
(2010) 03 AHC CK 0028
In the Allahabad High Court
Case No : Writ Petition No. 2628 (M/B) of 2010

Asok Pande and Another

APPELLANT

Vs

Election Commission of India and Another

RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Constitution of India, 1950 — Article 324, 324(1), 327, 328
Representation of the People Act, 1951 — Section 29A

Citation : (2011) 3 AWC 2229

Hon'ble Judges : Amitava Lala, Acting C.J.; Anil Kumar, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Amitava Lala, A.C.J.

1. This writ petition, in the form of public interest litigation, has been made by two practicing advocates of this High Court, who appeared in person. They have prayed that the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the "Order, 1968") be declared ultra vires to the extent it categorizes reserve symbols and free symbols, and in further to direct the Election Commission of India to treat the contesting candidates of registered political parties and other political parties equally and to cancel the allotment of symbols to the political parties. The real issue before us in this writ petition is as to whether there is any scope open for the Election Commission of India to reserve the symbol for any recognized political party and if it is so, whether it tantamounts to discrimination with other political parties,- for whom symbols have not been reserved. The reservation of symbol means a political party is getting opportunity to make its propaganda with its symbol throughout the area, which facility is not available to the political parties, whose symbols have not been reserved.

2. The petitioners contended before us that National political parties, State political parties and other political parties have been treated differently. However,

in this regard, we want to hold and say that this differentiation is made on the basis of the people's representation. That representative capacity is to be adjudged by the Election Commission. The Election Commission within its wide power of superintendence, direction and control as well as conduct of all elections is empowered to know the category of a political party and its strength of representation to recognize the symbol. Moreover, a system was adopted by the political parties and the same continued for a considerable period. Therefore, the Order, 1968 cannot be said to be ultra vires in the year 2010, so far as categorization of reserve symbols and free symbols are concerned.

3. learned Counsel appearing on behalf of the Election Commission of India has placed before us a judgment of the Supreme Court in *Kanhiya Lal Omar Vs. R.K. Trivedi and Others*, from which we have got the complete answer. Paragraph 16 of the said judgment is quoted hereunder:

16. Even if for any reason, it is held that any of the provisions contained in the Symbols Order are not traceable to the Act or the Rules, the power of the Commission under Article 324(1) of the Constitution which is plenary in character can encompass all such provisions. Article 324 of the Constitution operates in areas left unoccupied by legislation and the words "superintendence", "direction" and "control" as well as conduct of all elections" are the broadest terms which would include the power to make all such provisions. See *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and *A.C. Jose Vs. Sivan Pillai and Others*,

4. learned Counsel further submitted that paragraphs 10 and 17 of the said judgment are also important to make a note in this regard. Therefore, we quote paragraphs 10 and 17 hereunder:

10. It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be it a donkey or an elephant, does give rise to a unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis - in other words, "on systematized differences and unresolved conflicts." That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-Second Amendment) Act,

1985 there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence, it is difficult to say that the reference to recognition, registration etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.

17. We do not also find any substance in the contention that the Central Government which had been delegated the power to make rules u/s 169 of the Act could not further delegate the power to make any subordinate legislation in the form of the Symbols Order to the Commission, without itself being empowered by the Act to make such further delegation. Any part of the Symbols Order which cannot be traced to Rules 5 and 10 of the Rules can easily be traced in this case to the reservoir of power under Article 324(1) which empowers the Commission to issue all directions necessary for the purpose of conducting smooth, free and fair elections. Our attention is not drawn by the learned Counsel for the petitioner to any specific provision in the Symbols Order which cannot be brought within the scope of either Rule 5 or Rule 10 of the Rules or Article 324(1) of the Constitution and which is hit by the principle *delegatus non potest delegare*, i.e. a delegate cannot delegate, the Commission itself in this case being a donee of plenary powers under Article 324(1) of the Constitution in connection with the conduct of elections referred to therein subject of course to any legislation made under Article 327 and Article 328 of the Constitution read with Entry 72 in List I or Entry 37 in List II of the Seventh Schedule to the Constitution and the rules made thereunder. While construing the expression "superintendence, direction and control" in Article 324(1), one has to remember that every norm which lays down a rule of conduct cannot possibly be elevated to the position of legislation or delegated legislation. There are some authorities or persons in certain grey areas who may be sources of rules of conduct and who at the same time cannot be equated to authorities or persons who can make law, in the strict sense in which it is understood in jurisprudence. A direction may mean an order issued to a particular individual or a precept which many may have to follow. It may be a specific or a general order. One has also to remember that the source of power in this case is the Constitution, the highest law of the land, which is the repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which the power is granted is effectively achieved. Viewed from this angle it cannot be said that any of the provisions of the Symbols Order suffers from want of authority on the part of the Commission, which has issued it.

5. The writ petitioners contended before us that the judgment, which has been delivered by the Supreme Court in *Kanhaiya Lal Omar* (supra) was prior to introduction of Section 29A in the Representation of the People Act, 1951

(hereinafter in short called as the "Act, 1951"). therefore, it cannot have any face value so far as the issue in question before this Court is concerned. We find that Section 29A of the Act, 1951 has been inserted with effect from 15.6.1989. Therefore, let us confine to Section 29A to analyze the position. Section 29A of the Act, 1951 is quoted hereinbelow:

29A. Registration with the 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 formed 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 the 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.

6. The opening line of Section 29A of the Act, 1951 speaks that 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. According to us. once a party is registered, it requires grant of symbol consequently, and if the symbol is allotted to it on the strength of the representative capacity, no discrimination can be said to be done by the authority, i.e. the Election Commission of India in declaring so. The intelligible differentia cannot be construed as discrimination. An individual, whether he will contest the election or not, will not be in a position to know his symbol before making any application to contest the election, therefore, no question of reservation of symbol or grant of symbol will arise. If a party chooses to get a particular symbol, it has to prove its strength on the basis of people's representation before the Election Commission itself. Such type of position is understandable only on the basis of strength of the political party alone. Such trend cannot be said to be of any superiority or inferiority, but a party supported by a number of people, which wants to contest election, is required to be considered by the Election Commission on the basis of evidentiary value. The Court in its writ jurisdiction, hearing a public interest litigation, cannot adjudicate upon such type of disputes. Therefore, in all, we do not find any merit, whatsoever, in this public interest litigation. Hence, the same is dismissed, however, without imposing any cost.

7. In any event, passing of this order will not, in any way, affect the rights of the writ petitioners, if any, to make representations to the Election Commission of India for their disposal upon giving fullest opportunity of personal hearing, as

expeditiously as possible.