
(1967) 02 CAL CK 0002
In the Calcutta High Court
Case No : C. Order No. 2551 (W) of 1966

Arun Chandra Ghose

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-02-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 226, 32, 326, 328
Representation of the People Act, 1951 — Section 169, 169(3)

Citation : 71 CWN 799

Hon'ble Judges : B.C. Mitra, J

Bench : Single Bench

Advocate : Arun Kumar Datta Jr. and Amar Nath Dhole, for the Appellant; P.N. Chunder for opposite parties Nos. 1, 3, 4 and 5 and Arun Kumar Janah for State of West Bengal, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Mitra, J.—This is an application for a rule nisi for writs and orders in the nature of mandamus, prohibition and certiorari. The petitioner is a resident of Purulia town and is the Secretary of a political party known as Lok Sevak Sangha. Purulia. It is claimed that the candidates of the said political party intend to contest the elections in the several constituencies of Purulia, both in the parliamentary and assembly constituencies in the General Election due to be held from February 19, 1967, to February 26, 1961. The petitioner's case is that the main provisions relating to symbols are to be found in: (i) Rules 4 and 5 of the Conduct of Election Rules, 1961, and Sub-rules (4), (5) and (6) of Rule 10, (ii) Forms 2A, 2B and 7A and (iii) Notifications of the Election Commission. According to the petitioner, symbol voting is one of the essential steps to give to the principle of adult suffrage as enunciated in article 326 of the Constitution.

2. Mr. Arun Kumar Dutt, learned Advocate for the petitioner, submitted that "due constitution" of the Houses of Legislature in the context of adult suffrage could

only mean symbols for election in parliamentary and assembly constituencies, such symbols to be chosen by candidates subject to restrictions in their choice. In other words, symbolical voting is one of the essential matters or steps for "due constitution" of parliament and Legislative Assembly, It was next argued that failure to provide by legislation or rules adequate machinery regarding symbols under Rule 5 vitiated the election in parliamentary and assembly constituencies and for that reason such election could not be regarded as "due constitution" of the Houses as contemplated by article 328 of the Constitution.

3. It was next argued that there was a downward trend for the success or return of candidates from the said political party in the elections to Parliament and State Legislative Assembly because of the allotment of "free symbols" to the candidates of the said political party in the last three General Elections.

4. The failure of the candidates of the sold political party in the last three General Elections, it was alleged, was due to allotment of symbols, not on a uniform basis, but such allotment having been done and diverse symbols having been allotted solely on the whims of the Election Commission.

5. It was next argued that in exercise of the powers conferred by sub-rule (1) of Rule 5 of the said Rules and in supersession of a Notification dated February 26, 1959, the Election Commission by Notification dated September 19, 1961, specified the manner in which the symbols were to be chosen by candidates for election in a parliamentary or assembly constituency. By another Notification dated September 22, 1962, which is annexure "B" to the petition, substantial changes have been made relating to "reserved symbols", but not with regard to "free symbols." By this Notification candidates were to select symbols either from the "reserved symbols" in event of their being sponsored by a recognised political party or from the "free symbols" in other cases. This Notification was again superseded and the Notification which is the subject matter of challenge in this application is a Notification dated December 1, 1966.

6. It was contended that the said Notification dated December 1, 1966 was a substantial departure from the directions issued by the Election Commission by several earlier Notifications in the same matter. It was further contended that the power conferred on the Election Commission to issue directions was equivalent to delegated legislation and the issue of such directions and circulars was tantamount to legislation. It was also contended that the power to issue directions was equivalent to exercise of uncanalised power to issue directions leaving ample scope for arbitrary and discriminatory selection of symbols, "reserved" and "free". It was next contended that there was no condition precedent to allotment of uniform symbols, and recognised political parties were assured of uniform symbols and were, therefore, in a position of advantage. The petitioner being a candidate of an unrecognised political party, it was argued, was at a disadvantage as against the candidates sponsored by recognised political parties, who were given five years time to canvas for their symbols, but unrecognised political parties were left only with twenty days time to canvas for

votes in support of the particular symbol.

7. It is on these grounds that the petitioner seeks a rule nisi for cancelling or rescinding the said Notification in annexure "B" to the petition.

8. As I have noticed earlier, the petitioner is the Secretary of a political party, namely, Lok Sevak Sangha. The petition was signed and verified on September 28, 1966 and the application for a rule nisi was moved on September 30, 1966. This application has been made on behalf of the petitioner alone and not for and on behalf of the said political party. No leave has been obtained or prayed for under Order 1, Rule 8 of the CPC for moving the application in a representative capacity. From the averments in the petition, however, it appears that it is the said political party which is aggrieved by the issue of the impugned Notification and the allotment of symbols by the respondent No. 3. In paragraph 4 of the petition it is alleged that the candidates of the said political party intend to contest the elections in the several constituencies mentioned in the petition, both in parliamentary and in assembly constituencies in the General Election to be held from February 19, 1967 to February 26, 1967. In paragraph 9 of the petition it has been alleged that in the General Election held in 1952 the said political party was given a party symbol of "Railway Engine"; that in the General Election held in 1957 the said political party was given a free symbol of unrecognised party, viz., "Elephant" for general seats and "Tree" for reserved seats. In paragraph 10 it has been alleged that in the General Election held in 1962 no free symbol was given to the candidates set up by the said political party, but symbols were given on individual basis and that such allotment of symbols created confusion between candidates of the said political party and independents. In paragraph 11 of the petition it has been alleged that in the General Election held in 1952, the said political party returned seven candidates for the assembly constituencies out of twelve seats and two candidates for the parliamentary constituencies out of two seats. In the General Election held in 1957 the said political party returned seven candidates out of eleven seats for the assembly constituencies and one candidate for the parliamentary constituencies. In 1962 the said political party returned four candidates out of eleven for the assembly constituencies and one candidate for the parliamentary constituencies. In paragraph 12 it has been alleged that there has been a downward trend in the success of the said political party in the General Election because of the allotment of "Free Symbol" to the candidates of the said political party in violation of the principle of symbol voting and that there was no uniformity in the allotment of symbols and diverse symbols were allotted according to the whims of the respondent No. 3. In paragraph 24 of the petition it is alleged that "Free Symbols" are relegated to the position of no importance with the result that unrecognised political parties are dependent on uncertain and unreasonable procedure laid down in the directions issued by the respondent No. 3. But what is most significant, is that it has been alleged in this paragraph that unfortunate candidates like the petitioner not sponsored by a political party are left to float as floatsam and jetsam on the election waves. According to the

petitioner, therefore, he has not been sponsored by a political party. In paragraph 26, on the other hand, it is alleged that the petitioner is in a position of disadvantage as a candidate of an unrecognised political party, vis-a-vis a candidate sponsored by a recognised political party.

9. The reason for my referring to the averments in the petition is to show that the petitioner's case as made out in the petition is that the political party known as Lok Sevak Sangha of Purulia has been aggrieved by the impugned Notification and that its misfortune in the elections has been due to the allotment of free symbols to this party, as such allotment created confusion between candidates of this party and independent candidates. That being the position, it was for the said political party to seek relief in the writ jurisdiction of this court, assuming it is entitled to such relief. But the said political party is not the petitioner in this case, nor has this application been made by the petitioner on behalf of the political party. According to the petitioner allotment of free symbols to the said political party has caused the set-back in the fortunes of the party at the General Elections. According to the petitioner again allotment of "Reserved Symbols" to the recognised political parties has given such recognised political parties an advantage over unrecognised political parties like the Lok Sevak Sangha. This is the basis of the petitioner's grievance in this application. But strangely enough, the party who, according to the petitioner has been aggrieved and injured by the allotment of election symbols, has not come forward to move this application. There is no explanation in the petition as to why the said political party has not chosen to move this application. That being the position, is the petitioner entitled to a rule nisi on the ground that he is a member of a political party which has been injured and aggrieved by the issue of certain notifications by the Election Commission, although the said political party has chosen to remain in the background instead of coming forward to move this application for agitating its grievances ? I think not. As I have noticed earlier, this is not an application made in a representative capacity. There is not even an averment that the petitioner has been authorised to move this application on behalf of the said political party.

10. It is next to be considered if the petitioner in his individual capacity is entitled to the rule nisi as prayed for. As I have noticed earlier the petition was signed and verified on September 28, 1966 and it was moved on September 30, 1966. The right of the petitioner to a rule nisi could arise if, and only if, he was a candidate for election to the Parliament or the Legislative Assembly at the next General Election. At the time when the petition was moved no nomination paper was filed by the petitioner and, therefore, there was no security of the nomination papers and he was not declared to be a validly nominated candidate for election. At best, it could be said that at the time when the petition was moved the petitioner intended to contest the elections for a seat in the Parliament or in the Assembly. It could not be said that as a validly nominated candidate he was likely to be injured or prejudiced by the impugned Notification. It is only if the petitioner is a validly nominated candidate that he could make a grievance of the impugned Notification on the ground that he was likely to be

affected, injured or prejudiced by the requirements of the Notifications and by the allotment of "Free Symbol". But there is nothing on the record or on the materials before me to show that he was such a candidate at the time when the petition was moved.

11. The question, therefore, is, has the petitioner a right in law for the enforcement of which he can invoke the extraordinary jurisdiction of this Court under article 226 of the Constitution ? It is now well-settled that the existence of a right is the foundation, of the exercise of jurisdiction of this Court under article 226 of the Constitution (1) *The State of Orissa Vs. Madan Gopal Rungta*, . It is also well-settled that the right to be enforced under article 32 of the Constitution must be the right of the petitioner himself who complains of infractions of such right and approaches the Court for relief (2) *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, . In (3) *The Management of Marina Hotel Vs. The Workmen*, , the Supreme Court held that the right that could be enforced under article 226 of the Constitution also should ordinarily be the personal or individual right of the petitioner himself though in the case of the writs like habeas corpus or quo warranto this Rule might have to be relaxed or modified.

12. Mr. P. N. Chunder, learned Advocate for the respondents Nos. 1, 3, 4 and 5, relied upon a decision of the Supreme Court in (4) *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, , in which it was held that the existence of a right was the foundation of a petition under article 226 of the Constitution. Mr. Chunder also relied upon a decision of the Andhra Pradesh High Court reported in (5) *AIR 1965 Andhra Pradesh 425 (Kosaraju Venkata Subbayya v. The State of Andhra Pradesh)*, in which it was held that it was only a person who had an existing and specific legal right who could maintain a petition for a writ of certiorari or mandamus or ask for an order or direction under article 226 of the Constitution.

13. It is the breach of some right of the petitioner which entitles him to move this Court under Article 226 of the Constitution for a remedy; and unless there has been invasion of some rights of a petitioner this Court will not give him any remedy in its extraordinary jurisdiction. In this case none of the rights of the petitioner has been infringed or invaded. At the time when the petition was moved he did not file any nomination paper and was not, therefore, a validly nominated candidate for election at the next General Election, In my opinion the petitioner is not entitled to a rule nisi in an application under Art. 226 of the Constitution.

14. Mr. Dutt also conceded that the petitioner has not filed any nomination paper and is not, therefore, a candidate for election either to the Parliament or to the Legislative Assembly at the next General Election. The only right which the petitioner has so far as the next General Election is concerned, is a right to vote for the candidates for election to the Parliament and the Legislative Assembly. If the petitioner was a candidate for election either to the Parliament or the Legislative Assembly it would have been open to him to raise the question of the

validity of the impugned Notifications regarding allotment of symbols and also regarding classification of candidates belonging to "national political parties" or "recognised political parties" and candidates sponsored by parties other than a national or recognised political party. It is to be remembered that one of the main grievances of the petitioner is the paucity of time between the allotment of symbols to independent candidates or candidates sponsored by unrecognised parties and the date of poll which is twenty days. It was argued that candidates of recognised political parties, who have the benefit or advantage of a fixed symbol, have five years time to canvas for votes, as against twenty days allowed to independent candidates or candidates sponsored by parties other than national or recognised parties. But since the petitioner in this case is not a candidate for election on his own admission, it is not open to him to raise such question in a writ petition, as he has no legal or any other right to canvas for votes in his favour. These findings would have been enough to dispose of this application, but since arguments have been advanced on the validity of the Notification whereby symbols have been prescribed and reserved, I should now proceed to deal with the same.

15. The Notification which is the subject matter of challenge in this application is a Notification dated December 1, 1966. This Notification has superseded the earlier Notification No. 56/65, dated September 2, 1965. By this Notification certain symbols have been reserved for "recognised parties" and for "multi-State parties". The main grievance of the petitioner is the reservation of symbols for the recognised parties and multi-State parties. But the reservation of symbols for recognised parties and multi-State parties was however made not arbitrarily, but on the basis of valid votes polled by a party and the test on the basis of which this reservation was done, was polling of four per cent of votes by a party excluding the votes polled by candidates who have forfeited their deposit. It was on this basis that symbols were allotted to parties who have been treated as recognised parties or multi-State parties.

16. Mr. P. N. Chunder submitted that there was no merit in the contentions on behalf of the petitioner that there was excessive delegation of legislative power to the Election Commission by Rule 5 and Rule 10(4) of the Conduct of Election Rules, 1961. He argued that the impugned Notification was issued under Rule 5 of the said Rules and the respondent No. 3 was quite competent to lawfully issue the Notification. He further argued that the validity of the Notification could not be questioned by the petitioner on the ground that there was excessive delegation of legislative power on the ground that the directions of the Election Commission regarding symbols in the said Notification were tantamount to legislation, nor could the Notification be attacked on the ground that the respondent No. 3 has been vested with un-canalised power to issue directions which enable the respondent No. 3 to exercise arbitrary powers in the matter of selection of symbols. Mr. Chunder submitted that the Conduct of Election Rules, 1961 could not be assailed by the petitioner on the ground that they were ultra vires of the Central Government or beyond the powers of the Central

Government u/s 169 of the Representation of the People Act, 1951. He further submitted that the Rules were laid upon the table of both Houses of Parliament for a period of thirty days as required by sub-section (3) of section 169 of the Act and these Rules, therefore, must be taken to be part and parcel of the Act itself and that being so, it was argued, it could not be said that there was delegation of legislative power to the respondent No. 3. In support of this contention, Mr. Chunder relied upon a decision of the Madhya Pradesh High Court in (6) Prabhu Charan v. Shiv Dutta, AIR 1958 Madhya Pradesh 299. This very question came up for consideration in that case and a Division Bench of the Madhya Pradesh High Court held that where the Election Commission issued press notes under Rules 5 and 10 which gave recognition to four parties and required other parties to follow the procedure prescribed by the Notification, though worded as rules, the press notes were in the nature of control and contained details of policies under which the symbols were to be allotted to parties or candidates and that the Election Commission had merely effectuated the Rules as they stood imposing certain restrictions in the matter of allotment of symbols. As to the validity of the Rules which was also challenged in that case, it was held that the Rules became part and parcel of the Act itself as they were laid for thirty days in both Houses of Parliament u/s 169(3) of the Act. Regarding the directions issued by the Election Commission by Notification it was held that these directions did not amount to rule-making and that the power to control elections by specifying symbols was conceded by the Rules to the Election Commission and all that was done was to effectuate the Rules as they stood, imposing certain restrictions in the matter of allotment of symbols.

17. Appearing for the respondent No. 2, Mr. Arun Kumar Janah supported the contentions raised by Mr. Chunder and he also relied upon a decision of the Supreme Court in (7) K.S. Abdul Azeez Vs. Ramanathan Chettiar and Others, . In that case, however, the question that came up for consideration was the validity of a nomination paper in which only one symbol was mentioned in the space provided for three symbols. This decision, to my mind, is not of much assistance in the facts of this case.

18. The question of allotment of symbols was considered by the Supreme Court in (8) Civil Appeal No. 1653 of 1966 (Sannyukta Socialist Party v. The Election Commission of India) and (9) Writ Petition No. 193 of 1966 (Madhu Limaye v. The Election Commission of India). In that case the allotment of symbols by the Election Commission was challenged on the ground that such allotment was done capriciously and without jurisdiction. The preparation of the list of free and reserved symbols made by the Election Commission under Rule 5(1) of the said Rules was also considered in that case. In that case two political parties, namely, Praja Socialist Party and Socialist Party united to form the Samyukta Socialist Party. The Election Commission recognised the new party and allotted "Hut" as the symbol of the party. "Hut" was a reserved symbol of the Praja Socialist Party in several States. Union of the two political parties, however, broke up and thereupon the Praja Socialist Party claimed its original symbol, namely, "Hut" and

this symbol was restored to the Praja Socialist Party and the symbol "Tree" was allotted to the Samyukta Socialist Party as representing the old Socialist Party, leaving it open to the Samyukta Socialist Party to choose any other free symbol it liked. The act of the Election Commission in making allotment of the symbol to the parties after the breaking of the Union was challenged on the ground that it was done arbitrarily and capriciously. This contention was rejected by the Supreme Court and it was held that although the said Rules did not contemplate a discretion to the Election Commission in the matter of selection of symbols, there was some jurisdiction in the Election Commission to regulate or restrict the choice of symbols in particular circumstances and that although the Election Commission could not impose its own wishes on parties or candidates, it could restore the lost advantage to a party before the symbol could be said to be finally assigned to another party. It was further held that the Election Commission did not act arbitrarily or capriciously in taking the symbol "Hut" from the Samyukta Socialist Party and allotting the same to the Praja Socialist Party.

19. Mr. Arun Kumar Dutt, learned advocate for the petitioner, sought to repel the contentions raised on behalf of the respondents by contending that a threat to a right was enough to sustain an application under article 226 and it was not necessary that there should be actual invasion of any right. He argued that although his client was not a candidate for election, he was qualified to stand as a candidate for election and the impugned Notification was a threat to his right to stand as a candidate and therefore this petition could be maintained. In support of this contention reliance was placed by Mr. Dutt on the decision of the Supreme Court in (10) *The Delhi Laws Act case*, AIR 1951 SC 332. Particular reference was made to paragraph 74 of the report at page 335 where it was held that the legislature could not abdicate its legislative functions and while entrusting such function to an outside agency it must see that such agency acted as a subordinate authority and did not become a parallel legislature. This decision in my view is of no assistance to the petitioner as there was no delegation of legislative functions to the respondent No. 3 in this case. Mr. Dutt next relied upon a decision of the English Court of Appeal reported in (11) [1948] 2 AER 558 (*Jackson Stansfield and Sons v. Butterworth*). That was an action to recover costs of certain works done on the basis of a supplementary licence which was held to be of no effect because of the wording of certain regulation. Certain circulars were issued in exercise of sub-delegated powers in exercise of which a licence issued by the Ministry of Works. This decision, to my mind, is of no assistance to the petitioner as the Rules were laid before the Houses of Parliament u/s 169(3) of the Representation of the People Act, 1951 and therefore these Rules became part of the Act itself. There could, therefore be no question of delegation of legislative power.

20. In my view the contention raised by the learned advocates for the respondents must prevail. The petitioner is not entitled to a rule nisi in this application. It cannot be said that the respondent No. 3 had acted arbitrarily or capriciously in the matter of allotment of symbols to recognised political parties

or multi-State parties. Nor can I accept the petitioner's contention that there has been delegation of legislative functions to the respondent No. 3. There is also no force in the petitioner's contention that the issue of directions and circulars relating to allotment of symbols is tantamount to legislation. In my opinion, the allotment of reserved symbols to national or political parties has been lawfully made by the respondent No. 3 under the powers conferred upon it by the Conduct of Election Rules, 1961. For the reasons mentioned above, this application fails and is, therefore, rejected.