

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 1397 of 2020

Petitioner :- Kali Shankar

Respondent :- Election Commission Of India And Another

Counsel for Petitioner :- Gulab Chandra Tiwari, Kapil Tiwari

Hon'ble Govind Mathur, Chief Justice

Hon'ble Piyush Agrawal, J.

This petition for writ, said to be filed in Public Interest Litigation jurisdiction, is raising several important issues relating the election symbols allotted by the Election Commission of India to the contesting candidates in accordance with the Representation of People Act, 1951 and the Election Symbols (Reservation & Allotment) Order, 1968 (hereinafter referred to as, 'the Order of 1968').

The submission of learned counsel appearing on behalf of the petitioner is that under Order 16-A of the Order of 1968, the Election Commission of India is empowered to suspend or withdraw recognition of a recognized political party for its failure to observe Model Code of Conduct or further to direct to follow lawful directions and instructions of the Commission. According to the petitioner, the reserved election symbol for a political party is a national symbol too; hence, necessary directions must be issued to the Commission for freezing the same and further, to the recognized political parties for not misusing the symbols reserved.

Though the issue not raised in the petition for writ, it is also submitted by the learned counsel that under the Order of 1968, election symbol is required to be allotted to a contesting candidate to be used only and only for the election purpose and not otherwise. So far as the reserved symbol is concerned, according to the learned counsel, that too is required to be allotted to the contesting candidates authorized by a recognized political party, as defined under the Order of 1968, only for election purpose.

Reliance is also placed by the learned counsel on Order 8 of the Order of 1968; that too refers to a right of contesting candidate to choose symbol reserved for specific political party.

It is asserted that under the Representation of People Act as well as under the Order of 1968, the concept of election symbols is applicable only for the purpose of elections and such symbols cannot be used as a *logo* of any political party. According to learned counsel, the life of election symbols, even

reserved symbol with a contesting candidate - may that be of a recognized political party, is only for a specific election and the same symbol can be allotted to a contesting candidate of other recognized political party or to a contesting candidate (independent) in other elections.

The submission of learned counsel is that if the political parties are permitted to use the election symbols perpetually, for the purposes other than elections, then that would be highly unjust and discriminatory, as the candidates, who are not affiliated with recognized parties, would not be having to propagate their election symbols perpetually.

It is also stated by the learned counsel that in most of the democratic countries, the concept of election symbols has already been withdrawn on attaining higher levels of literacy, but in our democratic set up, there is no intention of Government to withdraw the election symbols and to go for elections by showing names of the candidates in the applicable script.

Learned counsel appearing on behalf of Election Commission of India wants sometime to examine the entire issue involved in the petition and further, to file a counter to the same.

Time prayed for is allowed.

Let this petition for writ be listed on January 12, 2021.

Counsel for the petitioner, in the meanwhile, may also take necessary steps to prescribe complete address of the respondent no. 2 and further, to implead any other nationalized political parties as a party respondent.

Order Date :- 9.12.2020

Amit Mishra

(Piyush Agrawal, J.)

(Govind Mathur, C.J.)