

(2019) 07 DEL CK 0604

In the Delhi High Court

Case No : Civil Writ Petition No. 6886 Of 2019, Civil Miscellaneous Application
No. 28645 Of 2019

Manmohan Singh Narula & Anr

APPELLANT

Vs

Speaker, Lok Sabha

RESPONDENT

Date of Decision : 08-07-2019

Acts Referred:

Salary And Allowances Of Leaders Of Opposition In Parliament Act, 1997 — Section 2
Central Vigilance Commission Act, 2003 — Section 4
Right To Information Act, 2005 — Section 12, 12(3)
Lokpal And Lokayuktas Act, 2013 — Section 4
Protection Of Human Rights Act, 1993 — Section 4
Leaders And Chief Whips Of Recognised Parties And Groups In Parliament (Facilities)
Act, 1998 — Section 3

Citation : (2019) 262 DLT 55 : (2019) 9 AD(Delhi) 37

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ; C. Hari Shankar, J

Bench : Division Bench

Advocate : Manmohan Singh Narula

Final Decision : Dismissed

Judgement

D.N.Patel, CJ

1. This writ petition has been preferred for the following prayers:

"(i) To issue a writ of mandamus or any other appropriate writ to the respondents for issuing directions, orders or to frame a policy for appointment of Leader of Opposition of Lok Sabha;

(ii) Or to pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case. For such act of kindness, the petitioners shall as in duty bound, ever pray."

2. Having heard the petitioner in person and looking into the facts and circumstances of the case, it appears that the petitioner is in search for drafting of a policy for the appointment of Leader of Opposition of the Lok Sabha.

3. The petitioner has also drawn attention of this Court to the requirements of appointment of the Chief Vigilance Commissioner (CVC), Central Information Commission (CIC), Chief of the CBI, Member of NHRC and Lokpal and submits that in absence of Leader of Opposition, the appointment of these posts will be delayed.

4. We see no reason to entertain this writ petition mainly for the reason that there is no law which prescribe for the appointment of the Leader of Opposition.

5. The term "Leader of Opposition" finds its statutory definition in the Salary and Allowances of Leaders of Opposition in Parliament Act, 1997. Section 2 thereof reads thus:

"2. Definition.-In this Act, "Leader of the Opposition", in relation to either House of Parliament, means that member of the Council of States or the House of the People, as the case may be, who is, for the time being, the Leader in that House of the party in opposition to the Government having the greatest numerical strength and recognised as such by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

Explanation.-Where there are two or more parties in opposition to the Government, in the Council of States or in the House of the People having the same numerical strength, the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, shall, having regard to the status of the parties, recognise any one of the Leaders of such parties as the Leader of the Opposition for the purposes of this section and such recognition shall be final and conclusive."

6. Section 4 of the Central Vigilance Commission Act, 2003 reads as follows:

"4. Appointment of Central Vigilance Commissioner and Vigilance Commissioners:

(1) The Central Vigilance Commissioner and the Vigilance Commissioners shall be appointed by the President by warrant under his hand and seal:

Provided that every appointment under this sub-section shall be made after obtaining the recommendation of a Committee consisting of-

(a) the Prime Minister - Chairperson;

(b) the Minister of Home Affairs - Member;

(c) the Leader of the Opposition in the House of the People - Member.

Explanation.-For the purposes of this sub-section, "the Leader of the Opposition in the House of the People" shall, when no such Leader has been so recognised, include the Leader of the single largest group in opposition of the Government in the House of the People.

(2) No appointment of a Central Vigilance Commissioner or a Vigilance Commissioner shall be invalid merely by reason of any vacancy in the

Committee."

(Emphasis supplied)

7. Moreover, in the Right to Information Act, 2005, the constitution of Central Information Commission (CIC) is defined in Section 12. The appointment of CIC is enumerated in Section 12(3) of the RTI Act, which reads thus:

"12. Constitution of Central Information Commission.-

xxx xxx xxx

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of-

- (i) the Prime Minister, who shall be the Chairperson of the committee;
- (ii) the Leader of Opposition in the Lok Sabha; and
- (iii) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation.-For the purposes of removal of doubts it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of the Opposition."

(Emphasis supplied)

8. Further, in the Lokpal and Lokayuktas Act, 2013, Section 4 of the Act specifies appointment of Chairperson and Members on recommendations of Selection Committee. The relevant portion of Section 4 thereof is reproduced as under:

"4. Appointment of Chairperson and Members on recommendations of Selection Committee.

(1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of-

- (a) the Prime Minister-Chairperson;
- (b) the Speaker of the House of the People-Member;
- (c) the Leader of Opposition in the House of the People -Member;
- (d) the Chief Justice of India or a Judge of the Supreme Court nominated by him-Member;
- (e) one eminent jurist, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President-Member.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee."

(Emphasis supplied)

9. Moreover, Section 4 of the Protection of Human Rights Act, 1993 deals with the appointments of members to the National Human Rights Commission. Section 4 is reproduced hereunder :

"4. Appointment of Chairperson and other Members.-

(1) The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal: -1. The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal: Provided that every appointment under this sub-section shall be made after obtaining the recommendations of a Committee consisting of-

(a) the Prime Minister-Chairperson;

(b) Speaker of the House of People-Member;

(c) Minister in-charge of the Ministry of Home Affairs in the Government of India-Member;

(d) Leader of the Opposition in the House of the People-Member;

(e) Leader of the Opposition in the Council of States-Member;

(f) Deputy Chairman of the Council of State- Member.

Provided further that no sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy of any member in the Committee referred to in the first proviso to sub-section (1)."

(Emphasis supplied)

10. Furthermore, Section 3 of The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998, the term "Leader of Opposition" finds its mention as under:

"3. Facilities to the Leaders and Chief Whips of recognised groups and parties.-

Subject to any rules made in this behalf by the Central Government, each leader, deputy leader and each Chief Whip of a recognised group and a recognised party shall be entitled to telephone and secretarial facilities:

Provided that such facilities shall not be provided to such leader, deputy leader or Chief Whip, as the case may be, who-

(i) holds an office of Minister as defined in section 2 of the Salaries and Allowances of Ministers Act, 1952; or

(ii) holds an office of the Leader of the Opposition as defined in section 2 of the Salary and Allowances of Leaders of Opposition in Parliament Act, 1977; or

(iii) is entitled to similar telephone and secretarial facilities by virtue of holding any office of, or representation in, a Parliamentary Committee or other Committee, Council, Board, Commission or other body set up by the Government; or

(iv) is entitled to similar telephone and secretarial facilities provided to him in any other capacity by the Government or a local authority or Corporation owned or controlled by the Government or any local authority."

11. No provision has been pointed out by learned counsel for the petitioners that a Leader of Opposition is a must for these appointments. Rather the above extracted provisions in the aforesaid Acts, categorically state that any vacancy in the appointment committee shall not invalidate any such appointments, and thus, the argument of the petitioner that appointments to these posts will be delayed holds no merit.

12. On the contrary, looking to the provisions for the appointments of the aforesaid posts, there is no such statutory requirement of the appointment of the Leader of Opposition.

13. Previously, such type of writ petition was preferred in W.P.(C). 5745/2014 which was disposed of by the Division Bench of this Court vide judgment and order dated 14th January, 2015 and no relief was granted.

14. The facts of present case are similar to the facts of that case.

15. Appointment of the Leader of Opposition is subject matter for the respondent to be decided. The respondent will take all care of the appointment, or otherwise, of the Leader of Opposition.

16. We see no reason to draft a policy for the appointment of the Leader of Opposition. The respondent is capable of drafting of such policy for the appointment of the Leader of Opposition in Lok Sabha.

17. With these observations, this writ petition is dismissed.

CM No. 28645/2019

1. In view of the order passed in the writ petition, this application stands disposed of.