
(2017) 01 AHC CK 0037
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 : 03-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226, Article 324
Representation of the People Act, 1951 — Section 29-A (7), Section 29-A (9)

Citation : (2017) 1 ADJ 540 : (2017) AIR(Allahabad) 80 : (2017) 1 ESC 311

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

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

Final Decision : Disposed off

Judgement

Sanjay Harkauli, J. - This writ petition has been filed by a registered political party petitioner no.1 Apna Dal and petitioner no.2 Smt. Krishna Patel alleging herself to be duly elected party president of the said political party, for quashing the letters of the Election Commission of India being Annexure Nos. 9, 14, 17 & 18 whereby the said commission had directed the petitioner no.2 to resolve the issue regarding party president-ship being an internal dispute of the party as there is no approved list of office bearers of the party as per the record of the commission.

Admitted facts are that the party "Apna Dal" was got registered with the Election Commission of India and husband of the petitioner no.2 Late Shri Sone Lal Patel was recognised as then president of the party. The said political party though registered with the Election Commission of India has not been accorded recognition by the Commission till now.

2. Upon demise of Shri Sone Lal Patel on 17.10.2009 a resolution was adopted in a meeting held by the National as also the State Office Bearers of the party on

18.10.2009 by which petitioner no.2 was elected as National President of the party who continued to function as such and information accordingly was sent to the Secretary, Election Commission of India vide letter dated 20.10.2014.

3. Thereafter, opposite party no.2 Ms. Anupriya Patel sent a letter dated 04.02.2015 to the Election Commission of India intimating that she has been elected as National President of the party in a subsequent meeting of National Executive Committee held on 20.10.2014 and this has led to the present controversy.

Thereupon, the Election Commission of India sent a letter dated 10.03.2015 to the petitioners requiring necessary comments in this regard. The petitioner no.2 sent her reply vide letters dated 18.03.2015 and 09.05.2015 to the Election Commission of India stating therein that the proceedings as mentioned by opposite party no.2 were arbitrary and illegal.

In the aforesaid circumstances, Election Commission of India asked the petitioner no.2 as also the opposite party no.2 vide impugned letter/order dated 09.06.2015 to resolve the aforesaid dispute internally, failing which Election Commission of India would not recognise any of the groups, as heading the political party.

4. The petitioner no.2 wrote letters to the Election Commission of India to review their aforesaid decision to which the Commission refused to relent and again asked the petitioner no.2 to settle the dispute either within the party or through Court.

5. According to the petitioners, Section 29A of the Representation of Peoples Act, 1951 does not contain any provision for de-recognising any political party by the Election Commission of India on the pretext of some internal dispute being created by some members of the party within the party and that too without giving a proper opportunity of hearing to the petitioners.

6. This petition has been contested by opposite party no.2 by way of a counter to which a rejoinder has been filed by the petitioners. The Election Commission is represented by Sri O.P. Srivastava, learned Senior Counsel.

7. The question which arises for consideration is whether the Election Commission of India in such a situation has the right to hear the rival groups and determine as to which of the rival claimants is entitled to represent the political party described as "Apna Dal". Upon hearing the objections of Sri Srivastava for the Election Commission of India, this Court had framed the following questions vide order dated 5.10.2016 to answering the issue:-

"An affidavit filed by the Election Commission of India as well as rejoinder affidavit filed by the petitioner today are taken on record.

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.

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.

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.

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;

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 subsection 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."

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 subsection (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."

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.

8. 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 dated 22.9.2015 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.

"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.

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.

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.

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

List in the next cause list."

9. Section 52 of the Representation of Peoples Act does not define the term "recognised political party" but the explanation to Section 52 thereof provides that "recognised political party" means a political party recognised by the Election Commission of India under the Election Symbols (Reservation and Allotment) Order, 1968. The said order vide clause-15 thereof empowers the Election Commission of India that when there are rival sections or groups of a

political party, each of whom claims to be that party, to after taking into account the available facts and circumstances and hearing representatives of the sections or groups, decide which of such rival section or group is the recognised political party and such decision of the Election Commission of India is binding on all such rival sections or groups. However, the said clause does not apply to a political party which is yet to be recognised by the Election Commission of India.

10. The registration of a political party and a political party being recognised as a political party are governed by two separate sets of provisions the former under Section 29-A of the Representation of Peoples Act, 1951 and the latter by Section 52 with it's explanation read with the Election Symbols (Reservation and Allotment) Order, 1968. Any dispute therefore has to be resolved in terms of the provisions of the Representation of Peoples Act as well as the Symbols Order 1968 as both issues are within the domain of the Election Commission.

While observing that the Election Commission cannot proceed to de-register a party so as to review it's decision, the Apex Court in the case of Indian National Congress (I) v. Institute of Social Welfare and others [(2002) 5 SCC 685] was of the opinion that the power of de-registration was not available under Section 29-A that was introduced and inserted in the Representation of Peoples Act after the Symbols Order of 1968. However, in paragraph ? 19, the argument of the Attorney General appearing for the Union of India was noticed as follows:-

"The question then arises whether, in the absence of an express power in the Act, the Election Commission is empowered to de-register a registered political party. Learned Attorney General, appearing for the Union of India urged that the Election Commission while exercising its power under Section 29A of the Act, acts quasi-judicially and in absence of any express power of review having been conferred on the Election Commission, the Election Commission has no power to deregister a political party. According to learned Attorney General, excepting in three circumstances when the Election Commission could not be deprived of the power to de-register a party are - (a) when the Election Commission finds that the party has secured registration by playing fraud on the Commission, (b) when a political party itself informs the Commission in pursuance of Section 29A (9) that it has changed its constitution so as to abrogate the provision therein conforming to the provisions of Section 29 A (5) or does not believe in the provisions of the Constitution, rejecting the very basis on which it secured registration as a registration political party and (c) any like ground where no enquiry is called for on the part of Election Commission, the Commission has no power to de-register a political party. Learned Attorney General further argued that in a situation where a complaint is made to the Election Commission and it is required to make an inquiry that a particular registered political party has committed breach of the undertaking given before the Election Commission or has violated the provisions of the Constitution, the election Commission has neither any power to make any inquiry into such a complaint nor de-register such a political party."

In paragraph ? 26, the Apex Court held that if there is a lis then the exercise of power may be termed as quasi-judicial and the authority would be a quasi-judicial authority if it is to act judicially. It was further held in paragraph ? 28 that the distinction between an "administrative act" and the "quasi-judicial act" was that before arriving at a decision if the authority has to make an enquiry, such a requirement of law makes the authority a quasi-judicial authority.

The Court then went on to dissect the provisions of Section 29-A of the Representation of Peoples Act in paragraph ? 31 as follows:-

"We shall now examine Section 29A of the Act in the light of the principles of law referred to above. Section 29A deals with the registration of a political party for the purposes of the Representation of the People Act. Sub-Section (1) of Section 29A of the Act provides who can make an application for registration as a political party. Sub-sections (2) and (3) of the said Section lay down making an application to the Commission. Sub-sections (4) and (5) of the said Section provide for contents of the application. Sub-section (7) of Section 29 provides that the Election Commission after considering all the particulars in its possession and any other necessary and relevant factors and after giving the representatives of the association reasonable opportunity of being heard shall decide either to register the association or body as a political party or not so to register it and thereupon the Commission is required to communicate its decision to the political party. Further, sub-section (8) of Section 29A attaches finality to the decision of the Commission."

Then the Court ultimately concluded in paragraph ? 32 that the function of the Commission while exercising powers in registering a political party which includes making an enquiry and opportunity of hearing renders the act of the Commission as quasi-judicial. In paragraph ? 33, the Apex Court ruled that since there was no express power to de-register a political party, such power could not be exercised but three exceptions were carved out by the Apex Court in paragraph ? 34 of the judgment. Paragraph ? 34 is extracted hereunder:-

"However, there are three exceptions where the Commission can review its order registering a political party. One is where a political party obtained its registration by playing fraud on the Commission, secondly it arises out of subsection (9) of Section 29A of the Act and thirdly, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law."

Further, clarifying the position the Apex Court in paragraph ? 38 ruled as under:-

"It was next urged by the learned counsel for the appellants that the view taken by the High Court that by virtue of application of provisions of Section 21 of the General Clauses Act, 1897 the Commission has power to de-register a political party if it is found having violated the undertaking given before the Election Commission, is erroneous. According to him, once it is held that the Commission

while exercising its powers under Section 29A of the Act acts quasi-judicially and an order registering a political party is a quasi-judicial order, the provision of Section 21 of the General Clauses Act has no application. We find merit in the submission."

In paragraph ? 40 again, it was held as follows:-

"On perusal of Section 21 of the General Clauses Act, we find that the expression "order" employed in Section 21 shows that such an order must be in the nature of notification, rules and bye-laws etc. The order which can be modified or rescinded on the application of Section 21 has to be either executive or legislative in nature. But the order which the Commission is required to pass under Section 29A is neither a legislative nor an executive order but is a quasi-judicial order. We have already examined this aspect of the matter in the foregoing paragraph and held that the functions exercisable by the Commission under Section 29A is essentially a quasi-judicial in nature and order passed thereunder is a quasi-judicial order. In that view of the matter, the provisions of Section 21 of the General Clauses Act cannot be invoked to confer powers of deregistration/ cancellation of registration after enquiry by the Election Commission. We, therefore, hold that Section 21 of the General Clauses Act has no application where a statutory authority is required to act quasi-judicially."

In the light of what has been observed here-in-above, it is evident that the Commission has been held to have the power of review when a situation arises out of Sub-Section (9) of Section 29-A of the Act as per the ratio of paragraph ? 34 of the judgment extracted here-in-above and the power exercised is quasi-judicial.

11. Accordingly, as per the principles observed by the Apex Court, the validity of the impugned order dated 9.6.2015 calling upon the parties to get their dispute resolved internally may require a re-consideration in the light of what has been extracted here-in-above. The Election Commission while passing the impugned order dated 9.6.2015 nowhere indicates the consideration of the aforesaid specific provisions particularly the law laid down by the Apex Court as extracted here-in-above.

We may at this stage note that in paragraph-11 of the writ petition the petitioner has complained of the inaction on the part of the Election Commission to reconsider the request made by the petitioner. The respondent No. 2 also in paragraph-16 of the counter affidavit has hinted upon a disposal by the Election Commission about the said dispute. Dr. L.P. Misra, learned counsel for the respondent No. 2 has also urged that the matter can be resolved by the Election Commission of India.

12. However, the learned counsel for the Election Commission Sri O.P. Srivastava relying on the order of the Delhi High Court as noted above, has urged that the Election Commission cannot be saddled with this responsibility.

13. With due deference, what has been said by the Delhi High Court, we would still impress upon the Election Commission to reconsider the matter in the light of what has been stated herein-above as the order of the Delhi High Court does not appear to have examined the entire issue in the aforesaid perspective.

Apart from this, it is needless to re-emphasize that Article ? 324 of the Constitution gives a wide latitude in such matters. The scope and extent of such powers after coming into force the Symbols Order 1968 was first spelt out in the decision of Shri Sadiq Ali and another v. The Election Commission of India and others [1972 (4) SCC 664]. Paragraph ? 6 of the said judgment indicates the stand taken by the Election Commission of India in the said dispute between the rival factions the ratio of the decision, then went on to re-emphasize the powers of the Commission under Article 324 of the Constitution of India. In paragraphs 15 to 22 of the said decision, principles have been enunciated while considering the scope of para ? 15 of the 1968 Symbols Order as existing then. It was held that such powers that are available with the Commission were to sub-serve the powers conferred on the Commission under Article 324 that widely included the superintendence and direct control for conduct of elections. The question in the present case is a preelection dispute. The Supreme Court went on further in the case of Kanhaiya Lal Omar v. R. K. Trivedi and others [1985 (4) SCC 628] to spell out that whatever areas are left unoccupied by legislation the same can be read into the inherent powers of under Article 324 of the Constitution of India. The Court relied on the observations made by the Apex Court in the case of Sadiq Ali (supra). The Election Commission being a self-regulatory autonomous institution not only regulates the election process but also the political parties.

14. It is keeping in view the amendments which were brought about in 1989 in the Representation of Peoples Act with the insertion of Chapter IV-A which also includes the amendments under Section 29-A of the 1951 Act, defined the powers statutorily available as well. It is for this reason that the judgment of the Apex Court in 2002 in the case of Indian National Congress (supra) extracted here-in-above took notice of such amendments and then defined the powers of the Election Commission accordingly.

However, in the case of Subrahmanian Swamy v. Election Commission of India [2008 (14)) SCC 318], while interpreting the provisions of the Symbols Order 1968 cautioned that while interpreting the powers and provisions of subsidiary rules should not be interpreted in a manner so as to bring about a situation of judicial legislation.

The Apex Court in the case of Desiya Murpokku Dravida Kazhagam (DMDK) and another v. Election Commission of India [(2012) 7 SCC 340] reiterated the powers of the Election Commission of India traceable to Article 324 of the Constitution of India and affirmed the view taken earlier in the cases of Sadiq Ali, Kanhaiya Lal as well as Subrahmanian Swami (supra).

15. A conspectus of the entire law as reproduced here-in-above therefore

compels us to remit the matter back to the Election Commission of India to consider the grievances of the petitioners and respondent No. 2 by first determining it's own jurisdiction and authority to do so in the light of the law and also the provisions as interpreted by the Apex Court indicated above which does not appear to have been delineated while issuing the impugned communication. The observation of the Election Commission of India that further action can be taken only after the dispute is settled either within the party or through the orders of the competent Court therefore appears to have been mentioned without considering the scope and powers that can be exercised under Article 324 of the Constitution, Section 29-A (7) read with 29-A (9) of the Representation of Peoples Act, 1951 and the decisions referred to above particularly paragraph ? 34 of the judgment in the case of Indian National Congress (supra) extracted here-in-above. The interplay of these provisions have to be examined before arriving at any conclusion. The Commission will be free to determine it's own jurisdiction in the matter but the same shall be done by recording reasons after considering what has been stated above, and in the event the Commission comes to the conclusion that it does have the authority to decide the said dispute, it shall do so expeditiously, preferably within one month of the date of production of a certified copy of the order before it.

Disposed off with the said observations.