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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6076/2024

AMARJEET GUPTA

..... Petitioner

Through: Md. Imran Ahmad, Mr. Gufran Khan
and Ms. Ariana Ahluwalia, Advocate

versus

ELECTION COMMISSION OF INDIA & ORS. Respondents

Through: Mr. Ankit Agarwal, Standing Counsel
with Mr. Ashish Shukla, Mr. Atul Raj
and Mr. Jayant Rao, Advocates for
ECI-R-1

Mr. Chetan Sharma, ASG, Mr.
Apoorv Kurup, CGSC with Mr. Amit
Gupta, Mr. Vinay Yadav, Mr.
Saurabh Tripathi, Mr. Vikramaditya
Singh, Mr. Akhil Hasija and Ms.
Nidhi Mittal, Advocates for R-2 and
R-3

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Date of Decision: 01st May, 2024.

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. Present Public Interest Litigation ('PIL') has been filed seeking a direction to the Union of India ('UOI') to provide information about the arrest of a political party leader or a candidate immediately to the Respondent No. 1, Election Commission of India ('ECI') when the Model Code of Conduct ('MCC') is in force. The Petitioner also seeks a direction



to ECI to develop a mechanism to ensure that the arrested under-trial political party leaders and/or candidates are allowed to campaign through virtual conference mode with reasonable restriction as may be decided by a competent Court and/or the ECI. The Petitioner also seeks a direction to ECI to reply to letters/communication received from members of the public in terms of the Office Memorandum ('O.M.') dated 01st December, 2021 and 15th March, 2021 issued by Department of Personnel and Training ('DoPT').

2. Learned counsel for the Petitioner states that the present PIL has been filed on behalf of the affected party leaders and electors in Delhi. He states that the Petitioner is aggrieved by the timing of the arrest of the National Convener/leader of the Aam Admi Party ('AAP') on 21st March, 2024. He states that the said arrest has deprived the electors of Delhi with respect to their right to get information from the said party leader by listening to him during the ongoing election campaign. He states that the right of the electors to be informed about the ideology, plans and programs of AAP have been curtailed on account of the said arrest. He states that, similarly, the arrested political leader has also been deprived of his legal right to campaign during the election. He states that, therefore, arrested leaders, who are under-trials should atleast be allowed to campaign through the virtual conference mode with reasonable restriction as directed by the ECI or the competent Court.

2.1. He states that the Petitioner is of the opinion that to ensure free and fair elections and level playing field to all political parties, Respondent Nos. 2 and 3 (UOI) should ensure the detailed information about the arrest of political leader or candidate is immediately communicated to the ECI. He states that the timing of the arrest has vitiated the level playing field in the elections.



2.2. He lastly states that the Respondent No. 1, ECI has failed to give any reply to the representations made by the Petitioner and this is in contravention of the OM dated 01st December, 2021 and 15th March, 2021.

3. Learned counsel for Respondent No. 1 states that the directions sought by the Petitioner are beyond the jurisdiction of ECI. He states that ECI cannot interfere in judicial process, where a person is arrested in accordance with law.

4. This Court is of the view that the present writ petition which effectively challenges the arrest of the National Convenor of AAP on 16th March, 2024 is not maintainable as the said person is in judicial custody in pursuance to the judicial orders, which are not a subject matter of the present petition. The petition conspicuously fails to name the person though the identity is apparent due to the references made to his political standing/position in the petition. The said person admittedly has the means and wherewithal to approach the Court and file appropriate proceedings which in fact he has so done before this Court as well as the Apex Court. A similar PIL i.e., W.P.(CrI.) 1203/2024 was dismissed with costs by this Court on 22nd April, 2024 after observing that the writ petitioner therein has no *locus standi* to approach the Court for seeking relief with respect to criminal proceedings initiated against the said person. This petition as well is liable to be dismissed as the Petitioner herein has no *locus standi* to seek the reliefs in favour of the arrested person.

5. The direction sought in the present petition to Respondent Nos. 2 and 3 to provide information of the arrest of a political party leader or a candidate to ECI when MCC is in force belies the Petitioner's legal understanding with respect to the Rule of law. Every person who is arrested



by a law enforcement agency is required by law¹ to be produced before the nearest Magistrate within a period of 24 hours of such arrest and the further incarceration of the arrested person is permissible only after obtaining orders of the Magistrate. In the facts alleged in the petition similarly, the concerned person after his arrest was duly produced before the competent Court and continues to remain in judicial custody in pursuance to the orders of the Court. Therefore, the direction seeking separate information to ECI has no rationale or basis and undermines the safeguards which exist in law.

6. Similarly, the direction to ECI for framing a policy for permitting arrested undertrial political leaders or candidate to carry on campaigning through virtual mode during elections is in ignorance of the existing rules in the jail manual which govern the rights of the undertrials. It is a settled law that the Courts do not issue directions which are legislative in nature unless there is a vacuum (*Re. Ashwani Kumar vs. Union of India*²). The petition has been filed in ignorance of the doctrine of separation of powers and seeks directions which are legislative in nature and therefore, outside of power of judicial review. Even otherwise, the ECI does not have any jurisdiction with respect to the rights of undertrials, who are in judicial custody.

7. In view of the stand of Respondent No. 1 on the issue raised in this petition and this Court's finding that the issues raised by the Petitioner have no merit, prayer (i) seeking a direction to Respondent No. 1 to decide the representations of the Petitioner does not survive for consideration.

8. In our considered opinion, this petition is frivolous and appears to have been filed with the intent of garnering publicity. Though we were

¹ Section 57 of the Criminal Procedure Code

² (2020) 13 SCC 585 para nos. 29 to 32



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inclined to impose costs, however, learned counsel for the Petitioner has prayed that since the Petitioner is a student the costs be exempted. This petition is, therefore, without any merit is dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MAY 1, 2024/hp/ms

Click here to check corrigendum, if any