
(2016) 10 AHC CK 0019
In the Allahabad High Court
Case No : Misc. Bench No. 4425 of 2016

Apna Dal	Vs	APPELLANT
Election Commission of India		RESPONDENT

Date of Decision : 05-10-2016

Acts Referred:

Representation of the People Act, 1951 — Section 29(9)

Citation : (2016) 6 AILLJ 795

Hon'ble Judges : Amreshwar Pratap Sahi and Dr. Vijay Laxmi, JJ.

Bench : Division Bench

Advocate : Nirankar Nath Jaiswal and Ajai Kumar Jaiswal, Advocates, for the Petitioners; V.K. Dubey, Gaurav Mehrotra, L.P. Mishra and M.C. Dhingra, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

1. An affidavit filed by the Election Commission of India as well as rejoinder affidavit filed by the petitioner today are taken on record.
2. Heard Sri N.N. Jaiswal, learned counsel for the petitioners, Sri O.P. Srivastava, learned Senior Counsel for the Election Commission of India and Sri Gaurav Mehrotra, learned counsel for the respondent No.2.
3. The present petition was entertained by this Court keeping in view the nature of the contest between the parties, particularly on the issue of the Forum for resolution of the dispute between the petitioners and the respondent No.2, where they both contend that they are prepared for such a resolution of the dispute by the Election Commission of India.
4. The Election Commission of India has declined to entertain this dispute stating that it is an internal dispute of splinter groups of a registered political party, known as "Apna Dal" which dispute cannot be resolved by the Election Commission of India under the Representation of People Act, 1951 or under the Election Symbols (Reservation and Allotment) Order, 1968. The Election

Commission of India has filed a counter affidavit categorically stating therein that Apna Dal is a registered party under Section 29-A of the Representation of People Act, 1951 but it does not have the status of a recognised political party as per the Election Symbols (Reservation and Allotment) Order, 1968. The stand of the Election Commission of India is that it is only the dispute relating to a recognised political party that can be entertained under the 1968 Order by the Election Commission of India, but since the Apna Dal is not having the status of a recognised political party, therefore, any dispute between it's splinter groups cannot be resolved or adjudicated or entertained by the Election Commission of India. To substantiate this plea, the order in the case of Baba (Pt.) Nand Kishore Mishra and others v. Dinesh Chandra Tyagi and others delivered on 22.9.2015 by a learned Single Judge of the Delhi High Court has been relied upon, which, in turn, has relied on the Division Bench judgment in Letters Patent Appeal No.522/2011 of the Delhi High Court extracted therein. It is therefore, submitted that in view of the aforesaid position of law, as explained by the Delhi High court, the Election Commission of India is adhering to it and consequently, the contention of either the petitioner or the respondent No.2 to confer any authority on the Election Commission of India to decide this dispute is not permissible in law.

5. We have considered the submissions raised and we find that Section 2 (f) of the Representation of People Act, 1951 defines "political party" as under:-

2 (f) "political party" means an association or a body of individual citizens of India registered with the Election Commission as a political party under section 29A;

6. The registration of a political party under the 1951 Act is provided for under Section 29-A which is extracted hereunder:-

"29A. Registration with the Election Commission of associations and bodies as political parties -(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made --

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989) within sixty days next following such commencement;

(b) if the association or body is found after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely --

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body;

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body;

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay."

7. Section 52 of the 1951 Act and the explanation are extracted hereunder:-

52. Death of a candidate of a recognised political party before poll - (1) If a candidate set up by a recognised political party, -

(a) dies at any time after 11.00 A.M. on the last date for making nominations and his nomination is found valid on scrutiny under section 36; or

(b) whose nomination has been found valid on scrutiny under section 36 and who has not withdrawn his candidature under section 37, dies, and in either case, a report of his death is received at any time before the publication of the list of contesting candidates under section 38; or

(c) dies as a contesting candidate and a report of his death is received before the commencement of the poll, the returning officer shall, upon being satisfied about the fact of the death of the candidate, by order, announce an adjournment of the poll to a date to be notified later and report the fact to the Election Commission and also to the appropriate authority:

Provided that no order for adjourning a poll should be made in a case referred to in clause (a) except after the scrutiny of all the nominations including the nomination of the deceased candidate.

(2) The Election Commission shall, on the receipt of a report from the returning officer under the sub-section (1), call upon the recognised political party, whose candidate has died, to nominate another candidate for the said poll within seven days of issue of such notice to such recognised political party and the provisions of sections 30 to 37 shall, so far as may be, apply in relation to such nomination as they would apply to other nominations:

Provided that no person who has given a notice of withdrawal of his candidature under sub-section (1) of section 37 before the adjournment of the poll shall be ineligible for being nominated as a candidate for the election after such adjournment.

(3) Where a list of contesting candidates had been published under section 38 before the adjournment of the poll under sub-section (1), the returning officer shall again prepare and publish a fresh list of contesting candidates under that section so as to include the name of the candidate who has been validly nominated under sub-section (2).

Explanation - For the purpose of this section, sections 33 and 38, "recognised political party" means a political party recognised by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968."

8. The same refers to a recognised political party and also defines that a recognised political party would be the same as defined in the 1968 Order. Clause 2 (h) of the 1968 Order defines "political party" as under:-

"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.?

9. Thus, a gamut of these provisions indicate that there is a distinction between the definitions of a "registered political party" and a "recognised political party".

The Delhi High Court in its order has indicated that in view of the provisions of Clause 15 of the 1968 Order if there is a dispute between the splinter rival claims of an unregistered political party, then the same cannot be a subject matter of resolution by the Election Commission of India.

10. A registered political party can claim allocation of a symbol under the 1968 Order, and in the event of any rival or splinter group of the same party it can seek declaration of its status touching the registration of a political party keeping in view Sub-Section (9) of Section 29-A of the Act extracted here-in-above.?

11. Sri O.P. Srivastava contends that Sub-Section (9) of Section 29-A only allows an information to be taken on record and does not confer any authority for adjudication of rival claims and it is for this reason that the intimation was given to the petitioner to resolve the dispute at the end of the party level itself or file a Civil Suit.

12. The question is can Section 29-A (9) be also invoked in terms of the General Clauses Act and the submissions raised on behalf of the petitioners to empower the Commission to proceed to decide such a dispute or not keeping in view the fact that the Delhi High court while proceeding to answer the question in the negative does not appear to have considered the impact of Sub-Section (9) of Section 29-A of the Act.

13. Learned counsel for the parties will address the Court on this issue whenever the matter is next listed.

14. List in the next cause list.