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

+ W.P.(C)No.7374/2017 and CM Nos.30434-36/2017

% Date of decision : 24th August, 2017

SATYA NARAYAN PRASAD Petitioner
Through : Petitioner in person.

versus

UNION OF INDIA & ORS Respondents
Through : Mr. Arun Bhardwaj, CGSC.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This writ petition purporting to be in public interest states in para (iv) of the grounds that the petitioner “*wants that this method of Election for member of Rajyasabha should be changed modified and reconsidered by Election Commission as well as by the ministry of Law and Justice, govt. of India. Wherein the govt. of India and Election Commission of India should frame/pass rules and regulations in this context that defeated leader in Loksabha/Vidhan Sabha Election cannot be elected as member of Rajyasabha and also cannot be appointed as the minister of the ruling party.*” Additionally, in para (v), the petitioner seeks information from the Ministry of Law and

Justice as to “under what provision/rule/law, defeated leader of Lok Sabha/Vidhan Sabha election are again nominated and elected as member of Rajya Sabha Election. But Election Commission of India has not given detail information in this context and stated that there is no legal restriction and provision that defeated leader in Lok Sabha/Vidhan Sabha Election has not contest in the Election of Rajya Sabha. In the same way Ministry of Law and Justice has also failed to give sufficient information in this context and mention that the Government of India is abided by whatever provision given in Article-84 of Indian Constitution. Wherein qualification for member of council of state (Rajyasabha) has been already given”.

2. Premised on the above grounds, the following prayer is made :

“1. Issue writ of mandamus or order or direction to the respondent to impose restriction/ban on those leaders who have lost their election in Lok Sabha or Vidhan Sabha election to again contest in the Election of Rajya Sabha for five years.”

It is apparent from the above that the writ petitioner wants this court to legislate and prescribe conditions as to the eligibility of a person to be nominated as a member of the Rajya Sabha.

3. Mr. Arun Bhardwaj, Central Government Standing Counsel for the respondents has drawn our attention to the letter dated 22nd May, 2017 whereby the Ministry of Law and Justice has clearly informed the petitioner as follows :

*“F.No.H-11021/7/2017-Leg-II
Government of India
Ministry of Law & Justice
Legislative Department*

4th Floor, "A" Wing
Shastri Bhawan
New Delhi the 22 May, 2017

To

Shri Satyaa Narayan Prasad,
AB-431/2, Amarpuri, Nabi Karim
New Delhi-110055

Subject : Writ petition (Civil) No.1222 of 2017 – in the matter of
Shri Satya Narayan Prasad Versus Ministry of Law &
Justice & another before Hon'ble Delhi High Court –
regarding.

Sir,

I am directed to refer to the directions of the Delhi High Court dated 21/4/2017 in Writ Petition (Civil) No.1222 of 2017 and to say that articles 102 and 191 of the Constitution of India and Part II and Chapter III of the Representation of the People Act, 1951 contain detailed provisions for disqualification for membership of Parliament and State Legislatures. A perusal of the said provisions would make it clear that the existing constitutional and statutory scheme of laws relating to elections does not envisage disqualification for Membership of Rajya Sabha on the ground of defeat of a candidate in Lok Sabha/State Assembly elections. You may kindly appreciate that the founding fathers of the Constitution in their collective wisdom did not consider such a provision to be circumscribed by the tenets of the democratic system of governance envisioned for the country.

Apart from the above, I may state that the electoral reforms in its entirety was examined by the Law Commission of India which, after consulting various stake holders including political parties, Election Commission etc., submitted its 244th and 255th Reports containing recommendations on a wide spectrum of electoral issues. However, the Law Commission has not made any recommendation for disqualification of a person for membership of Rajya Sabha on the ground of defeat of a candidate in Lok Sabha/Assembly elections.

Yours faithfully,

s/d
(KK Saxena)
Deputy Secretary to the Govt. of India
Telefax:2338 4603”

(Emphasis by us)

4. Mr. Arun Bhardwaj also places reliance on the pronouncement of the Supreme Court reported at (2005) 13 SCC 287, **Suresh Seth v. Commissioner, Indore Municipal Corporation & Ors.**

5. In this case, a similar prayer made before the Supreme Court for amendment in the M.P. Municipal Corporation Act, 1956 in **Suresh Seth** was rejected by the court holding as follows :

*“5. Learned counsel for the appellant has also submitted that this Court should issue directions for an appropriate amendment in the M.P. Municipal Corporation Act, 1956 so that a person may be debarred from simultaneously holding two elected offices, namely, that of a member of the Legislative Assembly and also of Mayor of a Municipal Corporation. In our opinion, this is a matter of policy for the elected representatives of people to decide and no direction in this regard can be issued by the Court. That apart **this Court cannot issue any direction to the legislature to make any particular kind of enactment. Under our constitutional scheme Parliament and Legislative Assemblies exercise sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation.** In Supreme Court Employees' Welfare Assn. v. Union of India[(1989) 4 SCC 187 : 1989 SCC (L&S) 569] (SCC para 51) it has been held that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such **executive authority cannot be asked to enact a law which it has been empowered to do under the delegated legislative authority.** This view has been reiterated*

in State of J&K v. A.R. Zakki [1992 Supp (1) SCC 548 : 1992 SCC (L&S) 427 : (1992) 20 ATC 285] . In A.K. Roy v. Union of India [(1982) 1 SCC 271 : 1982 SCC (Cri) 152] it was held that no mandamus can be issued to enforce an Act which has been passed by the legislature. Therefore, the submission made by the learned counsel for the appellant cannot be accepted.”

(Emphasis by us)

These principles bind this court.

6. It is therefore, well settled that it is not open to this court to legislate on the present issue or issue directions in terms of the prayers made by the petitioner in the instant writ petition.

7. In view of the above, the present writ petition is clearly misconceived and the prayer made herein cannot be granted.

This writ petition and applications are dismissed in the above terms.

ACTING CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

AUGUST 24, 2017

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