
(2017) 09 MAD CK 0038
In the Madras High Court
Case No : 15818 of 2017

Ramkumar Adityan

APPELLANT

Vs

The Chief Election Commissioner, O/o. Election Commission
of India, & Ors.

RESPONDENT

Date of Decision : 15-09-2017

Acts Referred:

Citation : (2017) 09 MAD CK 0038

Hon'ble Judges : K.K.Sasidharan, G.R.Swaminathan

Bench : DIVISION BENCH

Advocate : K.K.Sasidharan, G.R.Swaminathan

Judgement

1. The split in political parties and emergence of rival groups and the consequent litigations contribute considerably for the Himalayan arrears in Courts. The division in All India Anna Dravida Munnetra Kazhagam (AIADMK) and the claim made by the rival groups for recognizing them as the official faction and allotment of reserved symbol made the petitioner who is an active member of AIADMK to file this Writ Petition for a direction to the Election Commission of India to decide the dispute in accordance with the "test of majority" approved by the Hon'ble Supreme Court in *Sadiq Ali vs. Election Commission of India* [1972(4) SCC 664], under the supervision of a former Judge of the High Court.

2. The AIADMK is a recognized political party in the State of Tamil Nadu and Pondicherry with the symbol "two leaves".

3. The General Secretary of AIADMK expired on 05 December, 2016. Thereafter, the respondent No.6 was nominated/appointed as the General Secretary of AIADMK, in its meeting held on 29 December, 2016, till a General Secretary is duly elected as per Rule 20(2) of the Bylaws of AIADMK.

4. The respondent No.3 and others filed a petition before the Election Commission of India on 16 March, 2017, invoking paragraph 15 of the Symbols Order, challenging the nomination of the sixth respondent on various grounds.

5. The respondent No.3 and others sought a direction for allotment of reserved symbol of AIADMK to their group. The petition was opposed by the sixth respondent.

6. While so, the Election Commission of India notified the by-election from Dr.Radha Krishnan Nagar Assembly Constituency in Tamil Nadu.

7. Before the Election Commission, both the groups submitted pleadings and documents to substantiate their respective contentions. However, on account of paucity of time, the Election Commission decided to take up the proceedings for final disposal after the By-election and passed an interim order dated 22 March, 2017 restraining both the Groups from using the name of the party AIADMK and its reserved symbol "two leaves".

8. The Election Commission by order dated 22 March, 2017, directed the parties to produce documents and affidavits, on which, they propose to rely on their respective claims, latest by 17 April, 2017. The Election Commission made it clear that it was the final opportunity and the Commission would hear the matter finally on a date to be intimated later.

9. The Election Commission cancelled the By-election from Dr.Radha Krishnan Nagar Assembly Constituency by order dated 09 April, 2017.

10. The respondent No.6, vide letter dated 13 April, 2017, sought eight weeks further time to file documents and affidavits. Similarly, the respondent Nos.3,4 and 5, by letter dated 17 April, 2017, have sought four weeks time to file supporting affidavits.

11. The time granted by the Election Commission for filing affidavits and documents expired on 16 June, 2017. Even then, the dispute was not taken up for final disposal by the Election Commission. The petitioner, therefore, filed this Writ Petition.

12. The learned counsel for the petitioner, during the course of his submissions, made it clear that the petitioner is not pressing the relief of appointment of a former High Court Judge to oversee the process of counting the majority and it would suffice, in case direction is given for an early disposal of the proceedings.

13. Subsequently, Thiru.K.C.Palaniswamy, former member of Parliament was impleaded as a party to this Writ Petition, pursuant to his application in W.M.P.No.13558 of 2017.

14. We have heard the learned counsel for the petitioner, learned Senior Counsel appearing on behalf of the respondents 3 to 5, learned counsel for the respondents 6 and 7 and the learned counsel for the eighth respondent. We have also heard the learned Standing Counsel for Election Commission of India.

15. The learned Standing Counsel, on instructions, submitted that the Election Commission is willing to take up the matter for final hearing and for an early disposal. According to the learned Standing Counsel, the parties have taken time

for filing documents and that is the reason for the delay.

16. Paragraph 15 of the Symbols Order gives power to the Election Commission to decide as to whether which section or group is the recognized party entitled for the reserved party symbol.

17. The Hon"ble Supreme Court in Sadiq Ali vs. Election Commission of India [1972(4) SCC 664], while considering the order passed by the Election Commission in the matter of recognition of the group lead by Sri Jag Jivan Ram as the official congress party, held that the Election Commission is empowered to decide the dispute relating to the split in a recognized political party under para 15 of the Symbols Order.

18. The Election Commission, by applying the test of majority as approved by the Hon"ble Supreme Court in Sadiq Ali vs. Election Commission of India [1972(4) SCC 664], decided the split in Telugu Desam Party, Rashtriya Janata Dal, All India Rashtriya Janata Party, Janata Dal, Nationalist Congress Party and finally, the split in Samajwadi Party by orders dated 12.03.1996,

19. 12.1997, 07.08.1999, 17.01.2000, 08.03.2004 and 16.01.2017 respectively.

19. The Election Commission has already taken a decision that there are two rival groups in the AIADMK party lead by Sri.E.Madhusudhanan and Smt.V.K.Sasikala and each group claims to be the party and, therefore, the matter needs determination in terms of Paragraph 15 of the Symbols Order. The observation is found in paragraph 9 of the order dated 22 March, 2017.

20. The Election Commission, by its order dated 20 April, 2017, extended time for production of affidavits and documents finally by 16 June, 2017. According to the learned Standing Counsel for Election Commission, even three months after the expiry of the deadline, the parties have not submitted their documents and they have been taking time.

21. The Election Commission is not expected to keep proceedings of this nature indefinitely. This is more so in the subject case on account of the direction given by the Principal Bench of this Court directing the Government to hold elections to the Local Bodies by 17 November, 2017. Any delay in the matter would seriously hamper the functioning of the political parties in their political activities.

22. The Supreme Court in Sadiq Ali vs. Election Commission of India [1972(4) SCC 664] case indicated the need for early disposal of proceedings under Para 15, in the following words:

"The Commission in deciding that matter under paragraph 15 has to act with a certain measure of promptitude and it has to see that the inquiry does not get bogged down in a quagmire"

23. The Election Commission realizing the urgency of the matter in view of the fast approaching general election in the State of Uttar Pradesh, decided the dispute involving the Samajwadi Party by order dated 16 January, 2017. It is

worth-mentioning here that dispute was raised only on 02 January, 2017 and it was disposed of by the Election Commission on 16 January, 2017. This shows the sense of urgency and measure of promptitude shown by the Election Commission in matters like this.

24. In the subject case, the proceedings commenced on 16 March, 2017. It is true that the rival groups of AIADMK were responsible for the delay in the matter. However, that cannot be a reason for keeping the proceedings indefinitely. The Election Commission must fix a deadline for completion of pleadings and production of documents for the purpose of taking up the matter for final disposal.

25. The First Division Bench of the Principal Bench has already directed the completion of election to the Local Body in the State of Tamil Nadu on or before 17 November, 2017. The Division Bench directed the State Election Commission to issue the notification by 18 September, 2017 and to complete the entire election process by 17 November, 2017. The symbol issue has to be decided by the Election Commission before the election.

26. The Election Commission in paragraph 38 of the order dated 16 January, 2017, in Dispute Case No.1 of 2017 observed that realizing the urgency of the matter in view of the fast approaching general elections in Uttar Pradesh, where the first notification calling the general election for the first phase from 73 Assembly Constituencies scheduled to be notified on 17 January, 2017, fixed an urgent hearing. Similar is the case of Local Body election in the State of Tamil Nadu, in view of the deadline fixed by the High Court.

27. The learned Standing Counsel for the Election Commission submitted that the Election Commission would dispose of the proceedings as expeditiously as possible, in case the parties extend their co-operation for such early disposal. We are, therefore, of the view that outer time should be fixed for disposal of the proceedings, so as to enable the Election Commission to direct the parties before it to submit their documents and affidavits within a stipulated period.

28. We, therefore, issue a Writ in the nature of a Writ of Mandamus, directing the Election Commission of India to dispose of the proceedings in Dispute Case No.2 of 2017 on merits and as per law, after hearing all the parties to the dispute, as expeditiously as possible and in any case, on or before 31 October, 2017.

29. The Writ Petition is disposed of with the above direction. No costs.