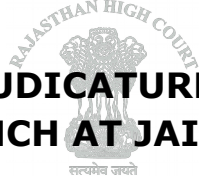




**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



D.B. Civil Writ Petition (PIL) No. 20457/2023

Om Prakash Solanki ( )

-----Petitioner

Versus

1. Special Secretary His Excellency Governor of The State of Rajasthan, Jaipur.
2. Hon'ble Chief Minister, State of Rajasthan, Secretariat, Jaipur.
3. The Secretary, Union of India, New Delhi.
4. State of Rajasthan, Through Chief Secretary, Rajasthan, Jaipur.
5. Diya Kumari Daughter
6. Prem Chand Bairwa

-----Respondents

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For Petitioner(s) : Petitioner-in-person  
For Respondent(s) : Mr. R.D. Rastogi, ASG with  
Mr. C.S. Sinha, Advocate &  
Mr. Devesh Yadav, Advocate  
Mr. Rajesh Maharshi, AAG with  
Mr. Sheetanshu Sharma, Advocate &  
Mr. Udit Sharma, Advocate

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**HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA**

**HON'BLE MRS. JUSTICE SHUBHA MEHTA**

**Judgment / Order**

**23/01/2024**

Filing of frivolous petition has been on ascend. To gain cheap publicity, frivolous petitions in the name of public interest are being filed without proper search and without proper examination of law and legal position. Present case is a classic example of a frivolous petition.



The petitioner, who is an advocate, has filed this petition seeking following reliefs:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to call for the entire record of the case and be further pleased to declared the appointment of Diya Kumari and Shri Prem Chand Bairwa as Deputy Chief Ministers of State of Rajasthan as the post of Deputy Chief Minister is unconstitutional and invalid.

Any other order or direction as may be deemed fit and proper in the facts and circumstances of the case may also be passed in favour of the petitioner".

In the body of the petition, the substance of pleadings is that since there is no office of Deputy Chief Minister described in the Constitution, the oath taken by Respondent No. 5 & 6 as Deputy Chief Minister is wholly unconstitutional.

During the course of argument, petitioner-in-person referring to additional documents filed subsequently would argue that on 30.12.2023, Cabinet Minister and State Minister (independent charge) were reported having taken oath which does not contain the name of the Respondent No. 5 & 6, therefore, it is argued, it has to be inferred that they had not taken any oath.

It is also submitted that under another notice dated 05.01.2024, the division of business was notified, wherein, again Respondent No. 5 & 6 have been allotted business of various departments of Government and again they have only been described as Deputy Chief Minister.

It is the submission of the petitioner that the Constitution does not recognize any office as the Deputy Chief Minister and, therefore, taking an oath as Deputy Chief Minister is constitutionally impermissible and for that reason, Respondent No.





5 & 6 are illegal usurps of the office of Minister. They can neither be allotted any work, nor any other facility can be provided to them.

Mr. R.D. Rastogi, Additional Solicitor General of India, on advance copy, appeared before this Court on behalf of Respondent No. 3 and assisted this Court by placing certain decisions for consideration to submit that the petition is raising an issue which is no longer res integra and stands settled in catena of decisions.

The basis of the relief sought in the writ petition is that as there is no office declared as the Deputy Chief Minister, the oath taken by Respondent No. 5 & 6 as Deputy Chief Minister is unconstitutional. From the reading of the petition, we could not find that there is any specific statement of fact made, much less with any responsibility or the source of information that Respondent No. 5 & 6 have not taken oath. During the course of argument, we repeatedly asked the petitioner-in-person whether he has made any such averment in the petition that the Respondent No. 5 & 6 have not taken oath, he could not give any satisfactory answer, much less point out any specific pleading in this regard.

During the course of arguments, it was also stated that the Constitution requires oath to be taken in form (V) Schedule III appended to the Constitution of India. We then inquired from the petitioner whether it is his case that the Respondent No. 5 & 6 have not taken oath in the prescribed performatum as prescribed in Schedule III of the Constitution. On this aspect, there is neither any pleading nor any satisfactory answer coming forth.

All that has been argued before us is that the appointment of Respondent No. 5 & 6 as Deputy Chief Minister is unconstitutional and therefore that bald pleading must be taken as engulfing all



averments like Respondent No. 5 & 6 had never taken any oath or that they had not taken any oath as per the provision of the Constitution of India as contained in Schedule III appended to it.

We are of the view that the pleadings made in this petition are evasively and ambiguously vague and there is no specific averment in the petition that Respondent No. 5 & 6 had not taken any oath much less any averment that they had not taken oath as per the requirement of Schedule III (V) appended to the Constitution of India.

In the absence of any such averments made in this petition, we are of the view that the issue raised in this petition is squarely covered by series of decisions which shall be referred to one after the other.

In the case of **K.M. Sharma Versus Devi Lal & Others, (1990) 1 SCC 438**, the appointment of respondent as Deputy Prime Minister of India was assailed on the ground that the oath administered to him as such was not in accordance with the prescription of the Constitution. The submission made by the Attorney General before the Court was as below:-

"3. Learned Attorney General appearing on behalf of the Union of India has stated that the form prescribed in the Third Schedule pursuant to the requirement of Article 75(4) of the Constitution is only for a Minister of the Union and there is no separate form even for the Prime Minister. Since the Prime Minister is also a member of the Council of Ministers, he takes the same oath as the other ministers are required to take. He maintains that yet in view of the fact that the Constitution describes him as the Prime Minister, while being sworn into office, he describes himself as Prime Minister and this practice is in vogue ever since 1950. The oath register is by the incumbent signed as Prime Minister and all other ministers sign as Ministers. He further indicates that describing Shri Devi Lal as Deputy Prime Minister is descriptive only and for all purposes he is a Minister and



there is no constitutional sanction for the post of Deputy Prime Minister as such.

4. Relying on a bench decision of this Court in the case of Virji Ram Sutaria v. Nathalal Premji Bhavadia and Ors.: (1969) 1 SCC 77, learned Attorney General further contends that the prescribed oath should be divided into two parts, one which is descriptive and the other which contains the substantial part. And according to him, as long as the substantial part is properly followed, a mere mistake or error in the descriptive part would not vitiate the oath."

Thereafter the Hon'ble Supreme Court proceeded to hold as

below:-

"5. This Court in the reported decision said:

"In this case, as we have already noted, the essential requirement of Article 173 read with Form VII-A was that the person taking the oath or making the affirmation would bear true faith and allegiance to the Constitution and uphold the sovereignty and integrity of India. The words which precede this portion are merely descriptive of the person and of his nomination as a candidate."

6. In view of the clear statement, made by the learned Attorney General that Respondent No. 1 is just a Minister like other members of the Council of Ministers though he has been described as Deputy Prime Minister but the description of him as Deputy Prime Minister does not confer on him any powers of the Prime Minister, along with his other submissions, we think the first contention raised by the petitioner has no force."

In the case of **Devidas S/o Venkatrao Pawar V. Shri Gopinath Mundhe and Others: AIR 1996 Bom 1**, a Division Bench of the Bombay High Court also followed the dictum of the Hon'ble Supreme Court in the case of **K.M. Sharma(supra)** and dismissed the petition raising identical issue, with following observations:-

"... ... There is no separate form for administering oath either for the Chief Minister or the Deputy Chief Minister. The prescribed Form V in Schedule III is for administering oath to a Minister. Secondly, describing the respondent No. 1 as Deputy Chief Minister is descriptive of





him as Deputy Chief Minister **only**, though for all purposes he is Minister when it is common ground that there is no constitutional sanction for the office of the Deputy Chief Minister as such. The Apex Court in the reported decision (AIR 1990 SC 528) reiterated the view that the words which precede the essential requirement of oath as provided in Article 173 read with Form VI-A, which is similar to Form V of Article 164 in the present case, are descriptive of a person and that description "of Deputy Prime Minister does not confer any power of Prime Minister". In that case the oath administered to Shri Devi Lal was also challenged on the same ground and the Apex Court observed that merely describing Shri Devi Lal as Deputy Prime Minister could not vitiate the oath administered under Article 173 read with Form VI-A in Schedule III to the Constitution. We have already stated that in this case also there is no quarrel that the respondent No. 1 was administered oath as per Article 164 read with Form V in Schedule III to the Constitution which contains the essential requirement that the person taking oath or making affirmation would bear true faith and allegiance to the Constitution and uphold sovereignty and integrity of India. Thus, applying the same principle as laid down by the Apex Court in the case cited supra, the ground to challenge the oath administered to the respondent No. 1 must fail."

The aforesaid legal position was again reiterated by a Division Bench of Allahabad High Court in the case of **Nirdesh Kumar Dixit and Others V. Smt. Renuka Choudhury and Others:2005 (2) ESC 978**, rejecting the petition against description of Deputy Chief Minister and State Ministers, relying upon the dictum of Hon'ble Supreme Court in the case of **K.M. Sharma(supra)**.

A Division Bench of the High Court of Karnataka At Bengaluru in the case of **Dr. Sekhar S. Iyer Versus Chief Secretary & Others (Writ Petition No. 23925 of 2018 (GM-RES) PIL**, had occasion to decide exactly the same issue as has been raised in this petition. That was a case where designation of the respondent therein as the Deputy Chief Minister of Karnataka was challenged







as unconstitutional on the ground that the concept of Deputy Chief Minister is nowhere contemplated in the Constitution of India.

Relying upon the dictum of the Hon'ble Supreme Court in the case of **K.M. Sharma (supra)** as also the decision of the High Courts of Bombay and Allahabad, it was concluded as below:-

"We are clearly of the view that with the consistent decisions of the Hon'ble Supreme Court as also of different High Courts, it is beyond the pale of doubt that mere description of any Minister in the Council of Ministers as Deputy Chief Minister does not confer the person concerned with any powers of the Chief Minister and does not result in any unconstitutionality. That being the position, we are further clearly of the view that there had been absolutely no justification for filing this writ petition as a PIL."

A Division Bench of High Court of Punjab & Haryana at Chandigarh in the case of **Jagmohan Singh Bhatti Versus Union of India & Others (CWP-PIL No. 221-2019(O&M))**, has also taken similar view relying upon the dictum of Hon'ble Supreme Court in the case of **K.M. Sharma (supra)** and decision of the Division Bench of Karnataka High Court referred to hereinabove and other decisions. It was held as below:-

"Having heard the petitioner at length and having perused the judgments placed before us, while we agree with the submissions of the petitioner that the Constitution is the primary law of country and has to be followed by all and that the judiciary is entrusted with the all important role of the guardian of the Constitution. However, as far as the challenge to the appointment of Deputy Chief Minister of the State is concerned, it is evident from a perusal of the decision of the Supreme Court rendered in the case K.M.Sharma v. Shri Devi Lal (supra) as well as the





decision of Karnataka High Court in the case of P.Venkatesh v. State of Karnataka (supra) and Bombay High Court in the case of Devidas son of Venkatrao Pawar v. Shri Gopinath Mundhe (supra) that the Supreme Court and various High Courts while dealing with the challenges to the appointment of Deputy Prime Minister of India and Deputy Chief Minister have held that mere description of a person as Deputy Prime Minister of India or Deputy Chief Minister of the State does not amount to violation of the Constitution nor does it confer upon him any extra powers under the Constitution and in such circumstances giving oath to a person as Deputy Chief Minister is not invalid as the status of a person continues to remain as the Minister.”

We find that the issue which has been raised in this petition has been answered in catena of decisions which have not been looked into by the petitioner for reasons best known to him.

Filing of PILs without proper search and raising an issue to challenge the appointment of Respondent No. 5 & 6 on the face of series of decisions and settled legal position can only be termed as frivolous, and therefore it is necessary to impose an appropriate cost.

Taking into consideration the entirety of the matter and frivolity of the petition, we are inclined to impose cost of Rs.25,000/- payable by the petitioner in the Rajasthan High Court Legal Services Committee, Jaipur within a period of one month.

The petition is, accordingly, dismissed.

(SHUBHA MEHTA),J

(MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

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