

(2017) 04 DEL CK 0012

In the Delhi High Court

Case No : C.M No. 12977 of 2017 in LPA 221 of 2017

Swaraj India

APPELLANT

Vs

State Election Commission

RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

Constitution of India, 1950 — Article 243, Article 243ZA
Delhi Municipal Corporation (Election of Councillors) Rules, 2012 — Rule 15

Citation : (2017) 4 ADDelhi 470

Hon'ble Judges : Mr. Sanjiv Khanna and Mr. Chander Shekhar, JJ.

Bench : Division Bench

Advocate : Mr. Shanti Bhushan, Sr. Advocate with Mr. Prashant Bhushan, Mr. Shakti Vardhan and Mr. Kartik Seth, Advocates, for the Appellant; Mr. Sumeet Pushkarna, Standing Counsel and Siddhartha Nagpal, Mr. Girish Pandey, Deputy Secretary, Mr. Sanjoy Ghose, ASC with Mr. Rhishabh Jetley, Advocates, for the Respondent No. 1

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—C.M. No.12977/2017

The appellant, Swaraj India, who is the applicant, was formed as a political party on 2nd October, 2016 and had applied to the Election Commission of India (ECI) for registration on 14th October, 2016. The appellant was granted status of a registered unrecognized political party by the ECI on 27th February, 2017.

2. Even before grant of registration, the appellant on 14th February, 2017 had made a representation to the State Election Commission, National Capital Territory of Delhi (SEC) for allotment of a common election symbol for they proposed to nominate candidates and contest the 272 seats in the forthcoming municipal elections in Delhi. This representation was rejected by the SEC vide order dated 21st February, 2017. After registration, the appellant on 28th February, 2017 had submitted a review application which was declined by the SEC vide order dated 17th March, 2017.

3. The order dated 21st Feb.,2017 relies upon Paragraphs 3 and 4 of the "Symbols Order" dated 5th April, 2016 issued by SEC read with Rule 15 of the Delhi Municipal Corporation (Election of Councillors) Rules,2012 (Election of Councillors Rules, for short) and Articles 243 and 243ZA of the Constitution to hold that SEC recognises and allots a common symbol to candidates of only National and State parties recognised by the ECI and not registered unrecognised parties. The second order dated 7th March,2017 records that ECI allots a common symbol to candidates of " registered but not recognised parties" as a first step for recognition of such parties in State or States where they return the prescribed quantum of votes and elected candidates to the House and if such parties fulfil the requirements prescribed by the ECI. SEC was not concerned with such procedure for it does not register or recognise a political party for elections to the Municipal Corporations nor allots a symbol to a party which is registered but unrecognised with the ECI. The "procedure" was/is prescribed by Rule 15 of the Election of Councillor Rules and the SEC cannot act over and above the existing law by relying upon "precedents" in other States. The power to amend and modify the Election of Councillor Rules vests with the Lt. Governor.

4. The appellant thereafter filed the Writ Petition (C) No. 2409/2017 on 10th March, 2017, which was listed for admission before the single Judge on 15th March, 2017. The primary challenge was to paragraph 4 (d) of the Municipal Corporation of Delhi Election Symbols (Reservation and Allotment) Order, 2017, (Reservation and Allotment Order, for short) published on 14th March, 2017. Reservation and Allotment Order had substituted the "symbol order" dated 5th April, 2016. The appellant had also challenged the orders dated 21st February, 2017 and 7th March, 2017, rejecting the appellant's request for grant of common election symbol for their candidates.

5. By the impugned judgment dated 29th March, 2017, the writ petition has been dismissed. LPA no. 221/2017 has been filed challenging the impugned judgment and for allowing the prayers made in the WP(C) No. 2409/2017.

6. In order to ensure that hearing is granted and no injustice is done, we had listed the matter for hearing at 2.15 p.m. on 1st April, 2017, which was not the Court working day being a Saturday.

7. A number of issues and contentions on merits have been raised, which we accept require examination and consideration. We are not deciding the Letters Patent Appeal impugning the judgment of the Single Judge dated 29th March, 2017 disposing of W.P. (C) No. 2409/2017, as issues raised mandate and require elaborate hearing and elucidation before an authoritative pronouncement is made. This was clarified at the time of hearing and that the application for stay will be decided at this stage.

8. The appellant has made the following prayers in the application for stay:-

a) "Direct the respondent State Election Commission N.C.T. of Delhi, for an interim stay on the order dated 14th March, 2017 and from holding the MCD

Election 2017 till further order pending this appeal.

b) Pass any other order (s) as this Hon"ble Court may deem fit in the facts and circumstances of the present case."

9. Prayer (a) made in the aforesaid application has to be rejected for obvious reasons. Stay of elections is simply unacceptable. Fairly, counsel for the appellant-applicant did not press for the said order.

Relying upon clause (b) praying for passing of any other order as the Court may deem fit, the appellant submits that in an interim order should be passed directing the SEC to allot a common election symbol to the appellant (Swaraj India) in the forthcoming MCD elections to be held on 23rd April, 2017.

10. The appellant submit that a similar controversy had arisen and was raised before the Supreme Court when the Election Symbols (Reservation and Allotment) Order, 1968 (Election Symbol Order, 1968 for short) was challenged by the registered unrecognized political parties before the Supreme Court. Representations were also made to the ECI. Thereafter, a press note dated 17th October, 2011 was issued by the ECI appreciating the reasonableness of the prayers made before the Supreme Court, which were considered and appropriate modifications were made in the Election Symbol Order, 1968 to provide for one time concession of allotment of a common symbol to candidates sponsored by the registered unrecognized political party. This concession could only be exercised only once by the registered unrecognized party, either at the general elections of the house of the people or at the State Legislative Assembly elections. Once the concession was availed of, the registered unrecognized party was not eligible for concession in any subsequent general elections. The amendment made in the symbol order had specified several conditions in the substituted paragraph 10 B. The said conditions relate to the date/time period within which the registered unrecognized political party had to exercise the option. On the importance and significance of the common symbol reference was made to *Sadiq Ali and Anr. v. The Election Commission of India and Ors.*, (1972) 4 SCC 664. It was submitted that allotment of a common symbol would sub serve and facilitate the process of election. It ensures unified and coordinated publicity and campaign. Rule 15 of the Election of Councillor Rules leaves the field open when it comes to registered unrecognized political parties and therefore the SEC could have filled the vacuum in the Reservation and Allotment Order.

11. The contentions are controverted and contested by the respondents for the reasons set out in the two impugned orders passed by the SEC. It is submitted that the prayer if accepted would stall and create un-surmountable difficulties and complications.

12. Having heard the parties, we are of the opinion that it would not be appropriate and proper to pass an interim order as orally submitted for the reasons recorded hereinafter.

13. The prayer can be granted, if and only when paragraph 4 (d) of the Reservation and Allotment Order is struck down by an interim order. The contention raised by the appellant and the objections and submissions of the SEC on merits have to be considered in the light of Article 243ZA (2) on the question of power of SEC and the legal effect of Rule 15 of the Election of Councillors Rules framed by the Lieutenant Governor of the National Capital Territory of Delhi in exercise of power conferred by Section 31 of the Delhi Municipal Corporation Act, 1957. Rule 15 of the Election of Councillors Rules, which deals with symbols, has not been challenged. Questions would arise whether the said Rule which stipulates that national parties and state parties recognised by ECI shall use those very symbols which are reserved for them by the ECI and no other symbol, would bar grant of any concession as claimed by the appellant, by making a challenge to the Reservation and Allotment Order. Difference between Municipal elections conducted by the SEC and National and State assembly elections conducted by the ECI and Rules relating to the recognition of parties have to be considered and examined. The Election Symbol Order, 1968 is not applicable to the municipal election and this is the reason why controversy has arisen. Even if accept the plea of the appellant, questions would arise as to the nature of the direction which the court can issue. The contention of the SEC is that the courts cannot direct and mandate a particular legislation or stipulate the nature and type of conditions to be imposed for grant of a common symbol. Pertinently, there is no authoritative pronouncement of the Division Bench of the Delhi High Court or the Supreme Court on the said subject. The single Judge by the detailed and exhaustive impugned judgment has dismissed the writ petition.

14. We do not in the facts of the present case feel that any interim order should be passed or granted, which would have the effect of setting aside and modifying paragraph 4 (d) of the Reservation and Allotment.

15. The second reason is significant and compelling. It relates to the principle of balance of convenience. The contention of the SEC that any interim direction for grant a common election symbol to the appellant would gravely hinder, impede, and could stall the election process set in motion by issue of Notification dated 22nd March, 2017, has merit and is not a sparse or surmise. The notification dated 22nd March, 2017, issued by the SEC lays down the following schedule for conducting the elections to the three Municipal Corporations:-

"(a) Issue of notification of election 27.03.2017 (Monday)

(b) Last date of filing nominations 03.04.2017 (Monday)

(c) Date for scrutiny of nominations 05.04.2017 (Wednesday)

(d) Last date for withdrawal of candidatures 08.04.2017 (Saturday)

(d) Date of poll, if necessary 23.04.2017 (Sunday)

(f) Counting of votes for the elections 26.04.2017 (Wednesday)

(g) Completion of election by 05.05.2017 (Friday) "

16. The impugned judgment refers to similar request for a common symbol by 27 other parties. We are informed that 31 registered unrecognized parties and 11 unregistered parties have made identical requests. Any interjection and interim direction in favour of the appellant to allot a common symbol would result in spate of similar prayers before the SEC or writ petitions before the Court on identical lines. If we stay operation of paragraph 4 (d) of the Reservation and Allotment Order, which would be the effect of an interim order, there would be serious and grim consequences. Further, issue/grant of a common election symbol would require and mandate comments/objections from different stakeholders. The process and award of a common symbol is not an easy and simple exercise, for others could have objection and reservation on allotment from the free symbols. Independent candidates in the nomination forms are required to specify three symbols which they have chosen in the order of preference. The last date of filing of nominations is 3rd April, 2017. In the given time frame, any interim order/direction would virtually scuttle and cripple the election process set in motion and the dates fixed in the notification dated 22nd March, 2017. The principle of balance of convenience mandates that the election as fixed should be conducted smoothly without any obstruction and hindrance.

17. In a similar situation, the Supreme Court in *Desiya Murpokku Dravida Kazhagam and Anr. v. Election Commission of India*, (2009) 16 SCC 781 had stayed the order passed by the High Court directing the Election Commission to grant a common symbol to all candidates of the registered unrecognized party. In the said case, paragraph 12(3)(b) of the Election Symbols Order, 1968 was referred to observe that candidates of the political parties would submit in the prescribed form duly authorised. It was made clear that the three political parties would not be entitled to any preferential treatment in respect of the symbols and no equity would arise in future, when allotment of regular symbol would be considered. Thus, the interim direction issued by the High Court was stayed.

18. In the same appeal, and some writ petitions, another order was passed on 16th March, 2011 in the decision reported as *Desiya Murpokku Dravida Kazhagam (2) and Anr. v. Election Commission of India*, (2011) 4 SCC 224. Paragraph 1 of the decision observes that on account of paucity of time as the election process had been set in motion in the State of Tamil Nadu, the Supreme Court had focused its attention to possibility of making a temporary arrangement till the Writ Petitions and Special Leave Petition were disposed of. Reference was made to the earlier order in *Desiya Murpokku Dravida Kazhagam and Anr.* (supra) noted above. Interim arrangement was not found to be feasible and appropriate, for the notification issued and made subject matter of challenge, it was observed, was by of delegated legislation and till the same was stayed, no arrangement could be made. The Supreme Court, therefore, was not inclined to grant interim direction. The Supreme Court, conscious that three registered unrecognised parties were before them, observed that many others could join

the band wagon. Grant of interim direction or arrangement would not be justified if prejudice could be caused to any of the stakeholders in the election process. Further, if all registered unrecognized parties were provided with the common election symbol, prima facie, the provision of the Election Symbols Order, 1968 would become completely unworkable.

19. We are conscious and aware of the difference in the factual matrix and issue under challenge in *Desiya Murpokku Dravida Kazhagam and Anr.* (supra) before the Supreme Court, and the present appeal. However, the ratio expounded is of relevance, for interim order or direction in such cases is not warranted. We cannot ignore the practical and functional problems which would arise. These would hinder and create obstacles in conduct of free and fair election in a smooth manner.

20. For the aforesaid reasons, we are not inclined to issue any interim order for award of a common election symbol to the appellant in the ensuing municipal elections. The application is dismissed. We clarify that the view expressed above is tentative and prima facie and would not be considered as expression of final opinion and would not affect the final outcome of the present appeal.