

(1972) 03 CAL CK 0028
In the Calcutta High Court
Case No : C.R. No. 444 (W) of 1972

Sushil Kumar Dhara

APPELLANT

Vs

The Election Commission of India and Others

RESPONDENT

Date of Decision : 06-03-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 329
Representation of the People Act, 1951 — Section 80

Citation : AIR 1973 Cal 184 : (1973) 1 CALLT 390 : (1973) CriLJ 253 : (1975) 1 ILR (Cal) 614

Hon'ble Judges : Chittatosh Mookerjee, J

Bench : Single Bench

Advocate : Somendra Chandra Bose, Bhagabati Prasad Banerjee, Sundarnanda Pal, Amitava Dutta and Ashim Kumar Ghose, for the Appellant; Attorney-General, General, Noni C. Chakravarty, R.N. Dhebar, B.C. Basak and Samar Banerjee, (for Nos. 1 to 3) and A.G. and B.C. Basak, (for No. 4), for the Respondent

Final Decision : Dismissed

Judgement

Chittatosh Mookerjee, J.—This petition was filed by Shri Sushil Kumar Dhara claiming himself as General Secretary of Bangla Congress, Rajya Committee, No. 2, Basanta Bose Road, Calcutta-26. At the time of issue of the Rule, a leave under Order 1, Rule 8 of the CPC was granted to the petitioner to prosecute the petition on behalf of and for the benefit of all the members of Bangla Congress. In pursuance thereof notices were published. Purnendu Narayan Khan and six others made an application for being added as petitioners. Let the said persons be added as petitioners.

2. In May 1965, Bangla Congress was formed as a political party. In the general election 1967, candidates set up by Bangla Congress had contested with free Symbols. In the mid-term General Election to West Bengal Legislative Assembly held in the year 1969, the Election Commission recognised Bangla Congress as a State political party and had allotted symbol "Plough" for the candidates set up by Bangla Congress. On 25th January, 1971, the Election Commission issued a

notification in pursuance of paragraph 17 of the Election (Symbols Reservation and Allotment) Order, 1968, and in supersession of the previous notification specified the names of National parties and State parties and the symbols respectively reserved for them and also the free symbols for each State. In table 2 of the said notification, Bangla Congress was mentioned as a State party with "plough" allotted as its symbol. In the Mid-term General Election to West Bengal Legislative Assembly held in March 1971, five of the candidates set up by Bangla Congress were elected. According to the petitioner the total number of valid votes polled by all the contesting candidates set up by Bangla Congress at the said general election held in 1971, was 6,86,358 which was about 5.18 per cent of the total votes polled. The Governor of West Bengal by an order under Article 174 of the Constitution dated 25th of June, 1971, dissolved the West Bengal Legislative Assembly. On 29th June, 1971, the President of India in exercise of the powers conferred on him by Article 356 of the Constitution, issued a proclamation assuming to himself all the functions of the Government of the State and all the powers vested in or exercisable by the Governor of the State as mentioned in the said proclamation.

3. On 25th May, 1971, Shri Sushil Kumar Dhara issued a notice for holding of a meeting of the Rajya Karma Parishad of Bangla Congress on 5th June, 1971 in the office of the Rajya Committee at No. 2, Basanta Bose Road, Calcutta. The petitions has alleged in paragraph 6 of the petition that at a meeting held on 5th of June, 1971, a section of the members of Bangla Congress led by Sri Ajay Kumar Mukherjee left the said party and thereafter pretended to start a new office at No. 180, Bidhan Sarani, Calcutta, also naming it Bangla Congress. According to the petitioner, in or about December, 1971 Sri Ajay Kumar Mukherjee and his followers joined the ruling Congress party merging themselves with the Congress (R). The petitioner has alleged in paragraph 7 of the petition that on 5th of June, 1971, the Bangla Congress having its office at No. 1, Basanta Bose Road, Calcutta, held a meeting and elected an acting president. Thereafter the president of the said party was duly elected in a State Convention held on 7th and 8th of August 1971. In the paragraph 6 of the affidavit-in-opposition on behalf of respondents 1 and 2 affirmed by Sri Adi Nath Sen it has been stated that the petitioner Sri Sushil Kumar Dhara had tendered his resignation from the post of General Secretary of the erstwhile Bangla Congress which was accepted by a resolution dated 5th of June, 1971 passed by the executive committee of the State Bangla Congress. It further appeared that later on the petitioner Sri Sushil Kumar Dhara was expelled from the said party with effect from 25th August, 1971. The respondents have disputed the locus standi of Sri Sushil Dhara to act as the General Secretary of the Bangla Congress and to make the present petition. It is however, not necessary for me to determine which version is correct as I am of the view that this Rule is liable to fail on a preliminary ground,

4. On 3rd January, 1971, the petitioner Sushil Kumar Dhara as General Secretary of Bangla Congress Rajya Committee at No. 2, Basanta Bose Road, Calcutta,

wrote a letter to the Chief Election Officer, Government of West Bengal. He stated therein that after the split of Bangla Congress a small section of the party members had left and started a parallel organisation and style as Bangla Congress under the leadership of Sri Ajay Kumar Mookerjee. It was expected that the Chief Electoral Officer had come to know the fact that they had merged themselves with the Congress (R) very recently. Sri Sushil Kumar Dhara contended that none can use the name Bangla Congress but their original party whose head office was at No. 2, Basanta Bose Road, Calcutta. He requested the Chief Electoral Officer to direct his subordinate officers to correspond with the respective offices in the Districts of Assembly constituencies of the said party as and when required. It was further stated therein "for the same reason, let me express that our registered symbol "plough" would remain as our symbol". The Chief Electoral Officer by his letter dated 11th January, 1972. forwarded a copy of the letter dated 3rd January, 1972 of Sri Sushil Kumar Dhara to the Secretary, Election Commission of India. On or about 15th January, 1972, the General Secretary of the West Bengal Pradesh Congress Committee informed the Chief Electoral Officer West Bengal that Bangla Congress had merged with the Indian National Congress. The respondent No. 4 the Chief Electoral Officer, West Bengal communicated the same to the Secretary, Election Commission,

5. On 12th January, 1972, the All India Radio, New Delhi, broadcast a News Bulletin that the Chief Election Commissioner had received a letter from the Central Government requesting him to hold elections to the West Bengal and Bihar State Assemblies along with the elections to the other State Assemblies. A.I.R.'s correspondent understood that in accordance with this request elections of the West Bengal and Bihar Assemblies would be held with other State Assemblies and steps were being taken by the Election Commission in this connection. On 13th January, 1972, the All India Radio broadcast another news bulletin that the time table for the forthcoming Assembly Elections for the different States had been finalised. There would be one day election in West Bengal and polling would be held on 11th March, 1972, Announcing the schedule, the Chief Election Commissioner had stated that in States where one day poll would be held, the Governors would issue notifications calling for election on 4th of February, nominations are to be filed by 11th and last date for withdrawal will be 14th February. On 22nd January, 1972, the Election Commission of India in pursuance of Sub-section (2) of Section 15 of the Representation of the People Act 1951, recommended the 4th of February, 1972 as the date on which may be published in the Official Gazette, a notification by which the Governor of West Bengal shall, as required by the said section, call upon for the purpose of constituting a new Legislative Assembly, all the Assembly Constituencies in the said State to elect members in accordance with provision of the Act and the Rules and Orders made thereunder. Thereafter on 4th February, 1972 the Governor of West Bengal issued a notification u/s 15(2) of the Representation of the People Act 1951. The Election Commission has also already issued notification u/s 30 of the Representation of the People Act 1951 appointing the

last date for filing nominations, the date for the scrutiny of nomination and also for withdrawal for the candidates, the date on which the poll shall be taken and the dates before which the election shall be completed.

6. On 27th of January, 1972, Sri Sushil Kumar Dhara as General Secretary of Bangla Congress sent a telegram to the Election Commissioner of India, stating that they had applied to the Chief Election Officer, West Bengal for the reserved symbol "plough" and other concerned matters. No response had been received. He requested that directions may be issued to expedite matters. Sri Sushil Kumar Dhara also addressed a letter to the Election Commission forwarding a copy of his said telegram. In the meantime the Election Commission of India sent a teleprinter message to the Chief Electoral Officer, West Bengal, with reference to his letters dated 11th and 19th January, 1972; the teleprinter message stated that the Commission had not received any communication from Sri Ajay Kumar Mookerjee, President of the now defunct Bangla Congress, regarding the merger with Congress. A letter in confirmation of the merger may be forwarded to Commission. The Chief Electoral Officer was requested to ascertain from Sri Ajay Kumar Mookerjee what was the position of the group led by Sri Sushil Kumar Dhara with regard to his claim that his group should be treated as the original party and the symbol "plough" should be continued to be reserved for it. On 27th January, 1972, the Chief Electoral Officer, West Bengal" wrote a letter to Sri Ajay Kumar Mookerjee requesting him to supply information on the point of merger of Bangla Congress with the Indian National Congress and about position of the group led by Sri Sushil Kumar Dhara and about his claim to be treated as the Original Party. On 29th January, 1972, Sri Ajay Kumar Mookerjee sent a long letter in reply to the Chief Electoral Officer, West Bengal placing certain alleged facts for his information. Sri Ajay Kumar Mookerjee contended that claim of Sri Sushil Kumar Dhara as Bangla Congress leader was untenable, baseless and illegal. He opposed granting Sri Sushil Kumar Dhara and his party the reserved symbol "plough" as it will create confusion amidst the electorate. Respondents 1, 2 and 3 in the affidavit-in-opposition affirmed by Sri Adi Nath Sen has stated that on 1st February, 1972, the Chief Electoral Officer over a telephone informed the Chief Election Commissioner that he had received a letter from Sri Ajay Kumar Mookerjee to the effect that the executive committee of the Bangla Congress at its meeting held on 12th December, 1971, had decided to merge with the Indian National Congress and the merger was formally given effect to on the 6th January, 1972 by the West Bengal Pradesh Congress. According to the letter of Sri Ajay Kumar Mookerjee the Bangla Congress no longer existed and so symbol "plough" should no longer remain either as a reserved or as a free symbol in West Bengal. The Chief Electoral Officer was confirming his telephonic talk by teleprinter message. The teleprinter message of the Chief Electoral Officer, West Bengal, did not however reach the Office of the Election Commission, New Delhi, before 2nd February, 1972. On 1st February, 1972 the Election Commission issued a notification in pursuance of paragraph 17 of the Election Symbols (Reservation and Allotment) Order, 1968, and in supersession of its previous

notification dated 25th January, 1971. In the said application the name of Bangla Congress was not specified as a State Party in West Bengal and no symbol was reserved for the said party; the "plough" which was reserved as a symbol of Bangla Congress in the previous notification dated 25th January, 1971, was not also made a free symbol in West Bengal. On 4th February, 1972, the Chief Electoral Officer, West Bengal, forwarded to the petitioner a copy of the said notification of the Election Commission dated 1st February, 1972.

7. On 7th February, 1972, the petitioner Sri Sushil Kumar Dhara moved the present petition under Article 226 of the Constitution. A. K. Sen, J. directed that a copy of the application be served upon the respondents 1 to 4 and the application be placed on 9th February, 1972. On 9th February, 1972, A. K. Sen, J. having heard the learned advocates for the parties directed that the present Rule be issued. The respondents 1, 2 and 3 have filed an affidavit-in-opposition affirmed by Sri Adi Nath Sen. The Chief Election Commissioner S.P. Sen Verma has also affirmed a separate affidavit-in-opposition adopting the affidavit-in-opposition affirmed by Sri Adi Nath Sen. The Chief Electoral Officer, West Bengal who affirmed an affidavit-in-opposition at the time of hearing of the Civil Order has not filed any fresh affidavit-in-opposition but has appeared to oppose the Rule. The petitioners have filed an affidavit-in-reply traversing the allegations contained in the said affidavits-in-opposition.

8. In order to complete the chronology of events it is necessary to refer to some subsequent events. On 5th February, 1972, an under-Secretary of the Election Commissioner wrote a letter to Sri Sushil Kumar Dhara stating that after considering the facts available to the Commission that the Bangla Congress had merged with the Indian National Congress and subsequently ceased to exist, the Bangla Congress had been treated as now defunct. The symbol "plough" reserved exclusively for the said party, had been also withdrawn as the new political party cannot be registered with the name of the defunct party nor can it claim the symbol which was reserved for the said party. The Commission regretted its inability to accede to his request for reserving the symbol "plough" for his party. The Commission had decided that the "plough" will not be a free symbol in the State of West Bengal. On 11th February, 1972, the Election Commission in pursuance of paragraph 17 of the Election Symbols (Reservation and Allotment) Order, 1962 made amendments in its notification No. 56/72-1 dated 1st February, 1972, inter alia by including "plough" in Entry 21 therein.

On 13th February, 1972, the Chief Election Commissioner however gave special direction under Rule 10 read with Rule 5, Sub-rule (2) of the Conduct of Elections Rules, 1961 that the symbol "plough" which is a free symbol in West Bengal be allotted in preference to any other candidates to 27 candidates named therein. The said 27 candidates have been set up by the party of which Sri Sushil Kumar Dhara claimed to be the General Secretary. Therefore it is no longer disputed that all the candidates set up by the petitioner's party have been exclusively allotted "plough" as the free symbol.

9. The petitioners made an application for amendment of the writ petition for incorporating the said subsequent events. But as the respondents waived objections to the maintainability of the petition as originally amended, application for amendment has not been pressed. Accordingly no order is pressed on the application for amendment of the petition.

10. Mr. Bose, learned advocate for the petitioner, has submitted that the action of the Election Commission in deleting the name Bangla Congress from the notification under paragraph 17 of the Election Symbols (Reservation and Allotment) Order, 1968 dated 1st February, 1972 is illegal and without jurisdiction. The Election Commission did not give any hearing to the petitioner before deciding that Bangla Congress was a defunct party. The Election Commission purported to rely and act upon a letter of Sri Ajay Kumar Mukherjee dated 29th January, 1972 but the petitioner had no opportunity to meet the allegations contained in the said letter and the petitioner could not produce materials to establish that Bangla Congress as a party still exists. The said Bangla Congress was a recognised party within the meaning of Election Symbols (Reservation and Allotment) Order, 1968 and the Election Commission before depriving the party of the said recognition was bound to act in accordance with the principles of natural justice. Mr. Bose has also contended that Bangla Congress fulfilled the conditions specified in paragraph 6 of the Election Symbols (Reservation and Allotment) Order, 1968 and was a recognised political party, therefore until the results of the next general election to West Bengal Legislative Assembly are announced the question of continuance or discontinuance of the said recognition could not arise. Mr. Bose has challenged the action of the Election Commission deleting the name of Bangla Congress as a State party with the reserve symbol "plough" from the notification dated 1st February, 1972 on the ground that the Election Commission did not record any reason why Bangla Congress should be treated as defunct. In fact there is no written order on record to the said effect. The learned Attorney-General, who appeared on behalf of the respondents, stated that the Chief Election Commissioner penned through the entry relating to the Bangla Congress in the notification under paragraph 17 of the Symbol Order which was sent to the press for publication in the official gazette. According to Mr. Bose, learned advocate for the petitioner, the Election Commission was not entitled to act in a high-handed and arbitrary manner by hurriedly deleting the name of Bangla Congress as a State party without recording in writing any order to the said effect and without affording any opportunity to the petitioner to submit any representation in the matter. Mr. Bose has further submitted that in the present case the petitioner's group and the group belonging to Mr. Ajay Kumar Mukherjee both claimed to be Bangla Congress party; therefore the Election Commission should have proceeded under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 and decided the question of recognition after taking into account all the available facts and circumstances and after hearing both the groups. But the Election Commission acted without jurisdiction in holding that Ajay Mukherjee's group

was Bangla Congress party and that the said party by merging with Indian National Congress ceased to exist. The Election Commission had no material before it for coming to the decision that Bangla Congress was now defunct. The affidavit-in-opposition of Adi Nath Sen on behalf of the respondents Nos. 1 to 3 only mentioned about an alleged telephonic conversation between the Chief Electoral Officer, West Bengal and the Chief Election Commissioner on 1st February, 1972. His statement on the point was purely hearsay. D. K. Guha, Chief Electoral Officer, in his affidavit-in-opposition did not mention about any such telephonic conversation. Mr. S.P. Sen Verma, the Chief Election Commissioner, in his affidavit-in-opposition also did not specifically refer to the said conversation. Therefore no reliance should be placed on the said alleged telephonic conversation. Lastly, Mr. Bose submitted that the Election Commission included Forward Block and Revolutionary Socialist Party as State parties for West Bengal and gave reserved symbols to the said parties although they did not fulfill the conditions of paragraph 6 of the Symbols Order, 1968.

11. The learned Attorney-General who appeared on behalf of the respondents Nos. 1 to 3 has raised a preliminary objection that the present writ petition is totally barred under Article 329(b) of the Constitution of India. It has been further submitted that the writ petition should be dismissed for suppression of material facts. The learned Attorney General has also submitted that paragraphs 6 and 7 (3) of the Symbols Order, 1968 have no manner of application and the petitioner's party cannot claim to be a recognized political party. There is no Legislative Assembly for the time in existence and functioning and the petitioner's party cannot in any event fulfil the conditions for recognition under paragraph 6 of the Election Symbols (Reservation and Allotment) Order, 1968. According to the learned Attorney General Mr. Ajay Kumar Mukherjee and his party having joined Indian National Congress, there could be no further question of a decision on splinter groups or rival sections of Bangla Congress within the meaning of paragraph 15 of the Symbols Order, 1962. It has been also urged that after the old leadership of the original party "Bangla Congress" left and merged, the petitioner and his supporters claiming to belong to erstwhile party Bangla Congress with new leadership cannot get the reserved Symbol "plough". The petitioner has not made out even a prima facie case in the petition that he and his supporters had a numerical majority in the political party which was called Bangla Congress to be entitled to the Symbol "plough". Lastly it has been urged that the Election Commission has subsequently exclusively given the symbol "plough" to all the candidates set up by the petitioner's party and therefore the petitioner can have no further grievance.

12. In my view the preliminary objection about the bar of Article 329 should be upheld. Therefore it is not necessary for me to decide the other points raised on behalf of the petitioner and I keep the same open. The part XV of the Constitution lays down the provisions relating to "Elections". Under Article 324(1) the superintendence, direction and control of the preparation of the electoral rolls for the conduct of all elections to Parliament and to the Legislature

of every State and of elections to the offices of the President and Vice-President are vested in the Election Commission. The electoral rolls for election to the two houses of Parliament and to the legislature of a State are mentioned in Article 325. The Article 326 provides that elections to the House of People and the legislative assemblies shall be on the basis of adult suffrage. Article 327 confers power upon the Parliament to enact law to make provision with regard to all matters relating to or in connection with the elections to the houses of Parliament and the legislature of a State subject to the provisions of the Constitution and in so far as provision is not made by Parliament the legislature of a State under Article 328 may make provisions with respect to elections to the legislature of a State. Article 329 is as follows:

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

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

13-14. The Full Bench of the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, , upheld the decision of Madras High Court that they had no jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection of nomination papers for election to the Madras Legislative Assembly. Fazl Ali, J. who delivered the judgment of the Court at page 68 of the report staled : "It seems to me that the word "election" has been used in Part XV of the Constitution in the wide sense, this is to say to connote the entire procedure to be gone through to return a candidate to the legislature. The use of the expression "conduct of elections" in Article 324 specifically points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article 329. That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins. The subject is dealt with quite concisely in Halsbury's Laws of England in the following passage -- see page 237 of Halsbury's Laws of England, Edn. 2, Vol. 12 under the heading "Commencement of the Election."

"Although the first formal step in every election is the issue of the writ, the election is considered for some purposes to begin at an earlier date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law the test being whether the contest is "reasonably imminent". Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day

afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when "the conduct and management of an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case."

The observations in this passage make it clear that the word "election" can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.

15. Fazl Ali, J. also observed that Part XV of the Constitution was really a Code In itself providing for the entire ground work for enacting appropriate laws and setting up suitable machinery for the conduct of elections. It was pointed out that the Representation of the People Act 1951 which was passed by the Parliament under An. 327 of the Constitution is also a self-contained enactment so far as elections are concerned. Reference was made to the provisions of Section 80 which provides that no election shall be called in question except by an election petition. Section 100 provides for the grounds on which an election may be called in question. It was pointed out that there is no provision anywhere to the effect that anything connected with elections can be questioned at an intermediate stage. The jurisdiction of the High Court is excluded from dealing with any matter which may arise while the elections are in progress.

16. The Supreme Court in its decision in Narayan Bhaskar Khare Vs. The Election Commission of India, referred to its previous decision in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, and reiterated that election in [Art. 71(1) has the same meaning as that given in Article 329 and that it comprises the entire election process culminating in a candidate being declared elected.

17. It would be apparent from the examination of the provisions of Conduct of Elections Rules, 1961 and the Election Symbols (Representation and Allotment) Order, 1968 that when the elections are imminent allotment of symbols for candidates for elections in Parliamentary and assembly constituencies is but an important stage of such elections. The provision for registration of political parties and their recognition as national and State parties by the Election Commission are only for the purposes of allotment, reservation and specification of symbols at elections. Rule 4 of the Conduct of Elections Rules, 1961 provides that every nomination paper presented u/s 33 of the Representation of the People Act, 1951 shall be in the Forms 2-A to 2-E as may be appropriate. The Forms 2-A and 2-B require the candidate to choose Symbols. Under Rule 5 (1) the Election Commission by notification may specify the symbols that be chosen by candidates at elections to the parliamentary and assembly constituencies. Under Rule 10 (4) the Returning Officer shall consider the choice of symbols expressed by contesting candidates and subject to any general or special jurisdiction issued by the Election Commission allot a different symbol to each

contesting candidate. The allotment by the Returning Officer is final under Sub-rule (5) of Rule 10 subject to the directions of the Election Commission who may revise the allotment.

18. Before the enactment of Election Symbols (Reservation and Allotment) Order 1968 the Election Commission under the power conferred under Rule 5 (1) of the Conduct of Election Rules used to prepare and notify list of free and reserved symbols together with restrictions to which their use was subject. Sanjukta Socialist Party under Article 226 of the Constitution challenged a notification dated September 2, 1956 issued by the Election Commission making "hut" a reserved symbol for Praja Socialist Party in Bihar, Gujarat, Madhya Pradesh, Maharashtra, Mysore and Orissa. On dismissal of the said petition the S. S. Parry filed an appeal in the Supreme Court, Mr. Madhu Limaye also questioned the same order by a writ petition on the ground of breach of his fundamental rights. The Supreme Court in *Samyukta Socialist Party Vs. Election Commission of India and Another*, upheld the said notification. In *Samyukta Socialist Party Vs. Election Commission of India and Another*, the question of bar of Article 329 was not however considered and the order of the Election Commission was upheld as valid and within jurisdiction.

19. On 31st August, 1968, the Election Commission in exercise of the powers conferred by Article 324 of the Constitution read with Rules 5 and 10 of the Conduct of Election Rules 1968 made Election Symbols (Reservation and Allotment) Order, 1968.

20. The Supreme Court in *Shri Sadiq Ali and Another Vs. The Election Commission of India, New Delhi and Others*, pointed out "the 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. ..."....."

21. The Supreme Court in paragraph 12 (at page 195) pointed out the reasons which led to the introduction of symbols:

"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."

22. As I have decided not to enter into the merits of the case, I need not deal at length with the observations of the Supreme Court with the scope of paragraph 15 of the Symbols Order 1968 and about the test of majority and numerical strength for the purposes of the said paragraph. But it would be pertinent to point out that the Supreme Court at p. 199 of report with reference to paragraph 15 stated "IN this respect it has to be borne in mind that the Commission only decides the question as to whether any of the rival sections or groups of a recognised political party, each of whom claims to be that party is that party. The claim made in this respect is only for the purpose of symbols in connection with the ejections to the Parliament and state legislatures and decision of the Commission pertains to this limited matter. The Commission while deciding the matter under paragraph 15 does not decide dispute about property. The proper forum for adjudication of disputes about property are the civil courts. The decision of the Commission under paragraph 15 constitutes a direction to the Returning Officer for the purpose of Rule 10 of the Conduct of Election Rules. The said decision shall be binding upon the Returning Officer in accordance with Sub-rules (4) and (5) of the above mentioned Rule; whether the decision of the Commission can be called in question in appropriate proceedings in a Court of Law is a matter which does not arise in this case and we need not express any opinion thereon."

23. The above quoted observations of the Supreme Court indicate that the recognition of political parties under the symbols order is only for the purpose of specification, reservation, choice and allotment of symbols. The Supreme Court also pointed out that the object of the symbols is for identification of the candidates in the ballot papers so that the process of election it as genuine and fair as possible.

24. I have hereinbefore set out in detail the facts of the present case. In the instant case the election had already commenced before the publication of the impugned notification under paragraph 17 of the Symbols Order, 1968, dated February 1, 1972. The contest for election to West Bengal Legislative Assembly was reasonably imminent to borrow the expression in p. 237 of Halsbury's Laws of England Edn. 2 Vol. 12 (quoted in Ponnuswami v. Returning Officer (supra)). Evidently, the Election Commission made the said notification under paragraph 17 of the Symbols Order, 1968 for the purpose of allotment of symbols to candidates in the ensuing General Election to legislative assemblies. After the issue of this Rule, the Election Commission gave special directions under Rule 10 (4) of the Conduct of Elections Rules 1961 regarding the symbol "plough". The

Commission by its notification dated February 1, 1972, declined to treat Bangla Congress as a recognized party thereby depriving the said party of a reserved symbol. The petitioner by challenging the said notification is in substance calling in question certain steps taken for holding! of the ensuing general election to the West Bengal Legislative Assembly. Any order made in this Rule for recognizing Bangla Congress as a State party would be bound to affect and interfere with the election process which has been already set in motion. This I am precluded from doing, in view of Article 329 of the Constitution.

25. Assuming the petitioner is right hi his contention that the Election Commission in the instant case, did not comply with the provisions of the Symbols Order 1968 by not recognizing Bangla Congress as a State Party and by not allotting a reserved symbol, even then the bar under Article 329(b) of the constitution read with Section 80 of the Representation of the People Act, 1951 would be attracted. u/s 100 of the Representation of the People Act, 1951 when the result of the election, so far as it concerns a returned candidate has been materially affected by -

(i) xx xx xx

(ii) xx xx xx

(iii) xx xx xx

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

26. Thus in a proper case a non-compliance of the aforesaid nature might be ground in an election petition for declaring the election of a returned candidate void. Thus the petitioner is not without any remedy. But his grievance about allotment of symbols is premature. Therefore the petitioner cannot at this intermediate stage challenge the alleged non-compliance with the provisions of the Symbols Order, 1968, and thereby attempt to hold up the election.

27. Dixit and Badkas, JJ, of Bombay High Court in Yeshvantarao Balwantrao Chavan Vs. K.T. Mangalmurti and Another, observed that election is not merely the ultimate decision. Election is every stage from the time the notification is issued till the result is declared. It is one whole continuous integrated proceeding and every stage of it and every step taken is a part of the election.

28. Similarly D. N. Sinha, J. (as he then was) in Nirmal Kumar Sikdar Vs. Chief Electoral Officer and Others, upheld the objection of the respondents that when the election is directed to take place and steps are taken for the purpose of obtaining photographs of voters for identity cards the same was a part of the proceeding relating to the election. If irregularities are committed while election is in progress they should be brought up before the election tribunal and should not be made a subject of dispute before any other court.

29. Mr. Bose has placed before us some of the decided cases when courts entertained writ applications in the matter of allotment of Symbols.

30. In *Samyukta Socialist Party Vs. Election Commission of India and Another*, the Supreme Court while dealing with the writ petition of Mr. Madhu Limaye observed that the constitutional points were not pressed. These observations might have been primarily made with regard to allegations of Mr. Madhu Limaye that his fundamental rights had been violated, still it is clear therefrom that in the said case the Supreme Court had no occasion to deal with the bar under Article 329(b) of the Constitution.

31. In *Sadiq AH v. Election Commission (supra)* the relevant dates are very relevant. On 21st December, 1969, Sri Subramanian as the President of the Congress addressed a letter to the Chief Election Commissioner stating that there had been a change in the office bearers of the Congress. There was then some exchange of letters. On 8th January, 1970, the Commission sent a letter to the Secretary of Congress (O). On 15th January, 1970, the Commission wrote to the Secretaries of Congress (O) and of Congress (J) that a decision was required under paragraph 15 read with paragraph 18 of the Symbols Order. On or about 11th January, 1971, the Election Commission made an order under paragraph 15 regarding the symbol. On 20th January, 1971, the Supreme Court granted a stay order in the appeal preferred by Sadiq Ali under Article 136 of the Constitution against the order of the Election Commission. The symbol "two bullocks with yoke" was not to be allotted till the disposal of the appeal. The general election was held in March 1971. On 11th November, 1971, the Supreme Court dismissed the appeals. In the said case when the Supreme Court gave its judgment the election was not "imminent" and the same no way interfered with any pending election. Further in *Shri Sadiq Ali and Another Vs. The Election Commission of India, New Delhi and Others*, the point regarding bar under Article 329 was not raised and possibly on the facts of the said case the same could not arise for consideration.

32. Mr. S.C. Bose learned advocate for the petitioner has placed before me the decision of Punjab High Court in *R.C. Sukla v. Election Commission*, (1957) 13 ELR 105 (Pun) and the decision of Delhi High Court in *Halimuddin Rahat Maolaey Vs. Election Commission of India, New Delhi and Another*, . In both the cases petitions under Article 226 of the Constitution were entertained regarding election symbols. In both these cases however I find no discussion about Article 329(b). Further it does not appear whether the elections were imminent in the said cases.

33. Let us now briefly examine the petition of the instant case:

The petitioner stated in paragraph 25 of the petition that unless the respondents are directed to allow the candidates of the said party to file nomination papers with the said symbol "plough" in the election to be held in March, 1972, and to contest the said election with the said symbol, the said party will be in a great

disadvantageous position and will suffer irreparable loss and injury. In paragraph 26 of the petition the last date for filing nomination paper has been mentioned. The petitioner in paragraph 30 of the petition has stated that unless the respondents are directed by mandatory order to allot the symbol "plough" to Bangla Congress Party, your petitioner will suffer irreparable loss and injury because thousands and thousands of voters in the rural areas who are supporters of Bangla Congress and have mentally associated Bangla Congress with, the symbol "plough" will not cast their vote in favour of a candidate set up and nominated by the Bangla Congress. The petitioner is an intending candidate in the ensuing election. The Bangla Congress party has already made arrangements for setting up their candidates in the said election.

34. The petitioner has inter alia prayed for the following reliefs:--

(a) A Writ in the nature of Mandamus directing the respondent and each one of them and/or their servants and/or their agents to forbear from giving effect to the Notification dated 1st February, 1972, being annexed and marked with the letter "H".

(b) A Writ in the nature of Mandamus commanding the respondents Nos. 1 to 4 and each one of them and/or their agents not to hold the election of the Legislative Assembly in West Bengal scheduled to be held on 11th March, 1972 without allotting the reserved symbol "PLOUGH" to the Bangla Congress Party of which your petitioner is the General Secretary.

(c) A Writ in the nature of Certiorari directing the Respondents to send up to this Hon'ble Court the records and proceedings in connexion with the purported proceedings for deleting the symbol "PLOUGH" in favour of Bangla Congress.

(d) A writ in the nature of Mandamus directing the Respondents to act according to law and to continue the recognition already given to your petitioner's said party "Bangla Congress as a State party.

(e) A Mandatory interim order of injunction commanding the respondents 1, 2 and 3 to allow the symbol "PLOUGH" for the ensuing General Election of the West Bengal Legislative Assembly scheduled to be held on 11th March, 1972.

(f) A further interim order restraining the respondents Nos. 1, 2, 3 and 4 from holding the election in West Bengal Assembly on 11th March, 1972, till the disposal of this Rule.

35. Upon a reading of the entire writ petition, it is clear that the petitioner is challenging the power and the authority of the respondents to hold the ensuing general election to the West Bengal Legislative Assembly without recognizing petitioner's party and without permitting the candidates set up by the said party the use of the symbol "plough". Incidentally "the plough" has been subsequently made one of the free symbols in West Bengal and the Chief Election Commissioner has since given special directions that the twenty seven candidates who had given plough as their symbols be exclusively allotted the

same. When the notifications under Sections 15 and 30 of Representation of the People Act, 1951 have been already issued the recognition of a political party for the purposes of Election Symbols Order 1968 would be a matter relating to or in connection with the election to the West Bengal Legislative Assembly. When the date for the election has not been announced and the election is not imminent, different considerations might arise with regard to notification issued under the Election Symbols Order 1968. But I need not decide the said question in the present case. For the reasons hereinbefore given this writ petition is barred under Article 329 of the Constitution. In the said view I express no opinion on the propriety and the legality of the actions taken by the respondents for treating Bangla Congress as defunct and withdrawing its recognition under the Election Symbols Order 1968.

36. I accordingly discharge this rule. There would be, however, no order as to costs.