

HIGH COURT OF DELHI**Date of Decision: 10th April, 2024****CORAM: HON'BLE THE ACTING CHIEF JUSTICE, HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

W.P.(C) 5135/2024

SANDEEP KUMAR ...PETITIONER**VERSUS****ARVIND KEJRIWAL & ORS. ...RESPONDENTS****Legislation:**

Article 239AA of the Constitution

Rule 585 of the Delhi Prison Rules, 2018

Section 8(3) of the Representation of People Act, 1951

Prevention of Corruption Act, 1988

Subject: Dismissal of Public Interest Litigation seeking issuance of Quo Warranto against Delhi Chief Minister Arvind Kejriwal for incapacity due to incarceration.**Headnotes:**

Quo Warranto Petition - Dismissal - Public Interest Litigation challenging the authority of the Chief Minister of Delhi - Petitioner seeks removal of Chief Minister from office citing incapacity due to incarceration - Court finds earlier orders dismissing similar PILs seeking identical relief - Petitioner alleges breakdown of constitutional machinery - Court asserts inability to interfere with executive functions or declare breakdown of constitutional machinery - Petitioner's persistence despite knowledge of previous dismissals indicates motive for publicity - Frivolity of PIL evident - Reliance on precedent found misplaced - Supreme Court's caution against frivolous PILs reiterated - Writ petition dismissed with costs of Rs. 50,000/- to be deposited with Delhi High Court Staff Welfare Fund. [Paras 1-10]

Referred Cases:

- B.R. Kapur v. State of T.N. and Another(2001) 7 SCC 231 at para 59
- Sachidanand Pandey v. State of W.B. (1987) 2 SCC 295 para 59

- Dr. B. Singh v. Union of India and Ors. (2004) 3 SCC 363 para 12 and 14

Representing Advocates:

Petitioner: Mr. Nitin Meshram, Mr. Rishi Raj Singh, Mr. Saurabh Singh

Respondents: Mr. Rahul Mehra, Sr. Advocate with team for R-1; Mr. Chetan Sharma, ASG with team for R-2

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. The present Public Interest Litigation ('PIL') has been filed seeking Writ in the nature of Quo Warranto calling upon Respondent No. 1 to show by what authority, qualification and title, he holds the office of the Chief Minister of Delhi under Article 239AA of the Constitution and, after an inquiry to dislodge him from the office of the Chief Minister of Delhi with or without retrospective effect.

2. At the outset, it has been put to the learned counsel for the Petitioner if he is aware about the orders dated 28th March, 2024¹, 01st April, 2024² and 04th April, 2024³ passed by this Court dismissing PILs seeking identical relief. In reply, learned counsel for the Petitioner fairly admits that he is aware about the said orders; however, he states that the Petitioner herein is entitled to maintain the present PIL in his independent capacity.

3. He states that Respondent No.1 while lodged in jail has incurred incapacity to carry out his Constitutional obligations and functions under Articles 239AA (4), 167(b) and (c) of the Constitution and hence he can no longer function as the Chief Minister of Delhi. He states that the Lieutenant Governor is also prevented from discharging his Constitutional obligations under Article 167(c) of the Constitution due to the absence of access to the Chief Minister.

¹ W.P.(C) 4578/2024

² W.P.(C) 4642/2024

³ W.P.(C) 4904/2024

4. He relies upon the judgment of Supreme Court in ***B.R. Kapur v. State of T.N. and Another*** to contend that a writ of Quo Warranto can be issued by this Court in exercise of its writ jurisdiction.

5. Having heard the learned counsel for the Petitioner, we are of the view that the present PIL is not maintainable in view of the earlier orders passed by this Court dismissing PILs seeking identical relief. In this regard, we may refer to our order dated 28th March, 2024 passed in W.P.(C) 4578/2024, which reads as under:

“1. Present public interest petition has been filed seeking Writ in the nature of Quo Warranto calling upon the Respondent Nos. 1 to 3 to justify under what authority Respondent No. 4 is continuing to hold the post of Chief Minister of Government of NCT of Delhi and to further remove Respondent No. 4 from the post of Chief Minister of the Government of NCT of Delhi.

2. Learned counsel for the Petitioner states that the continuance of Respondent No. 4 as the Chief Minister of Government of NCT of Delhi after his arrest by the Enforcement Directorate in the money laundering case relating to the alleged liquor policy scam has degraded the credibility and image of Government of NCT of Delhi in the eyes of general public. He states that the continuance of Respondent No. 4 as Chief Minister has lead to breakdown of Constitutional machinery in the State.

3. He contends that with the Chief Minister in custody, the State Government cannot function. In support of his contention, he relies upon Rule 585 of the Delhi Prison Rules, 2018, which reads as under:-

“Every prisoner shall be allowed reasonable facilities for seeking or communicating with, his family members, relatives, friends and legal advisers for the preparation of an appeal or for procuring bail or for arranging the management of his property and family affairs

He shall be allowed to have interviews with his family members, relatives, friends and legal advisers twice in a week. A prisoner may be allowed to work any number of letters at his cost, however government will provide four post cards in a month, if he so desires. ”

4. Having heard the counsel for the Petitioner and having perused the paperbook, this Court is of the view that there is no scope for judicial interference in the present matter. This Court in writ jurisdiction cannot remove or dismiss Respondent No. 4 from the post of Chief Minister of the Government of NCT of Delhi or declare breakdown of constitutional machinery in the State. It is for the other organs of the State to examine the said aspect in accordance with law. This Court clarifies that it has not commented upon the merits of the allegations.

5. With the aforesaid observations, the present writ petition is dismissed.”

6. The filing of the present PIL by the Petitioner despite being aware of the dismissal of three earlier PILs seeking identical reliefs is sufficient

evidence of the fact that the Petitioner has filed this PIL to gain publicity. 7. The Supreme Court as early as in **Sachidanand Pandey v. State of W.B.** and in **Dr. B. Singh v. Union of India and Ors.** has taken note of the menace of filing of the frivolous PILs and cautioned against entertaining of such PILs. In our opinion, present PIL is misconceived in view of the earlier orders passed by this Court.

8. The frivolity of the PIL is also evident from the fact that the Petitioner has placed reliance upon the judgment of Supreme Court in **B.R. Kapur v. State of T.N. and Another** (supra) to maintain the PIL despite being aware that the facts of the said case were completely distinguishable. In the said case, the Respondent-Chief Minister on the date of her swearing in as a Chief Minister stood disqualified, by reason of her conviction under the Prevention of Corruption Act, 1988 and the sentence of imprisonment of not less than two years, for becoming a member of the legislature under Section 8(3) of the Representation of People Act, 1951 ('Act of 1951'). Admittedly, the Respondent No.1 herein has not suffered any disqualification under the Act of 1951.

9. With respect to the submission of the Petitioner that the incarceration of the Chief Minister has led to difficulties in functioning of the Government and the Lieutenant Governor, this aspect as well was also duly considered and opined upon by this Court *vide* order dated 28th March, 2024 in W.P.(C) 4574/2024.

10. With the aforesaid observations, the present writ petition is dismissed with costs of Rs.50,000/- to be deposited with Delhi High Court Staff Welfare Fund (Account No:- 15530110074442, IFSC Code:- UCBA0001553, Branch:- Delhi High Court) within four weeks.

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