

(2015) 03 DEL CK 0244

In the Delhi High Court

Case No : Writ Petition(C) No. 1458/2014

Hans Raj Jain

APPELLANT

Vs

Election Commission of India

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Constitution of India, 1950 — Article 19(1)(c), 226, 324
Emblems and Names (Prevention of Improper Use) Act, 1950 — Section 2(b), 3, 4, 4(1)(a)
Public Records Act, 1993 — Section 8
Representation of the People Act, 1950 — Section 18
Representation of the People Act, 1951 — Section 123(3), 146, 2(a), 2(b), 2(c)

Citation : (2015) 03 DEL CK 0244

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : P.R. Chopra and Y.R. Sharma, Advocates for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), impleading the Election Commission of India (ECI) only as the respondent, seeks the reliefs of, i) a direction for cancellation of registration of Aam Aadmi Party (AAP) on the ground of the same having been effected on forged, wrong and incomplete documents; ii) setting up of a Special Investigation Team (SIT) to inquire into the forged and fabricated documents filed by AAP for registration with the respondent ECI, and, iii) a direction for initiation of a disciplinary proceedings against the officials of respondent ECI.

2. Though notice of the petition was not issued but on 21st March, 2014, the counsel for respondent ECI stated that he shall file a short affidavit indicating the factual position behind the registration of AAP. Such an affidavit has been filed. The petitioner appearing in person and the counsel for the respondent ECI were heard and judgment reserved.

3. It is the case of the petitioner that:

"(a) AAP, on 3rd December, 2012 applied along with supporting documents under Section 29A of the Representation of the People Act, 1951 (RP Act) for registration as a political party;

(b) On 2nd January, 2013 some further documents were filed in support of the application;

(c) The respondent ECI on 22nd March, 2013 registered AAP as a political party and on the same day delivered the Registration Certificate to a person whose name was not available in the list of 300 persons filed by APP as its members;

(d) The petitioner on 5th December, 2013 approached the respondent ECI under Section 146 of the RP Act for holding an inquiry on registration of APP as a political party on false documents and without proper scrutiny and for cancellation of registration of AAP on the grounds that:

(i) The application submitted by AAP on 3rd December, 2012 for registration was on letterhead showing logo of "Dharma Chakra" of the National Flag and which usage is contrary to the Emblems and Names (Prevention of Improper Use) Act, 1950 (Emblems Act) and Section 123(3) of the RP Act.

(ii) According to the documents submitted, the party i.e. AAP was formed on 24th November, 2012 and the elections of the Executive Committee were held arbitrarily, without adopting democratic procedure.

(iii) No inquiry was held on the affidavits of 300 members -the respondent ECI was bound to scrutinize at least 100 members.

(iv) A scrutiny of affidavit filed of Arvind Kejriwal, National President of AAP showed that two identity cards have been issued to him at two different addresses of Kaushambi and his Income Tax Returns were at the address of Sunder Nagri, Seemapuri, Delhi - the respondent ECI should have held an inquiry and confirmed the name of Arvind Kejriwal only from his High School Certificate - according to Section 18 of the Representation of the People Act, 1950, no one can use more than one identity card.

(v) Similarly, there was a difference in address of Pankaj Gupta, National Secretary also, with his residential address disclosed as AG-132, Nirwana Country, Gurgaon and his Income Tax Returns showing the address of Faridabad, Haryana.

(vi) There was similar inconsistency in the addresses of Krishan Kant, National Treasurer, on different documents.

(vii) Such inconsistency in the documents of the office bearers of the party casts doubt on the address and signatures on affidavits of remaining 297 members also.

(viii) No verification of the No Objection Certificates (NOC) submitted for the office of the party was also carried out; the signatures of the landlord on the said

certificate were also not verified.

(ix) Though in the application for registration submitted on 3rd December, 2012, office of the party was shown at the address of Kaushambi, Ghaziabad but subsequently the address was changed to Delhi, in violation of Section 8 of the Public Records Act, 1993.

(x) The list of 300 members was without parentage, occupation, address and signatures.

(e) Under Section 3 of the Emblems Act, there is a prohibition against using the emblem or any colourable imitation thereof including pictorial representation of Dharma Chakra without the previous permission of the Central Government and no competent authority is entitled to register such a party;

(f) AAP had also not furnished any affidavit that its members were not a member of any political party as required by the Guidelines and Application format for registration of Political Parties under Section 29A of the RP Act, issued by the respondent ECI;

(g) Though the respondent ECI has power to cancel the registration, where obtained by practicing fraud or forgery, as held in Indian National Congress (I) Vs. Institute of Social Welfare and Others, but such power had not been exercised;

(h) The respondent ECI has adopted biased and partial procedure for registration of AAP."

4. Before we proceed to take note of the affidavit aforesaid filed by the respondent, we deem it appropriate to reproduce herein below in entirety Section 29A in Part IVA titled "Registration of Political Parties" of the RP Act and which Part besides the said Section 29A comprises only of Section 29B titled "Political Parties Entitled to Accept Contribution" and Section 29C titled "Declaration of Donation Received by the Political Parties":

"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 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 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."

5. As would be obvious from the above, there is no provision in Section 29A, empowering ECI to cancel the registration of a political party once the same has been effected. We do not find any such power in any other provision of the RP Act also. The Supreme Court also in *Indian National Congress (I) supra* held that neither under the Election Symbols (Reservation and Allotment) Order, 1968 nor under Section 29A of the RP Act, the ECI has been conferred with any express power to deregister a political party registered under Section 29A of the Act on the ground that it has either violated the provisions of the Constitution or any undertaking given at the time of its registration and no proceeding for deregistration can be taken by the ECI for the reason of having violated Section 29A(5) of the RP Act. It was however held that since the ECI is to give its decision under Section 29A(7) only after making an inquiry, wherein an opportunity of hearing is to be given to the representatives of the political party, ECI while exercising power to register a political party under Section 29A acts quasi judicially and the decision rendered by it is a quasi judicial order. It was further held that since fraud or forgery vitiates any act or order passed by any quasi judicial authority, ECI even in the absence of any specific power would be entitled to deregister a political party which was registered by practicing fraud or forgery.

6. The petitioner in the present case was seeking deregistration of AAP not on the ground of AAP having secured registration by practicing fraud or forgery but on the ground of the decision of the ECI being erroneous and ECI having not followed the procedure and caution which it was required to follow before deciding to register AAP as a political party. From the facts as narrated above, it is clear that the case of the petitioner is that though on the basis of the deficiencies/flaws in the documents submitted by AAP, it was not entitled to registration but was registered. It is not the case of the petitioner that AAP, with an intent to deceive, stated anything which was not true or concealed anything or though represented that it will not use the purported Ashok Chakra as its emblem, has continued to do so, to be said to be guilty of fraud. Similarly, though the petitioner alleges that certain documents submitted by AAP along with its application for registration have been forged but none whose signatures may have been forged has come forward and thus the plea of fraud and forgery is bereft of any particulars and is bald and is no plea in law. There is a distinction between obtaining registration by playing fraud and practicing forgery and registration having been effected without complying with requisite formalities and/or on the basis of deficient documents/material. We may also notice that for the petitioner to in this petition make allegations of forgery against AAP, it was incumbent to implead AAP and its office bearers who are alleged to have indulged in forgery as parties to this petition and which has not been done. The same is also indicative of the case of the petitioner being not of AAP having obtained registration by practicing fraud or forgery but merely of ECI having wrongly registered AAP and in spite of subsequent application of the petitioner having not deregistered AAP.

7. Thus, the grounds urged by the petitioner for deregistration of AAP also do not fall within the grounds on which the Supreme Court in *Indian National Congress (I) supra* held that ECI is entitled to exercise the power of deregistration. Once it is held so, the question of finding any error with the refusal of ECI to act on the application of the petitioner to deregister AAP does not arise and it cannot be said that ECI has failed to exercise any jurisdiction vested in it.

8. The petitioner is thus not entitled to the reliefs claimed and the petition is liable to be dismissed. However, since it is also the allegation of the petitioner that ECI erred in registering AAP, we for the sake of completeness, deem it appropriate to deal with the grounds urged in this perspective also.

9. The respondent ECI in the counter affidavit filed by it has stated that:

"(i) AAP submitted its application for registration on 3rd December, 2012 stating that it was formed on 24th November, 2012;

(ii) After the public notice was issued by the party in newspapers on 21st December, 2012 and 22nd December, 2012, objections were submitted by some individuals on various grounds and the AAP was asked to reply thereto;

(iii) One of the objections related to AAP on its letterhead displaying the "Ashoka Chakra" and the imitation of National Flag as the logo of the party. To this, AAP submitted its reply dated 15th March, 2013 stating that the logo referred to was not the official logo of the party and if the respondent ECI were of the view that this would be objectionable, the party would remove the same;

(iv) The provisions of the Emblems Act have no application;

(v) In any case, in view of the reply dated 15th March, 2013 (*supra*), the respondent ECI decided to grant registration as all the requisite documents had been submitted and other requirements for registration stood satisfied;

(vi) No violation of any provision of law was found;

(vii) AAP was registered after completing all requisite formalities and requirements and there was no lapse or undue haste on the part of ECI in this regard."

10. We will first take up the ground with respect to the Emblems Act. The legal position thereunder is as under:

"(a) Section 2(a) of the said Act defines "emblem" as meaning an emblem, seal, flag, insignia, coat-of-arms or pictorial representation specified in the Schedule to the Act.

(b) Section 2(b) defines "competent authority" as meaning any authority competent under any law for the time being in force to register any company, firm or other body of persons or any trade mark or design or to grant a patent.

(c) Section 2(c) defines "name" as including any abbreviation of a name.

(d) Section 3 prohibits use for the purpose of any trade, business, calling or profession or in the title of any patent, or in any trade mark or design, any name or emblem specified in the Schedule or any colourable imitation thereof without the previous permission of the Central Government.

(e) Section 4 on which the petitioner places reliance prohibits all competent authorities from registering any company, firm or any other body of persons which bears any name, if the use of such name or emblem is in contravention of Section 3 of the Act.

(f) Finally, Section 5 makes contravention of Section 3 punishable with fine which may extend to five hundred rupees.

(g) The Schedule to the Act lists inter alia the Indian National Flag, the name, emblem or official seal of the Government of India or of any State, or any other insignia or coat-of-arms used by any such Government or by a department of any such Government, the names of "Ashoka Chakra" or "Dharma Chakra" or the pictorial representation of Ashoka Chakra as used in the Indian National Flag or in the official seal or emblem of the Government of India or of any State Government."

11. We are unable to accept the stand in the affidavit of the respondent ECI that it is not governed by the provisions of the Emblems Act. The respondent ECI in exercise of powers under Section 29A performs the task of registration of an association or body of individual citizens of India calling itself a political party and would be a competent authority within the meaning of Section 2(b) of the Emblems Act. As such competent authority, ECI is by Section 4 of the Emblems Act prohibited from registering any association or body of persons as a political party which bears any name, if the use of such name or emblem is in contravention of Section 3 of the said Act. The question which arises is whether a case of violation by respondent ECI of Section 4 of the Emblems Act is made out.

12. For better appreciation, we deem it appropriate to set out herein below Section 4 of the Emblem Act. The same is as under:--

"4. Prohibition of registration of certain companies, etc. - (1) Notwithstanding anything contained in any law for the time being in force, no competent authority shall, -

(a) register any company, firm or other body of persons which bears any name, or

(b) register a trade mark or design which bears any emblem or name, or

(c) grant a patent in respect of an invention which bears a title containing any emblem or name,

if the use of such name or emblem is in contravention of Section 3.

(2) If any question arises before a competent authority whether any emblem is

an emblem specified in the Schedule or a colourable imitation thereof, the competent authority may refer the question to the Central Government, and the decision of the Central Government thereon shall be final."

Thus, the prohibition against registration of a body of persons is only if such body of persons bears any name which is in contravention of Section 3. The prohibition on a competent authority against use of emblem and/or name in contravention of Section 3 is only against registration as a trademark or in granting a patent bearing a title containing the emblem and/or name. There is no prohibition in Section 4 against use of an emblem while registering a body of persons.

13. The letterhead of AAP on which the application for registration was made, carried the following insignia:--

14. As would be obvious from the above, the purported "Ashoka Chakra" is interspersed with the human head with raised arms on the two sides and it thus cannot be said that the aforesaid is an imitation of the "Ashoka Chakra". Similarly, the swirling bands by no stretch of imagination can be said to be a colourable imitation of the National flag. However we do not deem it expedient to delve in detail on the said question being of the view that even otherwise, no case of violation of Section 4 of the Emblems Act is made out. The said provision, insofar as registration of any body of persons is concerned, places an embargo on the name of such body of persons being in contravention of Section 3 of the Emblems Act. The name AAP can by no stretch of imagination be said to be violating any emblem.

15. Section 3 of the Emblems Act however places prohibition on use of any name or emblem specified in the Schedule or colourable imitation thereof for the purpose of any trade, business, calling or profession or in the title of any patent or in any trademark or design. We have wondered whether use of an emblem for the purpose of registration of a political party can be said to be use for the purpose of any trade, business, calling or profession. The citizenry of course holds a belief of our leaders having made politics a trade and business. However, we are unable to find any legal authority therefor. Even though politics as commonly understood may be the most lucrative trade or business with maximum returns but is a science according to Harold Laski, sacred as religion according to Gandhiji and is statesmanship according to Lincoln. However, we find the Supreme Court in Commissioner of Expenditure Tax, Andhra Pradesh Vs. P.V.G. Raju, to have upheld the judgment of the High Court of Andhra Pradesh reported in P.V.G. Raju (Rajah of Vizianagaram) Vs. Commissioner of Expenditure-tax, holding the expenditure incurred by a politician and the Chairman of a political party on the election of candidates set up by that party to be expenditure incurred wholly and exclusively for the purpose of profession, vocation or occupation carried on by the assessee within the meaning of Section 5(a) of the Expenditure Tax Act, 1958. It was held that politics is a profession. The High Court whose judgment had been affirmed had held politics to be an

occupation of the assessee. Section 3 the Emblems Act is wider and includes the word "calling" which according to Shorter Oxford English Dictionary, Sixth Edition includes an occupation. Thus, it has to be held that use if any by AAP of the emblem specified in the Schedule or any colourable imitation thereof would be prohibited by Section 3.

16. Having held so, we are of the opinion that Section 4(1)(a) though placing prohibition only vis-?-vis name but has to be read in conjunction with Section 3 and ECI as a competent authority within the meaning of Section 2(b) of the Emblems Act is prohibited from registering any association or body of persons as a political party even if it uses any Scheduled emblem.

17. We have already held hereinabove that the insignia on the letterhead of AAP can neither be said to be Ashoka Chakra nor a colourable imitation thereof. Moreover, AAP in its letter dated 15th March, 2013 to the respondent ECI and copy of which has been filed before us clearly stated that the insignia on its letterhead was not the official logo of the party and that if found not entitled to use of the said insignia, would not use the same. The respondent ECI vide its letter dated 22nd March, 2013 to AAP, while communicating the registration of AAP as a political party under Section 29A (supra) directed AAP not to use the national emblem "Ashoka Chakra" or any part/imitation thereof in its letterhead or on any other party material. It is not the case of the appellant that AAP has not complied with the said condition. The purpose of Section 4 of the Emblems Act is only to control the contravention of Section 3 thereof and once the said purpose has been achieved, we fail to see as to how still violation of Sections 3 and 4 can be alleged. We thus do not find any merit in the said ground and dismiss the same.

18. As far as the other grounds urged by the petitioner in support of the reliefs claimed are concerned, we do not find the same to be amounting to violation of any of the conditions for registration stipulated in Section 29A. The need for incorporation of Part IVA (supra) in the RP Act arose in the year 1989 (the same was incorporated with effect from 15th June, 1989) merely to enable regulation of political parties by the respondent ECI. Prior thereto ECI had no control over political parties and was only concerned with the candidates contesting the election. Registration under Section 29A is only optional and is only for registration of name of the political party and there is no specific provision for registration of flag, symbol or slogan or design of the flag in the RP Act. The particulars regarding flag, symbol or slogan are not relevant factors to be furnished by the political party for registration. We have to view the contents of Section 29A in this perspective only and in no other. Else, the settled law is that right to form association has been conferred the status of Fundamental Right under Article 19(1)(c) of the Constitution of India. The particulars required by Section 29A to be furnished by a political party seeking registration are only for the purpose of identification thereof and not for any other reason. The provisions of Section 29A are not intended to be a deterrent to registration of political

parties thereunder.

19. ECI, in exercise of powers conferred by Article 324 of the Constitution of India and Section 29A of the RP Act has issued "Guidelines and Application Format for Registration of Political Parties under Section 29A of the Representation of the Act, 1951." Though the said Guidelines inter alia require that there should be a specific provision in the Rules/Constitution of the association or body of persons seeking registration as political party regarding internal democracy in the party, organizational elections at different levels, mode of such elections etc. but there is nothing, either in Section 29A or in the said Guidelines requiring an inquiry to be conducted into the fairness and validity of the elections held for the post of office bearers of such political party. The objection of the petitioner that the elections of the Executive Committee of AAP were held arbitrarily without adopting democratic procedure is of no avail. Similarly, though the said Guidelines require the application for registration to be accompanied with individual affidavits from at least 100 members of the Party but there is again no requirement for the ECI to, prior to registration investigate into the validity of the said affidavits if otherwise on face they are affidavits of members of such party. Similarly, we do not find any provision requiring ECI to inquire/investigate if in the documents furnished the address of any office bearer of a political party seeking registration is shown at different two addresses. Section 18 of the Representation of the People Act, 1950 to which reference is made only contains prohibition against registration on the electoral rolls for more than one constituency. Violation thereof has, in Pothula Rama Rao Vs. Pendyala Venakata Krishna Rao and Others, and in Ramnarain Ramgopal Chamediya Vs. Ramchandra Jagoba Kadu, , been held to be not fatal. There is no provision in Section 29A or in the Guidelines for scrutiny/investigation to be done and for the reason of not doing of which the petitioner finds fault with the registration. It is significant that no person who may have been shown as a member of the party has come forward to say that he/she was shown a member of the party without his/her consent. Similarly no person at whose address AAP may have shown its office has come forward to say that he had not allowed AAP to use its premises as an officer or had not given NOC therefor. A political party is like a club and in respect where to the law is clear that the Courts will not interfere in its indoor management.

20. Mention may also be made of S.S. Karana Vs. The Election Commission and Another, : where a Division Bench of this Court held that Section 29A(9) requiring a registered political party to communicate to ECI any change in its name, head office, office bearers, address or any other material matter does not enjoin any corresponding duty on the ECI to exercise any such power over the political parties.

21. We therefore do not find any merit in the petition and rather find it to be thoroughly misconceived and dismiss the same with costs of Rs. 5,000/- payable to Delhi State Legal Services Authority within three months of today.