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

Date of decision: 03rd NOVEMBER, 2022

IN THE MATTER OF:

+ **LPA 622/2022 & CM APPLs. 46951-52/2022**

SAMATA PARTY THROUGH SHRI UDAY KR MANDAL ITS
PRESIDENT Appellant

Through: Mr. Bibhuti Bhusan Mishra, Ms.
Shweta Priya, Ms. Shivalika, Mr.
Kamlesh Kumar Mishra, Mr.
Shubham Chauhan, Mr. Kailash Jha,
Advocates.

versus

ELECTION COMMISSION OF INDIA AND OTHERS

..... Respondents

Through: Mr. Sidhant Kumar, Ms. Manyaa
Chandok, Ms. Vidhi Udhay Shankar,
Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Appellant seeks to challenge the Order dated 19.10.2022, passed by the learned Single Judge in W.P.(C) 14830/2022, whereby the learned Single Judge dismissed the writ petition filed by the Appellant herein. The Appellant herein in the said writ petition had sought to impugn the communication-cum-order bearing No. 56/01/Dispute/PPS-II/2022 dated 10th October, 2022, issued by the Election Commission of India, whereby

the election symbol of 'flaming torch' has been allotted to "Shiv Sena (Uddhav Balasaheb Thackeray)".

2. The Appellant is a political party in India which was initially formed in 1994 by George Fernandes and Nitish Kumar. It is an offshoot of the Janata Dal. The Appellant/Party applied for registration under Section 29A of the Representation of the People Act, 1951, as a political party. The said application was accepted by Election Commission of India by Order dated 27.10.1994 and Samata Party was registered as a political party, with the symbol of 'flaming torch' being allotted to it..

3. It is stated that the Appellant/Samata Party in the general elections of 1996, which was in alliance with the Bhartiya Janata Party, won eight seats (six of which were in Bihar, and one each in Uttar Pradesh and Odisha). In the General Elections of 1998, again in alliance with Bhartiya Janta Party, it won twelve seats (ten from Bihar and two from Uttar Pradesh). However, in the year 2004, the Appellant/Samata Party was de-recognized as a State Party.

4. It is stated that in the General Elections of 2009 and 2014, the Apellant/Samata Party could not win any seats. Similarly, the Appellant/Samata Party secured no seat in State of by-elections.

5. By Order dated 10.10.2022, the Secretariat of the Election Commission of India allotted the symbol of 'flaming torch' to "Shiv Sena (Uddhav Balasaheb Thackeray)". The Appellant herein sent a representation to the Election Commission of India objecting to the allotment of the said symbol to "Shiv Sena (Uddhav Balasaheb Thackeray)". The Appellan therein challenged the communication-cum-order bearing No. 56/01/Dispute/PPS-

II/2022 dated 10th October, 2022 by filing the W.P.(C) 14830/2022 before this Court.

6. The learned Single Judge *vide* Order dated 19.10.2022 impugned herein dismissed the writ petition by observing that the Appellant herein had lost its status of a recognized party in 2004, and in terms of Para 10-A of the Election Symbols (Reservation And Allotment) Order, 1968, the Appellant's right on the symbol in question, if any, had lapsed with the expiry of six years therefrom.

7. The Appellant, thereafter, filed the present appeal challenging the Order dated 19.10.2022, passed by the learned Single Judge in W.P.(C) 14830/2022.

8. Heard learned Counsel appearing for the parties, and perused the material on record.

9. It is submitted by the learned Counsel appearing for the Appellant that even after the Appellant/Samata Party was de-recognized, the members of the Appellant's Party contested elections in the year 2014 under the symbol of 'flaming torch'. He relies upon Para 10A of the Election Symbols (Reservation And Allotment) Order, 1968. He submits that the symbol of 'flaming torch' could not have been put in the list of free symbols and could not have been allotted to any other Party, since the members of the Appellant's Party were consistently contesting elections under the said symbol even after the Party's de-recognition.

10. Para 10A of the Election Symbols (Reservation And Allotment) Order, 1968, states that if a political party, which is unrecognized at present but was a recognized National or State party in any State or Union territory not earlier than six years from the date of notification of the election, sets up

a candidate at an election in a constituency in any State or Union territory, whether such party was earlier recognized in that State or Union territory or not, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved earlier for that party when it was a recognized National or State party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union territory, on the fulfilment of the conditions mentioned in Para10-A of the Election Symbols (Reservation And Allotment) Order, 1968. Para 10A of the Election Symbols (Reservation And Allotment) Order, 1968 reads as under:

"10A. Concession to candidates set up by an unrecognized party which was earlier recognized as a National or State party.—If a political party, which is unrecognized at present but was a recognized National or State party in any State or Union territory not earlier than six years from the date of notification of the election, sets up a candidate at an election in a constituency in any State or Union territory, whether such party was earlier recognized in that State or Union territory or not, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved earlier for that party when it was a recognized National or State party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union territory, on the fulfillment of each of the following conditions, namely:—

(a) that an application is made to the Commission by the said party for the exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment:

Provided that nothing contained in this paragraph shall apply to a candidate set up by the said party at an election in any constituency in a State or Union territory where the same symbol is already reserved for some other National or State party in that State or Union Territory."

11. The Election Symbols (Reservation And Allotment) Order, 1968 was brought in to provide for specification, reservation, choice and allotment of symbols at elections in Parliamentary and Assembly Constituencies, for the recognition of political parties in relation thereto and for matters connected therewith.

12. Paragraph 2 (h) of the Election Symbols (Reservation And Allotment) Order, 1968 defines political party which reads as under:

"2. Definitions and interpretation..—

(h) "political party" means an association or body of individual citizens of India registered with the Commission as a political party under section 29A of the Representation of the People Act, 1951."

13. Paragraph 5 of the Election Symbols (Reservation And Allotment) Order, 1968 which defines 'classification of symbols' reads as under:

"5. 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 recognised 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."

14. A reading of the above paragraphs demonstrates that a reserved symbol is a symbol which is reserved for a recognized political party for exclusive allotment to contesting candidates fielded by that party. The Appellant herein was de-recognized as a State Party in the year 2004. The contention of the Appellant is that since the candidates of the Party contested elections in the year 2014 under the symbol of 'flaming torch', the said symbol cannot be allotted to any other party. This argument has already been rejected by the Apex Court in Subramanian Swamy vs. Election Commission of India, (2008) 14 SCC 318. The relevant portion of the said Judgment reads as under:

"30. Another argument which was pressed into service was that Para 8 should recognise a third category i.e. a party which was once a recognised party but has lost its status as such so that it retains its old symbol for ever and can rightfully claim it. That para makes it mandatory that a candidate set up by a national party shall chose the symbol reserved for that party and no other symbol. So also a candidate set up by the State party shall chose and shall be allotted only the symbol allotted to that party and no other symbol. Para 8(3) provides that a reserved symbol shall not be chosen by or allotted to any candidate other than a candidate set up by the national party or a

State party for whom such symbol has been reserved. The provision is extremely clear. Dr. Swamy, however, wanted us to create a third category as has been stated earlier. That is not possible. If the arguments were to be accepted, then we would have to read something which is not there in the provisions and this includes Paras 5, 6 and 8 as also the impugned Para 10-A. Such an exercise would amount to this Court treading dangerous path of legislature. We do not think that such a course is possible. We are, therefore, not inclined to accept that argument.

31. That leaves us with the last argument that the symbol amounts to a property and, therefore, a political party cannot be deprived of its property. The argument must be rejected at the outset as the symbol can never have even the traces of the concept of a property."

15. The above judgment further states that 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. The parties concerned cannot consider the symbol as its exclusive property. The Election Symbols (Reservation And Allotment) Order, 1968 makes it very clear that the right to use the symbol can be lost with the dismal performance of the party.

16. In view of the above, even though the members of the Appellant/Samata Party were permitted to use the symbol of 'flaming torch', the Appellant/Samata Party having been de-recognized in the year 2004, the symbol has become a free symbol and it was within the domain of Election Commission of India to allot the same to any other Party. No fault can be found with the communication-cum-order dated 10th October, 2022 issued by the Election Commission of India allotting the symbol of 'flaming torch' to

“Shiv Sena (Uddhav Balasaheb Thackeray)” and the Order dated 19.10.2022, passed by the learned Single Judge in W.P.(C) 14830/2022 affirming the said Order.

17. With these observations, the appeal is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

NOVEMBER 03, 2022

S. Zakir

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