

Supreme Court of India

K.M. Sharma vs Devi Lal & Ors on 9 January, 1990

Equivalent citations: 1990 AIR 528, 1990 SCR (1) 1

Author: M Rangnath

Bench: Misra Rangnath

PETITIONER:

K.M. SHARMA

Vs.

RESPONDENT:

DEVI LAL & ORS.

DATE OF JUDGMENT 09/01/1990

BENCH:

MISRA RANGNATH

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MISRA RANGNATH

PUNCHHI, M.M.

CITATION:

1990 AIR 528	1990 SCR (1)	1
1990 SCC (1) 438	JT 1990 (1)	5
1990 SCALE (1)1		

ACT:

Constitution of India, 1950: Article 75(4) and Schedule 111 Forms I and II--Oath/Affirmation by Minister--Description of person as Deputy Prime Minister--Whether valid, legal and constitutional.

HEADNOTE:

The petitioner challenged the appointment of Respondent No. 1 as Deputy Prime Minister of India on the ground that the oath administered to him as such was not the oath in accordance with the prescription of the Constitution.

The petition was contested by Respondent No. 1 and the Union of India. It was contended for the latter that describing Respondent No. 1 as Deputy Prime Minister was descriptive and for all purposes he was a Minister, that the form of oath 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 that there was no separate form even for the Prime Minister.

It was further submitted that the prescribed oath is susceptible of division into two parts, descriptive and substantial, and as long as the substantial part is properly followed, as in the instant case, a mere mistake or error in

the descriptive part would not vitiate the oath.

Dismissing the writ petition,

HELD: Respondent No. 1 is just a Minister like other Members of the Council of Ministers though he has been described as Deputy Prime Minister. The description of him as Deputy Prime Minister does not confer on him any power of Prime Minister. It cannot, therefore, be said that the oath administered to him as Deputy Prime Minister was not the oath in accordance with the prescription of the Constitution. [3E, 2D]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (C) No. 1269 of 1989.

(Under Article 32 of the Constitution of India). K.M. Sharma petitioner-in-person.

Soli J. Sorabjee, Attorney General, Santosh Hegde, Additional Solicitor General, A.K. Sen, Manbir Singh, Girish Chandra and Ms. A. Subhashini for the Respondents. The Court delivered the following order:

ORDER Two contentions were raised by the petitioner in this writ petition challenging the appointment of Respondent No. 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.

Pursuant to notice, two affidavits have been filed--one by the Respondent No. 1 and the other on behalf of the Union of India. In the affidavit of Respondent No. 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.

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.

Relying on a bench decision of this Court in the case of *Virji Ram Sutaria v. Nathalal Premji Bhavadia & Ors.*, [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. 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."

In view of the clear statement. made by the learned Attorney General that Respondent No. 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. We accordingly reject the writ petition for the reasons indicated above. No costs.

P.S. S
dismissed.

Petition