
(2003) 11 DEL CK 0011
In the Delhi High Court
Case No : CW No. 7639 of 2003

Mr. Sanjoy Sachdev

APPELLANT

Vs

Chief Election Commission and Others

RESPONDENT

Date of Decision : 20-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 327, 328, 329

Citation : (2003) 2 ILR Delhi 529

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Bhim Singh, B.S. Billowria, Manzoor Ali Khan and S.P. Gupta, for the Appellant; M.K. Mendiratta and P.R. Chopra for Respondent No. 1, Mohd Rasheed and Karishma, for Sanjay Jain, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—With the consent of the parties, the matter is taken up for final disposal.

2. The petitioner is the President of the Delhi Pradesh Panthers Party which is a wing of the Jammu & Kashmir National Panthers Party (JKNPP). It is not a recognised State Party in Delhi. The petition is concerned with the allotment of symbols to the candidates put up by JKNPP in the election to the Legislative Assembly of Delhi, polling for which is to be held on 1.12.2003.

3. The symbol "Bicycle" has been allotted to the JKNPP in Jammu & Kashmir. The Samajwadi Party which is another political party and is a recognised State party in Uttar Pradesh and Uttaranchal has also been given the symbol "Bicycle" in those States. Both these parties i.e. the JKNPP and the Samajwadi Party, which are un-recognised parties in Delhi and are not recognised State parties in Delhi, have set up candidates in the ongoing elections. The JKNPP has set up 19 candidates whereas the Samajwadi Party has set up 41 candidates. All these candidates, whether they have been set up by the JKNPP or the Samajwadi Party,

have opted for the " Bicycle" symbol.

4. The question in this petition is with regard to the allotment of this symbol to such candidates. The contention of Mr. Bhim Singh, Sr. Advocate who appeared on behalf of the petitioner is that in terms of the Election Symbols (Reservation and Allotment) Order 1968 (hereinafter referred to as the Election Symbols Order) candidates from the JKNPP would be entitled to have the symbol "Bicycle". He relied upon paragraph 10 of the Election Symbols Order which reads as under:

"10 Concession to candidates set up by a State party at elections in other States or Union Territories: If a political party which is recognised a State Party in some State or States, sets up a candidate at an election in a constituency in any other State or Union Territory in which it is not a recognised State party, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved for that party in the State or States in which it is a recognised State party, notwithstanding that such symbol is not specified in the list of free symbols for such other 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 exclusive allotment of that symbol to the candidate setup by it 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 setup 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 a State party at an election in any constituency in a State in which that party is not a State Party and where the same symbol is already reserved for some other State Party in that State."

5. He submits that, by virtue of the aforesaid paragraph 10, the candidates set up by his party would be entitled to get the symbol "Bicycle" allotted to them in the on going election to the Delhi Legislative Assembly. On the other hand, learned counsel appearing for the Election Commission of India has raised two objections. The first objection is that the powers of intereference in electoral matters is very limited and are circumscribed by the provisions of Article 329 and, in this particular case, by Article 329(b) of the Constitution. In terms thereof, no interference is called for in this matter. His second objection is that in any event the decisions taken by the Election Commission for allotment of symbols in respect of the candidates of JKNPP are purely in accordance with the provisions of law and, in particular, of the Election Symbols Order.

6. It is to be noted that the election schedule was notified on 7.11.2003. The last date of nomination was 14.11.2003 and allotment of symbols was to be done on 17.11.2003. The poll is to be held on 1.12.2003. The JKNPP has set up 19 candidates in the election. All of them sought the symbol "Bicycle" but only six have been granted that symbol and 13 others have been allotted diverse symbols such as Aeroplane, Batsman, Book, torch, Lock & Key, Electric Pole, Water Tap and Sewing Machine. Prior to the notification of the election schedule, the petitioner had requested by a letter dated 3.9.2003 that the symbol "Bicycle" be allotted to its candidates. The Election Commission of India replied by a letter dated 23.9.2003 asking the petitioner to submit an application under paragraph 10 of the Election Symbols Order. That application was made on 6.10.2003. The Election Commission of India, however, after considering the claim of the candidate of the JKNPP, issued a direction on 17.11.2003 to the Chief Electoral Officer, NCT of Delhi to the following effect:-

"As regards the allotment of symbol "Bicycle" to Samajwadi Party and Jammu and Kashmir National Panthers Party, the Commission has allowed Samajwadi Party to use the symbol in 29 Assembly Constituencies shown in the Annexure-I and use of the same symbol to JKNPP in other 7 Assembly Constituencies shown in Annexure-II enclosed with this letter."

7. It may be noted that in the aforesaid letter, it is mentioned that Samajwadi Party can use the symbol in 29 Assembly constituencies and the JKNPP can use it in 7 Assembly Constituencies. However, this has been subsequently modified. The 22-Bawana (SC) Constituency which was earlier included in both lists, was subsequently deleted and that has resulted in the position that the Samajwadi Party has been allotted " Bicycle" in 28 Assembly Constituencies specified in Annexure I [minus 22-Bawana (SC)] and the JKNPP has been allotted the same symbol i.e. "Bicycle" in 6 Assembly Constituencies shown in Annexure II [minus 22-Bawana (SC)]. In all the other Constituencies both the parties have been allotted diverse symbols. The reason given by the learned counsel for the Election Commission is that the concession that is to be granted in paragraph 10 of the Election Symbols Order is qua candidates in particular constituencies and is not to be regarded as a State -wise concession. In those Constituencies where both the Samajwadi and JKNPP set up candidates, since both the parties sought the symbol "Bicycle" and both the parties sought the concession in paragraph 10 of the Election Symbols Order, the same was not allotted to either of them. Accordingly, in 13 Constituencies, the JKNPP were allotted free symbols and Samajwadi Party, likewise, was also allotted free symbols in 13 constituencies. The symbol "Bicycle" was allotted to candidates of both the parties in such of the constituencies where the other party had not setup a candidate. In this respect, learned counsel for the Election Commission submits that they have fully complied with the requirement of paragraph 10 of the Election Symbols Order.

8. Upon examining the Election Symbols Order, it becomes clear that paragraph 10 has to be read in the backdrop of paragraph 8 which reads as under:

"8. Choice of symbols by candidates of National and State Parties and allotment thereof -

(1) A candidate set up by a National Party at any election in any constituency in India shall choose, and shall be allotted, the symbol reserved for that party and no other symbol.

(2) A candidate set up by a State party at an election in any constituency in a State in which such party is a State Party, shall choose, and shall be allotted the symbol reserved for that party in that State and no other symbol.

(3) A reserved symbol shall not be chosen by, or allotted to, any candidate in any constituency other than a candidate setup by a National Party for whom such symbol has been reserved or a candidate setup by a State Party for whom such symbol has been reserved in the State in which it is a State party even if no candidate has been setup by such National or State Party in that Constituency."

Paragraph 8 provides that a National Party is to be allotted a symbol which is reserved for that party whereas a candidate of a recognised State party in the State in which it is a State Party is to be allotted the symbol reserved for that party in that State. Sub-paragraph 3 of paragraph 8 provides that a reserved symbol shall not be chosen by or allotted to any candidate in any Constituency other than a candidate setup by a National Party or a State Party in the State in which it is recognised as such. Paragraph 5 of the Election Symbols Order classifies symbols into two categories - reserved or free. In terms of these provisions, the Commission by notifications issued under paragraph 17 of the Election Symbols Order specifies symbols reserved for National Parties, the symbols reserved for State Parties in the States in which they are so recognised. It also notifies the list of free symbols for each State and Union Territory. In view of the provisions of paragraph 9 of the Election Symbols Order, the symbol "Bicycle" which is reserved for the JKNPP in Jammu & Kashmir and Samajwadi Party in Uttar Pradesh and Uttaranchal cannot be included in the list of free symbols for any other State or Union Territory. This will be clear from a reading of the provisions of paragraph 9 which are as under:

"9. Restriction on the allotment of Symbols reserved for State Parties in States where such parties are not recognised - A symbol reserved for a State Party in any State -

(a) shall not be included in the list of free symbols for any other State of Union Territory; and

(b) shall not be reserved for any other party which subsequently becomes eligible, on fulfillment of the conditions specified in paragraph 6B, for recognition as a State Party in any other State.

Provided that nothing contained in clause (b) shall apply in relation to a political party, for which the Commission has, immediately before the commencement of the Election Symbols (Reservation and Allotment) (Amendment) Order, 1997,

already reserved the same symbol which it has also reserved for some other State Party or Parties in any other State or States."

9. So, the position that obtains is that "Bicycle" is not in the list of free symbols in Delhi. Accordingly, normally this symbol cannot be allotted to any candidate in Delhi. However, a concession is granted under paragraph 10 to a political party which is recognised as a State Party in some State or States, when it sets up a candidate in a State where it is not a State recognised party. By virtue of this concession, candidates of such a party, to the exclusion of all other candidates, may be allotted the symbol reserved for that party in the State or States in which it is a recognised State Party. This concession entails that the JKNPP, which is a recognised State Party in Jammu and Kashmir and is not a recognised State Party in Delhi, may be given the symbol "Bicycle" for its candidate to the exclusion of all other candidates in a constituency. Thus, although, normally speaking, the symbol "Bicycle" could not be allotted to anybody for any Constituency in Delhi, the JKNPP as well the Samajwadi Party may be given the concession of allotment of such symbol to their candidates because of paragraph 10 of the Election Symbols Order. However, this is subject to the conditions which have been set out in paragraph 10 itself and, in particular, condition 'c' which requires the Election Commission to form an opinion that there is some reasonable ground for refusing the application for such allotment. In the present case, it is amply clear that these two parties set up candidates. Both the parties were not recognised State Parties in Delhi. They were, however, recognised State Parties in the States mentioned above. In those States, they were allotted the symbol "Bicycle" for their candidates. In such a situation, the Election Commission has acted reasonably and has taken into consideration the practicalities of the matter and Therefore their decision to allot the symbols to the candidates of the JKNPP in the manner in which they have done cannot be faulted. The Election Commission has granted the concession to the JKNPP and the Samajwadi Party in all the constituencies where it was feasible and possible. In those constituencies where both these parties had set up candidates neither have been given the benefit of the concession. If either had been given, the other could easily have complained of discrimination. Both have been treated on an equal footing. The Election Commission has taken a decision which, far from being arbitrary or discriminatory, is reasonable and practical. One more aspect which has to be borne in mind is this, sans paragraph 10 of the Election Symbols Order, candidates of the JKNPP and the Samajwadi Party are in no better position than independent candidates. In such circumstances where the concession of para 10 cannot be worked out practically in certain constituencies, the candidates of JKNPP and the Samajwadi Party are to be allotted symbols out of the list of free symbols. That is exactly what has happened. So, the petitioner cannot have a legitimate grouse in this regard.

10. Even though on merits, the decision of the Election Commission cannot be faulted, learned counsel for the Election Commission had also raised the question as to whether this court can even entertain such a petition under Article 226.

Article 329 of the Constitution imposes a bar to interference by courts in electoral matters. Article 329 reads as under:

"329. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution.

(a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(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."

11. In this matter, we are concerned with Article 329(b) which categorically provides that no Election shall be called in question except by an election petition. The Article begins with the words " Notwithstanding anything in this Constitution" which obviously includes Article 226. Therefore, the Constitution itself imposes a bar on interference in electoral matters by court including by way of entertaining petitions under Article 226. The expression `election" used in Article 329(b) does not merely relate to the poll itself but is used in the widest sense. In this contest, the Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, held as follows:

" For this limited purpose, we set down our holdings:

1 (a) Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate."

The same sentiment was emphasized by the Supreme Court in the case of Election Commission of India Through Secretary Vs. Ashok Kumar and Others, . In paragraph 32 thereof the Supreme Court has summarised the position, after considering with earlier Constitution Bench decisions, as regards the question of the scope and extent of interference in electoral matters. Paragraph 32 of the aforesaid judgment reads as under:

"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution benches have already said and then adding by clarifying what follows there from in view of the analysis made by us hereinabove:

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which

questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles, therein , or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

12. It is pertinent to note that Mr. Bhim Singh who appears on behalf of the petitioner has also placed reliance on this judgment. According to him, the order that he was seeking was not to impede the electoral process but only to facilitate the same and Therefore it would fall within the parameters prescribed by the supreme court for interference by courts in electoral matters. In the case of Ashok Kumar (supra), the Supreme Court held that the term `election" included all steps and the entire proceedings commencing from the date of notification of election till the date of declaration of the result would be covered in the expression `election". It further held that if the Election is called in question and if it would have the effect of interrupting , obstructing or protracting the election proceedings in any manner, then invoking of judicial remedy would have to be postponed till after the completion of elections. In the present case, what is in

question is the allotment of symbols by the Election Commission. That is certainly a part of the electoral process and would come within the expression 'election'. Therefore, what is being called in question is not just the allotment of the symbols but the 'election' itself. And, if it is permitted to be called in question then, it would have the effect of interrupting and obstructing the election process. All those candidates who have been allotted symbols and are busy with their campaign would be thrown into disarray. The lists of candidates would have to be altered. The administrative machinery would be adversely affected. Furthermore, the learned counsel for the Election Commission has submitted that similar situations have arisen in other States which are also going to the polls and if there is any interference then, it would certainly impede the election process in all such States.

13. I am in agreement with the submission of the learned counsel for the Election Commission that this is not one of those cases where, if this court interfered, something would be done to facilitate the election process. On the contrary, if the court interfered at this stage, it would certainly impede and obstruct the electoral process. In this view of the matter, the bar of Article 329 would come into play and on this ground also the writ petition would not be maintainable. Thus on both grounds, the writ petition is liable to be dismissed. No order as to costs.

Copy of this Judgment be given duly to both the parties.