

(1973) 11 SC CK 0016
In the Supreme Court Of India
Case No : Civil Appeal No. 630 of 1973

Ramashankar Kaushik and Another	APPELLANT
Vs	
Election Commission of India and Another	RESPONDENT

Date of Decision : 14-11-1973

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 10, 10(4), 5

Citation : AIR 1974 SC 445 : (1974) 1 SCC 271 : (1974) 2 SCR 265

Hon'ble Judges : S. N. Dwivedi, J; P. Jaganmohan Reddy, J

Bench : Division Bench

Advocate : D.V. Pate, J.P. Goyal, Pranab Chatterjee and R.A. Gupta, for the Appellant; B. Sen, S.C. Malik and S.P. Nair, Respondent No. 1 S. K. Mehta, Santokh Singh, K.R. Nagaraja, M. Qamaruddin and Vinod Dhavan, for the Respondent

Final Decision : Dismissed

Judgement

Dwivedi, J.—Before independence the Congress Socialist Party functioned as a group inside the Indian National Congress. After Independence it had to quit the Congress, and became known as the Socialist Party. On the eve of the general election in 1952 another group of persons came out of the Congress. They formed a new party called the Krishak Mazdoor Praja Party. The Socialist Party and the Krishak Mazdoor Praja Party participated in the first general election. 'Tree' was the symbol of the Socialist Party; 'Hut' of the Krishak Mazdoor Praja Party. Some time in 1953 the two parties merged together and formed a new party called the Praja Socialist Party (hereinafter called the P.S.P.). It was allotted the symbol of 'Hut'. This unity was not long lived. In 1956 a group of persons came out of the P.S.P. They reformed the Socialist Party. The Socialist Party was allotted the symbol 'Tree'. The P.S.P. retained its symbol 'Hut'. The two parties participated in the second general election in 1957 with their respective symbols. In 1964 the P.S.P. and the Socialist Party merged to form a new party called the Samyukta Socialist Party (hereinafter referred to as the S.S.P.). This party was allotted the symbol 'Hut'. This unity also was short lived. In 1965 there was a

split. One group came to be known as P.S.P., and the other as S.S.P. The P.S.P. got back its old symbol 'Hut', the S.S.P. got the symbol 'Tree'. They participated in the general election of 1967 and bye-elections in 1969 with their respective symbol. The urge for unity was again strongly felt after the general election to the Lok Sabha in 1971 in which both parties made a very poor showing. It appears that on May 25, 1971, a joint meeting of the Chairman and General Secretaries of the P.S.P. and the S.S.P. was held to draft an agreement for merger of the two parties for consideration by the two parties. They succeeded in hammering out a draft agreement. The draft agreement was entitled the "basis for the unification of the S.S.P. and the P.S.P." It is a long document. It laid emphasis on a broad based unity of all democratic socialists who have genuine commitment to democratic socialism. It expressed the hope that "the unification of the S.S.P. and the P.S.P. can be a precursor to such a broad based socialist consolidation." According to it, the "primary task of the unified Socialist Party will be to build an effective organisational instrument which will lead people's struggle for economic equality, social mobility and meaningful participation of the people in building a socialist economy." The document uses the expression "United Party" in various clauses. For instance, it says : "The United Party will pursue an integrated price policy whose important elements will be : (1) Parity between the prices of the agricultural produce and industrial goods; (2) the price of essential commodities not to exceed 1 1/2 times the cost of production including the transport charges; (3) assurance of a remunerative price for the agricultural produce and elimination of occasional fluctuations in price; and (4) Socialisation of the wholesale trade in food grain and other essential commodities and their effective distribution through cooperative agencies." As regards organisational unification of the SSP and the PSP, the agreement provided for the formation of a National Ad-hoc Committee comprising of the National Executive Committees of the S.S.P. and the P.S.P. The National Ad-hoc Committee of the United Party would appoint office bearers of the new party and also set up ad-hoc committees at State level. It was decided that "the name of the United Party will be Socialist Party". The National Ad-hoc Committee would prepare the membership pledge for the "New Party" and would fix up the membership year and the date and venue of the first National Conference of the United Party. The document is signed by Sarvsri N.G. Goray, Karpoori Thakur, Prem Bhasin and George Fernandes. The draft agreement was approved by a Special National Conference of the S.S.P. held at Barhiya in Bihar on June 19, 1971. The Conference approved the proposal "relating to S.S.P. and P.S.P. unification" An identical resolution was passed by the Special National Conference of the P.S.P. held at Bulandshahr in U.P. on August 7, and 8, 1971. It appears that after the passing of these two resolutions, the S.S.P. and the P.S.P. formed a new party called the Socialist Party. A National Ad-hoc Committee of the Socialist Party was constituted. The National Ad-hoc Committee held its first meeting in the Constitution Club, New Delhi on August 9 and 10, 1971. 51 members of the Committee were present in the meeting. Seven special invitees also attended the meeting. The Committee took several decisions. Sri Karpoori Thakur and Sri

Madhu Dandavate were elected unanimously as Chairman and General Secretary of the party. The Committee ratified the agreement arrived at amongst the General Secretary of the "erstwhile S.S.P.", the General Secretary of the "erstwhile P.S.P." and the Chairman of the "old I.S.P." regarding the representation of the old I.S.P., Socialist Party (U.P.), Socialist Party (Bihar) and the Socialist Party (West Bengal) in the National Ad-hoc Committee of the Socialist Party. The Chairman and the General Secretary were authorised to take a decision in the matter of giving representation in the Committee to the I.S.P. (Bihar) and other groups which decided to merge in the Party. The Committee also took a decision as regards the Party flag. It decided that the flag of the party will be :

Red Band above, white band in the middle, Red band below. Insignia of wheel and plough to be painted in red in the middle of the white band.

No final decision could be taken on the election symbol, and the issue was postponed for consideration in the next meeting. Certain decisions were taken in regard to the formation of State Ad-hoc Committees and District Committees of the Socialist Party. Decision was also taken in regard to membership of the Socialist Party. The form of membership was also adopted. Sri Madhu Dandavate, General Secretary of the Socialist Party, despatched copies of the resolutions of the National Ad-hoc Committee of the Socialist Party to the State and District units on August 14, 1971. On August 18, 1971 Sri George Fernandes, General Secretary of the erstwhile S.S.P. sent a letter to the Election Commissioner. An identical letter proceeded simultaneously to the Election Commissioner from Sri Prem Bhasin, General Secretary of the erstwhile P.S.P. Both these letters state that the S.S.P. and the P.S.P. have "now merged...to form the new Socialist Party." Sri George Fernandes requested the Election Commissioner to allot the symbol 'Tree' to the Socialist Party. Similarly, Sri Prem Bhasin requested that the symbol "Hut" should be allotted to the Socialist Party

2. On August 23, 1971 Sri Surendra Mohan, Joint Secretary of the Socialist Party, sent a letter to the Chief Election Commissioner along with the two aforesaid letters as enclosures. His letter states that "both these parties have now merged alongwith some others to create the Socialist Party." The letter concluded by saying that until a request for reservation of symbol was made by the Socialist Party, the symbol 'Hut' and 'Tree' should not be allotted to any other party. It appears that the National Ad-hoc Committee of the Socialist Party met in Lonavla on October 22, 23 and 24, 1971 and took a decision as regards its election symbol. It opted for the symbol 'Tree'. Accordingly, on November 5, 1971 Sri Surendra Mohan sent another letter to the Chief Election Commissioner for reservation of the symbol 'Tree' to the Socialist Party. Paragraph 1 of the letter states that the 'Tree' symbol which was reserved for the S.S.P. should be reserved for the Socialist party paragraph 2 states that the 'Hut' which was reserved for the PSP should be frozen. It should not be allotted to any other party nor included in the list of symbols. After considering various documents

and hearing some of the leaders of the erstwhile S.S.P. and P.S.P. as also a few persons who were opposed to the merger of various parties and formation of the Socialist Party, the Chief Election Commissioner passed an order on November 15, 1971. He came to the conclusion that the Socialist Party was entitled to be recognised as a National Party. He has also recorded this finding : "In the circumstances, the Commission will not be unjustified in coming to the conclusion that the P.S.P. or the S.S.P. does no longer subsist as a separate political party after the formation of the Socialist Party by the amalgamation of these two parties and some other groups." As regards the dissidents who opposed Sri Surendra Mohan's request, he said "In any case the existence of a few dissident members in the P.S.P. or the S.S.P. cannot be regarded as a ground for the continued existence of the P.S.P. and S.S.P. as separate National Political Parties." On these findings he decided that "the newly formed Socialist Party formed by the merger of S.S.P., a National Party, P.S.P., another National Party, and other political parties, such as the Indian Socialist Party, is a National Party for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter to be referred as the Order), and that symbol 'Tree' shall be reserved exclusively for that party and be allotted to it. This narrative brings to close the first chapter of the story. We shall now pass on to the second chapter of the story.

3. Somewhere in the middle of April, 1972 Sri Ramashankar Kaushik declared in a Press Conference that Sri Maniram Bagri was elected as the General Secretary of the Socialist Party in place of Sri Madhu Dandavate. This declaration was questioned by others in the Socialist Party and proved to be a harbinger of fissure in the Socialist Party. On May 13, and 14, 1972, certain persons calling themselves as delegates of the Poona Conference of the S.S.P. and certain members of the P.S.P. and I.S.P. assembled at Allahabad, The meeting was convened by Sri Maniram Bagri. The meeting decided to annul "the ad-hoc merger of the S.S.P. and P.S.P." On May 21, 1972, Sri Maniram Bagri sent a letter to the Election Commission. Therein he stated that the "unity between the S.S.P. and P.S.P. was void. The Allahabad assembly has decided to dissolve this unity and has given rebirth to the Socialist Party. He requested that the 'Tree' symbol should be allotted to the reborn Socialist Party.

4. On December 15 and 16, 1972 a Socialist Workers' Conference was held at Patna. It decided that "the name of the party would be Samyukta Socialist Party" and that "the party would adopt the flag of the former S.S.P. It also decided that the Steering Committee was "authorised to adopt a Constitution." On December 30, 1972 another Conference was held at Lucknow. This Conference passed a resolution The resolution relevantly reads : "The special national conference of Socialist Party endorses the decision of annulling the ad hoc merger of S.S.P and P.S.P that has passed by the Allahabad Conference.... Lest some people might be under the illusion, this conference unequivocally declares that the merger of S.S.P. and P.S.P. herewith stands annulled and the Party that is working in the name of the so-called socialist party under the General Secretaryship of

Dandavate is not the same as the merged party between S.S.P. and P.S.P." It also endorsed the Patna decision that the party should be called the "Samyukta Socialist Party". This ends the second chapter of the story.

5. The third chapter of the story begins from January 27, 1973. On that date the Chief Election Commissioner received a letter from Sri Ramashanker Kaushik. He has described himself in the letter as a Co-convenor of S.S.P. The subject matter of the letter is : "allotment of 'Tree' symbol to S.S.P." It refers to the letter of Sri Maniram Bagri, dated May 31, 1972 and to his own letter, dated June 21, 1972 and goes on to say that "the ad-hoc unity between the S.S.P. and the P.S.P. has broken down." it states that 13 members from amongst the 25 members of the National Committee of the former S.S.P. were with their party. Almost all the legislators of the State Legislatures and Lok Sabha who were elected on S.S.P. ticket were with them. Those legislators who were elected to the State Legislatures in 1972 after the ad-hoc unity were also with them. The letter ends with the request that the symbol 'Tree' should be allotted to the S.S.P. The Socialist Party opposed this request and the Chief Election Commissioner forwarded its caveat to Sri Ramashanker Kaushik. By his letter dated March 13, 1973 he sent his reply to the caveat. On March 14, 1973 the Chief Election Commissioner passed the order impugned in this appeal. Pursuant to the order, he published a notification on March 29, 1973 under paragraph 17 of the Order. This notification mentions the Socialist Party as a National Party with its symbol 'Tree'.

6. The Chief Election Commissioner posed two issues for decision : (1) whether Sri Ramashanker Kaushik's party could be recognised as the S.S.P.; and (2) whether the symbol 'Tree' could be reserved for it.

7. On the first question he recorded these findings : (1) the merger of the S.S.P. and P.S.P. was complete and irrevocable and there emerged from this merger a new party called the Socialist Party; (2) it is no body's case that the Socialist Party has ceased to exist; (3) the Constitution of the new Party (called the S.S.P.) is different from the Constitution of the merged S.S.P. Some of the office bearers of the former party are new and were not the office bearers of the merged S.S.P.; and (4) many leaders of the merged S.S.P. are still members of the Socialist Party. On these findings he held that the party (now calling itself the S.S.P.) cannot be the old S.S.P. and is a new party.

8. On the second issue he recorded these findings : (1) the decision of the Chief Election Commissioner regarding merger of the S.S.P. and P.S.P. and the formation of the Socialist Party has been acted upon by the former members of the merged S.S.P. and P.S.P., (2) the Socialist Party has contested the elections to the Legislative Assemblies of various States held in 1972 on the basis of the 'Tree' symbol; (3) the Socialist Party was formed by the merger of the S.S.P. and P.S.P. and four other parties. The former members of the merged P.S.P. and other parties are still members of the Socialist Party. Only some of the former members of the merged S.S.P. have formed a party which they call as S.S.P.;

and (4) the Socialist Party is now identified with the 'Tree' symbol. On these findings he came to the conclusion that the party now calling itself S.S.P. cannot claim the 'Tree' symbol for itself.

9. It was argued before him on behalf of Sri Ramashanker Kaushik that the decision regarding the allotment of the symbol should depend upon whether the majority of the former members of the merged S.S.P. and the representatives elected on the merged S.S.P. and the Socialist Party tickets belong to the Socialist Party or to the party now called the S.S.P. He took the view that this question was not relevant on the facts and circumstances of the case. Accordingly, he has not made an inquiry into this question. As a result of his "findings on the two issues he rejected the applications of Sarvsri Ramashanker Kaushik and Maniram Bagri. He left open to the party now calling itself the S.S.P. to apply for registration as a new party under paragraph 3 of the Order.

10. Sri Patel, counsel for the appellants, has made three submissions before us : (1) the case is covered by paragraph 15 of the Order; (2) in the alternative the case falls within the scope of Rules 5 and 10 of the Conduct of Election Rules, 1961 and paragraph 18 of the Order; and (3) as the Chief Election Commissioner did not hold any inquiry regarding the allegiance of the majority of members and elected representatives, the order is void. In support of his arguments he has heavily relied on Samyukta Socialist Party Vs. Election Commission of India and Another, and Shri Sadiq Ali and Another Vs. The Election Commission of India, New Delhi and Others,

11. It should facilitate the appreciation of arguments if we notice the relevant provisions of the law at this stage. Clause (1) of Article 324 of the Constitution provides, inter alia that the superintendence, direction and conduct of all elections to Parliament and to the Legislature of every State shall be vested in a Commission called the Election Commission. Clause (2) thereof provides that the Election Commission shall consist of a Chief Election Commissioner and such number of Election Commissioners as the President may from time to time fix. Section 2(g) of the Representation of the People Act, 1951 (hereinafter called the Act) defines the word "prescribed" as meaning "prescribed by Rules made under this Act." Section 59 of the Act provides that at every election where a poll is taken votes shall be given by ballot "in such manner as may be prescribed". Section 169 deals with the rule making power of the Central Government. Sub-section (1) thereof empowers the Central Government to make rules "for carrying out the purposes of this Act." Sub-section (2)(c) thereof provides that rules may be made with respect to "the manner in which the votes are to be given both generally and in case of illiterate voters." The Central Government has enacted the Conduct of Election Rules, 1961 (hereinafter called the Rules). Rules 5(1) reads :

The Election Commission shall, by notification in the Gazette of India and the Official Gazette of each State, specify the symbols that may be chosen by candidates in parliamentary or assembly constituencies and the restrictions to

which their choice shall be subject.

Rule 10(4), (5) and (6) read as follows :

(4) At an election in a parliamentary or assembly constituency, where a poll becomes necessary, the returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commission,-

(a) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice; and

(b) if more contesting candidates than one have indicated their preference for the same symbol, decide by lot to which of such candidates the symbol will be allotted

(5) The allotment by the returning officer of any symbol shall be final except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.

(6) Every candidate or his election agent shall forthwith be informed of the symbol allotted to the candidate and be supplied with a specimen thereof by the returning officer.

12. We now pass on to the relevant provisions of the Order. Professedly, the Order has been made by the Election Commission in exercise of its power under Article 324 read with Rules 5 and 10. It was made on August 31, 1968. Paragraph 3 of the Order deals with registration of political parties by the Election Commission. Any association of citizens, desiring to be registered as a political party and intending to avail itself of the provisions of the Order, may make an application to the Election Commission for its registration as a political party for the purpose of the Order. The paragraph prescribes certain formalities for registration. After hearing the applicants, the Election Commissioner shall decide whether to register or not to register the association as a political party for the purposes of the Order. His decision shall be final. Paragraph 4 provides that in every contested election a symbol shall be allotted to a contesting candidate in accordance with the provisions of the Order and different symbols shall be allotted to different contesting candidates at an election in the same constituency. According to paragraph 5, there are two kinds of symbols : (1) reserved; and (2) free. A reserved symbol is one which is reserved for a recognised political party for exclusive allotment to contesting candidates set up by that party. All other symbols are free symbols. Under paragraph 6 it is open to the Election Commission to specify which political party shall be regarded as a recognised political party or as a non-recognised political party. In certain contingencies a political party shall be treated as a recognised political party in a State. According to paragraph 7, if a political party is treated as a recognised

political party under paragraph 6, in four or more States, it shall be known as and shall enjoy the status of a 'National Party' throughout the whole of India. If a political party is treated as a recognised political party under paragraph 6 in less than four States, it shall be known and shall enjoy the status of a "State Party" in the State or States in which it is a recognised political party. There is also a provision to the effect that every political party which immediately before the commencement of the Order was a multi-State party shall, on such commencement of the Order, be a National Party. A similar provision is made in regard to a political party recognised as a State party. Paragraph 8(1) provides that 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 in that State and no other symbol." There is a similar provision in regard to a State Party. Sub-paragraph 3 of paragraph 8 provides that a reserved symbol shall not be chosen or allotted to any candidate in any constituency other than a candidate set up by a National Party for whom such symbol has been reserved or a candidate set up 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 set up by such National or State Party in that constituency. According to paragraph 9, a symbol reserved for a State Party may be included in the list of free symbols in any State in which that party is not a State Party. The symbol will be not allotted to a candidate set up by any other political party for that State. It may, however, be allotted to any independent candidate in certain circumstances. According to paragraph 10, a candidate set up by a State Party in which it is not recognised as a State Party may exclusively be allotted the symbol reserved for the State Party in certain conditions. According to paragraph 11, if a symbol has been exclusively allotted to a candidate set up by a political party at the election in the parliamentary constituency that symbol shall not be allotted to any candidate at any election in any of the said assembly constituencies which is being held simultaneously with the parliamentary election. According to paragraph 12, free symbols may be chosen by a candidate, other than a candidate set up by a National Party or a candidate set up by a State Party. Paragraph 15 is important in this appeal. It reads :

Where the Commission is satisfied on information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party, the Commission may, after taking into account all the available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard, decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival sections or groups;

Paragraph 16 is also relevant for our purposes. It reads :

(1) When two or more political parties, one or some or all of whom is a recognised political party or are recognised political parties, join together to form

a new political party the Commission may after taking into account all the facts and circumstances of the case, hearing such representatives of the newly formed party and other persons as desire to be heard and having regard to the provisions of this Order, decide-

(a) whether such newly formed party should be a National Party or a State Party; and

(b) the symbol to be allotted to it.

(2) The decision of the Commission under sub-paragraph (1) shall be binding on the newly formed political party and all the component units thereof.

13. Paragraph 17 authorises the Commission to issue a notification in the Gazette of India specifying (a) the National Parties and the symbols respectively reserved for them, (b) the State parties and the symbols reserved for them, (c) the unrecognised political parties; and (d) the free symbols for each State.

14. Sri Patel has also relied on paragraph 18(b). It reads :

The Commission may issue instructions and directions :

(b) for the removal of any difficulty which may arise in relation to the implementation of any such provision.

15. It is first necessary to consider the impact of paragraph 16 on this case. A new political party is formed by the joining together of at least one recognised political party and another political party. The newly formed political party may apply for recognition to the Election Commission under paragraph 16. After due hearing, the Election Commission may recognise the newly formed political party either as a National Party or as a State Party and may allot a symbol to it. The decision of the Commission is binding on the newly formed political party and "all the component units thereof." The two significant expressions in paragraph 16 are "joining together" and "all the component units thereof." According to the Webster's New World Dictionary, 1962 Edn. page 789 the word "join" has these meanings : "(1) to place together, bring together, connect, pass on, combine; (2) to make into one, unite; (3) to become a part or a member of; enter into association with; (4) to go to and combine with; (5) to enter into the company of; a company; (6) to go and take one's proper place in." The word has evidently got several meanings. When it is used in the sense of "combine", it may imply mingling together of things, often with a loss of distinction of elements that completely merge with one another. When it is used in the sense of "unite", it implies joining or combining of things to form a single whole. When it is used in the sense of "associate", it implies joining with another or others as companion, partner etc. According to the same dictionary, the word "component" is derived from "Com" plus "Ponere". Componere means serving as one of the parts of whole, constituent. So the word component means : "part, constituent, ingredient."

16. The expression "joining together" in paragraph 16(1) is apparently used in its broad meaning. There is nothing in the context to restrict its meaning to a case of merger of two or more political parties and their resultant extinction on formation of a new political party. It will also embrace a case of two or more political parties agreeing to form a new political party while retaining their separate identity. Our construction gets support from the expression "all the component units thereof." We think this expression is included in paragraph 16(2) with the object of comprehending a case where two or more political parties have federated into a new political party while retaining their separate identity instead of merging themselves into the new political party. It seems to us that this expression also includes in paragraph 16(1) a third type of case where two or more political parties, after deciding to destroy their separate identity, have brought into existence a new political party even though the process of extinction is not formally completed or is invalid and ineffective. In such a case, they retain their separate identity and will be deemed to be component units of the new party. In the second and third types, when the Commission has given recognition to the newly formed political party as a National Party or a State Party and has allotted a symbol to it, his order will be binding on them as they should be regarded as the "component units" of the new party.

17. Returning to the arguments of Sri Patel, we are of opinion that paragraph 15 of the Order is not attracted to the facts of the present case. The appellants did not claim before the Chief Election Commissioner that their group represented the Socialist Party recognised under paragraph 16 of the Order. The case set up by Sri Maniram Bagri was that the Socialist Party has been dissolved and that the Socialist Party is reborn. Sri Kaushik also pressed the claim of the S.S.P. against the Socialist Party. Admittedly there are important differences between the S.S.P. and the Socialist Party. Their flags are different; so are their Constitutions. Their membership is also different. The S.S.P. does not claim that it is the Socialist Party. On the facts of the present case, the appellants cannot derive any assistance from the decision in Sadiq Ali (*supra*). In that case two rival groups claimed to be the Indian National Congress.

18. The next argument of Sri Patel also cannot prevail. Paragraph 18(b) of the Order provides that the Commission may issue instructions and directions for the removal of any difficulty which may arise in relation to the implementation of the provisions of the Order. Obviously, no difficulty can arise in regard to the implementation of paragraph 16 of the Order in the present case. For the sake of argument, it may be assumed that the merger of the Samyukta Socialist Party in the Socialist Party was not a valid and accomplished fact on the date when the symbol "Tree" was allotted to the Socialist Party under paragraph 16 and that the Samyukta Socialist Party has been enjoying a ceaseless existence. Even so, the Samyukta Socialist Party is bound by the decision of the Chief Election Commissioner under paragraph 16(2) because the Samyukta Socialist Party would be regarded as a component unit of the Socialist Party. It cannot now go

back from his decision and claim the symbol "Tree". It should be observed that it has not been proved that the Socialist Party has ceased to exist.

19. On the view that we are taking, it is not necessary to decide whether the S.S.P. had merged in the Socialist Party and destroyed its separate identity. But we should observe that if it were necessary for us to decide that matter, we should have required evidence on certain aspects. Two vital elements of an association are members and a common purpose for which they associate. If an association is constituted under a statute; it can be dissolved only in accordance with that statute; if it is organised on the basis of a contract, then it can be dissolved only in accordance with the terms of the contract, commonly called the Constitution. If the Constitution provides for dissolution by the consent of all the members, the rule of decision by majority is excluded. There seems to be no evidence on these material aspects.

20. The last argument also does not prevail. Rule 10(4) of the Rules will apply only when the Returning Officer is considering the choice of a symbol expressed by a contesting candidate in his nomination paper. We are not concerned with such a case at present. Rule 5 will also not apply now. The provisions of paragraph 16 of the Order will prevail over rules 5 and 10 because rules 5 and 10 expressly are subject to any general or special directions or restrictions issued by the Election Commission. Sri Patel has relied on Samyukta Socialist Party (*supra*). That decision was given under Rule 5 at a time when the Commission had not enacted the Order. As the present case is now directly governed by the provisions of the Order, the appellants cannot derive any help from that decision.

21. For the reasons already discussed, we find no force in this appeal, and it is dismissed with costs.