

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 1933/2023

CM No. 4517/2023

Jammu and Kashmir National Conference ...Appellant/Petitioner(s)
through its General Secretary Ali Mohammad
Sagar

Through: Mr. Shariq J. Reyaz, Advocate

Vs.

Union Territory of Ladakh and Ors. ...Respondent(s)

Through: Mr. T. M. Shamsi, DSGI for R1 to R3 & R5
Mr. Shuja-ul-Haq, Advocate for R4

CORAM:

HON'BLE MS JUSTICE SINDHU SHARMA, JUDGE

ORDER

09.08.2023

1. Petitioner is aggrieved of notification dated 26.07.2023, excluding the reservation of election symbol allocated to the petitioner-party.
2. The petitioner submits that being the recognized State Political Party under Section 29 of the Representation of People Act, 1951 read with the Election Symbols (Reservation and Allotment) Order 1968, it is entitled to contest the upcoming General Election of Ladakh Autonomous Hill Development Council (LAHDC) on allotted election symbol.
3. The petitioner being the incumbent political party in power in the present LAHDC, Kargil, seeks to contest the upcoming elections of LAHDC on allocated reserved election symbol (Plough). The respondents have not notified the election symbol already allotted and reserved by the petitioner-party for the upcoming elections, which has deprived the petitioner-party to contest the election on the symbol

“Plough” reserved for them as per the notification of Election Commission of India dated 15th May 2023.

4. Mr. T. M. Shamsi, learned DSGI, has opposed the contention on the ground that the petitioner-party is not a recognized State Political Party in Union Territory of Ladkaha, is only recognized as State Political Party for the Union Territory of Jammu and Kashmir and the symbol is reserved only for the Union Territory of Jammu and Kashmir as per the notification issued by Election Commission of India. The allotment of symbols in terms of notification dated 26.07.2023 regarding National Parties free symbols is to be chosen by other than recognized political parties for the elections to LAHDC, Kargil. No party has been recognized/identified as a State Party in the Union Territory of Ladakh, therefore, no symbol has been reserved for them. In terms of Rules 17 and 18 of the Ladakh Autonomous Hill Development Council (Election) Rules, 1995, symbols are reserved only political parties recognized by the Election Commission as National/State Party.
5. Learned counsel for the petitioner submits that the petitioner-party was recognized State Political Party in the erstwhile State of Jammu and Kashmir, which included the Union Territory of Ladakh also. The last General Elections in entire area as well as elections held for LAHDC were contested by the petitioner on the same symbol. Their symbol being a pictorial representation of their party to which the voters identify.
6. Learned counsel for the petitioner submits that in terms of the Clause 10 and 10 (A) of the Election Symbol (Reservation and Allotment)

Order, 1968, concession is given to the candidates set up by a State Party at elections in another States or Union Territories. It provides if a recognized State Political Party that is not recognized in other State decides to contest elections in such State or Union Territory, it has to be allotted symbol reserved for it in its State of recognition to the exclusion of all others.

7. Clause 10 (A) provides that if any political party, which is unrecognized at present but was earlier a recognized National or State Party in any State or Union Territory, every election that is held within 6 years of its de-recognition, sets up its candidate for elections in a constituency in any other State or Union Territory, whether such party was earlier recognized in that State or Union Territory or not, then such candidate to the exclusion of all other candidates in the constituency would be allotted the symbol reserved earlier for that political party
8. It is submitted that the Election Commission of India vide its communication dated 18.07.2023 that the State Election Commission does not allot any symbol for local body election as it is a subject matter of the State Election Commission concerned. Therefore, Commission cannot grant any concession under paragraph 2(h)(i) of the Election Symbols (Reservation & Allotment) Order 1968, to the Party in Union Territory of Ladakh, during the General Election of Ladakh Autonomous Hill Development Council (LAHDC).
9. The petitioner seeks to contest the upcoming General Election of Ladakh Autonomous Hill Development Council (LAHDC) and in terms of Rule 17 & 18 of the LAHDC Rules 1995, the Union

Territory of Ladakh has to specify the symbol reserved for candidates set up for political party in these elections. The petitioner-party seeks notification of the Election Symbol “Plough” already reserved for them.

10. Reliance is also placed on the opinion of the Law Department which has been quoted by the District Election Officer (District Magistrate), Kargil, in his communication dated 12.07.2023 addressed to the Chief Electoral Officer, Union Territory of Ladakh on the representation of the petitioner for recognition and clarification for the use of “Plough” as a symbol in Union Territory of Ladakh, mention therein that the symbol of petitioner-party can be considered for allotment to the contesting candidates of petitioner-party in the elections to be held in Ladakh in consultation with the Election Commission of India as per paragraphs 10 and 10 (A) of the Election Symbols (Reservation & Allotment) Order 1968, Relevant part of the opinion reads as under:-

“After perusal of provisions of the representation of People Act, 1951 read with above quoted provision of Election Symbols (Reservation and Allotment) order, 1968, it is amply clear that the reservation of symbols of political parties operating in this Union Territory before its existence are saved and shall be reserved as per the above quoted provision of Law. Similarly, the election symbols already recognized/allotted/reserved by the Election Commission of India in any State shall be deemed to be the allotted/reserved and recognized symbols of that party in any other state subject to the conditions provided in Section 10 and 10 A of the Election Symbols (Reservation and Allotment) Order, 1968.”

11. Keeping in view that the upcoming General Election of Ladakh Autonomous Hill Development Council (LAHDC) stands announced, the petitioner-party is directed to approach the office of the respondents 1 to 3 & 5, for notifying the reserved symbol (Plough)

already allotted to it and respondents 1 to 3 & 5 shall notify the symbol allotted to petitioner-party in terms of Paragraphs 10 and 10 (A) of Election Symbols (Reservation and Allotment) Order, 1968, and allow the candidates set up by the petitioner-party to contest on the reserved election symbol (plough) already allotted to the party.

12. List on 13.09.2023.
13. Alteration/modification on motion.

SRINAGAR
09.08.2023
Manzoor

