

(2001) 10 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No. 17248, 17886, 17893, 17984 and 18095 of 2001 and W.M.P. No's. 25495 to 25497, 26386, 26391, 26392 and 26498 of 2001

Janatha Party

APPELLANT

Vs

The Tamil Nadu State Election Commission

RESPONDENT

Date of Decision : 01-10-2001

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 5
Constitution of India, 1950 — Article 14, 213K, 226, 234K, 243O
Representation of the People Act, 1950 — Section 2, 2(1), 27
Representation of the People Act, 1951 — Section 2(1), 29A, 29A(5)
Tamil Nadu District Municipalities Act, 1920 — Section 51A, 51B
Tamil Nadu Municipal Corporation Act — Section 33
Tamil Nadu Panchayats (Election) Act, 1994 — Section 35
Tamil Nadu Panchayats (Election) Rules, 1995 — Rule 33, 34, 35, 35(1)
Tamil Nadu Panchayats Act, 1994 — Section 258, 259
Tamil Nadu Town Panchayats and Municipal and Corporation Councils (Elections) Rules, 1996 — Rule 31, 32, 33, 33(1)

Citation : (2001) 10 MAD CK 0078

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : P. Chidambaram, G. Rajagopal for S. Venkatraman, S. James, D. Rajagopal, Mohan Parasaran, A. Kumaraguru, for the Appellant; N.R. Chandran, General, assisted by, D. Krishna Kumar, Special Government Pleader, for the Respondent

Judgement

P.D. Dinakaran, J.—1. Democracy, certainly, is a matter for honour and tribute rather than a matter for exploration. We, therefore, need to know what working hypothesis the democracy involves and what institutions can effectively embody their purpose. For the survival of democracy, a Rule of Law must prevail.

1.2. To elect the best available people's representation for proper governance in a democracy, election must be free and fair. Since millions of voters in India are illiterates, symbols are considered absolutely necessary to enable them to

exercise their right to franchise through secret ballots. Symbols help them to identify the contesting political parties/candidates.

1.3. No doubt, a right to elect is neither a fundamental right nor a common law right, but they are creatures of statutes and special laws and they are subject to limitations imposed by the Statute and special laws.

2.1.1. Accordingly, the Representation of the People Act, 1950 was enacted on 12.5.1950 to provide the allocation of seats in and the delimitation of constituencies for the purpose of election to, the House of the People and the Legislatures of States, the qualifications of voters at such elections, the preparation of electoral rolls, the manner of filling seats in the Council of States to be filled by representatives of Union territories, and matters connected therewith.

2.1.2. As per Section 2(d) of Representation of the People Act, 1950, "Election Commission" means the Election Commission appointed by the President under Article 324.

2.2.1. Thereafter, the Representation of the People Act, 1951 was enacted on 17.7.1951 to provide for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

2.2.2. As per Section 2(1)(a), Representation of the People Act, 1951, each of the expressions defined in Section 2 or Sub-section (1) of Section 27 of the Representation of the People Act, 1950 (43 of 1950), but not defined in Representation of the People Act, 1951, shall have the same meaning as in the Representation of the People Act, 1950 (43 of 1950).

2.2.3. Section 2(1)(f) of the Representation of the People Act, 1951, defines a "political party" as an association or a body of individual citizens of India registered with the Election Commission as a political party u/s 29-A.

2.2.4. Section 29A of the Representation of the People Act, 1951 provides for registration of associations and bodies as political parties with the Election Commission. It is relevant to mention Section 29A(5) of the Representation of the People Act, 1951, which deals with the basic requirements to be followed for registering as a political party, which reads as follows:

Section 29A(5) of the Representation of the People Act, 1951:

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.

2.3.1. For assigning proper symbols, Election Commission has issued Election Symbols (Reservation of Allotment) Rules, 1968 in exercise of the powers conferred by Rule 5 of the Conduct of Election Rule 1961 read with Article 324 of the Constitution of India. The Election Symbols (Reservation and Allotment) Order 1968 provides for specific reservation, choice and allotment of symbols at elections in Parliamentary and Assembly Constituencies.

2.3.2. Paragraph 4 of Election Symbols (Reservation and Allotment) Order 1968, provides for allotment of symbols to contesting political parties/candidates in accordance with the provisions of the said order.

2.3.3. Paragraph 5 classifies symbols as reserved symbols and free symbols. The reserved symbols are reserved for recognised political parties. Paragraph 6 deals with classification of political parties - either recognised or unrecognised. Paragraph 7 in turn categorises the recognised political party as (i) National party and (ii) State party.

2.3.4. Paragraph 8 provides for choice of symbols by candidates of National and State parties and allotment thereof. Paragraph 9 deals with restrictions of the allotment of symbols reserved for State parties in States where such parties are not recognised. Paragraph 10 deals with concessions to candidates set up by a State Party at elections in other States. Paragraph 11 deals with restrictions on the choice and allotment of symbols allotted under paragraph 10.

2.3.5. Paragraph 12 deals with choice of symbols by other candidates and allotment thereof, of which, Paragraph 12(3) reads as follows:

12(3): Where the same free symbol has been chosen by several candidates at such election, then?

(a) if, of those several candidates, only one is a candidate set up by an unrecognised political party and all the rest are independent candidates, the returning officer shall allot that free symbol to the candidate set up by the unrecognised political party, and to no one else, and if, of those several candidates, two or more are set-up by different unrecognised political parties and the rest are independent candidates, the returning officer shall decide by lot to which of the two or more candidates set up by the different unrecognised political parties that free symbol shall be allotted, and allot that free symbol to the candidate on whom the lot falls, and to no one else:

Provided that where of the two or more such candidates set up by such different unrecognised political parties, only one is, or was, immediately before such election, a sitting member of the House of the People, or, as the case may be, of the Legislative Assembly (irrespective of the fact as to whether he was allotted that free symbol or any other symbol at the previous election when he was chosen as such member), the returning officer shall allot that free symbol to that

candidate, and to no one else.

(b) if, of those several candidates, no one is set up by any unrecognised political party and all are independent candidates, but one of the independent candidates is, or was, immediately before such election a sitting member of the House of the People, or, as the case may be, of the Legislative Assembly, and was allotted that free symbol at the previous election when he was chosen as such member, the Returning Officer shall allot that free symbol to that candidate, and to no one else; and (c) if, of those several candidates, being all independent candidates, no one is, or was, a sitting member as aforesaid, the returning officer shall decide by lot to which of those independent candidates that free symbol shall be allotted, and allot that free symbol to the candidates on whom the lot falls, and to no one else.

2.3.6. Paragraph 13 provides when a candidate shall be deemed to be set up by a political party. Paragraph 17 empowers the Commission to publish lists specifying (a) the National parties and the symbols respectively reserved for them; (b) the State parties, the State or States in which they are State parties and the symbols respectively reserved for them in such State or States; (c) the unrecognised political parties and the State or States in which they function; and (d) the free symbols for each State;

2.3.7. Paragraph 18 empowers the Commission to reserve certain powers to issue instructions and directions (a) for the clarification of any of the provisions of this order: (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or make insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections.

2.4. By a notification of Election Commission of India dated 1.12.2000, Paragraph 10A was inserted in the Election Symbols (Reservation and Allotment) Order, 1968, which reads as follows:

10A. Concession to candidates set up by an unrecognised party which was either recognised as a National or State party - If a political party, which is unrecognised at present but was a recognised National or State party in any State or Union Territory not earlier than six years from the date of notification of the election, sets up a candidate at an election in a constituency in any State or Union Territory, whether such party was earlier recognised in that State, or Union Territory or not, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved earlier for that party when it was a recognised National or State party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union territory, on the fulfillment of each of the following conditions, namely:

(a) that an application is made to the Commission by the said party for the

exclusive allotment of that symbol to the candidate set up by its, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of Clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and (c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment:

Provided that nothing contained in this paragraph shall apply to a candidate set up by the said party at an election in any constituency in a State or Union territory where the same symbol is already reserved for some other National or State party in that State or Union Territory.

3.1. The local bodies, namely Panchayats, Municipalities and Corporations, are intended to impart certainty and continuity to strengthen democratic units of self-government in the grass roots of the society; to meet the basic requirements of the same by constituting local bodies as fundamental units of the State by duly elected representatives of all the people in accordance with relevant statutes such as Tamil Nadu Panchayat Act, Tamil Nadu District Municipalities Act, and Tamil Nadu Municipal Corporation Act, read with the relevant Rules such as the Tamil Nadu Town Panchayats and Municipal and Corporation Councils (Elections) Rules, 1996, and the Tamil Nadu Panchayats (Elections) Rules, 1995.

3.2. The Respondent-State Election Commission is appointed for conducting elections to Panchayats and Municipalities under Article 234K and 243ZA of the Constitution of India, read with the relevant Rules such as the Tamil Nadu Town Panchayats and Municipal and Corporation Councils (Elections) Rules, 1996, and the Tamil Nadu Panchayats (Elections) Rules, 1995.

3.3. Rules 31, 32 and 33 of the Tamil Nadu Town Panchayats and Municipal and Corporation Councils (Elections) Rules, 1996, provides for recognition of political parties, publication of a list of recognised parties and symbols, and assignment of symbols and publication of list of contesting candidates respectively, with respect to Town Panchayats, Municipal and Corporations, which reads as follows:

Rule 31 - Recognition of political parties - Every political party recognised by the Election Commission of India as a national party or as a State party in the State of Tamil Nadu under the Election Symbols (Reservation and Allotment) Order, 1968 shall be a recognised political party for the purpose of election under these rules.

Rule 32 - Publication of a list of recognised parties and symbols - For the purpose of these rules, the State Election Commission shall publish by a notification a list of recognised political parties and symbols reserved to each such recognised political party and a list of free symbols.

Rule 33 - Assignment of symbols and publication of a list of contesting candidates-(1) After the expiry of the period within which candidature may be withdrawn, if a poll is found to be necessary, the Returning Officer shall, subject to such directions as may be issued by the State Election Commission in that behalf, assign a distinctive symbol to each contesting candidate. Every candidate or his proposer may, thereafter, be informed of the symbol allotted to the candidate in such manner as the State Election Commission may direct and also be supplied with a specimen thereof.

(2) The allotment by the Returning Officer or any symbol to a candidate shall be final except where it is inconsistent with any direction issued by the State Election Commission under Sub-rule (1). In such cases, the State Election Commission may after examining all the facts, revise the allotment in such manner as it thinks fit.

(3) Notwithstanding anything contained in Sub-rule (1), the State Election Commission may by order rescind, revoke, amend or vary the direction issued under the said sub-rule for the assignment of symbols to the contesting candidates, at any stage before the last date fixed for receipt of nominations.

(4) The Returning Officer shall then complete the list of contesting candidate in Form 9 and publish at the office of the Town Panchayat or Municipality or Corporation, as the case may be. The list shall also be published in two or more conspicuous places in each ward in the office of the Town Panchayat or Municipality or Corporation, as the case may be, in the case of election of Chairman or Mayor and in the respective ward in the case of election councilOrs. 3.4. Rules 33, 34, and 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995 with respect to election to the Tamil Nadu Panchayats, read as follows:

Rule 33 - Recognition of Political Parties:

Every political party recognised by the Election Commission of India as a National party or as a State party in the State of Tamil Nadu under the Election Symbols (Reservation and Allotment) Order, 1968 shall be a recognised political party for the purpose of election to Panchayat bodies.

Rule 34 - Publication of a list of recognised parties and symbols - For the purpose of these rules, the State Election Commission shall publish by notification a list of recognised political parties and their symbols and a list of free symbols.

Rule 35 - Assignment of symbols and publication of list of contesting candidates (1) After the expiry of the period within which candidature may be withdrawn, if a poll is found to be necessary, the Returning Officer shall, subject to such directions as may be issued by the State Election Commission in that behalf, assign a distinctive symbol to each contesting candidate within a reasonable time. Every candidate or his proposer may, thereafter, be informed of the symbol allotted to the candidate in such manner as the State Election Commission may direct and also be supplied with a specimen thereof.

(2) The allotment by the Returning Officer of any symbol to a candidate shall be final except where it is inconsistent with any direction issued by the State Election Commission under Sub-rule (1). In such cases, the State Election Commission may after examining all the facts, revise the allotment in such manner as it thinks fit.

(3) Notwithstanding anything contained in Sub-rule (1), the State Election Commission may by order rescind, revoke, amend or vary the direction issued under the said sub-rule for the assignment of symbols to the contesting candidates, at any stage before the last date fixed for receipt of nominations.

(4) The Returning Officer shall then complete the list of contesting candidates in Form 9 and publish:

(i) in the case of election of members of District Panchayat or Panchayat Union Council at the offices of the Returning Officer, and the District Panchayat or the Panchayat Union and two or more conspicuous places which the Returning Officer considers necessary; and

(ii) in the case of election of President and members of Village Panchayat, on the notice board of the Village Panchayat.

3.5.1. In exercise of the powers conferred under Articles 243K. and 243ZA of the Constitution of India read with the relevant sections of the Acts, and rules 33, 34 and 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995, rules 31, 32 and 33 of the Tamil Nadu Town Panchayats and Municipal and Corporation Councils (Election) Rules, 1996 and all other powers enabling it in this behalf, the Respondent herein, viz., the State Election Commission, Tamil Nadu, has notified the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 1996, repealing the Tamil Nadu Panchayats Election Symbols (Reservation and Allotment) Order, 1995, to provide specifications, reservation, choice and allotment of symbols at elections to local bodies in the State of Tamil Nadu, for the recognition of political parties in relation thereto and for matters connected therewith.

3.5.2. The following are the relevant paragraphs of Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 1996:

Paragraph 2(1)(f) defines "free symbol" as a symbol other than a reserved symbols;

Paragraph 2(1)(1) defines "recognised political party" as political party which has been recognised by the Election Commission of India as a National Party or as a State Party in the State of Tamil Nadu under the Election Symbols (Reservation and Allotment) Order, 1968;

Paragraph 2(l)(m) defines "registered but unrecognised political party" as (i) every political party which has been recognised by the Election Commission of India as a State Party in any State other than Tamil Nadu under the Election

Symbols (Reservation and Allotment) Order, 1968 and (ii) every political party having its head office in Tamil Nadu which is registered with but not recognised either as a National Party or as a State Party in Tamil Nadu by the Election Commission of India under the Election Symbols (Reservation and Allotment) Order, 1968;

Paragraph 2(1)(n) defines "reserved symbol" as a symbol which is reserved by the Election Commission of India for exclusive allotment to a contesting candidate set up by a recognised political party;

Paragraph 4 empowers the State Election Commission to notify from time to time (a) the list of reserved symbols and a list or lists of free symbols for use in election or elections held on party basis and (b) a list or lists of free symbols for use in election or elections not held on party-basis;

3.5.3. Paragraph 5 provides for notification by the State Election Commission of the list of recognised political parties and their symbols and the list of registered but unrecognised political parties; Paragraph 6 provides for allotment of symbols;

3.5.4. Paragraph 7 provides for allotment of symbols in elections not held on party-basis; Paragraph 8 provides for allotment of symbols in elections held on party basis, of which paragraph 8(2) is relevant to be mentioned, which reads as follows:

Paragraph 8 - Allotment of Symbols in Elections held on party basis.

(1)...

(2) Choice of Symbol by candidates set up by registered but unrecognised political parties and by independent candidates: Every candidate who is set up by the registered but unrecognised political party or who is an independent candidate, shall declare in the nomination paper first filed by him or on his behalf, his choice of three free symbols from the list of free symbols for that election indicating the order of his preference. The symbols shall be allotted in accordance with the procedure laid down below:

(a) The allotment of symbols shall be considered in the order of preference made by the candidates, that is to say, the first preference of the candidates will be considered first, the second preference next and the third preference last:

Provided that the allotment of symbols to candidates set up by the registered but unrecognised political parties shall be completed first and only thereafter the allotment of symbol to the independent candidates shall be taken up and allotted from among the remaining free symbols.

(b) Where a free symbol has been sought for by only one candidate set up by a registered but unrecognised political party, as his first choice it shall be allotted to that candidate and to no one else. If any free symbol has been sought for by more than one candidate set up by the registered but unrecognised political parties, the allotment of that symbol shall be decided by drawing a lot among the

candidates and the candidate whose name is drawn first shall be allotted that symbol.

(c) If any candidate set up by the registered but unrecognised political party could not be allotted the symbol sought for in his first preference in the lot he shall be considered for allotment of the free symbol sought as his second preference. Should the second choice of symbol could not also be allotted, due to conflicting claims for that symbol and failure in the lot, he shall be considered for the allotment of the free symbol of his third preference. Even if this could not be allotted, he should be allotted by drawing a lot, any one of the free symbols left after allotting to other candidates set up by the registered but unrecognised political parties in accordance with the procedure set out above.

(d) After completing the allotment of free symbols to all the candidates set up by the registered but unrecognised political parties, the remaining free symbols shall be allotted to the independent candidates in accordance with their choice and preference by adopting the procedures for allotment of symbols to candidates set up by the registered but unrecognised political parties;

3.5.5. Paragraph 9 deals as to when a candidate shall be deemed set up by a political party.

3.5.6. Paragraph 13 empowers the State Election Commission to issue necessary instructions and directions for the smooth and orderly conduct of election, which reads as follows:

Paragraph 13 - Power of State Election Commission to issue instructions and directions:

The State Election Commission may issued instructions and directions:

- (a) for the clarification of any of the provision of this Order;
- (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or make insufficient provision, and the provision is, in the opinion of the State Election Commission, necessary for the smooth and orderly conduct of elections.

3.6.1. The Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001 is notified to provide specification, reservation, choice and allotment of symbols at elections to local bodies in the State of Tamil Nadu and for matters connected therewith, by exercising the powers conferred by Articles 243-K and 243-ZA of the Constitution of India read with relevant sections of the Acts, and Rules 33, 34 and 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995, Rules 31, 32 and 33 of the Tamil Nadu Town Panchayats and Municipal and Corporation Councils (Elections) Rules, 1996 and in supersession of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 1996.

3.6.2. Paragraph 5 of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001 deals with the recognition of political parties, which reads as follows:

Recognition of political parties: As per the provisions of Rule 33 of the Tamil Nadu Panchayats (Elections) Rules, 1995 and Rule 31 of the Tamil Nadu Town Panchayats and Municipal and Corporation Councils (Elections) Rules, 1996, every political party recognised by the Election Commission of India as a National Party or as a State Party in the State of Tamil Nadu under the Election Symbols (Reservation and Allotment) Order, 1968 shall be a recognised political party for the purpose of elections to local bodies.

3.6.3. Paragraph 6 of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001, empowers the Respondent State Election Commission to notify the list of recognised political parties and the symbols respectively, reserved for them.

3.6.4. Paragraph 9 of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) order, 2001 deals with the allotment of symbols for elections held on party basis which provides for allotment of reserved symbols to the recognised parties and such reserved symbols shall not be allotted to any candidate other than the candidate set up by such recognised political parties, even if no candidate has been set up by that recognised political party. Paragraph 9 of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001 also provides that an independent candidate who is not set up by recognised political party, shall choose three free symbols of his choice from the list of free symbols for that election indicating the order of preference and among them the Respondent - State Election Commission shall allot one symbol in accordance with the procedure laid down under paragraph 9 of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001. The said order does not make any provision for allotment of symbols to the recognised political parties as provided either under paragraph 12(3) of the Election Symbols (Reservation and Allotment) Order, 1968, which is applicable to elections in parliamentary and assembly constituencies or under paragraph 8(2) of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 1996, which is applicable to elections to local bodies in the State of Tamil Nadu, namely Tamil Nadu Town Panchayat, Municipal, and Corporation Councils. As a result, unrecognised registered political parties are treated on par with independent candidates for allotment of symbols in the election on party basis.

3.6.5. However, similar to paragraph 18 of the Election Symbols (Reservation and Allotment) Order, 1968 and paragraph 13 of Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 1996, paragraph 13 of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001 empowers the State Election Commission to issue instructions and directions for smooth and orderly conduct of elections, which reads as follows:

Paragraph: 13 - Power of State Election Commission to issue instructions and directions - the State Election Commission may issue instructions and directions:

- a) for the clarification of any of the provisions of this Order.
- b) For the removal of any difficulty which may arise in relation to the implementation of any such provision; and c) In relation to any matter with respect to the reservation and allotment of symbols for which this order makes no provision or makes insufficient provision, and the provision is, in the opinion of the State Election Commission, necessary for the smooth and orderly conduct of elections. Therefore, paragraph 13(c) of Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001 empowers the Respondent - State Election Commission to issue necessary instructions and directions in relation to any matter with respect to the reservation and allotment of symbols for which this Order makes no provision or makes insufficient provision, and the provision is, in the opinion of the State Election Commission, necessary for the smooth and orderly conduct of elections.

3.6.6. In pursuance of a Notification for Elections in Tamil Nadu, the Respondent by notification dated 13.6.2001 have notified a list of recognised political parties and their symbols and the lists of free symbols for the purpose of local body elections in exercise of the powers conferred under paragraphs 4 and 6 of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001. The symbols mentioned in Table 1 relates to recognised political parties and the symbols are reserved for them. While Table 2 and 3 apply to non party basis election, Table 4 and 5 deal with free symbols for use in elections of political parties. The tables, 1,2,3, 4 and 5 of the said notification dated 13.6.2001 reads as follows:

- a) in Table 1, the recognised political parties and the symbols respectively reserved for them;
- b) in Table 2, the free symbols for the use in election of Members of Village Panchayats;
- c) in Table 3, the free symbols for the use in election of Presidents of Village Panchayats;
- d) in Table 4, the free symbols for the use in election of Members of Panchayat Union Councils, Members of Town Panchayats, Councillors of Municipalities and Councillors of Municipal Corporations; and e) in Table 5, the free symbols for the use in election of Members of District Panchayats, Chairman of Town Panchayats, Chairmen of Municipalities and Mayors of Municipal Corporations.

4.1. After the publication of notification dated 13.6.2001, the Petitioner in W.P. No. 17685 of 2001, viz., Congress Jananayaka Peravai, made a representation to the Respondent claiming preference to the candidates set up by registered unrecognised political party as against independent candidates, placing reliance on paragraph 12(3) of the Election Symbols (Reservation and Allotment) Order,

1968. However, the said request of the Petitioner was rejected by the Respondent in their proceedings dated 19.9.2001.

4.2. The proceedings of the Respondent dated 19.9.2001 reads as follows:

Haji M. Abdullah Tamil Nadu State Elec-Sha, I.A.S. tion Commission, Secretary 6, Revathy Street, Jawaharlal Nehru Road, Vadapalani, Chennai-600 026 Rc. No. ME-3/6313/2001-8 Dated 19.09.2001 To The General Secretary Congress Jananayaka Peravai 24, Ormes Road, Kilpauk, Chennai-600 010 Sir, Sub: Elections - local bodies Elections - Party -Allotment of Symbol - request Regarding.

Ref: From the General Secretary. Congress Jananayaka Peravai, letter dated 27.09.2001.

With reference to the letter cited, it is informed that as per the provisions in Rule 33 of the Tamil Nadu Panchayats (Elections) Rules, 1995 and Rule 31 of the Tamil Nadu Town Panchayats and Municipal and Corporations Councils (Elections) Rules, 1996, every political party recognised by the Election Commission of India as a National Party or a State Party in the State of Tamil Nadu under the Election Symbols (Reservation and Allotment) Order, 1968 shall be a recognised political party for the purpose of election to local bodies in the State.

In view of the above specific provision and in the absence of any provision in the said Rules empowering this Commission to register any political party this Commission is not in a position to comply with your request.

Yours faithfully, Sd/- M. Abdullah Sha Secretary /forwarded by order/

Principal Election Officer (Municipalities) 4.3. In the meanwhile, the Election Commission of India by their proceedings dated 20.9.2001 clarified that the candidates duly set up by the party at an election will be entitled to benefits of preference over independent candidates under paragraph 12 of the Election Symbols (Reservation and Allotment) Order, 1968. The said clarification dated 20.9.2001 was also marked to the Respondent directly by the Election Commission of India and was also forwarded by the Petitioner in their letter dated 21.9.2001. However, the Respondent by his letter dated 22.9.2001 reiterated their earlier decision dated 19.9.2001.

4.3. Aggrieved by the same the Petitioner in W.P. No. 17685 of 2001, seeks a writ of Certiorarified Mandamus to call for the records of the Respondent relating to its order Rc. No. ME-3/6313/2001/8, dated 19.9.2001, quash the same and direct the Respondent to make a suitable provision or issue a suitable direction/instruction giving preference to candidates set up by registered political parties, in the matter of allotment of symbols, over independent candidates in the forthcoming elections to local bodies, according to the principle contained in paragraph 12 of Election Symbols (Reservation and Allotment) Order, 1968.

5.1. Similarly, the request of Puthiya Thamishagam, the Petitioner in W.P. No.

17886 of 2001, an unrecognised political party, registered u/s 29-A of the Representation of the People Act, 1951, for preference in the allotment of symbol as against the independent candidates, was also rejected by the Respondent in their proceedings dated 21.9.2001, on the ground that there is no provision under Rules 31, 32, and 33 of the Tamil Nadu Municipal Corporations (Elections) Rules, 1996 and Rules 33, 34 and 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995, to register any political party or to reserve any symbol to any party than a recognised political party.

5.2. The proceedings of the Respondent dated 21.9.2001 read as follows:

Haji M. Abdullah Tamil Nadu State Elec-Sha, I.A.S. tion Commission, Secretary 6, Revathy Street, Jawaharlal Nehru Road, Vadapalani, Chennai-600 026 Rc. No. ME-3/6313/2001-10 Dated 21.09.2001 To The Founder-President, Puthiya Thamizhagam, 41/3, Viswanath Apartments, Kasthurirangan Road, Chennai-600 018 Sir, Sub: Elections - local bodies elections -Party - Allotment of symbol - request - regarding.

Ref: From the Founder President, Puthiya Thamizhagam, letter dated 20.9.2001.

With reference to the letter cited, it is informed that as per the provisions in Rule 33 of the Tamil Nadu Panchayats (Elections) Rules, 1995 and Rule 31 of the Tamil Nadu Town Panchayats and Municipal and Corporations Councils (Elections) Rules, 1996, every political party recognised by the Election Commission of India as a National Party or a State Party in the State of Tamil Nadu under the Election Symbols (Reservation and Allotment) Order, 1968 shall be a recognised political party for the purpose of election to local bodies in the State.

In view of the above specific provision and in the absence of any provision in the said Rules empowering this Commission to register any political party or to reserve any symbol t any political party other than the recognised political party, this Commission is not in a position to comply with your request. And hence, the parties other than the said recognised political parties need not furnish Form A and B.

Yours faithfully Sd/- M. Abdullah Sha Secretary /forwarded by order/

Principal Election Officer (Municipalities) 5.3. Hence, the Petitioner in W.P. No. 17886 of 2001 seeks the issue of a writ of Certiorarified Mandamus calling for the records of the Respondent relating to its order Rc. No. ME-3/6313/2001-10 dated 21.9.2001, to quash the same and to direct the Respondent to make a suitable provision or issue a direction giving preference to candidates set up by Puthiya Thamizhagam, a registered political party in the matter of allotment of symbols over independent candidates in the forthcoming elections to Local Bodies according to the principles contained in the paragraph 12 of the Election Symbols (Reservation and Allotment) Order, 1968.

6. Likewise, Puthiya Needhi Katchi, the Petitioner in W.P. No. 17984 of 2001, seeks the issue of a writ of mandamus directing the Respondent to make suitable

provision or to issue appropriate directions giving preference to candidates set up by the Petitioner party, which is a Registered Political Party in the matter of allotment of symbol over independent candidates in the forthcoming elections to local bodies in consonance with the principles contained in para 12 of the election Symbols (Reservation and Allotment) Order 1968 of the Election Commission of India to enable the Petitioner to secure appropriate common symbol in respect of candidates to be set up by it in the ensuing local body elections.

7. Similarly, M.G.R. Anna Dravida Munnetra Kazhagam, the Petitioner in W.P. No. 18095 of 2001 seeks the issue of a writ of Mandamus directing the Respondent to make a suit provision or issue a direction giving preference to candidates set up by M.G.R. Anna Dravida Munnetra Kazhagam, a registered political party in the matter of allotment of symbols over independent candidates in the forthcoming elections to local bodies according to the principles contained in paragraph 12 of the Election Symbols (Reservation and Allotment) Order 1968.

8.1. The Petitioner in W.P. No. 17248 of 2001 Janata Party, contending that they were originally a recognised political party in the State of Tamil Nadu but later on declared unrecognised by the Election Commission of India as per paragraph 6 of the Election Symbol (Reservation) Allotment Order, 1968, claims that they are entitled for allotment of "Chakra Haider" symbol, which is not notified even as a free symbol in the notification dated 13.6.2001, issued for election of local bodies in Tamil Nadu, which was reserved earlier when they were recognised as a State party in Tamil Nadu, placing reliance on paragraph 10A of the Election Symbols (Reservation and Allotment) Order, 1968, referred to above.

8.2. However, the Respondent State Election Commission rejected the said request of the Petitioner by proceedings dated 13.9.2001 on the ground that there is no provision under Rule 33 of the Tamil Nadu Panchayats (Elections) Rules, 1995 and Rule 31 of the Tamil Nadu Town Panchayats and Municipal and Corporations Councils (Elections) Rules, 1996, to reserve any symbol to any political party other than the recognised political party.

8.3. The proceedings of the Respondent dated 13.9.2001 reads as follows:

Haji M. Abdullah Tamil Nadu State Elec-Sha, I.A.S. tion Commission, Secretary 6, Revathy Street, Jawaharlal Nehru Road, Vadapalani, Chennai-600 026 Rc. No. ME-3/6313/2001/1 Dated 13.09.2001 To Dr. Subramanian Swamy, Ph.D. (Harward) President, Janata Party, A-77, Nizamuddin (East), New Delhi-110 013 Sir, Sub: Elections - Local Bodies Elections -Janata Party - Allotment of symbol - request -regarding.

Ref: From the President, Janata Party, Lr. No. Nil, dated 4.9.2001.

With reference to the letter cited, it is informed that as per the provisions in Rule 33 of the Tamil Nadu Panchayats (Elections) Rules, 1995 and Rule 31 of the Tamil Nadu Town Panchayats and Municipal and Corporations Councils (Elections) Rules, 1996, every political party recognised by the Election Commission of India

as a National party or a State Party in the State of Tamil Nadu under the Election Symbols (Reservation and Allotment) Order, 1968 shall be a recognised political party for the purpose of election to local bodies in the State.

In view of the above specific provision and in the absence any provision in the said rules empowering this Commission to reserve any symbol to any political party other than the recognised political party, this Commission is not in a position to reserve the symbol as requested.

Yours faithfully Sd/- M. Abdullah Sha Secretary /forwarded by order/
superintendent

8.4. Hence, the Petitioner in W.P. No.7248 of 2001 seeks the issue of a writ of Certiorari calling for the records of the Respondent in Proceedings Rc. No. ME-3/6313/2001-1 dated 13.9.2001, to quash the same and to direct the Respondent to allot the symbol of "Chakra Halidar" to the Petitioner for the forthcoming local bodies elections 2001 and for subsequent elections in State of Tamil Nadu, on the ground that the Petitioner is deemed to be a recognised party for the purpose of allotment of symbol and therefore, entitled for allotment of "Chakra Halidar" symbol, which was earlier reserved for them as per paragraph 10A of the Notification of the Election Commission of India dated 1.12.2000.

9.1. Similarly, the request of Janata Dal (United), the Petitioner in W.P. No. 17893 of 2001, a registered national party and a recognised political party in the States of Karnataka and Bihar, for allotment of "Arrow" symbol, which is not notified even as a free symbol in the notification dated 13.6.2001, issued for election of local bodies in Tamil Nadu, was rejected by proceedings of the Respondents dated 2A.9.2001 on the ground that there is no provision in the Tamil Nadu Panchayats Act, 1994, Tamil Nadu District Municipalities Act, 1920 and the Tamil Nadu Municipal Corporation Act or in the Rules made thereunder, to register any political party.

9.2. The proceedings of the Respondent dated 24.9.2001 reads as follows:

Haji M. Abdullah Tamil Nadu State Elec-Sha, I.A.S. tion Commission, Secretary 6, Revathy Street, Jawaharlal Nehru Road, Vadapalani, Chennai-600 026 Rc. No. ME-3/6313/2001-12 Dated 24.09.2001 To The President Janata Dal (United) No. 5, New Boag Road Lalithapuram, T. Nagar Chennai-600 017.

Sir, Sub: Elections - Local Bodies Elections -Party - Allotment of symbol - Request - Regulation

Ref: 1. From the Secretary General, Janata Dal (United) letter dated 18.9.2001. 2. This Commission's Lr. Rc. No. -ME3/6313/01-9 dt. 21.9.2001. 3. From the President, Janata Dal (United), letter dated 23.9.2001.

With reference to the letter 3rd cited,, it is informed that the Election Symbol (Reservation and Allotment) Order, 1968 of Election Commission of India has been made by invoking inter-alia Section 29-A of the Representation of the

People Act, 1951 (C. Act 43 of 1951) which empowers the Election Commission of India to register the association or body as a political party. Whereas no such provision is available either in the Tamil Nadu Panchayats Act, 1994, Tamil Nadu District Municipalities Act, 1920 and Municipal Corporations Act or in the Rules made thereunder. On the other hand, the provisions of the relevant Rules referred to in the reference second cited specifically provide that every political party recognised by the Election Commission of India as a National party or as a State party in the State of Tamil Nadu under the Election Symbols (Reservation and Allotment) Order, 1968 shall be recognised political party for the purpose of election to local bodies in this State.

Hence, this Commission is not in a position to allot exclusive symbol namely "Arrow" as requested.

Yours faithfully, (sd/-) M. Abdullah Sha SECRETARY Forwarded/By order Superintendent

9.3. Hence, the Petitioner seeks the issue of a writ of Certiorarified Mandamus calling for the records R.C. No. ME3/6313/2001-12 dated 24.9.2001 passed by the Respondent, to quash the same and to consequently direct the Respondent to allot the "Arrow" symbol to the candidates contesting on behalf of Janata Dal (U) in the forthcoming Local Body Election to be held on 16 and 18.10.2001 in Tamil Nadu, which was notified on 24.9.2001.

10. Admittedly, all the Petitioners herein are registered but unrecognised political parties in the State of Tamil Nadu as on date.

11.1. Mr. P. Chidambaram contends that the unrecognised registered political parties are entitled for preference in the matter of allotment of symbols over the independent candidates, as unrecognised political parties, since they are registered, cannot be treated as equals with independent candidates.

11.2. Mr. P. Chidambaram, contends that failure to exercise such power conferred on the Respondent under Rules 31, 32 and 33 of the Tamil Nadu Town Panchayats and Municipal and Corporation Councils (Elections) Rules, 1996 and Rules 33,34, and 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995 read with Clause 13 (c) of Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001, is arbitrary and violative of Article 14 of the Constitution of India, which prevents equals to be treated as unequals and also says unequals cannot be treated as equals.

11.3. Inviting my attention to the classification that has been made by the Central Election Commission, namely recognised parties, unrecognised registered parties and independent parties, Mr. P. Chidambaram contends that classification must bear the nexus of the object sought to be achieved, to require the parties to register, and to encourage the parties to come under the jurisdiction of the Election Commission.

11.4. Placing reliance on the decision in

11.5. According to Mr. P. Chidambaram, paragraph 1 of the impugned order dated 19.9.2001 is totally irrelevant. The reason that the Respondent has no power to register the Petitioner political party is totally unwarranted as the Petitioner has never requested the Respondent to register them as political party as they are already registered u/s 29A of the Representation of the People Act, 1951.

11.6. Mr. P. Chidambaram further submits that, no reason is assigned for refusing preference in the matter of allotment of symbol to the Petitioner's registered political party, even though they are yet to be recognised, as against the independent candidates.

11.7. Mr. P. Chidambaram also contends that the failure to appreciate the proceedings of the Election Commission of India dated 20.9.2001, a copy of which is marked to the Respondent - State Election Commission to the effect that the candidates duly set up by the party at an election will be entitled to benefits of preference over independent candidates under paragraph 12 of the Election Symbols (Reservation and Allotment) Order, 1968, is also arbitrary and unreasonable.

11.8. Mr. P. Chidambaram, referring to paragraph 13(c) of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001 contends that the State Election Commission has reserved the powers that should be exercised either to clarify any of the provisions of the order or removal of any difficulties which may arise in relation to the implementation of any such provision or in relation to any matter with respect to the reservation and allotment of symbols for which this order makes no provision or insufficient provision.

12.1. Per contra, Mr. N.R. Chandran, learned Advocate General appearing for the Respondent-State Election Commission, contends that these writ petitions are not maintainable in law, in view of the bar under Articles 243-0(b) and 243-ZG(b), which are identical to Article 329(b) of the Constitution of India.

12.2. Mr. N.R. Chandran also contends that the grievance of the Petitioners that they are denied for preference in the matter of allotment of symbols against the independent candidates could be challenged only in an election petition u/s 51-A read with Section 51-B(I)(d)(iv) of the Tamil Nadu District Municipalities Act and Section 258 read with Section 259(I)(d)(iv) of the Tamil Nadu Panchayat Act, 1994, as the case may be placing reliance on the decision in Sushil Kumar Dhara Vs. The Election Commission of India and Others, .

12.3. According to Mr. N.R. Chandran, the Respondents are constituted under Articles 213-K and 243-ZA of the Constitution of India and the Election Commission of India is constituted under the Article 329 of the Constitution. Therefore, the Respondent-State Election Commission is not subordinate to the Election Commission of India, but is independent. It is contended that since the very right to vote, much less a right to contest is not a fundamental right, but a statutory right, the Petitioners have no right to seek a writ of Mandamus as

prayed for, in the absence of any provision in the statute for the same, either in the Tamil Nadu Municipalities Act or in the Tamil Nadu Panchayats Act or in the Rules and orders made thereunder for the purpose of conduct of election to the respective local bodies.

12.4. Placing reliance on State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , Mr. N.R. Chandran contends that the Petitioners are not entitled to claim equality before law, merely because the registered parties are provided with a preferential right as against the independent candidates in the matter of allotment of symbols under the Election Symbols (Reservation and Allotment) Order, 1968, which is not applicable to the impugned local bodies elections or under Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 1996, as the same is not in force as on date.

12.5. Mr. N.R. Chandran contends that the Petitioners in W.P. Nos. 17248 and 17893 of 2001 are not recognised parties in the State of Tamil Nadu as on date, and therefore, they are not entitled to seek "Chakra Haldar" and "Arrow" respectively, based on Election Symbols (Reservation and Allotment) Order, 1968, which is not applicable to the local bodies elections. In any event Mr. N.R. Chandran contends that the Petitioners in W.P. Nos. 17248 and 17893 of 2001 are not entitled for a Mandamus for "Chakra Haldar" and "Arrow", nor they are entitled for any relief in the absence of any prayer for inclusion of the said symbols in the notification dated 1.12.2000 nor such relief could be moulded and granted, placing reliance on the ratio laid down in Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another, .

13. From the foregoing submissions, the following issues arise for my consideration:

i. Whether these writ petitions are maintainable in law in view of the bar under Articles 243-0(b) and 243-ZG(b) of the Constitution of India?

ii. Whether the Petitioners in W.P. Nos. 17248 and 17893 of 2001, viz, Janata Party and Janatha Dal (U) respectively, are deemed to be recognised parties in the State of Tamil Nadu in spite of the fact that they are not recognised in the State of Tamil Nadu as on date and whether they are entitled for the relief as prayed for?

iii. Whether the Petitioners, as registered political parties, but yet to be recognised in the State of Tamil Nadu are entitled for preference in the matter of allotment of symbols over the independent candidates, as prayed for?

iv. What relief the Petitioners are entitled for in these writ petitions?

14. The issues raised in these writ petitions, though appear to be hyper-technical, need to be approached in prospective of realisation, penetrating into the facts and realities.

15.1. Issue: 1; Whether these writ petitions are maintainable in law in view of the bar under Articles 243-0(b) and 243-ZG(b) of the Constitution of India?

15.2. Mr. N.R. Chandran, learned Advocate General also invited my attention to Articles 329(b), 243-0(b) and 243-ZG(b) of the Constitution of India which impose a bar for interference of Court in electoral matter to the effect that: -"Notwithstanding anything in the Constitution:

(a)....

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

15.3. Articles 243-0(b) and 243-ZG(b) bar interference of Court in electoral matter of Panchayats and Municipalities and the same read as follows:

Article 243-Q: Bar to interference by Courts in electoral matters - notwithstanding anything in this Constitution:

a)....

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the Legislature of a State.

Article 243-ZG: Bar to interference by Courts in electoral matters - notwithstanding anything in this Constitution:

a)....

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as it provided for by or under any law made by the Legislature of a State.

15.4. According to Mr. N.R. Chandran, the learned Advocate General, in view of the bar imposed under Article 243-0(b) and 243-ZG(b) of the Constitution of India, the Petitioners cannot seek relief as prayed for, as no election to any Panchayat or municipality shall be called upon after the issue of notification of election schedule except by election petition u/s 258 of Tamil Nadu Panchayat Act or Section 51A of the Tamil Nadu District Municipalities Act.

15.5. Even though Mr. N.R. Chandran, learned Advocate General, placing reliance on the decision in *Kanak Das Vs. Ram Lakhan Shaw*, , contends that the grievance about allotment of symbol could be challenged only by way of an election petition u/s 258 of Tamil Nadu Panchayat Act, and Section 51A of the Tamil Nadu District Municipalities Act, on the ground on noncompliance to the provisions of the Act, or of any rules, or orders made thereunder, as per Section 259(I)(d)(iv) of the Tamil Nadu Panchayat Act or Section 51-B (I)(d)(iv) of the Tamil Nadu District Municipalities Act, as though, the refusal of allotment of

symbol is premature, I am unable to appreciate the said contention, as all the Petitioners in these writ petitions, even though they are unrecognised political parties in the State, they are, in fact and reality, registered political parties u/s 29-A of the Representation of the People Act, 1951. Having their memorandum or rules and regulations registered with Election Commission of India, declaring that they shall bear in their 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, which, in my considered opinion cannot be termed as "making a simple declaration" u/s 29-A of the Representation of the People Act, 1951. Denial of legitimate right to the political parties registered u/s 29A of the Representation of the People Act, 1951 in a democratic electoral process, for claiming preference against the independent candidates and to seek a common symbol in the election in all constituencies, cannot be a reasonable solution for arresting mushroom growth of large number of non-serious political parties, unless it is supported by a law established, in as much as, the registered political parties are certainly for preference against the independent candidates as the unequals cannot be treated as equals, as rightly pointed out by Mr. P. Chidambaram, party-in-person.

15.6. The bar against maintainability of a writ under Article 226 of the Constitution of India, on a plain reading of Article 329(b), 243-0(b) and 243-ZG(b) of the Constitution of India, is only a prohibition of proceedings for setting aside an election, otherwise than by an Election Petition provided therein. But, in my considered opinion, it is not a total bar to challenge the decision of the Election Commission, refusing the legitimate right of registered political parties, claiming a preference in the allotment of symbols, out of free symbols, over the independent candidates, due to the refusal to exercise the powers conferred on the Election Commissioner under Rule 33 of the Tamil Nadu Municipal Corporation (Elections) Rules and Rule 35 of the Tamil Nadu Panchayats (Elections) Rules read with paragraph 13(c) of Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001, which empower the Respondents-State Election Commissioner to issue and pass appropriate and necessary instructions or directions in relation to any matter with respect to reservation and allotment of symbols if the said order makes no provision or makes insufficient provision.

16.1. Issue: 2: Whether the Petitioners in W.P. Nos. 17248 and 17893 of 2001, viz., Janata Party and Janatha Dal (U) respectively, are deemed to be recognised parties in the State of Tamil Nadu in spite of the fact that they are not recognised in the State of Tamil Nadu as on date and whether they are entitled for the relief as prayed for?

16.2. Even though Mr. G. Rajagopal, Learned Senior Counsel appearing for the Petitioner in W.P. No. 17248 of 2001 contends that the Janata Dal Party which was once recognised as a State Party in the State of Tamil Nadu and later on declared unrecognised by the Election Commission of India as per paragraph 6

read with paragraph 10A of the Election Symbol (Reservation) Allotment Order, 1968, is deemed to be a recognised party in the State of Tamil Nadu, for the purpose of grant of symbols, and therefore claims a legal fiction and contends that they are entitled for "Chakra Haldar" symbol, I am unable to appreciate the same as it is well settled in law that a deeming provision introducing a legal fiction must be confined to the context of it and cannot be given a larger effect, in other words, the Court must examine the context and the purpose of the legal fiction and confine its effects.

16.3. Similarly, the contention of Mr. D. Rajagopal, the Learned Counsel on behalf of the Petitioner in W.P. No. 17893 of 2001 that the Janata Dal Party is a National party and also recognised party in the States of Bihar and Karnataka and therefore they are entitled to have "Arrow" symbol, cannot be accepted as the same is not a recognised party in the State of Tamil Nadu as per the Tamil Nadu Municipal Corporation Election Rules and Tamil Nadu Panchayat Election Rules.

16.4. That apart, both the symbols "Chakra Haldar" and "Arrow" are not even notified as free symbols in Tables 2, 3, 4 and 5 of the notification dated 13.6.2001, which are neither challenged before us; nor inclusion of "Chakra Haldar" and "Arrow" symbols in the said tables is prayed by the respective Petitioners. As rightly pointed out by Mr. KR. Chandran, the Advocate General, in the absence of any such prayer for inclusion of "Chakra Haldar" and "Arrow" in the notification dated 13.6.2001, the relief as prayed for cannot be granted in the nature of prerogative writs, moulding such relief, ignoring a peculiar and complicated factor relating to the elections, particularly when the notification relating to the list of reserved and free symbols issued for the local body elections dated 13.6.2001 does not contain both the "Chakra Haldar" and "Arrow" symbols.

16.5. In any event, it is also difficult to impart the Election Symbol (Reservation) Allotment Order, 1968, into the Tamil Nadu Municipal Corporation Election Rules and Tamil Nadu Panchayat Election Rules and to grant the relief as prayed for by the Petitioners for Janata Party and Janata Dal, which would be stretching the powers of judicial review beyond the elasticity for the mere reason that it goes against the vague concept of democracy and equally carries invisible radiation from the same. Once the Constitution has entrusted the task of framing the law relating to election to Parliament, and subject to the law made for Parliament to the State legislature, it is not competent for this Court to test the election process in the teeth of some vague norms of free and fair election, as the same are very slippery slopes.

17.1. Issue: 3: Whether the Petitioners, as registered political parties, but yet to be recognised in the State of Tamil Nadu, are entitled for preference in the matter of allotment of symbols over the independent candidates, as prayed for?

17.2. Equality is a multi-coloured concept incapable of a single definition. It is a notion of many shades and connotations. The preamble of the Constitution

guarantees equality of status and opportunity, which is engraved as a fundamental right under Article 14 of the Constitution of India and makes it as an essential feature of our democratic policy. The concept of equality is basic to "Rule of Law". The most fundamental postulate of republicanism not only demands equal treatment among equals but also opposes the unequals being treated as equals. As long as India is a sovereign democratic republic, the equality of status and opportunity shall be secured to all the citizens. Therefore, it is a Constitutional obligation on this Court to exercise the powers under Article 226 of the Constitution of India to prevent the unequals being treated as equals before law and to maintain equality in spirit and substance in order to secure political justice, in as much as it is unassailable that "democracy and equality" are essential features of our Constitution.

17.3. It is a well established canon of interpretation that out of two possible interpretations of a provision, one, which prevents it from becoming unconstitutional, should be preferred as against the contrary. Therefore, instead of holding that the Respondent has no power to provide a remedy to the grievance of the Petitioners in acknowledgement of their legitimate rights as registered political parties u/s 29-A of Representation of the People Act, 1951, I am obliged to read such powers in Section 33 of the Tamil Nadu Municipal Corporations (Elections) Rules and Section 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995 read with paragraph 13(c) of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001, which empower the Respondent - Tamil Nadu State Election Commission to issue necessary instructions and directions in relation to the allotment of symbols to the Petitioners herein who are registered political parties for which the said Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001 makes no provision or make insufficient provision.

17.4. Mr. N.R. Chandran, learned Advocate General invites my attention that the Tamil Nadu Panchayat Rules and Tamil Nadu District Municipal Rules does not empower the Respondent-Tamil Nadu State Election Commission to neither recognise the Petitioners nor to reserve any symbol to the Petitioners who are registered parties u/s 29-A of the Representation of the People Act, 1951, but yet to be recognised under the Election Symbols (Reservation and Allotment) Order, 1968, and therefore they have no fundamental right to seek a preference in the allotment of symbol against the independent candidates, as their very right to contest, are not fundamental rights whatsoever, but only a right which springs from the statute namely Tamil Nadu Panchayat Act and Tamil Nadu District Municipalities Act, read with Tamil Nadu Panchayats (Elections) Rules, 1995, Tamil Nadu Municipal Corporations (Elections) Rules and the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001, which are subject to certain restrictions as held in Ahamed Jalaludin v. State of Tamil Nadu reported in 1986 Writ.L.R. Supp. 1, Mr. N.R. Chandran, learned Advocate General further contends that it is not permissible to complain that refusal to give preference in the allotment of the symbols to the Petitioners who are registered

political parties in preference to the independent candidates as available in Election Symbols (Reservation and Allotment) Order, 1968 as well as in Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 1996, as such rights, conferred under statute, are no more available to the Petitioners under the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001. Placing reliance on *State of Tamil Nadu and Others Vs. Ananthi Ammal and Others*, , Mr. N.R. Chandran, the learned Advocate General strongly contends that Article 14 of the Constitution of India does not authorise the striking down of the law of one State on the ground that, in contrast to the law of another State on the same subject, its provisions are discriminatory, nor does it contemplate the law of the Centre or of a State dealing with similar subjects, being held to be unconstitutional by a process of comparative study of the provisions of the two and that the sources of authority for the two being different, Article 14 of the Constitution of India can have no application. But, in my considered opinion, no objection can be taken as to the claim of the Petitioners who are registered political parties, for preference over independent candidates as unequals cannot be treated as equals; and therefore, the claim of the Petitioners in this regard is reasonable. Hence as held in *State of Tamil Nadu and Others Vs. Ananthi Ammal and Others*, , when a statute is impugned under Article 14 of the Constitution of India, the Court has to decide whether the statute is arbitrary or unreasonable. It is therefore permissible for the Court to interfere, applying the test of reasonableness, as found in similar subject which derives its authority from another source it can be referred to.

17.5. The reasons that weighed with the Respondent-State Election Commission for denying preference to the registered political parties as against the independent candidates in the matter of allotment of symbols in the ensuing local body elections on the ground that they do not have the power to register the Petitioners as political parties under Rules 31, 32 and 33 of the Tamil Nadu Town Panchayats and Municipal and Corporation Councils (Elections) Rules, 1996 and Rules 33, 34 and 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995 are not only irrelevant and irrational, as the Petitioners do not seek registration as political parties under the said rules before the Respondent herein, as rightly pointed out by Mr. P. Chidambaram, but in my considered opinion, they are apparently irrational and illogical and hence, they are unreasonable and are hereby quashed.

17.6. In this regard, I am obliged to refer the decision of the Apex Court in *In re: Special Courts Bill 1978* case, reported in *In Re: The Special Courts Bill, 1978*, , wherein the following propositions relating to Article 14 of the Constitution of India were considered:

(i) The first part of Article 14, which was adopted from the Irish Constitution, is a declaration of equality of the civil rights of all persons within the territories of India. It enshrines a basic principle of republicanism. The second part, which is a corollary of the first and is based on the last clause of the first section of the

Fourteenth Amendment of the American Constitution, enjoins that equals protection shall be secured to all such persons in the enjoyment of their rights and liberties without discrimination or favouritism. It is a pledge of the protection of equal laws, that is, laws that operate alike on all persons under like circumstances.

(ii) The State, in the exercise of its governmental power, has of necessity to make laws operating differently on different groups or classes of persons within its territory to attain particular ends in giving effect to its policies, and it must possess for that purpose large powers of distinguishing and classifying persons or things to be subjected to such laws.

(iii) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(iv) The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian Territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.

(v) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and classes arbitrarily.

(vi) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(vii) The classification must not be arbitrary but must be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two

conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.

(viii) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be impose, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned.

(ix) If the legislative policy is clear and definite and as an effective method of carrying out that policy a discretion is vested by the statute upon a body of administrators or officers to make selective application of the law to certain classes or groups of persons, the statute itself cannot be condemned as a piece of discriminatory legislation. In such cases, the power given to the executive body would import a duty on it to classify the subject matter of legislation in accordance with the objective indicated in the statute. If the administrative body proceeds to classify persons or things on a basis which has no rational relation to the objective of the legislature, its action can be annulled as offending against the equal protection clause. On the other hand, if the statute itself does not disclose a definite policy or objective and it confers authority on another to make selection at its pleasure, the statute would be held on the face of it to be discriminatory, irrespective of the way in which it is applied.

(x) Whether a law conferring discretionary powers on an administrative authority is constitutionally valid or not should not be determined on the assumption that such authority will act in an arbitrary manner in exercising the discretion committed to it. Abuse of power given by law does occur; but the validity of the law cannot be contested because of such an application. Discretionary power is not necessarily a discriminatory power.

(xi) Classification necessarily implies the making of a distinction or discrimination between persons classified and those who are not members of that class. It is the essence of a classification that upon the class are cast duties and burdens different from those resting upon the general public. Indeed, the very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality.

(xii) Whether an enactment providing for special procedure for the trial of certain offences is or is not discriminatory and violative of Article 14 must be determined in each case as it arises, for, no general rule applicable to all cases can safely be laid down. A practical assessment of the operation of the law in the particular circumstances is necessary.

(xiii) A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.

17.7. In the light of the above propositions, laid down in *In re, Special Courts Bill, 1978* case reported in *In Re: The Special Courts Bill, 1978*, , I am obliged to hold that the Respondent-State Election Commission cannot group registered political parties as well as the independent candidates as one and the same merely because the registered political parties are not recognised, in as much as, there is a duty cast on the Respondent to reasonably classify the registered political parties different from the independent candidates, as I am satisfied that under Clause 13(c) of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001, the State Election Commission has got the power to give directions in relation to the allotment of symbols, and to give preference to the Petitioners herein who are registered political parties and therefore the Petitioners, who are registered political parties are entitled for preference in the matter of allotment of symbols over the independent candidates.

18.1. Issue: 4: What relief the Petitioners are entitled for in these writ petitions?

18.2. In view of my conclusion as aforesaid, the proceedings of the Respondent-State Election Commission in W.P. Nos. 17248, 17685, 17886 and 17893 of 2001 stand quashed.

18.3. The Apex Court in *Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another*, , has held that the High Court, exercising jurisdiction under Article 226 of the Constitution of India can issue "directions, orders or writs" so as to enable the High Courts to reach injustice wherever it is found and to mould the reliefs to meet the peculiar and complicated requirements of this country. The High Courts have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case, the High Court can compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the Court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

18.4. Since the Respondent neither exercised the powers conferred on them

under paragraph 13(c) of Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2001 nor has disclosed any reason for not exercising such power, I am of the considered opinion that such failure on the part of the Respondent-State Election Commission to exercise the powers conferred on them, entitles this Court to hold that registered political parties shall be given preference over the independent candidates in the matter of allotment of symbols among the free symbols notified in Table 4 and 5 collectively of the notification dated 13.6.2001, in the matter of election to the offices notified under Table 4 and 5 therein and accordingly applying the ratio laid down in Comptroller and Auditor-Gen. Of India v. K.S. Jagannathan reported in (1968) 2 S.C.C. 679, the Respondent-State Election Commission is hereby directed to give preference to the registered political parties over the independent candidates in the matter of allotment of free symbols notified under Tables 4 and 5 collectively, to contest the election to the offices notified - either in table 4 or 5 of the notification dated 13.6.2001.

These writ petitions are ordered accordingly. No costs. Consequently, W.M.P. Nos. 26121, 26386, 26391, 26495, 26496, 26497 and 26498 of 2001 are closed.