

\$~37 and 38

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION(CIVIL) No. 7612/2018**

Date of decision: 20th August, 2018.

NITIN TYAGI & ORS Petitioners
Through: Mr. K.V. Vishwanathan Sr.
Advocate with Mr. Manish Vashisht, Mr.
Sameer Vashisht, Mr. Rikky Gupta, Mr.
Kamal Mehta, Ms. Rani Raghunath, Ms.
Manshury Jha and Mr. Kapil Gupta,
Advocates.

versus

ELECTION COMMISSION OF INDIA&ANR... Respondents
Through: Mr. Amit Sharma, Mr. Dipesh
Sinha, Mr. Pratik Kumar and Ms. Ayial
Imti, Advocates.

WRIT PETITION(CIVIL) No. 7635/2018

SHRI KAILASH GAHLOT AND ORS. Petitioners
Through: Mr. K.V. Vishwanathan Sr.
Advocate with Mr. Manish Vashisht, Mr.
Sameer Vashisht, Mr. Rikky Gupta, Mr.
Kamal Mehta, Ms. Rani Raghunath, Ms.
Manshury Jha and Mr. Kapil Gupta,
Advocates.

versus

ELECTION COMMISSION OF INDIA AND ANR... Respondents
Through: Mr. Arvindkr Nigam, Sr.
Advocate with Mr. Amit Sharma, Mr.
Dipesh Sinha, Mr. Pratik Kumar and Ms.
Ayial Imti, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA J., (ORAL)

These writ petitions impugn the order dated 17th July, 2018 passed by the Election Commission of India in Reference Case No.5/2015.

2. The impugned order disposed of the application filed by the petitioners dated 16th/17th May, 2018 for cross examination of Mr.Prashant Patel, the complainant, and for summoning of the Secretary, Delhi Legislative Assembly; concerned officer from the General Administrative Department, Government of NCT, Delhi; concerned officer from Accounts Department, Government of NCT, Delhi and concerned officer of Ministry of Law, Government of NCT of Delhi.

3. During the course of hearing before us, learned Senior Advocate appearing for the petitioners, on instructions, states that they would like to bring the controversy to an end and would accept the impugned order without prejudice to the rights and contentions on interpretation and pleas on “Office of profit under the Government”.

4. He also states that if required and necessary, the petitioners would file a consolidated but one application for summoning of witness(es), which may be considered and examined by the Election Commission of India on merits and in accordance with law.

5. Learned counsel for the Election Commission of India states that the order dated 17th July, 2018 had decided the application dated 16th/17th May, 2018. It is stated that the impugned order is not the

final order disposing of the Reference. Observations made in the order dated 17th July, 2018 are with reference to and for the purpose of deciding the application dated 16th/17th May, 2018.

6. On consideration, we are inclined to dispose of the present writ petitions with an observation that in case a fresh application for summoning of witness(es) is filed by the petitioners, the same would be considered and decided by the Election Commission of India in accordance with law. The application, if filed, should have full details and particulars why oral examination in respect of a specific document(s) is required. It is clarified that the Court has not expressed any opinion or view on merits on the question of “Office of Profit under the Government” or on application, which may be filed.

7. On the question of scope and ambit of remand to the Election Commission, we would like to re-produce paragraphs 110 and 113 of the decision dated 23rd March, 2018, which read as under:-

“110. We have deliberately not commented, given our opinion and interpreted the expression “office of profit under the Government” after quoting the judgments and noting the respective point of views, as order of remand is required and necessary. The reason why we have referred to the respective stands and position is to highlight the complexity and divergent views which require consideration before a firm and decisive opinion can be formed and given in a case of this nature. In the context of the present case, therefore, oral arguments and elucidation on the legal position as well as factual matrix is required and necessary. This is apparent also from the orders passed by the Commission on 16th September, 2016 and then on 23rd June, 2017.

XXX

113. In view of the aforesaid discussion, our findings on different issues and questions are as under:- (i) Reference made by the President to the ECI is valid. (ii) Order dated 23rd June, 2017 passed by the ECI is valid and in accordance with law. (iii) Opinion of the ECI dated 19th January, 2018 is vitiated and bad in law for failure to comply with the principles of natural justice. Accordingly, Writ of Certiorari is issued quashing the said opinion dated 19th January, 2018 and the consequent order/notification dated 20th January, 2018 for violation of principles of natural justice, namely, failure to give oral hearing and opportunity to address arguments on merits of the issue whether the petitioners had incurred disqualification and also on account of failure to inform that Mr. O.P. Rawat had expressed his intention to rejoin proceedings after his recusal and lastly because Mr. Sunil Arora had not participated and no hearings were held before him. (iv) Order of remand is passed to the ECI to hear arguments and thereafter decide the all important and seminal issue; what is meant by the expression "office of profit held under the Government" and re-examine the factual matrix to decide whether the petitioners had incurred disqualification on appointment as Parliamentary Secretaries, without being influenced by the earlier order or observations on the said aspect in this order."

On the question of the procedure, reference can be made to the discussion from Paragraph 39 onwards with reference to Sections 146, 146A, 146B and 146C of the Representation of People's Act, 1956.

8. Learned Senior Advocate for the Election Commission of India had expressed concern and apprehension that the proceedings in the Reference are being delayed and he had even suggested that the Court may fix outer time for completion of the hearing. Learned Senior Advocate for the petitioners in clear and categorical terms has stated that the petitioners do not want to delay the proceedings and

also seek expeditious and fair disposal. One of the reasons for the procedure followed by us and the present order disposing of the Writ Petitions on the basis of statements made, is to ensure expeditious and immediate disposal of the present petitions, so as not to delay the Reference proceedings.

9. During the course of hearing before us, learned counsel for the petitioners had referred to some remarks in the order dated 17th July, 2018, passed by the Election Commission of India. We are told by the counsel for the petitioners that the counsel had made applications before the Election Commission in that regard, but the applications have been dismissed as the present writ petitions were pending. As the writ petitions are being disposed of, the applications may be considered by the Election Commission in accordance with law.

10. Recording the above and in terms of the statements made, the writ petitions are disposed of, without any order as to costs.

11. Dasti under signature of the Court Master.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

AUGUST 20, 2018 MR/VKR