

Case :- MISC. BENCH No. - 12092 of 2016

Petitioner :- Shraddha Tripathi, Advocate

Respondent :- The Election Commission Of India(Eci), Thru. C.E.C. & Ors.

Counsel for Petitioner :- Shraddha Tripathi(In Per)

Counsel for Respondent :- A.S.G., Arpit Kumar, Asit Kumar Chaturvedi, O P Srivastava

Hon'ble Govind Mathur, Chief Justice

Hon'ble Pankaj Bhatia, J.

On 26 day of November, 1949 We the people of India in our constituent assembly adopted, enacted and gave ourselves the Constitution of India. The constitution so enacted and adopted was enforced on 26 day of January, 1950, and as a consequence India became a sovereign democratic republic. The values of equality and secularism were embodied in the Constitution of India from its inception but were included in explicit in preamble of the Constitution of India in the year 1976.

To execute the concept of democratic republic, the Constitution came with a complete process of elections as provided in its Part XV. According to Article 324 of the Constitution of India, the superintendence, direction and control of the preparation of electoral rolls and conduct of all elections to the parliament and the legislature of every State and of elections to the offices of President and Vice President is vested in an election commission. The election commission in our constitutional scheme is an autonomous authority.

On 17th July, 1951, the Parliament enacted The Representation of the People Act, 1951 as a complete code for the conduct of elections by Election Commission of India appointed under Article 324 of the Constitution of India.

Chapter IVA of the Act of 1951 pertains to registration of political parties. Part V relates to conduct of elections. As per Section 32 of the Act of 1951, any person may be nominated as candidate for election to fill a seat, if he is qualified to be chosen to fill that seat under the provisions of the Constitution and the Act of 1951 or under the provisions of the Government of Union Territories Act, 1963.

Section 35 of the Act of 1951 relates to notice of nominations and the time and place for their scrutiny and as per Section 37 any candidate for election may withdraw his candidature by a

notice in writing which shall contain the particulars as prescribed. A list of contesting candidates is required to be published as per Section 38 of the Act of 1951.

Under the Act of 1951, the Conduct of Elections Rules, 1961 were enacted and Rule 5 of that provides for symbols for elections in parliamentary and assembly constituencies. Rule 5 aforesaid reads as under:-

*"5. Symbols for elections in parliamentary and assembly constituencies.-
(1) The Election Commission shall, by notification in the Gazette of India, and in the Official Gazette of each State, specify the symbols that may be chosen by candidates at elections in parliamentary or assembly constituencies and the restrictions to which their choice shall be subject.*

(2) [Subject to any general or special direction issued by the Election Commission either under sub-rule (4) or sub-rule (5) of rule 10, where at any such election], more nomination papers than one are delivered by or on behalf of a candidate, 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 10 even if that nomination paper has been rejected."

Pertinent to notice that under the provision aforesaid, election commission is required to specify the symbols which may be chosen by ***candidates*** at elections in parliamentary or assembly constituencies.

Rule 10 of the Rules of 1961 provides that a list of **contesting candidates** shall be prepared in Form 7A or Form 7B with the particulars prescribed. As per sub-Rule (4) of Rule 10 at an election in a parliamentary or assembly constituency where a poll becomes necessary the Returning Officer shall consider the choice of the 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 commission allot a different symbol to each ***contesting candidate*** in conformity as far as practicable with choice of the ***contesting candidate***. The allotment by the Returning Officer of a *symbol* to a *candidate* shall be final except where it is inconsistent with the direction issued by the election commission.

The election commission in exercise of the powers conferred by Article 324 of the Constitution of India read with Section 29A of the Representation of the People Act, 1951 and Rule 5 and 10 of the Conduct of Elections Rules, 1961 framed the Election Symbols (Reservation and Allotment) Order, 1968.

As per para 4 of the Order of 1968 in every contested election a symbol would be allotted to a ***contesting candidate***. Para 5 of the

Order classifies the symbols as under:-

"Classification of symbols - (1) For the purpose of this Order symbols are either reserved or free.

(2) Save as otherwise provided in this Order, a reserved symbol is a symbol which is reserved for a recognized political party for exclusive allotment to contesting candidates set up by that party.

(3) A free symbol is a symbol other than a reserved symbol."

In para 5 of the Order of 1968, a reserved symbol is a symbol that is reserved for a recognized political party for exclusive allotment to *contesting candidates*. The other symbols are to be treated as free symbol.

The cause of the petitioner in present petition for writ is that the recognized political parties are using the election symbols as their party logo, which as a matter of fact is allotted by the Election Commission only to use for voting during the parliamentary or assembly elections, as the case may be.

It is submitted that in the scheme of elections under Article 324 of the Constitution of India, the Representation of the People Act, 1951 and the Rules and Orders framed thereunder provides for allotment of symbol to *contesting candidates* for participation in elections. Such a symbol cannot be permanently used by political parties as their party logo. It is asserted that even a reserved symbol is only for one election and that cannot be used and treated as a perpetual election symbol of that specific recognized political party.

According to the petitioner, no political party should be allowed to use the election symbol as its party logo on its flags and other propaganda material.

The petitioner states that for the purpose of election all *contesting candidates* may those by free/independent candidates or the candidates nominated by the political parties stands on same footing and as such Election Commission allots symbol to them for the election purpose only. If the reserved election symbol be allowed to be used as a party logo, then that would be in contravention of the provisions of the Act of 1951, the Rules of 1961 and the Order of 1968.

The reserved election symbol is only for one process of election and not for elections, which are to be conducted in future also. The reserved election symbols in a democratic republic are required to be changed for all the political parties in every election process. The law occupying the field does not permit to

have perpetual election symbol for political parties.

Having considered the argument advanced, we deem it appropriate to call upon all the political parties recognized by the Election Commission of India as national level parties to respond as to why this petition for writ be not accepted, as prayed.

The notice upon all the political parties is required to be served through respondent-Election Commission of India.

The Registry of this Court is directed to send an authorized copy of this order to the Election Commission of India by speed post. The Election Commission on receiving the authorized copy, shall serve a photo stat copy of the order on each and every recognized national political party with a notice about this petition for writ and the next date of hearing.

Let this petition for writ be listed for final hearing on 17th February, 2020.

Order Date :- 13.11.2019

Bhaskar

(Pankaj Bhatia, J.)

(Govind Mathur, C.J.)