

# Swati Maliwal vs State on 10 March, 2023

**Author: Anup Jairam Bhambhani**

**Bench: Anup Jairam Bhambhani**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.REV.P. 236/2023

SWATI MALIWAL

Through:

Ms. Rebecca M. John, Se  
Advocate with Mr  
Chauhan, Mr. Tushar Yad  
Sayed Asif, Mr. Rajat G  
Singh and Mr. Yashu Sin  
Advocates.

versus

STATE

Through:

Mr. Sanjay Lao, Standin  
(Crl.) for the State wi  
Agarwal, Advocate and S  
Kumar, P.S.: Anti Corru

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI  
ORDER

% 10.03.2023 Exemption granted, subject to just exceptions. Let requisite compliances be made within 01 week. The application stands disposed of.

By way of the present petition filed under sections 397 read with section 482 of the Code of Criminal Procedure 1973 („Cr.P.C. ), the petitioner seeks setting-aside of order dated 08.12.2022 whereby the learned Special Judge (PC Act) (ACB)-02, Rouse Avenue Courts, Delhi has framed charges inter-alia against the petitioner under section 120B of the Indian Penal Code, 1860 („IPC ) read with section 13(1)(d)/13(2) and under section 13(1)(d)(ii)/13(2) of the Prevention of Corruption Act, 1988 („PoC Act ) read with 120B IPC.

2. The order on charge impugned by way of the present petition is on record. A copy of the separate formal order framing charges, has been handed-up; and is taken on record.

3. Ms. Rebecca M. John, learned senior counsel appearing for the petitioner submits that the petitioner is the Chairperson of the Delhi Commission for Women („DCW ), having been appointed with effect from 27.07.2015; and the essence of the allegation against the petitioner is that in her position as Chairperson, during the period from 27.07.2015 to August 2016, the petitioner alongwith the other co-accused, appointed 87 persons to various positions in and under the DCW, in a manner which amounts to offences under the PoC Act. Mr. John points-out at the outset that since the FIR was registered on 19.09.2016, the 2018 amendments to the PoC Act will not apply.

4. Attention is drawn to para 5 of the impugned order, which sets-out three heads under which the allegations against the accused persons may be categorised. These three heads are:

(a) That as against 26 sanctioned posts, the accused persons appointed 87 persons in the DCW during the impugned period, of whom most appointees were acquaintances or party workers or persons associated with accused No. 1 (viz. the petitioner) and the Aam Aadmi Party („AAP ");

(b) That one Mr. P. P. Dhal was appointed as Member Secretary on

05.04.2016 contrary to the prescribed rules and regulations and without approval of the competent authority;

(c) That a sum of Rs. 676 lacs was released to DCW against the Budget Estimate Rs. 700 lacs in one-go, instead of being disbursed in three instalments.

5. Ms. John states however, that charges have been framed only under heads (a) and (b) and no charge has been framed in relation to head

(c).

6. It is pointed-out that the chargesheet contains a tabulated list, which purports to set-out inter-alia the names, posts, dates of joining, salaries, and the alleged connection of the persons appointed by the petitioner with her and/or with AAP. Ms. John submits that it is worthy of note that the number of persons on the list has got reduced from the alleged 87 persons alleged to have been appointed to only 20, upon completion of investigation i.e., at the stage when the chargesheet was filed.

7. Ms. John has taken the court through the various names appearing in the list, which also contains a column purporting to set-out the "Specific information emerged from resume/documents" which is supposed to disclose the connection of the appointees with the petitioner and/or with AAP, in support of the allegation that the petitioner has chosen only persons associated with that political party. It is observed that the persons listed include some advocates, apart from other persons who are claimed to have, or have had, some association with the AAP, and some who have worked with the petitioner in her earlier role in the Office of the Chief Minister, Delhi i.e., under an AAP government. Senior counsel submits that though in the list, associations have been alleged between the appointees and the petitioner/AAP, it is important to note that the membership register of AAP has never been seized nor placed before the learned Special Judge. Furthermore, attention is drawn to the statement of one Constable Arun Kumar, who is stated to be one of the persons tasked to verify the alleged association of the appointees with AAP; and it will be seen that the so-called verification is premised entirely on „hearsay ", based on what the said police officer says he learned from just asking various persons about the appointee; without any tangible material to evidence any association; nor any material to even show that the police officer made any enquiries.

8. Learned senior counsel submits, that most of the appointments made were contractual in nature; that they were duly approved by the Finance Department of the Government of NCT of Delhi; and moreover, as required, audit reports in respect of the appointments were duly placed before the Delhi Legislative Assembly; and many of the contractual appointments may even have ended.

9. Ms. John submits, that insofar as the functioning of the DCW is concerned, it is governed by the Delhi Commission for Women Act, 1994 („DCW Act "); and is set-up as an „autonomous body " to promote the intent and purpose of the legislation; and as evidenced by order dated 01.03.2016 issued by Department of Women & Child Development, Government of NCT of Delhi, a specific clarification has been issued to the effect that administrative and financial powers in relation to functioning of the DCW are to be exercised by the Member Secretary under the directions of the DCW, meaning thereby that the DCW has the autonomy to take financial decisions on its own, which would include decisions as regards appointment, without requirement of any prior approval from the Delhi Government.

10. Ms. John has also taken the court through the various provisions of the DCW Act, to urge that the DCW is entitled inter-alia to make appointments for achieving the purposes of the DCW Act, which necessitates appointing lawyers and other persons engaged and experienced in matters relating to women 's affairs.

11. Most importantly, Ms. John draws attention to the provisions of section 13(1)(d)(ii) of the PoC Act, under which the principal charge has been framed inter-alia against the petitioner. The provision reads as under :

"13. Criminal misconduct by a public servant.--

(1) A public servant is said to commit the offence of criminal misconduct,--

(a)-(c) ... ..

(d) if he,--

(i)...

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or...

(e) ... .."

(emphasis supplied)

12. Learned senior counsel submits that the offence therefore comprises at least two distinct ingredients, viz. :

12.1. abuse of position by a public servant; and 12.2. the public servant obtaining (for himself or for any other person) any valuable thing or pecuniary advantage.

13. Ms. John points-out, that there is not even an allegation in the chargesheet that the petitioner obtained any valuable thing or pecuniary advantage in lieu of the appointments that are alleged to have been made.

14. It is also the submission, that though the impugned order recites that, in criminal conspiracy with other accused persons, the petitioner has made appointments "... against Rules and Regulations, against procedure, in contravention of GFR Rules, Office Orders, Office Memorandum of the Government and Finance Department issued from time to time and also in contravention of DCW Act 1994", no such rule, regulation, procedure, office order or office memorandum has been cited, or placed on record before the learned Special Judge, on the basis of which the order on charge could have been made.

15. Ms. John submit, that the complainant in the matter is the previous Chairperson of the DCW, who belongs to a different political party;

and the complaint and all proceedings arising therefrom, are informed purely by mala-fides.

16. The matter is now stated to be listed before the learned Special Judge for recording prosecution evidence on 17th to 20th March, 2023.

17. Upon a prima-facie consideration of the averments contained in the petition, the material on record and the submissions made, issue notice.

18. Mr. Sanjay Lao, learned Standing Counsel (Crl.) appears for the State on advance copy; accepts notice; and seeks time to file status report.

19. Let status report be filed within 06 weeks; response thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.

20. Re-notify on 26th July 2023.

CRL. M.A. 6205/2023 (stay)

21. By way of this application, the petitioner seeks stay of proceedings in CC No. 107/2019 pending before the Special Judge (PC Act), (ACB)- 02, Rouse Avenue Courts, Delhi.

22. Issue notice.

23. Mr. Lao accepts notice; and seeks time to file status report.

24. Let status report be filed within 06 weeks; response thereto, if any, be filed within 04 weeks thereafter; with copies to the opposing counsel.

25. On a prima-facie view of the matter as summarised above; and in light of the law enunciated by the Supreme Court as to the essential ingredient of the offence under section 13(1)(d)(ii) of the PoC Act<sup>1</sup>, it is noticed that this essential ingredient viz. obtaining some valuable thing or pecuniary advantage, is conspicuously missing from the chargesheet and from the order on charge. This aspect evidently goes to the very root of the principal offence alleged against the petitioner, the import of which accordingly requires closer consideration.

26. In view of the above, further proceedings against the petitioner in CC No. 107/2019 are stayed, till the next date of hearing before this court.

27. Re-notify on 26th July 2023.

ANUP JAIRAM BHAMBHANI, J MARCH 10, 2023 ds K.R. Purushothaman vs. State of Kerala, (2005) 12 SCC 631 cf. para 21; CK Jaffer Sharief vs. State, (2013) 1 SCC 205 cf. para 17