
(2014) 03 AHC CK 0134
In the Allahabad High Court
Case No : Writ Petition No. 154 (M/B) of 2014

Natik Party

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 143, 226, 301, 324
Representation of the People Act, 1951 — Section 169, 29A, 29-A

Citation : (2014) 4 ADJ 419 : (2014) 4 ALJ 325

Hon'ble Judges : Rajiv Sharma, J; Mahendra Dayal, J

Bench : Division Bench

Advocate : C.B. Pandey and Maria Kirmani, Advocate for the Appellant; Manish Mathur and Akhilesh Misra, Advocate for the Respondent

Judgement

1. Short counter-affidavit filed today on behalf of opposite parties Nos. 2 and 3, counter-affidavit as well as additional affidavit filed today on behalf of opposite party No. 4 and rejoinder-affidavit to the short counter-affidavit filed on behalf of opposite party Nos. 2 and 3, are admitted to record. With the consent of learned Counsel for the parties, we proceed to hear the matter finally.

2. Heard Mr. C.B. Pandey, assisted by Ms Mariya Kirmani, Counsel for the petitioner, Mr. Manish Mathur, Counsel for the opposite parties Nos. 2 and 3 and Mr. Akhilesh Kalra, assisted by Mr. Piyush Agarwal, Counsel for the opposite party No. 4.

3. The instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner, which is an unrecognized registered political party in the State of U.P., for declaring Para 9 and 10 of the Election Symbols (Reservation and Allotment) Order, 1968 as ultra vires the Constitution and Rules of the Representation of the People Act, 1951. It has also been prayed that Election Commission of India may be directed to allot the symbol "Broom" to the petitioner for contesting Lok Sabha Election/2014.

4. Shorn off unnecessary facts of the case are as under:

5. Pursuant to Section 29-A of the Representation of People Act, 1953 [hereinafter referred to as the "Act"], the petitioner-Natik Party applied for registration to the Election Commission of India [hereinafter referred to as the "Commission"] vide letter dated 3.2.2010, the Commission, while exercising the powers conferred u/s 29-A of the Act, registered the petitioner as a political party. Since then, the petitioner is an unrecognized registered political party.

6. For contesting the General Election to the Legislative Assembly of Uttar Pradesh, 2012, the petitioner applied under the provision of Para 10-B of the Election Symbols (Reservation and Allotment) Order, 1968 [hereinafter referred to as the "Symbol Order"] for allotment of symbol to its candidates. This application was accepted by the Commission and election symbol "broom" was allotted to the petitioner for contesting all 403 Assembly Constituencies in the State of U.P. In the election of Legislative Assembly of Uttar Pradesh, 2012, since the petitioner-Natik Party could not secure the required percentage of vote for recognition as State Party, therefore, it was not recognized and remained as a registered unrecognized party, vide Notification No. 56/2013/PPS-II dated 10.7.2013, Para 10B of the Symbol Order was amended by the Commission. On 9.12.2013, the petitioner requested the Commission to allot free symbol "broom" for the ensuing Lok Sabha Election, 2014.

7. According to the petitioner, on 10th July, 2013, without the consent of the petitioner, the Commission allotted "broom" as a symbol to the Aam Aadmi Party for contesting Delhi Legislative Assembly Election, 2013. In the said Delhi Legislative Assembly, result of election was declared, in which, Aam Aadmi Party succeeded to secure 28 seats in the Assembly and on 19.12.2013, the party was recognized as a State party for the State of Delhi and the symbol "broom" was reserved for the Aam Aadmi Party in the State of Delhi.

8. Mr. C.B. Pandey, Counsel for the petitioner submits that Para 9 of the Symbol Order provide that a symbol reserved for a State Party in any State shall not be included in the list of free symbols for any other State or Union Territory. Since symbol "broom" has now been reserved for Aam Aadmi Party in Delhi, it would not be excluded from the list of free symbols, therefore, neither in Uttar Pradesh nor in any other State, it would be allotted to the petitioner. Thus, the provision relating to exclusion of symbol reserved for a particular State from the list of free symbols is totally arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

9. Mr. Pandey has further submits that Para 10 of the Symbol Order, which provide that the excluded free symbol would be made available to State party in other States, is wholly arbitrary and discriminatory for the reason that the State party, which is recognized in one State is unrecognized registered political in other State and, therefore, all unrecognized political party should be treated equally. Submission is that granting special status to a State party in other State

has no rationality and is against the principle of level playing which is essential for fair election under Article 324 of the Constitution of India and Representation of People Act.

10. Mr. Pandey submits that Para 6 of the Symbol Order provides only two classes of political parties i.e. (1) recognized political party; and (2) other unrecognized political party. A recognized party shall either be a National or a State Party. A national recognized party has symbol reserved for all the States, whereas the State recognized party has reserved symbol for a particular State only, where it is recognized. He further submits that from perusal of Para 5 of the Symbol Order, it is evident that it classified into two groups i.e. (1) reserved; (2) free. A symbol, which is not reserved are free symbol. His submission is that in case of State party, the symbol is reserved for that State only where it is recognized and so far as other State, it is not reserved symbol, therefore, it is free symbol in other States. Therefore, by excluding such symbol from the list of free symbols and make it available to State party in other States also is like giving national recognition to a State party indirectly. Thus, para 9 of the Symbol Order is liable to be struck down.

11. Elaborating his submission, Mr. Pandey submits that as provided in para 10 of the Symbol Order, the State recognized party only get an entitlement to use its reserved symbol over the unrecognized party in other State, which may be refused also under Para 10(e) by the Commission. But the Aam Aadmi Party is misleading the people by showing that "broom" has been allotted to it for all the States. He submits that Para 10B (A) of the Symbol Order provide for the procedure for allotment of symbol to a political party for Legislative Assembly and Para 10B (B) for Parliamentary Election. Clause IV of the explanation of Para 10B provide that the concession of allotment of common symbol for the candidates of registered unrecognized party shall be only one time facility either at general election for the House of People or to a State Legislative Assembly, as the party may choose, and a party that has availed of this concession once shall not be eligible for the concession in any subsequent general election. Therefore, Aam Aadmi Party, which has already chosen to avail the concession of common symbol in general election i.e. Delhi Legislative Assembly has no right to choose common symbol for general election to the House of People (Lok Sabha Election 2014). Therefore, Aam Aadmi Party should not be permitted to use "broom" as its symbol.

12. Lastly, Mr. Pandey submits that since the petitioner-Naitik Party and Aam Aadmi Party are unrecognized registered party for Lok Sabha Election, 2014 and further the petitioner has given the intimation to the Election Commission with regards to its intention to contest the general election of Lok Sabha, 2014 under Para 10B (B) and it has already contested the Election of Legislative Assembly in the State of U.P. on symbol "broom", it should be allotted to the petitioner-Naitik Party for contesting Lok Sabha Election, 2014.

13. To strengthen his arguments, Mr. Pandey has placed reliance upon the

judgment of the Hon"ble Supreme Court in Desiya Murpokku Dravida Kazhagam and Another Vs. The Election Commission of India, , Subramanian Swamy Vs. Election Commission of India through its Secretary, , Kanhiya Lal Omar Vs. R.K. Trivedi and Others, , Noida Entrepreneurs Association Vs. NOIDA and Others, , Zameer Ahmed Latifur Rehman Sheikh Vs. State of Maharashtra and Others, , Shri Sadiq Ali and Another Vs. The Election Commission of India, New Delhi and Others, , and Selvi J. Jayalalithaa and Others Vs. State of Karnataka and Others, .

14. Refuting the aforesaid submissions of the Counsel for the petitioner, Mr. Manish Mathur, Counsel for the Commission submits that the facility of allotment of common symbol to registered unrecognized political parties was originally provided under the provisions of Symbol Order w.e.f. 16.9.2011. The said facility was a one-time facility provided to all unrecognized registered political parties under the said paragraph 10B. The petitioner was granted this facility of allotment of common symbol of "broom" vide commission's letter No. 56/symbol/2011/PPS-II dated 13.1.2012 for the general election to the Legislative Assembly of Uttar Pradesh in the year 2012 as per the application made by the petitioner for such allotment. However, on contesting the election availing itself of that facility, the petitioner could not show the poll performance which would have entitled it to be recognized as a State party in Uttar Pradesh under Para 6A of the Symbol Order. He submits that the petitioner has set up 19 candidates and polled only 0.01% votes and did not win any seat in the said Assembly election in Uttar Pradesh.

15. Mr. Mathur submits that vide Notification No. 56/2013/PPS-II dated 10.7.2013, the provisions of para 10B of the Symbol Order were amended, which came into force w.e.f. 15.7.2013. As per the amended provisions of para 10B, a registered unrecognized party can apply for the one-time concession of common symbol at a general election during the period of six month prior to the date of expiry of the House concerned. Under this provision, Aam Aadmi Party, which was then a registered unrecognized party, applied for the "broom" symbol as its common symbol for the general election to the Legislative Assembly of Delhi. The said party submitted its application dated 14.6.2013 and it was allotted the common symbol "broom" vide Commission's letter dated 30.7.2013. But the petitioner-Natik Party had not submitted any application for the "broom" symbol for the election in Delhi. Therefore, the contention of the petitioner that the Aam Aadmi Party was illegally allotted the "broom" symbol is, therefore, totally misconceived because the petitioner party had no right or claim whatsoever on the said symbol mainly because the concession of allotment of a common symbol was granted to it under paragraph 10B of the Symbol Order to contest the Legislative Assembly elections in Uttar Pradesh, 2012.

16. Mr. Mathur submits that after the completion of the general election to the Legislative Assembly of Delhi, the Aam Aadmi Party qualified for the recognition as a State Party in the National Capital Territory of Delhi on the basis of its poll performance and has been given such status vide Commission's letter dated

20.12.2013. Consequently, upon the request of the Aam Aadmi Party vide letter dated 11.12.2013, the symbol "broom" has been allotted to the said party as a reserved symbol under para 5 of the Symbol Order. Therefore, the said symbol "broom" has been deleted from the list of free symbols as required under para 9 of the Symbol Order.

17. Mr. Mathur further submits that petitioner letter's dated 9.12.2013 was received in the Commission on 12.12.2013 but since the said application was not in accordance with requirements specified in para 10B of the Symbol Order, therefore, the petitioner was informed accordingly, vide Commission's letter dated 20.12.2013. In the meantime, symbol "broom" was allotted to the Aam Aadmi Party as its reserved symbol in Delhi.

18. Mr. Akhilesh Kalra, Counsel for the opposite party No. 4 submits that the Aam Aadmi Party was allotted "broom" symbol in Delhi Assembly Election and as it fulfilled all the conditions required under Para 6A of the Symbol Order, it was recognized as a State party with reserved symbol "broom". This symbol was widely popularized during the recent Delhi Assembly Election and now the Aam Aadmi Party is identified with this symbol across the country and therefore, if the said symbol is allotted to any unrecognized political party in any state other than Delhi, it will lead to confusion among the voters and the said party will unfairly gain in the election at the cost of the Aam Aadmi Party.

19. Mr. Kalra submits that a political party like the petitioner, which has not so far recognized in any State at all, cannot be treated at par with Aam Aadmi Party. He submits that the requirements under Para 6A of the Symbol Order for recognition as the State Recognized Party were fulfilled by the Aam Aadmi Party on the date of election result of the Delhi Assembly i.e. on 8.12.2013 itself. Thus, on that very day, the Aam Aadmi Party became eligible to be recognized as "State recognized party". On 9.12.2013, the petitioner, as stated hereinabove, applied for the said Symbol, which as per Para 9(A) of the Symbol Order is no longer available in the list of "Free Symbol". Therefore, the principle of "First come and First Service" will also not be applicable as it is applied in the case of free symbols only.

20. Lastly, Mr. Kalra submits that the Election Commission has already declared that symbol "broom" is not available in the list of "free symbol" by publishing the picture of symbol "broom" in the category of "not free symbol". Thus, the claim of the petitioner is frivolous, vexatious and contrary to the provisions of law.

20-A. We have heard Counsel for the parties and perused the records.

21. Before dealing with the contentions advanced by the respective parties, we think it appropriate to refer the relevant provisions.

22. Article 324 of the Constitution of India provides inter alia that the superintendence, direction and control of the preparation of electoral rolls for and the conduct of all elections to Parliament and Legislative Assemblies of the States

and all elections to the offices of President and Vice-President held under the Constitution shall be vested in the Commission. According to Section 169 of the Representation of the People Act, 1951, the Central Government may, after consulting the Election Commission by notification in the Official Gazette, make rules for carrying out the purposes of the Act. Without prejudice to the generality of the foregoing power, sub-section (2) enumerates some of the matters for which provision may be made in the rules. Sub-section (3) requires that the rules framed should be laid before each House of Parliament. Conduct of Elections Rules, 1961 were thereafter framed by the Central Government. Rule 5 of those Rules requires the Commission to specify the symbols that may be chosen by candidates at elections in Parliamentary and Assembly elections and the restrictions to which that choice shall be subject. Rule 10 makes provision for allotment of symbols to the contesting candidates by the Returning Officer subject to general or special directions issued by the Commission.

23. The Symbol Order has been issued by the Commission in exercise of the powers conferred by Article 324 of the Constitution of India read with Rules 5 and 10 of the Conduct of Election Rules. Paragraph 2 of the Symbols Order contains the various definitions and interpretation. Clause (h) of para-2 provides that political party means an association or body of individual citizens of India registered, with the Commission as a political party u/s 29A of the Representation of People Act, 1951. Paragraph 4 provides for allotment of symbols. Paragraph 5 deals with the classification of symbols.

24. According to paragraph 5, a reserved symbol is a symbol reserved for a political party for exclusive use by that party. A symbol other than the reserved symbol has been described by the said paragraph to be a free symbol. Political parties have been classified as recognised political parties of unrecognised political parties by paragraph 6. Para 6 reads as under:

6. Classification of political parties.--(1) For the purposes of this Order and for such other purposes as the Commission may specify as and when necessity therefore arises, political parties are either recognised political parties or unrecognised political parties.

(2) A recognised political party shall either be a National party or a State party.

6A. Conditions for recognition as a State Party.--A political party shall be eligible for recognition as a State party in a State, if, and only if, any of the following conditions is fulfilled:

(i) At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least two members to the Legislative Assembly of that State at such general election; or

(ii) At the last general election to the House of the People from that State, the

candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or

(iii) At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or

(iv) At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that State; or

(v) At the last general election to the House of the People from the State, or at the last general election to the Legislative Assembly of the State, the candidates set up by the Party have secured not less than eight percent of the total valid votes polled in the State.

6B. Conditions for recognition as a National Party.--A political party shall be eligible to be recognized as National party, if, and only if, any of the following conditions is fulfilled:

(i) The candidates set up by the party, in any four or more States, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in each of those States at that general election; and, in addition, it has returned at least four members to the House of the People at the aforesaid last general election from any State or States; or

(ii) At the last general election to the House of the People, the party has won at least two percent of the total number of seats in the House of the People, any fraction exceeding half being counted as one; and the party's candidates have been elected to that House from not less than three States; or

(iii) The party is recognized as State party in at least four States.]

6C. Conditions for continued recognition as a National or State party.--If a political party is recognised as a State party under paragraph 6A, or as a National party under paragraph 6B, the question whether it shall continue to be so recognised after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.

25. From bare perusal of the aforesaid paras, it reflects that the recognised political parties have been divided into two categories. If a political party is treated as a recognised political party in four or more states in accordance with paragraph 6, it shall have the status of a national party throughout the whole of

India. If on the contrary a political party is treated as a recognised political party in less than four states, it shall enjoy the status of a State party in the state or states in which it is a recognised political party.

26. Paragraph 9 deals with restriction on the allotment of Symbols reserved for State Parties in States where such parties are not recognized and reads 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 or Union Territory; and

(b) shall not be reserved for any other party which subsequently becomes eligible, on fulfillment of the conditions specified in paragraph 6A, 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.]

27. Paragraph 10 deals with Concession to candidates set up by a State Party at elections in other States or Union Territories and 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 as 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 set up 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 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 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.]

10A. Concession to candidates set up by an unrecognised party which was earlier 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 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 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].

10B. Concession to candidates set up by registered (unrecognized) parties and to unrecognized parties which were earlier recognized parties more than 6 years back. The candidates set up by a registered unrecognized political party at the general election to the Legislative Assembly of a State or to the House of the People, may be allotted a common symbol, subject to fulfilment of the following conditions:

(A) At a general election to the Legislative Assembly-

(i) The party sets up candidates at least in 10% (ten percent) of the assembly constituencies in the State, subject to a minimum of five constituencies in States having forty or less seats;

(ii) In the case of election on expiry of the normal term of the Legislative

Assembly, the intimation with regard to its intention to contest election under sub-clause(i) is given by the party to the Commission at any time during the period commencing from the date six months prior to the date of expiry of the term of the Assembly and latest by five clear days before the date on which the notification (or the first of the notifications in the case of a phased election) of the election is scheduled to be issued;

(iii) In the case of dissolution of the Legislative Assembly before the expiration of its normal term, the intimation with regard to its intention under sub-clause (i) is given by the party to the Commission at any time from the date of dissolution of the Legislative Assembly and latest by five clear days before the date on which the notification (or the first of the notifications in the case of a phased election) of the election is scheduled to be issued;

(iv) The party shall give the names often symbols, in order of preference, from out of the list of free symbols notified by the Commission under paragraph 17 of this Order:

Provided that a party may, if it so desires, also propose three new symbols of their choice, with the names and clear design and drawings of symbol, in the order of preference, for allotment to its candidates, which the Commission may consider for allotment as its common symbol if there is, in its opinion, no objection in allotting such symbol:

Provided further that the symbols proposed by the parties shall have no resemblance to the existing reserved symbols or free symbols, nor shall have any religious or communal connotation or depict any bird or animal;

Provided also that no proposal for a new symbol shall be entertained by the Commission unless it is made at least three months before the date of expiry of term of the Assembly concerned, or within one month of the premature dissolution of the Assembly, as the case may be;

(v) The party also gives an undertaking that if the party does not set up candidates in the minimum number of the constituencies as prescribed in condition (i) above, its candidates shall not be entitled to allotment of a common symbol on the date of allotment of symbols to them; and, in addition, the party shall be liable for such punitive action as the Commission may consider appropriate.

(vi) The list containing the serial numbers and names of the constituencies where the party is setting up candidates is submitted to the Commission latest by 5 clear days before the date on which the notification (or first of the notifications in the case of a phased election) of the election is scheduled to be issued;

(B) At a general election to the House of the People-

(i) The party sets up candidates at least in 10% (ten percent) of the parliamentary constituencies in the State, in which it seeks allotment of a

common symbol to its candidates, subject to a minimum of two constituencies in States having less than twenty parliamentary constituencies allotted to the State (except the States having only one seat);

(ii) In the case of election on expiry of the normal term of the House of the People, the intimation with regard to its intention to contest election under sub-clause(i) is given by the party to the Commission at any time during the period commencing from the date six months prior to the date of expiry of the term of the House of the People and latest by five clear days before the date on which the notification (or the first of the notifications in the case of a phased election) of the election is scheduled to be issued;

(iii) In the case of dissolution of the House of the People before the expiration of its normal term, the intimation with regard to its intention under sub-clause (i) is given by the party to the Commission at any time from the date of dissolution of the House of the People and latest by five clear days before the date on which the notification (or the first of the notifications in the case of a phased election) of the election is scheduled to be issued;

(iv) The party shall give the names of ten symbols, in order of preference, from out of the list of free symbols notified by the Commission under paragraph 17 of this Order:

Provided that a party may, if it so desires, also propose three new symbols of their choice, with the names and clear design and drawings of symbol, in the order of preference, for allotment to its candidates, which the Commission may consider for allotment as its common symbol if there is, in its opinion, no objection in allotting such symbol;

Provided further that the symbols proposed by the parties shall have no resemblance to the existing reserved symbols or free symbols, nor shall have any religious or communal connotation or depict any bird or animal:

Provided also that no proposal for a new symbol shall be entertained by the Commission unless it is made at least three months before the date of expiry of term of the House of the People, or within one month of the premature dissolution of the House, as the case may be;

(v) The party also gives an undertaking that if the party does not set up candidates in the minimum number of the constituencies as prescribed in condition (i) above, its candidates shall not be entitled to allotment of a common symbol on the date of allotment of symbols to them; and, in addition, the party shall be liable for such punitive action as the Commission may consider appropriate;

(vi) The list containing the serial numbers and names of the constituencies where the party is setting up candidates is submitted to the Commission latest by 5 clear days before the date on which the notification (or first of the notifications in the case of a phased election) of the election is scheduled to be issued.

Explanation--

For the removal of doubt, it is hereby clarified that-

(i) In cases where the period between the date of coming into force of this notification and the date of expiry of the term of a Legislative Assembly is less than six months, the provisions of this paragraph shall apply from the date this notification comes into force;

(ii) The concession of allotment of common symbol to the candidates of a registered unrecognized party under this paragraph shall be only a one-time facility either at a general election to the House of the People or to a State Legislative Assembly, as the party may choose, and a party that has availed of this concession once shall not be eligible for the concession in any subsequent general election:

Provided that those parties which have already availed of the concession under paragraph 10B, as it existed prior to this notification, shall also be eligible to a one-time concession of common symbol as per the amended provisions of this paragraph;

(iii) The free symbol allotted as a common symbol to the candidates of a party under this paragraph shall be available for allotment to candidates set up by the other parties or independent candidates in those other constituencies in which that party has not set up its candidates;

(iv) Allotment of common symbol under this paragraph shall be done on "first-come-first-served" basis:

Provided that if applications of two or more parties giving preference for the same symbol are received in the Commission on the same date, then the question of allotment of the symbol to one of such parties shall be decided by draw of lots in such manner as may be directed by the Commission:

Provided further that if out of the two or more such parties giving preference for the same symbol whose applications are received on the same date, one party is such that it has Member(s) elected to the House of the People or the Legislative Assembly of the State concerned on the symbol for which preference has been given by the party, then the symbol shall be allotted to that party to the exclusion of the other parties;

(v) if it is not possible for the Commission for any reason to allot a common symbol to the candidates of a party from out of the list of symbols for which it has given its preference under this paragraph, some other symbol from the list of free symbols may be allotted to that party in consultation with that party;

(vi) notwithstanding anything contained in paragraph 10A, a political party which was earlier a recognized political party and which lost its recognition more than 6 years back will also be eligible under this paragraph to the one-time concession of allotment of the symbol which was earlier reserved for the party, at a general

election to the House of the People or to the Legislative Assembly of a State, held after expiry of six years since the party lost its recognition, subject to the fulfilment of each of the conditions specified under clause(A) or (B), as the case may be, except the condition in sub-clause (iv) thereof.]

28. A notification containing the list of political parties and symbols has to be issued by the Commission under paragraph 17 while paragraph 18 gives certain additional powers to the Commission for issuing instructions and directions. The requisite notification was accordingly issued by the Commission under paragraph 17.

29. Perusal of the different paragraphs of the Symbols Order makes it manifest that they provide, as is made clear by its preamble, for specification, reservation, choice and allotment of symbols at elections in parliamentary and assembly constituencies as well as for the recognition of political parties in relation thereto and for matters connected therewith.

30. Under Article 324 of the Constitution, the Election Commission is empowered to frame its regulations. Section 5(1) and 10(4) of the Act provide that every candidate at an election shall be allotted a different symbol subject to such restriction as the Election Commission may specify. In exercise of its plenary power of superintendence, regulation and control of elections to parliament and State Legislatures under that Article, the Election Commission has promulgated the said Symbols Order as early as in 1968, which has been amended from time to time. Thus, the Election Commission of India under Article 324 of the Constitution has all powers necessary for the smooth conduct of elections.

31. In the instant case, the petitioner was granted the one time facility under Para-10B of the Symbol Order by allotting symbol "broom" in the General Election of the Legislative Assembly of Uttar Pradesh in the year 2012 as per the application preferred by the petitioner for such allotment. On availing that facility, the petitioner-Natik Party set up 19 candidates in the said election and obtained/pollled only 0.01% votes and no candidate of the petitioner-Natik Party won any seat in the said Assembly Election in Uttar Pradesh. Thereafter, vide notification dated 10.7.2013, the Commission amended the Symbol Order, which came into force w.e.f. 15.7.2013 and as per the amended provision of Para 10-B, a registered unrecognized party can apply for the one-time concession of common symbol at a general election during the period of six months prior to the date of expiry of the House concerned. Accordingly, Aam Aadmi Party, which was then a registered unrecognized party, applied for the "broom" symbol as its common symbol for the general election to the Legislative Assembly of Delhi and the said symbol was allotted to Aam Aadmi Party vide letter dated 30.7.2013. On availing that facility, the candidates of the Aam Aadmi Party contested the elections in the Legislative Assembly of Delhi, in which, the Aam Aadmi Party won 28 seats and qualified for the recognition as a State Party in the National capital Territory of Delhi. Consequently, on the letter of Aam Aadmi Party, the symbol "broom" has been allotted to the said party as a reserved symbol under

para 5 of the Symbol Order and the symbol "broom" has been deleted from the list of free symbol as required under Para 9 of the Symbol.

32. According to the petitioner, once the symbol "broom" has already been allotted to the petitioner party in the State of Uttar Pradesh in the previous election of the State Legislative by the Commission, therefore, allotting the symbol "broom" to the Aam Aadmi Party, which is also an unrecognized registered party in the State of Uttar Pradesh, in the ensuing Lok Sabha Election and Assembly Election, 2014 in whole country is violative of Article 14 of the Constitution of India. Therefore, the restrictions imposed by the Commission by Para-9 and 10 of the Symbol Order is hit by the Constitution of India as well as provisions of Representation of Peoples Act. Further submission of the petitioner is that Para 17 of Symbol Order deals with the Notification containing lists of political parties and symbols. As per sub-para (1) of Para 17, the Commission shall by one or more notifications in the Gazette of India 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. Therefore, para 17 of the symbol order is contrary to para 9 and 10 of the Symbol Order.

33. It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of the election law of India. In some countries, details in the form of letters of alphabet or numbers are added against the name of each candidate while in others, resort is made to symbols or emblems. The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice. Although the purpose which accounts for the origin of symbols was of a limited character, the symbol of each political party with the passage of time acquired a great value because the bulk of the electorate associated the political party at the time of elections with its symbol. It is, therefore no wonder that in case of a split in a political party, there is a keen contest by each rival group to get the symbol of that party.

34. It may be mentioned that according to paragraph 6 of the Symbols Order, one of the factors which may be taken into account in treating a political party as a recognised political party is the number of seats secured by that party in the House of People or the State Legislative Assembly or the number of votes polled by the contesting candidates set up by such party. If the number of seats secured by a political party or the number of votes cast in favour of the candidates of a political party can be a relevant consideration for the recognition of a political party, one is at a loss to understand as to how the number of seats

in the Parliament and State Legislatures held by the supporters of a group of the political party can be considered to be relevant.

35. It would follow from what has been discussed earlier in this judgment that the Symbols Order makes detailed provisions for the reservation, choice and allotment of symbols and the recognition of political parties in connection therewith. That the Commission should specify symbols for elections in parliamentary and assembly constituencies has also been made obligatory by rule 5 of Conduct of Election Rules. Sub-rule (4) of rule 10 gives a power to the Commission to issue general or special directions to the Returning Officers in respect of the allotment of symbols. It would, therefore, follow that Commission has been clothed with plenary powers by the above mentioned Rules in the matter of allotment of symbols. If the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbols and for issuing directions in connection therewith, it is plainly essential that the Commission should have the power to settle a dispute in case claim for the allotment of the symbol of a political party is made by two rival claimants.

36. Article 324 as mentioned above provides that superintendence, direction and control of elections shall be vested in Election Commission. It, therefore, cannot be said that when the Commission issues direction, it does so not on its own behalf but as the delegate of some other authority. It may also be mentioned in this context that when the Central Government issued Conduct of Elections Rules, 1961 in exercise of its powers u/s 169 of the Representation of People Act, 1951, it did so as required by that section after consultation with the Commission.

37. The real issue before us in this writ petition is as to whether there is any scope open for the Election Commission of India to reserve the symbol for any recognized political party and if it is so, whether it tantamounts to discrimination with other political parties, for whom particular symbol has not been reserved. The reservation of symbol means a political party is getting opportunity to make converse with its symbol throughout the area, which facility is not available to the political parties, whose symbols have not been reserved.

38. The petitioner contended before us that National political parties, State political parties and other political parties have been treated differently. However, in this regard, we want to hold and say that this differentiation is made on the basis of the people's representation. That representative capacity is to be adjudged by the Election Commission. The Election Commission within it's wide power of superintendence, direction and control as well as conduct of all elections is empowered to know the category of a political party and its strength of representation to recognize the symbol. Moreover, a system was adopted by the political parties and the same continued for a considerable period. Therefore, para 9 and 10 of the Symbol Order cannot be said to be ultra vires, so far as categorization of reserve symbols and free symbols are concerned.

39. It would be apt to reproduce Section 29-A of the Act, which is as under:

29A. Registration with the Commission of associations and bodies as political parties.--(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made,-

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988, (1 of 1989) within sixty days next following such commencement;

(b) if the association or body is formed after, such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in the possession and any

other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay.

40. The opening line of Section 29-A of the Act, 1951 speaks that any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party. According to us, once a party is registered, it requires grant of symbol consequently, and if the symbol is allotted to it on the strength of the representative capacity, no discrimination can be said to be done by the authority, i.e., the Election Commission of India in declaring so. The intelligible differentia cannot be construed as discrimination. An individual, whether he will contest the election or not, will not be in a position to know his symbol before making any application to contest the election, therefore, no question of reservation of symbol or grant of symbol will arise. If a party chooses to get a particular symbol, it has to prove its strength on the basis of people's representation before the Election Commission itself. Such type of position is understandable only on the basis of strength of the political party alone. Such trend cannot be said to be of any superiority or inferiority, but a party supported by a number of people, which wants to contest election, is required to be considered by the Election Commission on the basis of evidential value.

41. It is relevant to mention here that an enacted law may be constitutional or unconstitutional. Traditionally, the Courts had provided very limited grounds on which an enacted law could be declared unconstitutional. They were legislative competence, violation of Part III of the Constitution and reasonableness of the law. The first two were definite in their scope and application while the cases falling in the third category remained in a state of uncertainty. With the passage of time, the law developed and the grounds for unconstitutionality also widened. D.D. Basu in the "Shorter Constitution of India" (Fourteenth Edition, 2009) has detailed, with reference to various judgments of the Court, the grounds on which the law could be invalidated or could not be invalidated. Reference to them can be made as follows:

Grounds of unconstitutionality.--A law may be unconstitutional on a number of

grounds:

(i) Contravention of any fundamental right, specified in Part III of the Constitution. (Ref. Under Art. 143, (Ref. In the matter of: Under Article 143 of the Constitution of India,)

(ii) Legislating on a subject which is not assigned to the relevant legislature by the distribution of powers made by the 7th Sch., read with the connected Articles. (Ref. Under Art. 143, In the matter of: Under Article 143 of the Constitution of India,)

(iii) Contravention of any of the mandatory provisions of the Constitution which impose limitations upon the powers of a Legislature, e.g., Art. 301. (Ref. Atiabari Tea Co., Ltd. Vs. The State of Assam and Others,)

(iv) In the case of a State law, it will be invalid in so far as it seeks to operate beyond the boundaries of the State. (The State of Bombay Vs. R.M.D. Chamarbaugwala,)

(v) That the Legislature concerned has abdicated its essential legislative function as assigned to it by the Constitution or has made an excessive delegation of that power to some other body. Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others,

42. On the other hand, a law cannot be invalidated on the following grounds:

(a) That in making the law (including an Ordinance), the law-making body did not apply its mind (even though it may be a valid ground for challenging an executive act), (Ref. K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, , or was prompted by some improper motive. (Ref. Rehman Shagoo and Others Vs. State of Jammu and Kashmir,)

(b) That the law contravenes some constitutional limitation which did not exist at the time of enactment of the law in question. (Ref. R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another,

(c) That the law contravened any of the Directive contained in Part IV of the Constitution. (Ref. Deep Chand Vs. The State of Uttar Pradesh and Others, .

43. A law which violates the fundamental right of a person is void. In such cases of violation, the Court has to examine as to what factors the Court should weigh while determining the constitutionality of a statute. First and the foremost, as already noticed, is the competence of the legislature to make the law. The wisdom or motive of the legislature in making it is not a relative consideration. The Court should examine the provisions of the statute in light of the provisions of the Constitution (e.g. Part III), regardless of how it is actually administered or is capable of being administered. In this regard, the Court may consider the following factors as noticed in D.D. Basu (supra).

(a) The possibility of abuse of a statute does not impart to it any element of invalidity.

(b) Conversely, a statute which violates the Constitution cannot be pronounced valid merely because it is being administered in a manner which might not conflict with the constitutional requirements.

In the case of Charan Lal Sahu Vs. Union of India, , Mukherjee, C.J. made an unguarded statement, viz., that "In judging the Constitutional validity of the Act, the subsequent events, namely, how the Act has worked out, have to be looked into."

It can be supported only on the test of "direct and inevitable effect" and, therefore, needs to be explained in some subsequent decision. (c) When the constitutionality of a law is challenged on the ground that it infringes a fundamental right, what the Court has to consider is the "direct and inevitable effect" of such law. (d) There is presumption in favour of constitutionality of statutes. The law Courts can declare the legislative enactment to be an invalid piece of legislation only in the even of gross violation of constitutional sanctions.

44. It is a settled canon of constitutional jurisprudence that the doctrine of classification is a subsidiary rule evolved by Courts to give practical content to the doctrine of equality. Over-emphasis of the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperfectly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. (Ref. LIC of India and Another Vs. Consumer Education and Research center and Others,]. It is not necessary that classification in order to be valid, must be fully carried out by the statute itself. The statute itself may indicate the persons or things to whom its provisions are intended to apply. Instead of making the classification itself, the State may lay down the principle or policy for selecting or classifying the persons or objects to whom its provisions are to apply and leave it to the discretion of the Government or administrative authority to select such persons or things, having regard to the principle or policy laid down by the Legislature.

45. Article 14 forbids class legislation but does not forbid reasonable classification which means:

- (i) It must be based on reasonable and intelligible differentia; and
- (ii) Such differentia must be on a rational basis.
- (iii) It must have nexus to the object of the Act.

46. The basis of judging whether the institutional reservation, fulfils the above-mentioned criteria, should be a) there is a presumption of constitutionality; b) the burden of proof is upon the writ petitioners, the person questioning the constitutionality of the provisions; c) there is a presumption as regard the States" power on the extent of its legislative competence; d) hardship of few

cannot be the basis of determining the validity of any statute.

47. The principles for adjudicating the constitutionality of a provision have been stated by the Apex Court in its various judgments. Referring to these judgments and more particularly to the cases of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, and *Budhan Choudhry and Others Vs. The State of Bihar*, , the author Jagdish Swarup in his book "Constitution of India (2nd Edition, 2006) stated the principles to be borne in mind by the Courts and detailed them as follows:

(a) that a law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself;

(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;

(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;

(d) that the legislature is free to recognize decrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;

(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation; and

(f) that while good faith and knowledge of the existing conditions on the part of a Legislature are to be presumed, if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which the classification may reasonably be regarded as based, the presumption of constitutionality cannot be carried to the extent of always holding that there must be some undisclosed and unknown reasons for subjecting certain individuals or corporations to hostile or discriminating legislation.

48. These principles have, often been reiterated by the Courts while dealing with the constitutionality of a provision or a statute. Even in the case of *Atam Prakash Vs. State of Haryana and Others*, , the Apex Court stated that whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered, a cardinal rule is to look to the Preamble of the Constitution as the guiding light and to the Directive Principles of State Policy as the Book of Interpretation.

49. The Constitution being *sui generis*, these are the factors of distant vision that help in the determination of the constitutional issues. Referring to the object of

such adjudicatory process, the Court said:

....we must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State. For example, when we consider the question whether a statute offends Article 14 of the Constitution we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution.

50. In order to examine the constitutionality or otherwise of a statute or any of its provisions, one of the most relevant considerations is the object and reasons as well as the legislative history of the statute. It would help the Court in arriving at a more objective and justful approach. It would be necessary for Court to examine the reasons of enactment of a particular provision so as to find out its ultimate impact vis-?-vis the constitutional provisions.

51. From perusal of the records, we are of the view that the aforesaid ingredients or proposition of law is available with the petitioner and as such, the contention of the petitioner that para 9 and 10 of the Symbol Order is violative of Article 14 of the Constitution of India, is misconceived and is hereby rejected.

52. So far the decisions of the Hon"ble Supreme Court, which have been placed reliance by the petitioner"s counsel and referred hereinabove, is concerned, we are of the view that the same does not help to the petitioner, as in all the decisions placed reliance by the petitioner, law has not been declared as ultra vires and also on the following reasons:

I. In the case of Desiya Murpokku Dravida Kazhagam (DMDK) and another (supra), the petitioners have challenged the constitutional validity of the Election Symbols (Reservation and Allotment) Order, 1968 substituting Para 6 with Paras 6-A (I) and (ii) and Para 6-B therein;

II. In Subramanian Swamy (supra), the petitioner prayed for striking down paragraph 10 of the Symbol Orders.

III. In Kanhaiya Lal Omar (supra); the petitioner has challenged the constitutional validity of the Election Symbols (Reservation and Allotment) Order, 1968.

IV. In Noida Enterprises Association (supra), the matter pertains to allotment of lands;

V. In Zameer Ahmad Latifur Rehman Sheikh (supra), the petitioners have challenged the constitutional validity of the part of Section 2(10)(e) of the Maharashtra Control of Organized Crime Act, 1999, which refers to insurgency.

VI. Para 15 of the Election Symbols (Reservation and Allotment) Order, 1968 has been challenged in the case of Sadiq Ali (supra).

VII. In J. Jay Lalita and others (supra), removal of Special Public Prosecutor has

been challenged.

53. We, therefore, find no substance in the contention that paragraph 9 and 10 of the Symbols Order is ultra vires the Constitution and the Representation of People Act, 1951 and the Conduct of Election Rules, 1961.

54. For the reasons aforesaid, we dismiss the writ petition.

There is no order as to costs.

At this stage, Counsel for the petitioner submits that the petitioner has already applied for allotting symbol by giving other three preferences in case symbol "broom" has not been allotted to the petitioner. He submits that since the time for allotting the symbol has been expired and if no direction be issued to the Commission to allot symbol to the petitioner, he will suffer irreparable loss and the candidate of the petitioner party cannot contest the ensuing Lok Sabha Election as well as Legislative Assembly Election, 2014.

Considering the peculiar facts and circumstances of the case, particularly the fact that the petitioner has preferred an application for allotment of symbol before the Commission within the stipulated period, we provide that the Commission will consider and allot the symbol to the petitioner party and while allotting symbol, the Commission will first take into consideration three preferences given in its application except symbol "broom". In case those symbols, which have been given preference by the petitioner in its application, has been allotted to other party, then, the Commission will allot any other symbol to the petitioner-Natik Party for contesting the ensuing Lok Sabha Election and State Legislative Assembly, 2014, as provided under law.

It is clarified that the aforesaid liberty is granted to the petitioner's party under the present facts and circumstances.