

H.C. ARORA

ADVOCATE

PUNJAB & HARYANA HIGH COURT

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Dated: 30.11.2019

To,

Chief Secretary, Government of Punjab, Punjab Civil Secretariat,
Chandigarh.

Subject:- Demand Notice for seeking removal of the 6 Political Advisors recently appointed by the Chief Minister, Punjab.

Through E-mail

Sir,

I hereby serve the following notice on you:

1. That Punjab Government has recently appointed the following Political Advisors to the Chief Minister, Punjab:-

1. Kushaldeep Singh Dhillon;
2. Amarinder Singh Raja Warring;
3. Sangat Singh Gilzian;
4. Inderbir Singh Bolaria;
5. Kuljit Singh Nagra and
6. Tarsem Singh.

2. That in order to prevent these newly appointed 6 Political Advisors to the Chief Minister, from disqualification from continuing as MLAs, the State Legislature has recently passed a legislation, called "Punjab State Legislature (Prevention of Disqualification) Amendment Act, 2019", which protects these 6 MLAs, who have been appointed Political Advisors to CM recently, from disqualification which they would otherwise faced/suffered on resuming the aforesaid offices of profit .

3. That irrespective of the protective shield of the "Punjab State Legislature (Prevention of Disqualification) Amendment Act, 2019", the very appointment of the aforesaid 6 MLAs as Political Advisors to the Chief Minister of Punjab is without jurisdiction. Neither the State Legislature/Punjab Vidhan Sabha, nor the State Executive i.e. the Cabinet of Ministers is having jurisdiction to

appoint any MLA as Political Advisor to CM. The aforesaid 6 appointments of Political Advisors to CM are therefore, abinitio void and without jurisdiction and are liable to be set aside for the reason stated hereunder.

4. That Article 246 of the Constitution of India, which is in Part-XI, "Relations between the Union and States", Chapter-I, lays down as under, as regards the subject matter of laws made by Parliament and the Legislatures of States:-

"246. Subject matter of laws made by Parliament and by the Legislatures of States. - (1) Notwithstanding anything in clauses (2) and (3), Parliament has **exclusive power** to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List")

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List."

5. That with the aforesaid background, it may be pertinent to state that Article 246 is one of the sources of authority to legislate under the Constitution of India. It declares that Parliament and the legislatures of the various states have the "power to make laws with respect to any of the matters enumerated" in each of the three lists contained in the Seventh Schedule. It also makes clear that the power of the Parliament is exclusive with respect to List I and that of the State Legislature with respect to List II. List III indicates various fields over which both the Parliament as well as the State legislatures would have authority to legislate concurrently subject of course to the discipline of Article 254.

6. That the Hon'ble Supreme Court of India has repeatedly held that the entries in the various lists of the Seventh Schedule are not sources of the legislative power but are only indicative of the fields w.r.t. which the appropriate legislature is competent to legislate.

7. That in Para 32 of the said judgment, the Hon'ble Supreme Court of India observed as under:-

“32. As rightly pointed out by the petitioners, the existence of a dedicated article in the Constitution authorizing the making of law on a particular topic would certainly eliminate the possibility of the existence of the legislative authority to legislate in Article 246 read with any Entry in the Seventh Schedule indicating a field of legislation which appears to be closely associated with the topic dealt with by the dedicated article.....”

8. That after examining all issues mentioned above, the Hon'ble Supreme Court of India, in Transferred Case (Civil) No. 169 of 2006 (Bimolangshu Roy (Dead) Through LRs. Vs. State of Assam & Another) , observed that it can be seen from scheme of Article 194 that it does not expressly authorize the State Legislature to create offices such as Chief Parliamentary Secretaries. On the other hand, it speaks of various other offices, like offices of Speaker and Deputy Speaker, Chairman and Deputy Chairman of the Legislative Council wherever the Council exists. Article 187 makes stipulations even with reference to Secretarial staff of the legislature. In view of above, the Hon'ble Supreme Court of India in concluding part of Para No. 44 of the above judgment observed as under:-

“44. On the face of such elaborate and explicit constitutional arrangement with respect to the Legislature and the various offices connected with the legislature and matters incidental to them to read the authority to create new offices by legislation would be a wholly irrational way of construing the scope of Article 194(3) and Entry 39 of List II. Such a construction would be enabling the legislature to make a law which has no rational connection with the subject matter of the entry. “The powers, privileges and immunities” contemplated by Article 194(3) and Entry 39 are those of the legislators qua legislators.”

9. That thus, in Para No. 45 of the aforesaid judgment, the Hon'ble Supreme Court of India observed that legislature of Assam lacked competence to make the impugned Act, i.e. the Assam Parliamentary Secretaries (Appointment, Salaries, Allowances and Miscellaneous Provision) Act, 2004.

10. That in view of the facts stated above, particularly in view of the aforesaid judgment of Hon'ble Supreme Court of India, the State Legislature of Punjab lacks any competence to make any provisions for appointing any of the existing MLAs to the post of Political Advisor to the Chief Minister of Punjab. It is also pertinent to state that in similar circumstances, the Hon'ble High Court of Punjab and Haryana at Chandigarh had in CWP No. 6715 of 2012 (Jagmohan Singh Bhatti v. Union of India), decided on 12.8.2016, had set aside the appointments of various Chief Parliamentary Secretaries appointed by the Punjab Government. Thus, for the same reasons, the appointment of 6 Political Advisors to the Chief Minister, Punjab by the Punjab Government are also liable to be set aside and quashed, the same being void ab-initio.

11. That without prejudice to the aforesaid submissions, the appointment of 6 MLAs as Political Advisors to CM, Punjab is an act of circumvention of article 164 (1-A) of the Constitution of India, which restricts the number of Ministers to fifteen percent of total number of MLAs, as the newly appointed Political advisors to CM, Punjab have been conferred the status of Cabinet Ministers, which is also over-burdening the State of Punjab, which is reeling under funds-crunch to such an extent that it is not in a position even to pay the salaries of its employees.

I would therefore, call upon you to take immediate steps for removing all the aforesaid 6 MLAs from the post of Political Advisors to the Chief Minister of Punjab, and in any case within a period of two weeks from the date of receipt of this demand notice, which is being sent through E-mail also.

In case the needful is not done within the aforesaid two weeks, in that event, I shall be left with no other alternative, except to approach the Hon'ble High Court of Punjab and Haryana at Chandigarh for seeking the removal of all the aforesaid 6 Political Advisors to the Chief Minister, Punjab, in public interest.

Meanwhile, please acknowledge receipt of this notice.

Yours sincerely,

(H.C. ARORA)
ADVOCATE