

Decision of the Hon'ble Speaker, the Legislative Assembly of NCT of Delhi.

In the matter of

Kapil Mishra

..... Petitioner

Vs.

Arvind Kejriwal

Respondent

Petition for disqualification of Shri Arvind Kejriwal, Hon'ble Chief Minister, under paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India read with Article 191 (2) of the Constitution, Section 16 of the National Capital Territory of Delhi, Act, 1991 and the Members of Delhi Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1996

1. I have examined the petition filed by Shri Kapil Mishra, presently an ex-MLA seeking the disqualification of Shri Arvind Kejriwal, Member of the Legislative Assembly of Delhi under Para 2(1)(a) of the Tenth Schedule of the Constitution of India on the ground that Shri Arvind Kejriwal has voluntarily given up the membership of his party, the Aam Aadmi Party (AAP).

2. Paragraph 6 of the Tenth Schedule of the Constitution stipulates that before a petition is filed under this Para, a question should arise as to whether a member has become subject to disqualification.

A question arises only when a perceivable ground exists for it to arise. The question cannot arise in the vacuum. A perusal of the petition filed by Shri Kapil Mishra shows that it contains only wild allegations made by some people including the petitioner against Shri Arvind Kejriwal which have no relevance to Para 6 read with Para 2(1)(a). This petition



has been filed when no question has arisen under Para (6). The petition does not disclose any ground to presume that a question has arisen.

3. Further, the words "if any question arises as to whether a member of a House has become subject to disqualification" clearly indicate that the question arises when the subject matter of the question is perceivable by the public. This is clear from the decisions of the Supreme Court in the Speaker, Orissa Legislative Assembly V. Utkal Keshari Parida (Supreme Court; 17.01.2013) allowing any member of the public to file a petition under Para 6 of the Schedule. Any member of the public can file a petition on this matter when the question whether a Member of the Assembly has become subject to disqualification is perceivable by them from credible information available in the public domain.

Shri Arvind Kejriwal, besides being a Member of the Assembly and the Chief Minister of Delhi, is the National Convenor of the AAP. He leads the AAP which is the only perceivable truth. It is absurd to say or infer that he has voluntarily given up the membership of his party. It is a frivolous petition and an abuse of the provisions of the Tenth Schedule.

4. Rule 6(5) of the Member of Delhi Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1996 (Rules) requires every petition to contain a concise statement of the material facts. According to the new Oxford Dictionary of English, the word 'material' in the adjectival form means relevant. This means the facts mentioned in the petition should be relevant to disqualification under Para 2(1)(a) of the Schedule. A perusal of the petition clearly shows that it does not contain material facts.

I, therefore, dismiss the above petition under Rule 7 (2) of the Rules on the following grounds.




I. No question has arisen whether Shri Arvind Kejriwal has become subject to disqualification under Para 6 of the Tenth Schedule. Therefore, no petition can be filed under this Para.

II. The petition does not contain material facts as per the requirement of Rule 6(5) of the Rules. Thus, the petition does not comply with Rule 6.

Delhi
Date, 11.09.2019




(Ram Niwas Goel)
Speaker
Legislative Assembly,
National Capital Territory of Delhi