

(1986) 12 GUJ CK 0003
In the Gujarat High Court

Case No : Special Civil Application No's. 6302 and 6320 of 1986

Ahmedabad Shaher Stanik Swaraj Nagarik Samitee,
Ahmedabad and Another etc.

APPELLANT

Vs

V.N. Desai and Others etc.

RESPONDENT

Date of Decision : 15-12-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1988 Guj 39 : (1987) 2 GLR 1130

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Advocate : Jayant M. Pandya and Indubhai Kachhia, Party in person, M.A. Parchal, for the Appellant; S.T. Mehta, Addl. Govt. Pleader, for the Respondent

Judgement

1. These two petitions by the two unregistered and unrecognised organisations are for allotment of a common symbol for their candidates at the ensuing general election for Ahmedabad Municipal Corporation. The petitioner Samiti in Special Civil Application No. 6302 of 1986 has fielded 29 candidates from 16 wards and the petitioner Morcha in the other petition has fielded 19 candidates from 15 wards. In all, there are 127 seats from 43 wards of Ahmedabad Municipal Corporation.

2. The claim of the petitioners is based on the directions dated 29-1-1985 issued by the Election Commission. It is the common case that there are no rules regarding reservation and allotment of symbols at the Municipal election. However, as per the public notice dated 18-11-1986 issued by the Municipal Corporation (which is published in the newspapers which is at Annex. I to the affidavit-in-reply at page 33, it has been mentioned that the candidates for the ensuing general election will be allotted symbols as per the norm and practice adopted by election commission in the general election. As per that notice, seven symbols have been reserved for the seven recognised political parties as mentioned in the notification. For the candidates other than those of the

recognised parties, 25 free symbols are mentioned. Para 4 of that notification provides that every candidate has also to file a form regarding symbol and candidates of recognised parties have to mention the reserved symbol for the party and the other candidates will have to show their three preferences, first second and third out of the 25 symbols. Para 5 of the notification provides that the Commissioner shall allot the reserved symbol to the candidates of the respective political parties and thereafter will proceed to allot symbols to other candidates. If there is only one candidate in the ward having given first preference for a particular symbol, that symbol will be allotted to him. If there are more candidates in the same ward having given first preference for the same symbol, the decision will be taken by drawing lots.

3. Para 7 of the notification provides that in any ward, if the, free symbols are not sufficient in number, then only, additional symbols would be selected with the prior permission of the Commissioner.

4. In the present case also, the candidates of these two petitioners-Organisations have given their preferences, which are not uniform. The other candidates who are hundreds in number in different wards have also given their preferences and these preferences will have to be decided in accordance with paras 5 and 6 of the notification.

5. The petitioners have submitted that they are contesting these elections as unregistered and unrecognised organisations and they are not political parties. It is further submitted that the Election Commission has, by the telex of 29-1-1985, provided for allotment of common symbol to unregistered and unrecognised organisations and, therefore, following the same direction and pattern, the Municipal Commissioner should allot a common symbol to the candidates of the petitioners-Organisations. That direction is in respect of the named 25 political organisations who had applied for registration with the Election Commission under para 3 of the Election Symbols (Reservation and Allotment) Order, 1968. In respect of these 25 organisations, the Election Commission had issued directions for the purpose of examining their application for registration with reference to their electoral support and relationship with electors at the ensuing general election to assemblies held in different States in Mar. 1985 and it is directed that in the matter of allotment of free symbols, preference shall be given to candidates set up by such organisations over purely independent candidates. It is further directed that when the returning officer proceeds to allot symbols, he shall allot symbols to candidate of registered parties in, the first instance and thereafter he shall take up the allotment of symbols to candidates of "Organisations or bodies mentioned above" which have not yet been registered by the Commission as political parties. It is also mentioned in those directions that they are" only applicable to, ensuing general election to assemblies being held, in Mar. 1985.

6. The learned Counsel for the respondents has submitted that those directions are not applicable in the present case for two reasons : (1) that these directions

are applicable only to the candidates of 25 named organisations and not to other organisations, such as these two organisations of the petitioners; and (2) these directions were operative till March., 1985 and not thereafter.

7. It is clear from the directions of the Election Commission that they are applicable, to the 25 named organisations. Even at the time when that Circular or direction was in operation for the assembly elections in Mar., 1985, no unregistered organisation like the petitioner could have been given any reserved or common symbol. Therefore, reliance placed by the petitioners on this Circular is without any basis. This Circular cannot take their case any further. The petitioners are organisations not covered by those directions of the Election Commission and, therefore, their case based on that Circular must fail.

8. It was also argued that there is no legal bar or prohibition to allotting a particular common symbol to the candidates sponsored by one and the same organisation. This plea is too late. The notification regarding allotting of symbols has been issued on 18-11-1986 and this notification merely proceeds on the basis of the, same practice having been followed in all Municipal elections for decades. If the petitioners are vigilant citizens and want to avail of a particular election facility, they have to show awareness well in time to move the appropriate authority for getting a common symbol. At this stage, the petitioners-organisations do not have even legal status or personality. They are neither registered nor recognised under any law, not even as a trust or a society and they have come up only at the time of the present election. If these organisations or any such other organisations want to have common symbol at the elections, they have to move the authority and to make a proper demand for performance of public duty in proper time and give the authority reasonable time to take a decision thereon so that the authority duly considers the same, and thereafter if any organisation is aggrieved by the order of the Commissioner, such aggrieved party can have recourse to the Court of law. In the present case, there has been no such demand before 18-11-1986 when the notification regarding allotment of symbol was issued. That notification is not even challenged. Therefore, the election authorities have to go by that notification and they cannot commit breach of that notification by allotting any common symbol to the candidates of these two organisations.

9. At this stage, if any common symbols were to be allotted to the candidates of these organisations, that is bound to result into practical difficulties and breach of the notification. All the candidates (other than sponsored by the seven political parties) have to be allotted free symbols in accordance with that notification. The candidates of these two organisations as well as all other candidates have given their preferences for free symbols and they have to be allotted the same in accordance with para 5 and 6 of that notification. It is only when there are more independent candidates than 25, that additional free symbol can be resorted to. Therefore, it is not possible even to provide an additional symbol common to the candidates of each of these two organisations.

10. In view of the above discussion, it is not possible to grant any reliefs prayed for by the petitioners in these two petitions. Hence both the petitions are summarily rejected.

11. Petitions rejected.