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

Date of decision: 27th JULY, 2022

IN THE MATTER OF:

\+ **W.P.(C) 10207/2022**

DR NAND KISHORE GARG ..... Petitioner

Through: Mr. Shashank Deo Sudhi, Advocate.

versus

GOVT OF NCT OF DELHI AND ORS ..... Respondents

Through: Mr. Sandeep Sethi, Sr. Advocate and Mr. Rahul Mehra, Sr. Advocate with Mr. Satyakam, Additional Standing Counsel, Ms. Krishnashree Devee, Advocates for R-1 to 3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. The instant writ petition under Article 226 and 227 of the Constitution of India has been filed for issuance of a writ, order or direction in the nature of *Mandamus* to Respondent No.2/Lieutenant Governor of Delhi for initiating appropriate proceedings for suspension of Health Minister of Delhi Sh. Satyender Jain, who has been in custody since 30.05.2022.

2. It is stated that Sh. Satyender Jain, who has been in custody since 30.05.2022, has been enjoying all the perks and privileges of a Cabinet

Minister, despite facing allegations of serious financial irregularities, and that this is violative of Article 14 of the Constitution of India inasmuch as a Government Servant, who is in custody for more than 48 hours, is to be put under deemed suspension as per the practice which is being followed relating to the Public/Government Servants in terms of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (hereinafter referred to as "CCS (CCA) Rules, 1965"). It is stated that Respondent No.3/Sh. Satyender Jain has also committed breach of oath and he cannot be permitted to hold the office as a Minister.

3. The facts, in brief, are that the Central Bureau of Investigation (CBI) registered an FIR in the month of August 2017 against the Health Minister of Delhi, Sh. Satyender Jain, on the charge of alleged possession of disproportionate assets. The Enforcement Directorate, thereafter, launched a probe into the allegation levelled against Sh. Satyender Jain based on an FIR registered by the CBI and arrested Sh. Satyender Jain on 30.05.2022 in an alleged money laundering case on the grounds of him partaking in *hawala* transactions in the year 2015-2016 with a Kolkata-based firm.

4. By way of the instant petition, the Petitioner has submitted that the elected representatives/Ministers fall under the definition of a Government servant and are they liable to be kept under deemed suspension in case their custody extends for more than 48 hours, akin to the process that applies to a “Government servant” defined under provision of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. It is submitted that continuance of Sh. Satyender Jain, despite him being under custody, violates Article 164 read with provisions of Schedule-III of the Constitution of India. It is further submitted that the Minister under custody cannot be permitted to access confidential information of the State

departments and there is an urgent requirement to formulate strict guidelines pertaining to the resignation/suspension of the Minister in the event of arrest of a Minister. It is further submited that the Minister in custody (for more than 48 hours) is not entitled to the perks and privileges, including the full salary.

5. With the consent of both the parties, this case is being taken up for final disposal.

6. Mr. Shashank Deo Sudhi, learned Counsel appearing for the Petitioner, submits that the Minister is in custody since 31.05.2022 and this is a cause for his removal from the post of a Cabinet Minister. He states that allowing him to continue, with all perks and privileges, is in violation of Article 14 of the Constitution of India. He states that any "Government servant" being in custody for more than 48 hours faces suspension and the same analogy must apply to Mr. Satyender Jain also. Mr. Sudhi argues that as per Article 164 of the Constitution of India, the appointment of the Cabinet Ministers of the State is done on the advice tendered by the Chief Minister of the State to the Lt. Governor. He states that this "advice" is meant to be in consonance with the principles of constitutional morality and good governance, and that it is incumbent upon the Chief Minister to ensure that the Cabinet Ministers appointed are those who inspire confidence in the public at large.

7. Learned Counsel appearing for the Petitioner draws the attention of this Court to paragraph Nos.94, 96, 97 and 100 of a Judgment of the Supreme Court in Manoj Narula vs. Union of India, **(2014) 9 SCC 1**, which reads as under:

"Analysis of the term "advice" under Article 75(1)

94. *Having dealt with the concepts of "constitutional morality", "good governance", "constitutional trust" and the special status enjoyed by the Prime Minister under the scheme of the Constitution, we are required to appreciate and interpret the words "on the advice of the Prime Minister" in the backdrop of the aforestated concepts.*

96. *The repose of faith in the Prime Minister by the entire nation under the Constitution has expectations of good governance which is carried on by the Ministers of his choice. It is also expected that the persons who are chosen as Ministers do not have criminal antecedents, especially facing trial in respect of serious or heinous criminal offences or offences pertaining to corruption. There can be no dispute over the proposition that unless a person is convicted, he is presumed to be innocent but the presumption of innocence in criminal jurisprudence is something altogether different, and not to be considered for being chosen as a Minister to the Council of Ministers because framing of charge in a criminal case is totally another thing. Framing of charge in a trial has its own significance and consequence. Setting the criminal law into motion by lodging of an FIR or charge-sheet being filed by the investigating agency is in the sphere of investigation. Framing of charge is a judicial act by an experienced judicial mind. As the debates in the Constituent Assembly would show, after due deliberation, they thought it appropriate to leave it to the wisdom of the Prime Minister because of the intrinsic faith in the Prime Minister. At the time of framing of the Constitution, the debate pertained to conviction. With the change of time, the entire complexion in the political arena as well as in other areas has changed. This Court, on number of occasions, as pointed out hereinbefore,*

has taken note of the prevalence and continuous growth of criminalisation in politics and the entrenchment of corruption at many a level. In a democracy, the people never intend to be governed by persons who have criminal antecedents. This is not merely a hope and aspiration of citizenry but the idea is also engrained in apposite executive governance.

97. *It would be apt to say that when a country is governed by a Constitution, apart from constitutional provisions, and principles constitutional morality and trust, certain conventions are adopted and grown. In Supreme Court Advocates-on-Record Assn. [(1993) 4 SCC 441 : AIR 1994 SC 268] , the Court reproduced a passage from K.C. Wheare's book The Statute of Westminster and Dominion Status (4th Edn.) and we quote : (SCC p. 650, para 337)*
"337. ... 'The definition of "conventions" may thus be amplified by saying that their purpose is to define the use of constitutional discretion. To put this in slightly different words, it may be said that conventions are non-legal rules regulating the way in which legal rules shall be applied.'"

I. Jennings, in The Law and the Constitution [5th Edn., ELBS : London, 1976), in his Chapter "Conventions" 247.] , stated that a convention exists not only due to its non-enforceability but also because there is a reason for the rule. I. Lovehead, in Constitutional Law — A Critical Introduction [2nd Edn., Butterworths : London, 2000), 247] , has said that the conventions provide a moral framework within which the government ministers or the monarch should exercise non-justiciable legal powers and regulate relations between the Government and other constitutional authorities. In the Constituent Assembly Debates, Dr

> *Rajendra Prasad, in his speech as President of the Constituent Assembly, while moving for the adoption of the Constitution of India, had observed : (CAD p. 993)*
> *"... Many things which cannot be written in a Constitution are done by conventions. Let me hope that we shall show those capacities and develop those conventions."*
>
> ***100.*** *Thus, while interpreting Article 75(1), definitely a disqualification cannot be added. However, it can always be legitimately expected, regard being had to the role of a Minister in the Council of Ministers and keeping in view the sanctity of oath he takes, the Prime Minister, while living up to the trust reposed in him, would consider not choosing a person with criminal antecedents against whom charges have been framed for heinous or serious criminal offences or charges of corruption to become a Minister of the Council of Ministers. This is what the Constitution suggests and that is the constitutional expectation from the Prime Minister. Rest has to be left to the wisdom of the Prime Minister. We say nothing more, nothing less."*

8. Learned Counsel appearing for the Petitioner further draws attention of this Court to a Judgment of the Apex Court in M. Karunanidhi vs. Union of India, **(1979) 3 SCC 431** and the Judgment passed by the Division Bench of Kerala High Court in Kallara Sukumaran vs. Union of India & Others, **(AIR) 1986 Ker 122** to contend that a Minister, who has been arrested for more than 48 hours, should not be permitted to hold the office and all his perks and privileges of being a Cabinet Minster to be withdrawn.

9. Mr. Sudhi, learned Counsel for the Petitioner, submits that as a Minister is a public servant, Rule 10 of the Central Civil Services

(Classification, Control & Appeal) Rules, 1965, are applicable to him as well. He submits that comprehensive guidelines for regulating the resignation/suspension of a Minister should be formulated.

10. *Per contra*, Mr. Sandeep Sethi and Mr. Rahul Mehra, learned Senior Counsel appearing for the Respondents, contend that the Petitioner cannot place reliance on the Judgment of the Apex Court in Manoj Narula (supra) and submitted that, in fact, the said Judgment is contrary to the arguments of the learned counsel for the Petitioner. The learned Senior Counsel places reliance on Paragraph No.108 of the said Judgment to state that the Apex Court had opined that it was not clear as to who should frame guidelines for the appointment of a Minister in the Central or State Government, and it was entirely left to the discretion of the appropriate Legislature.

11. Learned Senior Counsel appearing for the Respondents place reliance upon Paragraph Nos.64, 108, 120.7 and 133.5 of the Judgment of the Apex Court in Manoj Narula vs. Union of India (supra) which read as under:

> ***"64.*** *On a studied scrutiny of the ratio of the aforesaid decisions, we are of the convinced opinion that when there is no disqualification for a person against whom charges have been framed in respect of heinous or serious offences or offences relating to corruption to contest the election, by interpretative process, it is difficult to read the prohibition into Article 75(1) or, for that matter, into Article 164(1) to the powers of the Prime Minister or the Chief Minister in such a manner. That would come within the criterion of eligibility and would amount to prescribing an eligibility qualification and adding a disqualification which has not been stipulated in the Constitution. In the absence of any constitutional prohibition or statutory embargo, such disqualification, in our considered opinion, cannot be*

read into Article 75(1) or Article 164(1) of the Constitution.

108. *The second substantive relief is for the framing of possible guidelines for the appointment of a Minister in the Central or State Government. It is not clear who should frame the possible guidelines, perhaps this Court. As far as this substantive relief is concerned, it is entirely for the appropriate Legislature to decide whether guidelines are necessary, as prayed for, and the frame of such guidelines. No direction is required to be given on this subject.*

120.7. *In other words, any person, not subject to any disqualification, can be appointed a Minister in the Central Government.*

133.5. *It is not for this Court to lay down any guidelines relating to who should or should not be entitled to become a legislator or who should or should not be appointed a Minister in the Central Government."*

12. Heard Mr. Shashank Deo Sudhi, learned Counsel appearing for the Petitioner, Mr. Sandeep Sethi, learned Senior Counsel and Mr. Rahul Mehra, learned Senior Counsel appearing for the Respondents, and perused the material on record.

13. Article 164 of the Constitution of India provides that a Chief Minister is to be appointed by the Governor, and all the other Ministers are to be appointed by the Governor on the advice of the Chief Minister, and that the said Ministers shall hold office during the pleasure of the Governor. Article 164 (1B) lays down the rules for disqualification of a Member of Council of Ministers.

14. The Supreme Court, while dealing with a petition under Article 32 of the Constitution of India assailing the appointment of certain persons as Ministers to the Council of Ministers of Union of India despite their involvement in serious and heinous crimes, referred the issue to a larger Bench by Order dated 24.03.2006 to decide the legality of a person with criminal antecedents and/or charged with offences involving moral turpitude being appointed as a Minister in the Central and State Governments.

15. The Bench of five Judges of the Apex Court decided the issue *vide* Judgement dated 27.08.2014 passed in Manoj Narula (supra). A perusal of the Judgement demonstrates that the contentions of the Petitioner herein are categorically contrary to what has been held in the said Judgement. In the said Judgment, the Supreme Court refrained from framing any guidelines on the said issue and held that it was not for the Court to issue any directions to the Prime Minister or Chief Minster, as the case may be, with regard to the manner in which they should exercise their power while selecting their colleagues in the Council of Ministers.

16. Furthermore, the Apex Court, while considering the contention of the Petitioner therein as to whether an implied limitation could be read into the conditions that would lead to the disqualification of a Minister, observed that in the presence of categorical reasons for disqualification in Article 164(1B), another condition for disqualification could not be read into the same by the Court. The Supreme Court further noted that deeming a person against whom allegations of criminality have been alleged as a criminal, and thereby, robbing them of their appointment, would go against the basic principle of criminal jurisprudence, i.e. a person is deemed to be innocent until proven guilty.

17. Relying on the aforementioned observation of the Apex Court in Manoj Narula (supra), this Court is of the opinion that the Petitioner's reliance on the said Judgement is misplaced as nowhere does the Supreme Court exercise its jurisdiction to either frame guidelines for the disqualification of a Minister or read into Article 164 a condition for disqualification. This Court finds it necessary to reiterate that it is not for the Court to lay down or state who should or who should not be appointed as a legislator or who should be entitled to becoming a Minister in either the Central Government or the State Government. It is solely the prerogative of either the Prime Minister, or the Chief Minister, as the case may be who will act in the best interest of the State and will uphold the spirit of our Constitution.

18. The Division Bench of Kerala High Court in Kallara Sukumaran vs. Union of India & Others, **(AIR) 1987 Ker 122,** has also noted that it is the political wisdom of the Chief Minister to choose his cabinet colleagues, and the same does not command judicial tolerance or even demand judicial scrutiny. The relevant portion of the said judgement reads as under:

> ***"25.*** *It is only on the advice of the Chief Minister that the other Ministers are, appointed by the Governor. The choice is, therefore, of the Chief Minister. In choosing the members of his Cabinet, the Chief Minister may be guided by several factors to formulate and pursue a common policy, to provide a cohesive and stable government and for an efficient administration of the State. He may consider the member's standing, his influence in the party, his ability to give valuable advice and to take the lead in the implementation of the avowed policies of the Government and also his utility in the debate and discussion that take place in the Legislative Assembly. In fact, there are no set patterns of conduct or rule which alone should guide the Chief Minister in the choice of his colleagues in the Cabinet and rightly therefore, the constitution has not in express terms*

> *prescribed the qualifications of the Ministers. The Chief Minister is answerable to the electorate and the members of the assembly and he makes a wrong choice of personnel of his cabinet at his peril. The political wisdom of the Chief Minister to choose his cabinet colleagues does not command judicial tolerance or even demand judicial scrutiny. The continuance of the Ministers in office is thus only at the pleasure of the Chief Minister, "at his disposal."*

19. With regard to whether the breach of oath on the part of the allegedly erring Minister can warrant the interference of the Court under Article 226 of the Constitution, the same has been considered by the Kerala High Court in K.C. Chandy v. R. Balakrishna Pillai, **AIR 1986 Ker 116**, wherein it was observed as under:

> *"**9.** Breach of oath requires a termination of the tenure of office. This power can be exercised by the appointing authority under the Constitution, and according to the procedure, if any, prescribed therein. The termination of that tenure is not the function of a Court; and it would not be appropriate to exercise jurisdiction under Art. 226 in such cases. Proceedings under Art. 226 in such cases do not lie. It was Jefferson who said:*
> *"Our peculiar security is in the possession of a written Constitution; let us not make it a blank paper by construction" (Government by Judiciary — Raoul Berger — p. 304).*
>
> ***10.** The question as to whether there was breach of oaths of office and of secrecy committed by a Minister is outside judicial review under Art. 226 of the Constitution. It is to be decided in other appropriate forums; and in the case of the Minister in a State, it falls*

within the discretionary domain of the Chief Minister and/or the Governor. Breach of oath prescribed by the Constitution may, in certain circumstances, attract the penal provisions under the Penal Code, 1860. When the Criminal Law is set in motion, it is of course for the criminal Court to decide whether an offence has been committed or not. That is an independent remedy which does not affect the Constitutional power, of withdrawing the pleasure to continue in office, ingrained in Art. 164(1). As Raoul Berger refers in 'Government by Judiciary' at page 293: 'Judiciary was designed to police constitutional boundaries, not to exercise supra constitutional police making decisions'— (Hamilton)."

20. A perusal of the above Judgment holds that whether a breach of oath fulfils a ground for disqualification of a Minister is not mentioned in Article 164 (1) of the Constitution of India, and it is not for the Court to direct the Governor of Chief Minister to remove a person who is committing said breach of oath. Therefore, breach of oath does not entail an automatic termination of the tenure, but requires an independent order by the appointing authority; a High Court under Article 226 is not competent to issue such orders terminating the appointment of a Minister of the State. The reliance placed by the Counsel for the Petitioner on M. Karunanidhi, (supra) is also irrelevant because the question which arose for consideration before the Court was whether a Chief Minister is a public servant or not within the ambit of the Indian Penal Code, 1860, or the Code of Criminal Procedure, 1973. In the instant case, the issue is whether Rule 10 of the CCS (CCA) Rules, 1965, would apply to a Minister and whether a Minister can be termed to be a government servant by virtue of being a public servant.

21. The contention of the Petitioner that Central Civil Services

(Classification, Control & Appeal) Rules, 1965 should be made applicable to Ministers is in fact without any basis. Clauses 2a and 3 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965,read as under:

> ***"2. Interpretation***
>
> *In these rules, unless the context otherwise requires, -*
>
> *(a) "appointing authority", in relation to a Government servant, means-*
>
> *(i) the authority empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or*
>
> *(ii) the authority empowered to make appointments to the post which the Government servant for the time being holds, or*
>
> *(iii) the authority which appointed the Government servant to such Service, grade or post, as the case may be, or*
>
> *(iv) where the Government servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment of the Government, the authority which appointed him to that Service or to any grade in that Service or to that post,whichever authority is the highest authority;*
>
> ***3. Application***
>
> *(1) These rules shall apply to every Government servant including every civilian Government servant in*

the Defence Services, but shall not apply to –

(a) any railway servant, as defined in Rule 102 of Volume I of the Indian Railways Establishment Code,

(b) any member of the All India Services,

(c) any person in casual employment,

(d) any person subject to discharge from service on less than one month's notice,

(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions.

(2) Notwithstanding anything contained in sub-rule (1), the President may by order exclude any Group of Government servants from the operation of all or any of these rules.

(3) Notwithstanding anything contained in sub-rule (1), or the Indian Railways Establishment Code, these rules shall apply to every Government servant temporarily transferred to a Service or post coming within Exception (a) or (e) in sub-rule (1), to whom, but for such transfer, these rules would apply.

(4) If any doubt arises, -

(a) whether these rules or any of them apply to any person, or whether any person to whom these rules apply belongs a particular Service, the matter shall be referred to the President who shall

decide the same."

22. Clause 3 of the CCS (CCA) Rules, 1965, which is an extensive Clause covering a variety of government servants to whom the 1965 Rules are applicable, explicitly excludes from its ambit a Minister. A Minister cannot be said to a government servant as well, as the appointing authority of the Ministers, i.e. the Governor of the State, does not fall under Clause 2a of the CCS (CCA) Rules, 1965. Therefore, Rule 10 of the 1965 Rules, which stipulates that being arrested for a period of 48 hours or more entails suspension of the government servant, would not apply to a Minister.

23. It is pertinent to note at this juncture that while it is not for the Court to issue directions to the Chief Minister, it is the duty of the Court to remind these key duty holders about their role with regard to uphold the tenets of our Constitution. The Chief Minister exercises his/her discretion in choosing the Members of Cabinet and to formulate a policy pertaining to appointment of Council of Ministers. The Council of Ministers has a collective responsibility to sustain and uphold integrity of the Constitution of India, and it is for the Chief Minister to act in the best interest of the State and consider as to whether a person who has criminal background and/or has been charged with offences involving moral turpitude should be appointed and should be allowed to continue as a Minister or not.

24. Good governance is only in the hands of good people. Even though the Court cannot sit in judgement of what is good or bad, it certainly can remind constitutional functionaries to preserve, protect and promote the ethos of our Constitution. There is a presumption that the Chief Minister would be well advised and guided by such constitutional principles. As Dr. B.R. Ambedkar, the father of the Indian Constitution, had stated during the Constituent

Assembly Debates:

> *"...however, good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot. The working of Constitution does not depend wholly upon the nature of the Constitution."*

25. This Court wholeheartedly agrees with the observations of Dr. B.R. Ambedkar, and hopes that the Chief Minister upholds the trust reposed in him that forms the foundation of a representative democracy while appointing persons to lead the people.

26. With these observations, the instant writ petition is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

JULY 27, 2022
S. Zakir