

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION No.31506 OF 2023

ORDER: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. G.L.Narasimha Rao, learned counsel for the petitioner.

Mr. Avinash Deshai, learned Senior Counsel, representing Mr.Mohammed Omer Farooq, learned counsel for the Election Commission of India for respondent Nos.1 and 2.

Mr. G. Praveen Kumar, learned Deputy Solicitor General of India for respondent No.3.

2. The petitioner is Praja Shanthi Party, which is a registered political party with the Election Commission of India w.e.f., 23.01.2009.

3. The petitioner submitted applications on 20.07.2023 and 19.10.2023 seeking allotment of common symbol. However, according to the petitioner, it failed to evoke any response. Thereupon, this writ petition has been filed on 10.11.2023 seeking the following relief:

"It is therefore prayed that the Hon'ble Court may be pleased to issue Writ, order or direction more in the nature of Mandamus, declaring the inaction of the

Respondent No.1 and 3 not allotting common symbol to the Petitioner Political party till now, though last date for filing nominations is going to be expired on 10th November 2023, as illegal, arbitrary, administrative discriminatory Violation of Para 8 and 10 of the Election Symbols (Reservation and Allotment) Order 1968 and violation of Art 14 and 21 of Constitution of India and consequently direct the Respondent No.1 and 3 to allot 'Helicopter' OR 'Ring' as Petitioner Party Common Symbol forthwith and direct the Respondent No.1 and 3 to extend the last date for filing Nominations until 13.11.2023 for the candidates of Petitioner political Party without insisting and to pass such other order or orders as this Hon'ble Court may deems fit and proper in the circumstances of the case".

4. When the matter is called today, in the first round, learned counsel for the petitioner sought for a pass over and thereafter filed an interlocutory application viz., I.A.No.2 of 2023 seeking amendment of the prayer, which reads as under:

"It is therefore prayed that this Hon'ble Court may be pleased to issue Writ, order or direction more in the nature of MANDAMUS declaring the inaction of the Respondent No.1 and 3 not allotting common symbol to the Petitioner Political party in spite of many repeated requests till now though last date for filing nominations is expired on 10th November 2023 as illegal, arbitrary, unconstitutional, administrative discriminatory, Violation of Para 8 and 10 of the Election Symbols (Reservation and Allotment) Order, 1968 and violation of Art 14 and 21 of Constitution of India and SETASIDE the Election Notification Dated 09.10.2023 for 03.11.2023 General Elections to the state Legislative Assembly of Telangana 2023, while allot Helicopter OR Ring as Petitioner Party Common Symbol forthwith and CONSEQUENTLY direct the Respondent No.1 and 3 re-issue the election notification in fresh for the protection of real democracy as settled law rendered in Civil Appeal 5707 of 2023 Dated 06.09.2023, and pass such other order or orders

may deem fit and proper in the circumstances of the case.”

5. Learned counsel for the petitioner submits that the notification issued by the Election Commission of India should be quashed, as the petitioner has not been allotted a common symbol. In support of the aforesaid submission, reliance has been placed on the order dated 06.09.2023 of Supreme Court in **Union Territory of Ladakh & Ors., v. Jammu and Kashmir National Conference & Anr¹**.

6. We have considered the submissions made by learned counsel for the petitioner and have perused the record.

7. Admittedly, the petitioner had submitted applications on 20.07.2023 and 19.10.2023 seeking allotment of common symbol. In response to the aforesaid applications, the Election Commission of India vide communication dated 18.10.2023 has informed the petitioner that its request for allotment of common symbol has not been considered, as the petitioner has failed to produce party's contribution report/audited annual accounts/election expenditure and at present, there are no elected office bearer in the party.

¹2023 SCC Online SC 1140

Therefore, the petitioner has been apprised that election common symbol under Para 10B of the Election Symbols (Reservation and Allotment) Order, 1968 cannot be allotted to it.

8. The petitioner has not chosen to challenge the validity of the order dated 18.10.2023. The process of election has already commenced. The election schedule reads as under:

- a. The 10th November, 2023 (Friday), as the last date for making nominations;
- b. The 13th November, 2023 (Monday), as the last date for the scrutiny of nominations;
- c. The 15th November, 2023 (Wednesday), as the last date for the withdrawal of candidatures;
- d. The 30th November, 2023 (Thursday), as the date on which a poll shall, if necessary, be taken;
- e. The 5th December, 2023 (Tuesday), as the last date before which the election shall be completed.

9. Article 329(b) of the Constitution of India reads as under:

“no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature”.

10. It is trite law that only when an action of Returning Officer results in stalling or stoppage of progress of election, this Court under Article 226 of the Constitution of India can interfere (See **Manda Jagannath v. K.S.Rathnam & Ors** ((2004) 7 SCC 492)).

11. For the aforementioned reasons, no case for interference, at this point of time, is made out.

12. In the result, the writ petition fails and is hereby dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

ALOK ARADHE, CJ

N.V.SHRAVAN KUMAR, J

Date:14.11.2023

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