

K. M. Sharma

Vs

Devilal and Others

Writ Petition (Civil) No. 1269 of 1989

(Ranganath Misra, M.M. Punchhi JJ)

09.01.1990

ORDER

1. Two contentions were raised by the petitioner in this writ petition challenging the appointment of respondent 1, Shri Devi Lal as Deputy Prime Minister of India :

(i) that the oath administered to him as Deputy Prime Minister was not the oath in accordance with the prescription of the Constitution; and

(ii) he was still functioning as the Chief Minister of Haryana when the oath of office of his new assignment was administered to him.

2. Pursuant to notice, two affidavits have been filed - one by respondent 1 and the other on behalf of the Union of India. In the affidavit of respondent 1 certain precedents have been relied upon and the practice which has been followed ever since the Constitution came into force has been referred to.

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 Bhanvadia ((1969) 1 SCC 77 : (1969) 2 SCR 627), 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.

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 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. So far as the second contention is concerned, the petitioner himself does not press it.

7. We accordingly reject the writ petition for the reasons indicated above. No costs.

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