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

+ **W.P.(C) 1189/2021**

ALKA GHALOT Petitioner

Through: Mr.H.S. Ghalot, Adv.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents

Through: Mrs.Hetu Arora Sethi, ASC with
Ms.Kavita Nainwal, Adv. for R-1.

Mr.Anil Soni, CGSC for R-2.

Mr.Sumeet Pushkarna and
Mr.Devanshu Lahiry, Advs. for R-3.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **18.04.2022**

1. This petition has been filed by the petitioner praying for a direction to the respondents to remove the election symbols from the ballot paper, including the Electronic Voting Machine (in short, 'EVM'), for the election to the Municipal Corporation of Delhi.

2. The learned counsel for the petitioner submits that the Municipal Corporation of Delhi is a institution of local self-governance under Article 243R of the Constitution of India, which states that all the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area, and for this purpose, each Municipal area shall be divided into territorial constituencies to be known as Wards. The important object of the Seventy-third and Seventy-fourth Amendments of the Constitution was to strengthen the grass-root democracy

for local self-governance and decentralization at the rural and the urban level, respectively. The intention is to keep away the political parties from municipal governance. The presence of reserved symbols of recognized political parties on the ballot paper/EVM, therefore, undermines the object of local self-governance.

3. The learned counsel for the petitioner further submits that the display of election symbols also gives an unfair advantage to the candidates of a political party as against those fighting independently, inasmuch as, a candidate not belonging to a recognised party is allotted a new election symbol just fifteen days prior to the poll. As the canvassing has to stop 48 hours before the poll, such a candidate has only 13 days to inform the voters of his election symbol. Whereas, the candidates of a recognized political party can popularise their symbol throughout the year.

4. The learned counsel for the petitioner further submits that the importance of election symbols no longer survives in the present-day context. He submits that the purpose of election symbols was to enable illiterate voters to identify the candidates. However, now with the photograph of the candidate also appearing on the ballot paper/EVM, the candidate can easily be identified with the photograph.

5. The learned counsel for the petitioner further submits that the candidates who do not belong to any recognised political party are randomly allotted the election symbols, which may not have any relevance to their character or personality. The same may, therefore, portray a misleading picture of the candidate and vitiates the fairness of the election.

6. On the other hand, the learned counsel for the respondent no.3/State Election Commission submits that Rule 15 and Rule 24 of the Delhi

Municipal Corporation (Election of Councillors) Rules, 2012 (hereinafter referred to as the 'Rules') provide for recognition by the State Election Commission of the National parties and the State parties and their symbols for the National Capital Territory of Delhi. The Rules further provide for the process of allotment of the symbols to the contesting candidates. He submits that these Rules have not been challenged by the petitioner. He submits that in absence of such challenge, the present petition is liable to be dismissed.

7. He further makes a reference to the judgments of the Supreme Court in *Subramanian Swamy v. Election Commission of India*¹, and *Samyukta Socialist Party v. Election Commission of India & Anr.*², to submit the importance of the election symbols. He submits that the election symbols play an important part in the election process and that their use cannot be dispensed with.

8. We have considered the submissions made by the learned counsels for the parties.

9. Though undoubtedly the Municipality is an institute of self-governance, however, we have not been shown any prohibition on the National or the States parties contesting Municipal elections. Article 243R of the Constitution of India does not also provide for any such restriction, nor can any restriction be read in it. Article 243R is reproduced herein below:-

“ **243R. Composition of Municipalities.**-(1) Save as provided in clause (2), all the seats in a Municipality shall be filled by persons chosen by

¹ (2008) 14 SCC 318.

² (1967) 1 SCR 643

direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) *The Legislature of a State may, by law, provide—*

(a) *for the representation in a Municipality of—*

(i) *persons having special knowledge or experience in Municipal administration;*

(ii) *the members of the House of the People and the members of the Legislative Assembly of the State representing constituencies which comprise wholly or partly the Municipal area;*

(iii) *the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area;*

(iv) *the Chairpersons of the Committees constituted under clause (5) of article 243S:*

Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality;

(b) *the manner of election of the Chairperson of a Municipality.”*

10. The Supreme Court in *Samyukta Socialist Party* (supra) and *Subramanian Swamy* (supra) has highlighted the importance of election symbols. In *Samyukta Socialist Party* (supra), the Supreme Court observed as under:-

“11.....

...the importance of the symbols to our system of elections needs no exaggeration. Symbols are its very soul and without them the exercise of franchise by the majority of our citizens would be impossible. No doubt elections are fought on party lines but even if there is a plebiscite between parties, the symbols play a key role by identifying the parties. Slogans,

placards, appeals all invoke the symbols and not the candidates. In fact, the voters are asked to vote for this symbol or that symbol. ..”

(emphasis supplied)

11. In *Subramanian Swamy* (supra), the Supreme Court again reiterated the relevance and importance of an Election Symbol, in the following words:-

“34. A symbol is not a tangible thing nor does it generate any wealth, it is only the insignia which is associated with the particular political party so as to help the millions of illiterate voters to properly exercise their right to franchise in favour of the candidate of their choice belonging to a particular party. In the election process it is not merely the individual candidate’s personality or his identity that weighs with the voters. It is undoubtedly a very relevant factor but along with it the voter also can and does vote in favour of the party. It is under such circumstances that the symbol becomes relevant and important.”

12. Though the level of literacy has increased in the State of Delhi, and the presence of a photographs of the candidates on the EVM may also aid in empowering the illiterate to properly exercise their right of franchise in favour of the candidate of their choice, in our view, the election symbols still play an important part in the election process in the country. In our view, in the absence of a clear prohibition, it is not for this Court to guide the policy or frame a law in this regard.

13. Article 243ZA vests the power and duty to conduct elections to the Municipalities on the State Election Commission. State Legislature has been empowered to make provisions with respect to all matters relating to, or in connection with, elections to the Municipalities. Therefore, it is for these

institutions to decide, subject to the provisions of the Constitution, the Rules for conduct of a free and fair election to the Municipality, including use of election symbols. Article 243ZA is reproduced herein below:-

“243ZA. Elections to the Municipalities.-(1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.”

14. Rules 15 and 24 of the Rules provide for the allotment of symbols and preparation of the list of contesting candidates. They read as under:

“15. Symbols:- (1) For the purpose of election to a Municipal Corporation of Delhi, the National Parties and State Parties for the National Capital Territory of Delhi, as are recognized for the time being by the Election Commission of India in the National Capital Territory of Delhi, under section 29A of the Representation of the People Act, 1951 and the rules and procedure made thereunder, shall be recognized as such by the Commission. The Commission shall recognize the parties and adopt symbols subject to the following conditions, namely:-

(a) The National Parties and the State Parties recognized by the Election Commission of India shall be recognized under the very same name by the Commission.

(b) The National Parties and the State Parties recognized by the Election Commission of India shall use only those very symbols which are reserved for them by the Election Commission of India and not any other symbol, and

(c) The facsimiles of the symbols thus allowed

shall not be different from the facsimiles prescribed and recognized by the Election Commission of India.

(2) A candidate shall be deemed to have been set up by a political party only if the candidate has made a declaration to that effect in the nomination paper first filed by him and duly supported by all authorized to such effect by the party concerned.

(3) The Commission shall also adopt free symbols as have been notified by the Election Commission of India for the time being in respect of elections to Lok Sabha and Legislative Assembly for the National Capital Territory of Delhi.

(4) The Commission shall specify by notification in the official Gazette, the symbols that may be chosen by candidates and the restrictions to which their choice shall be subject.

(5) Where at any such election, more nomination papers than one are delivered by or on behalf of a candidates, the declaration as to symbols, made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under rule 24 even if that nomination paper has been rejected.

(6) A failure to complete, or a defect in completing the declaration as to symbols in a nomination paper shall not be deemed to be a defect of a substantial character within the meaning of sub-rule (4) of rule 22.

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24. Preparation of list of contesting candidates:- *(1) Immediately after the expiry of the period within which candidature may be withdrawn under sub-rule (1) of rule 23, the Returning Officer shall prepare in Form 7 list of the contesting candidates; that is to say, candidates who were included in the list of validly nominated candidates, and who have not withdrawn their candidature within the said period. The said list shall be prepared in three different segments in consecutive order, that is to say, I- Candidates of recognized political parties at National Level, II- Candidates of State Parties for elections to Lok Sabha/Assembly in the National Capital Territory of Delhi, and III- Independents;*

(2) The said list shall be prepared and printed in three languages, namely, (i) Hindi (ii) English, and (iii) Urdu. It shall contain the names in alphabetical order of Hindi script and the addresses of the contesting candidates as given in the nomination papers, etc. The alphabetical order, shall be determined with reference to the surnames of the candidates having surnames and the names proper of other candidates.

(3) Where a poll becomes necessary, the Returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commissioner:

(a) allot different symbol to each contesting candidate in conformity, as far as practicable, with his choice and

(b) if more contesting candidates than one have indicated their preference for the same symbol, decide by lot to which of such candidates the symbol will be allotted.

(4) The allotment by the Returning Officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Commission in this behalf in which case the Commission may revise the allotment in such manner as it thinks fit.

(5) Every candidate or his election agent shall forthwith be informed of the symbol allotted to the candidate and be supplied with a specimen thereof by the Returning Officer.”

15. The above Rules are not in challenge before us in the present writ petition. They clearly recognise the National and States Parties and their symbols, and also prescribe the procedure for the allotment of symbols to the independent candidates.

16. The submissions of the learned counsel for the petitioner that there is discrimination against the independent candidates inasmuch as they are

provided with the election symbols only about fifteen days prior to the date of the poll, cannot also be accepted. The election symbol of a recognised political party is allotted to a candidate who has been validly nominated by the said political party. On the other hand, the candidates contesting as an independent, are allotted symbols, as far as practicable, of their own choice. It is not shown that any different process of allotment of symbols is followed in the National or the States Election.

17. We, therefore, find no merits in the present petition. The same is dismissed. There shall be no order as to cost.

VIPIN SANGHI, ACJ

NAVIN CHAWLA, J

APRIL 18, 2022/Arya/P