

(2019) 04 DEL CK 0049

In the Delhi High Court

Case No : Civil Writ Petition No. 530 Of 2017, Civil Miscellaneous Application No. 3705 Of 2017

Prashant Kumar Umrao

APPELLANT

Vs

Govt. Of Nct Of Delhi

RESPONDENT

Date of Decision : 09-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 85(2), 87(1)
Government Of National Capital Territory Of Delhi Act, 1991 — Section 10(1)

Citation : (2019) 04 DEL CK 0049

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : R.P. Luthra, Sourabh Luthra, Ramesh Singh, Prabhsahay Kaur, Avnish Ahlawat, N.K. Singh, Meera Bhatia, Bhagvan Swarup Shukla, Mukesh Kumar Pandey

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, praying as under:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may issue writ of Mandamus or any other appropriate writ, order or direction, thereby directing the Hon'ble Lieutenant Governor of Delhi or any other competent authority to declare the sixth part of the Fourth Session of the Sixth Legislative Assembly of National capital territory of Delhi to be illegal, invalid with all its consequential effects.

Or in alternate this Hon'ble Court may please declare the sixth part of the fourth session of the sixth Legislative Assembly of National Capital Territory of Delhi unconstitutional, illegal and invalid with all consequential effects."

2. The fifth part of the fourth session of the Delhi Legislative Assembly was adjourned sine die on 15.11.2016. The session was resumed on 17.01.2017 (the

sixth part of the fourth session). The notification for the same was put up on the website of the Delhi Legislative Assembly on 10.01.2017. The petitioner claims that the said session is illegal in terms of the Government of National Capital Territory of Delhi Act, 1991, as the first session of each year is required to commence with the address by the Lt. Governor.

3. Section 10(1) of the Government of National Capital Territory of Delhi Act, 1991 is set out below:-

"10. Special address by the Lieutenant Governor.?(1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Lieutenant Government shall address the Legislative Assembly and inform it of the causes of its summons."

4. According to the respondents, the address by the Lt. Governor was not required since the sixth part of the fourth session, which commenced on 17.01.2017, was only in resumption of the session that had been adjourned sine die on 15.11.2016. It is stated that the first session of the Delhi Legislative Assembly for the year 2017 had commenced on 06.03.2017. Concededly, the same had commenced with the address of the Hon?ble Lt. Governor.

5. The petitioner contends that the session that commenced on 17.01.2017 ought to be considered as the first session of the year 2017, as the same could not be left at the whims and fancies of the Speaker.

6. The aforesaid issue is squarely covered by the decision of the Constitution Bench of the Supreme Court in *Ramdas Athawale(5) v. Union of India and Ors.*: (2010) 4 SCC 1, wherein the Court had explained the distinction between adjournment and prorogation, in the context of Article 87(1) of the Constitution of India, which is *pari materia* to the provisions of section 10(1) of the Government of National Capital Territory of Delhi Act, 1991. The Supreme Court had expressly held that whenever the House resumes after it is adjourned sine die, its resumption for the purpose of continuing its business does not amount to the commencement of the session. The relevant extract of the said decision is set out below:

21. In the matter of Special Reference No. 1 of 2002, *In re [(2002) 8 SCC 237]* a Constitution Bench of this Court while interpreting Article 85(2) of the Constitution observed: (SCC p. 278, para 52)

"52. ... When the House is prorogued, all the pending proceedings of the House are not quashed and pending Bills do not lapse. The prorogation of the House may take place at any time either after the adjournment of the House or even while the House is sitting. An adjournment of the House contemplates postponement of the sitting or proceedings of either House to reassemble on another specified date. During currency of a session the House may be adjourned for a day or more than a day. Adjournment of the House is also sine die. When a

House is adjourned, pending proceedings or Bills do not lapse." (emphasis supplied)

22. An adjournment is an interruption in the course of one and the same session, whereas a prorogation terminates a session. The effect of prorogation is to put an end with certain exceptions to all proceedings in Parliament then current.

23. In May's Parliamentary Practice, which has assumed the status of a classic on the subject and is usually regarded as an authoritative exposition of parliamentary practice, it is stated:

"A session is the period of time between the meeting of a Parliament, whether after the prorogation or dissolution, and its prorogation....

During the course of a session, either House may adjourn itself of its own motion to such as it pleases. The period between the prorogation of Parliament and its reassembly in a new session is termed as 'recess'; while the period between the adjournment of either House and the resumption of its sitting is generally called an 'adjournment'."

24. Kaul & Shakhder's Practice and Procedure of Parliament further explains the constitutional position succinctly stating "the session of Lok Sabha comprises the period commencing from the date and time mentioned in the order of the President summoning Lok Sabha and ending with the day on which the President prorogues or dissolves the Lok Sabha." It is thus clear that a session commenced in terms of the order of the President summoning the House can come to an end only with the day on which the President prorogues the House or dissolves the Lok Sabha. The parliamentary practice prevalent till then has been noticed in the same treatise which is to the following effect:

"The eighth session of the Eighth Lok Sabha commenced on 23-2-1987 and was adjourned sine die on 12-5-1987. The Lok Sabha, however, was not prorogued. On a proposal from the Minister of Parliamentary Affairs, the Speaker, exercising his powers under proviso to Rule 15 of the Rules of Procedure and Conduct of Business in Lok Sabha, agreed to reconvene the sittings of Lok Sabha from 27-7-1987 to 28-8-1987. The two parts, preceding and following the period of adjournment of Lok Sabha sine die on 12-5-1987, were treated as constituting one session divided into two parts, namely, Part I and Part II. On conclusion of the second part of the eighth session, the Lok Sabha adjourned sine die on 28-8-1987 and was prorogued on 3-9-1987."

25. It is thus clear that whenever the House resumes after it is adjourned sine die, its resumption for the purpose of continuing its business does not amount to commencement of the session. The resumed sitting of the House, in this case, on 29-1-2004, does not amount to commencement of the first session in the year 2004"

7. In view of the authoritative pronouncement of the Supreme Court, the present petition is unmerited.

8. This Court is also of the view that the present petition also warrants the imposition of costs. The petitioner is not particularly prejudiced by the commencement of the session. The present petition is essentially in the nature of Public Interest Litigation; however, the petitioner has attempted to avoid the procedure required to file a PIL. The petitioner has unnecessarily sought to raise a controversy, where none exists. As noticed above, the issue has been authoritatively settled by the Supreme Court.

9. This court is of the view that such frivolous litigation ought to be discouraged. Accordingly, the present petition is dismissed with costs quantified as Rs. 50,000/-. The petitioner shall deposit the costs to the Delhi High Court Advocates Welfare Trust, within a period of two weeks, from today. The pending application stands disposed of.