

(2021) 03 KL CK 0408
In the High Court Of Kerala
Case No : Writ Petition (C) No. 8713 Of 2021

Niyaz Bharati

APPELLANT

Vs

Election Commission Of India And Ors

RESPONDENT

Date of Decision : 31-03-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 324

Citation : (2021) 03 KL CK 0408

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : R. Sanjith, C.S. Sindhu Krishnah, Deepu Lal Mohan

Final Decision : Dismissed

Judgement

1. The petitioner is the former State Vice President and Executive Member of Kerala Pradesh Youth Congress Committee. The petitioner filed nomination in Haripad Legislative Assembly Constituency as an independent candidate, for contesting in the Legislative Assembly Elections scheduled to be held on 06.04.2021.

2. By Ext.P1 proceedings dated 22.03.2021, the 3rd respondent allotted the symbol "KEY" to the petitioner. In Ext.P2 Form-7A list of contesting candidates also, the symbol allotted to the petitioner was shown as "KEY". However, on 23.03.2021, the petitioner was issued a notice stating that the symbol "KEY" allotted to the petitioner is one allotted to 'Prajasattak Bharat Paksha' Political Party. Therefore, the petitioner was re-allotted with the symbol "GAS CYLINDER".

3. The petitioner would submit that changing of symbol in the midst of his election campaign is highly illegal, arbitrary and violative of Articles 14 and 324 of the Constitution of India. The petitioner was not heard before re-allocation of symbol. The 'Prajasattak Bharat Paksha' Party mentioned in Ext.P3 is not a State Party falling within the ambit of paragraph 9 of the Election Symbols (Reservations and Allotment) Order, 1968. The said Party is not contesting

elections in Kerala. Therefore, there is nothing wrong in allocating the symbol "KEY" to the petitioner.

4. The petitioner further stated that he is in the midst of the campaign and has already extended ₹ 5 lakhs for preparing campaign posters, hoardings, cloth banners, etc. with the symbol originally allotted to him. The subsequent re-allocation of symbol would not only cause monetary loss to him but would also adversely affect his electoral prospects.

5. I have heard the learned counsel for the petitioner, learned Standing Counsel for the respondents.

6. The Hon'ble Apex Court has repeatedly held that the High Courts, in exercise of their jurisdiction under Article 226 of the Constitution of India, should not pass orders which will have the effect of obstructing free flow of the election process. The High Court can intervene in such matters only to undo obstacles, if any, in the free flow of electoral process.

7. In the case of the petitioner, re-allocation of symbol has already been made. Postal Ballot Papers are already printed and postal voting process is also in the midway. In the Postal Ballots, the petitioner might have been allocated the symbol "GAS CYLINDER". If any order in favour of the petitioner is passed by this Court now, the petitioner's symbol will be "KEY" in the electronic voting machines. This would indeed create unnecessary and undesirable confusion in the electoral process.

In the circumstances of the case, this Court do not deem it fit to interfere in the electoral process, which is already commenced. The writ petition is therefore dismissed.