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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 717/2022

UDDHAV THACKERAY

..... Appellant

Through: Mr. Kapil Sibal, Senior Advocate,
Mr. Devadatt Kamat, Senior
Advocate with Mr. Amit Anand
Tiwari, Mr. Vivek Singh, Ms. Tanvi
Anand, Ms. Aparajita Jamwal, Mr.
Harsh Pandey, Mr. Nizam Pasha,
Mr. Rajesh Inamdar, Mr. Javedur
Rahman, Advocates

versus

THE ELECTION COMMISSION OF INDIA & ANR ... Respondents

Through: Mr. Sidhant Kumar, Ms. Manyaa
Chandok, Mr. Shivanker Rao, Ms.
Vidhi UdayShanker, Advocates for
ECI
Mr. Rajiv Nayar, Senior Advocate,
Mr. Mahesh Jethmalani, Senior
Advocate, Mr. Maninder Singh,
Senior Advocate with Mr. Chirag
Shah, Mr. Utsav Trivedi, Mr.
Himanshu Sachdeva, Ms. Manini
Roy, Ms. Shivani Bhushan, Mr.
Aniket Panwar, Mr. Piyush Tiwari,
Ms. Kanjini Sharma, Ms. Mugdha
Pande, Mr. Saurabh Seth, Advocates
for R-2

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

ORDER
% **15.12.2022**
CM APPL. 54290/2022 (Exemption)

Allowed, subject to all just exceptions.

LPA 717/2022 & CAV 447/2022, CM APPL. 54289/2022

1. *Vide* the instant appeal, the Appellant herein seeks to challenge the Order dated 15.11.2022, passed by the learned Single Judge in W.P.(C) No.15616/2022. W.P.(C) No.15616/2022 was filed by the Appellant herein with the following prayers:

“a) Issue a writ of Certiorari calling for the records of Dispute Case No. 1 of 2022 pending before Respondent No. 1;

b) Issue a writ of Certiorari quashing the Order passed by Respondent No. 1 on 08.10.2022 in Dispute Case No. 1 of 2022;

c) In the alternative, issue an appropriate writ or direction in the nature of Mandamus or any other writ directing Respondent No. 1 to consider and to preferably allot the symbol proposed by the Petitioner herein without restricting the choice of symbol from the list of free symbols notified by Respondent No. 1 as provided under the Symbols Order;

d) Issue an appropriate writ or direction in the nature of Mandamus or any other writ directing Respondent No. 1 to conduct proper hearing before passing any order in Dispute Case No. 1 of 2022;

e) Issue an appropriate writ or direction in the nature of Mandamus or any other writ directing Respondent No. 1 to conduct the proceedings in Dispute Case No. 1 of 2022 in accordance with the Principles of Natural Justice, providing opportunity to lead evidence and

advance oral and written arguments;”

2. This Court, at this juncture, is not going into the factual issues arising in the Writ Petition.

3. The main grievance of Mr. Kapil Sibal, learned Senior Counsel appearing for the Appellant, is with regard to the observations made in Paragraph 11 of the impugned Judgment. The same reads as under:-

“11. The Petitioner has raised a jurisdictional objection regarding non-maintainability of the Dispute Petition before ECI, and the Court is confident that the same would be examined on its own merits by ECI while rendering the final decision, notwithstanding the lack of trust exhibited by the Petitioner.”

4. It is pertinent to mention that the Appellant has filed an application before the State Election Commission raising the two preliminary issues, namely:-

- a) Whether there is any split in the political party i.e. Shiv Sena;
- b) Whether petition can be maintained at the behest of a person who has given up membership of the party and incurred disqualification under Xth Schedule of the Constitution of India.

5. It is the contention of Mr. Sibal that the observation of the learned Single Judge will virtually inhibit the Election Commission of India from taking up the application filed by the Appellant herein before disposing of the matter finally.

6. It is pertinent to mention that the two preliminary issues which are sought to be raised by the Appellant are pending before the Apex Court in Writ Petition (Civil) 493/2022, yet the Apex Court *vide* Order dated 27.09.2022 in IA Nos.101776-77/2022 has held that there shall be no stay on

the proceedings before the Election Commission of India. Therefore, the Election Commission of India is free to proceed with the adjudication of the dispute pending before it.

7. It is needless to state that the Election Commission of India will proceed in accordance with the procedure followed by the Commission while adjudicating a petition under Para 15 of the Election Symbols (Reservation and Allotment) Order, 1968.

8. In view of the above, no further Orders are required to be passed in this appeal. Resultantly the LPA is disposed of, along with the pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

DECEMBER 15, 2022

Rahul