
(2018) 04 CHH CK 0157
In the Chhattisgarh High Court
Case No : Contempt Case (C) No. 575 of 2017

Kamlesh Mohan Seth

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 13-04-2018

Acts Referred:

Citation : (2018) 04 CHH CK 0157

Hon'ble Judges : THOTTATHIL B. RADHAKRISHNAN, J;SHARAD KUMAR GUPTA, J

Bench : Division Bench

Advocate : Amrito Das, J.K.Gilda, Prasoon Bhaduri, H.C.Shukla, Raja Sharma, Adil??Minhaj, Ankur Agrawal, Chandresh??Shrivastava, Noushina Ali, Manish?? Sharma, Shriya Mishra, Sumit??Jhanwar, Vaibhav Goverdhan, Rahul??Tamaskar, Sameer Behar

Judgement

1. This application seeking initiation of proceedings under the Contempt of Courts Act, 1971 is filed alleging disobedience of the order dated

01.08.2017 issued in Writ Petition (PIL) No. 119 of 2016, Writ Petition (C) No. 3057 of 2016 and Writ Petition (C) No. 3 of 2017. The said order

reads as follows:

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These writ petitions raised questions regarding the office of Parliamentary Secretaries in the State of Chhattisgarh.

These matters are listed today for consideration of the applications for interim relief.

Learned Advocate General points out that these matters are fixed for final hearing on 23.08.2017.

For the purpose of considering whether interlocutory order has to be issued, we treat Writ Petition (C) No. 3057 of 2016 as the leading case in which

all the persons who are Parliamentary Secretaries in the State of Chattisgarh are impleaded as Respondents and in which certain notifications are

sought to be quashed, apart from seeking a declaration that the appointment of Respondents No. 5 to 15 therein as Parliamentary Secretaries is void

ab initio.

Different submissions have been made by the learned counsel for the Petitioners, learned counsel for the contesting Respondents and the learned

Advocate General touching the applicability or otherwise of the ratio of the judgment of the Hon'ble Supreme Court of India in *Bimolangshu Roy*

(Dead) Through LRs v. State of Assam; 2017 SCC Online SC 813. The question whether that judgment clinches the issues in relation to

Parliamentary Secretaries of different States is indicated, to point out that some of the matters from a couple of other States are still pending before

Their Lordships of the Supreme Court.

Be that as it may, apart from the law laid by the Hon'ble Supreme Court in *Bimolangshu Roy* (supra), Article 163(1) of the Constitution provides for a

Council of Ministers with the Chief Minister as the head for the purposes stated therein. Article 164(1) of the Constitution provides inter alia that the

Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advise of the Chief Minister.

Clause (1A) of Article 164 of the Constitution, introduced as per 91st Amendment to the Constitution, enjoins that the total number of Ministers,

including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent of the total number of members of the Legislative

Assembly of that State. The proviso to that clause is not relevant here. One seminal principle that arises on a conjoint reading of Articles 163(1) and

164(1) of the Constitution is that only a person who is appointed as Minister by the Governor on the advise of the Chief Minister can be part of the

Council of Ministers . This means that no person who is not so appointed can carry out any function referable to Article 163(1) of the Constitution or

discharge any executive function as a Minister in the Council of Ministers.

The participation of any person, other than as a Member of Legislative Assembly in the proceedings of the Legislative Assembly is a matter which

will stand regulated by the Rules of Business of that House, the master of which is the Speaker. This order is issued in no manner intending to impair

the powers, responsibilities and duties of the Speaker of the Chhattisgarh Legislative Assembly or to interfere with the proceedings of that House.

For the reasons aforesaid, it is ordered that none among Respondents No. 5 to 15 in Writ Petition (C) No. 3057 of 2016 shall discharge any function as

Member of Council of Ministers unless such person has been appointed as a Minister by the Governor in terms of Article 164(1) of the Constitution.

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2. We have read the allegations in this application. There is nothing to show that any among the Respondents No. 1 to 15 in Writ Petition (C) No. 3057

of 2016 had discharged any function as member of the Council of Ministers. We therefore find no ground to further proceed with this contempt

petition. The same is closed dropping any proposal for such proceeding.