 118 of the Constitution of India providing for making of the rules for regulating the procedure and conduct of business in each House of the Parliament. He has then invited attention to the Rules Of Procedure and Conduct of Business in Lok Sabha, Rule 389 whereof titled "Residuary Powers" enables the Speaker to regulate the manner in which the matters not specifically provided for in the said Rules are to be conducted. Attention is next invited to the Directions stated to have been issued by the Speaker in 1956 under the Rules and Clause 120 whereof provides that the Speaker may recognise an association of members as a Parliamentary Party or Group for the purpose of functioning in the House and making the decision of the Speaker in this regard final and to Clause 121 thereof laying down the condition inter alia of having a strength equal to the quorum fixed to constitute for sitting in the House for recognition of such an association. It is argued that the Speaker has wrongly invoked the said Rules to hold that a party not having the strength equal to the quorum fixed to constitute a sitting of the House, even if having the maximum number of seats amongst the parties in opposition, cannot nominate the Leader of Opposition.

11. However, when we enquired, as to how the said provisions also mandate the appointment of the Leader of Opposition, again no answer is forthcoming.

12. Per contra, the learned ASG appearing on advance notice has contended, (a) that this is not the first Lok Sabha in which none has been appointed / recognised as the Leader of Opposition; instances of earlier Lok Sabhas which also did not have the Leader of Opposition are given; (b) that the contention of the petitioner that the appointment of the Leader of Opposition is necessary for making appointments under the Protection of Human Rights Act, CVC Act, RTI Act and the Lokpal and Lokayuktas Act is also not correct, inasmuch as all the said Statutes provide that any selection made thereunder would not be invalid for the reason of any vacancy in any of the offices required to participate in appointment thereunder; (c) that the amendment to the effect that leader of the single largest party shall be deemed to be the Leader of Opposition has already been carried out in the CVC and the RTI Act and is underway in the Lokpal and Lokayuktas Act and Delhi Special Police Establishment Act, 1946; (d) similar amendment is also proposed in the Protection of Human Rights Act; (e) that the Speaker is not bound to recognise anyone as the Leader of Opposition; (f) attention is invited to the Leaders And Chief Whips Of Recognised Parties and Groups In Parliament (Facilities) Act, 1998, particularly to Section 2(b) thereof to contend that thereunder also only a party having a strength of not less than 55 members in the House is eligible to be recognised; and, (g) that the petition is liable to be dismissed summarily for the reason of, in para 14 thereof having made reckless allegations against the high office of the Attorney General for India and which is indicative of the petition being not bona fide and having been filed with a political agenda.

13. The counsel for the petitioner being unable to satisfy us that there exists any mandate under the Constitution or under any law for appointment of a Leader of Opposition and the only reason urged for the necessity of appointment of a Leader of Opposition having been not substantiated, we are not inclined to entertain this petition. Merely because a petition is filed in public interest does not absolve the petitioner from making out a case for the same to be entertained. Merely because a petition is filed in public interest does not entitle the petitioner to, instead of discharging his onus, ask the Court to conduct a roving and fishing enquiry, particularly in the present facts. Reference in this regard can be made to para 13 of Narmada Bachao Andolan Vs. State of Madhya Pradesh and Another, . We therefore refuse to entertain this petition.

14. We may record that though the counsel for the petitioner read out to us a few lines from para 22 of the dicta of the Supreme Court in B.P. Singhal Vs. Union of India (UOI) and Another, inter alia to the effect that the doctrine of pleasure in a democracy does not mean a licence to act arbitrarily, capriciously or whimsically but was unable to state as to what is the context thereof to the present controversy. The counsel also referred to paras 97, 101 and 111 of Kihoto Hollohan Vs. Zachillhu and Others, to contend that tool of judicial review

can be exercised over the actions of the Speaker of the Lok Sabha but since we are not entertaining the petition, we do not feel the need to enter into the said question.

15. The petition is accordingly dismissed. However, since the said dismissal is owing to the petitioner having been unable to make out a case and since the petition was filed in public interest, we clarify that the dismissal of this petition would not constitute a precedent in an appropriate and properly framed and argued matter, even if claiming the same reliefs.

16. Though considerable time of this Court has been taken but we are refraining from imposing costs.