

(2003) 12 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16128 of 2003

Telangana Rashtra Samithi

APPELLANT

Vs

Election Commission of India

RESPONDENT

Date of Decision : 08-12-2003

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 10, 5
Constitution of India, 1950 — Article 14, 226, 324, 324(1), 327
Representation of the People Act, 1951 — Section 29A

Citation : (2004) 1 ALT 382

Hon'ble Judges : K.C. Bhanu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : S. Satyam Reddy, for the Appellant; C.P. Sarathy for Jayasree Sarathy, for the Respondent

Judgement

B. Sudershan Reddy, J.—The petitioner-Telangana Rashtra Samithi invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus declaring the action of the Election Commission of India in not allotting exclusive symbol to the petitioner-party as illegal and arbitrary, and, a consequential direction has been sought for allotment and reservation of an exclusive election symbol to the petitioner-party in order to enable it to contest in the ensuing Assembly as well as Parliament elections.

2. The abridged factual matrix on which the validity of the impugned order dated 10-2-2003 has been questioned in the writ petition may be broadly indicated as follows:

The Telangana Rashtra Samithi was formed in the State of Andhra Pradesh as a political party. Telangana Region in the State of Andhra Pradesh comprises of ten districts of Ranga Reddy, Hyderabad, Medak, Nizamabad. Nalgonda, Mahabubnagar, Warangal, Khammam, Karimnagar and Adilabad. The region has about 14,500 villages. That, according to the averments made in the affidavit

filed in support of the writ petition, the people of Telangana region did not want to become a part of integrated State of Andhra Pradesh. Even at the time of formation of the integrated State of Andhra Pradesh, the people of Telangana expressed apprehension of their being merged with the Andhra State. The States Reorganisation Commission opined that Telangana region will become a viable State economically, politically and geographically and should be made as a separate State instead of merging the same with the Andhra State. The State of Andhra Pradesh, however, which includes Telangana region came to be formed on 1-11-1956. The petitioner in its affidavit refers to various instances which according to it were responsible for the backwardness of this region, even after its merger into the integrated State of Andhra Pradesh on 1-11-1956. Various guarantees given under the Gentleman's Agreement arrived at between the leaders of both the regions at the time of formation of the State were given a go-by. The situation led to a peoples' movement in the year 1969 demanding a separate State of Telangana. It was followed by another movement of the people of Andhra region in the year 1971-72 for formation of a separate Andhra State. This resulted in issuance of Presidential Order under Article 371-D of the Constitution of India wherein the regional imbalances in the matter of providing seats in educational institutions and posts in public employment were sought to be removed and the regional interests were sought to be protected and regulated. In spite of the same, the Telangana region continued to suffer and the exploitation of the region became very acute and once again the people of Telangana have started demanding a separate State.

3. Ultimately, on 27-4-2001, the people belonging to various segments of the region gathered and formed the political party for achieving a separate State of Telangana. The petitioner-party approached the State Election Commission for registration as a political party, and, it was registered as a political party by the State Election Commission on 16-6-2001. The State Election Commission accordingly informed the petitioner-party that from out of the list of three symbols available for allotment, it can "choose any three symbols in order of preference. One of the three symbols chosen by you will be allotted to your political party." It also applied for reservation of symbol by the State Election Commissioner and the symbol "Haldar within wheel" was allotted to it. A petition was filed before the Election Commission of India for registration of the petitioner-party as a State Party and the Commission vide its order dated 21-8-2001 has registered the Telangana Rashtra Samithi as a political party u/s 29-A of the Representation of the People Act, 1951.

4. It is further stated that in the elections conducted to the local bodies in the State of Andhra Pradesh in August, 2001, the petitioner-party was able to secure 30 lakh votes in Telangana region. The petitioner-party also contested to the elections to the Municipal Corporation of Hyderabad and secured substantial votes. All the elections were fought on the symbol "Haldar within wheel." In the by-elections held for Medak Assembly Constituency, though on reserved symbol was allotted, election was fought on different symbols and the party secured

substantial number of votes.

5. The petitioner-party intends to contest all the 117 Assembly seats in the Telangana region and as well as the Parliamentary seats in the ensuing elections. Its case is that it would become impossible for the petitioner-party to prepare election material, especially, election symbol, if the party has to wait till two days after the last date for withdrawal of nominations, for allotment of symbol, since, on petitioner's request for allotment of exclusive symbol, the respondent-Election Commission of India through letter dated 10-2-2003 expressed inability to allot exclusive symbol on the ground that the Election Symbols (Reservation and Allotment) Order, 1968 (for short "the Symbols Order, 1968") did not make such a provision.

6. The submission of the petitioner-party is that being a new political party having been formed only in the year 2001 under the relevant provision, recognition can be accorded as one of the eligible parties entitled for symbol allotment till regular elections to the Parliament/Assembly take place. It would be totally chaotic for the petitioner-party, in case its candidates will have to contest its 117 Assembly Constituencies and 15 Parliament Constituencies within the State Assembly Constituencies with separate symbol for each constituency.

7. Learned counsel for the petitioner contended that till the petitioner-political party is given the status of a recognized political party after the ensuing elections, the petitioner's request can be considered at least for allotment of common election symbol for all the constituencies to its candidates. It is also contended that the petitioner is not claiming that it should be given any particular symbol for the ensuing elections. All that the petitioner-party wants is a separate symbol for the candidates set up by it for the ensuing elections.

8. In the counter-affidavit filed by the Secretary of the Election Commission, it is inter alia stated that the scheme of the Symbols Order, 1968 is that a political party, after its registration, has to contest a general election and fulfil the requirement of paragraph 6-A or 6-B as the case may be, to be eligible for recognition as a National or State party. A party cannot claim recognition under the Symbols Order, 1968 on the basis of its performance in any by-election or the local elections. Symbols are to be reserved only to recognized registered political parties and reserving a symbol for each of the registered political parties is practically impossible.

9. The Election Commission apart from the counter affidavit also filed objections pursuant to the directions of this Court dated 18-9-2003 whereunder this Court required the Election Commission to submit what objection it will have in not taking a decision for passing appropriate orders for allotting one particular symbol in the forthcoming elections to be contested by the petitioner's candidates without making it as a precedent and without reserving that symbol. In the objections filed in response to the directions of this Court, it is stated that as far as reservation of symbols is concerned, no area is left unoccupied and

there is no gray area as is sought to be made by the writ petitioner, in view of the necessary provisions made in the Symbols Order, 1968 as amended from time to time. Since the petitioner's party is only a registered and unrecognized party under the provisions of the said Order, it is not entitled for either reservation or exclusive allotment of any particular common symbol for the candidates proposed to be set up by the party at an election of the House of People or State Legislative Assembly, The petitioner will be allotted a symbol from the list of free symbols under para 12 of the Symbols Order, 1968. The main benefit that accrues to a political party on its recognition is that it gets the advantage of an exclusive election symbol for its candidates at an election to the House of People of State Legislative Assembly. If election symbol is reserved for an unrecognised political party, before such party obtains recognition, on the basis of its support base, it will be defeating one of the main purposes of recognition. It is also stated that a large number of registered political parties, have, in the past approached the Commission for allotment of a common symbol to them and the Commission has rejected their request explaining to them the provisions of the Symbols Order, 1968, as had been done in the case of the petitioner's party.

10. The sum and substance of objections are that the Election Commission in the case of petitioner's political party alone cannot take a different view from that of its view whereunder similar requests made by other registered political parties have been rejected.

11. Learned counsel for the petitioner contended that the petitioner's political party cannot be equated to that of other registered political parties, for the petitioner-political party having contested the local elections and having contested few by-elections secured substantial number of votes in the Telangana region of the State of Andhra Pradesh and it is not known as to whether the other political parties have demonstrated of their securing any substantial support from the people after their formation and registration as a political party. It was contended that there is no provision in the Symbols Order, 1968 for the allotment of an exclusive symbol to any registered political party but at the same time, the Commission is not helpless in tackling with any peculiar situation for allotting a separate symbol for the candidates set up by even a non-recognised political party like the petitioner-political party if situation so demands and if any case for such allotment is made out to the satisfaction of the Election Commission. Reference is made to paragraph 18 of the Symbols Order, 1968 which empowers the Election Commission to issue instructions and directions in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which the Order makes no provision or makes insufficient provision, and the provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections. It was contended that the Symbols Order, 1968 does not take into consideration all situations which might crop up like the present one where a political party has come up in between two elections and which has mustered enough following.

12. Learned senior counsel appearing on behalf of the Election Commission reiterated that para 18 of the Symbols Order, 1968 has no application whatsoever to the facts on hand. The Elections Commission cannot take any decision in any manner contrary to the mandatory provisions of the Symbols Order, 1968. Any such decision will result in defeat of the object of fair and free elections. Learned counsel contended that the impinged order rejecting the request of the petitioner-political party for either reservation or exclusive allotment of any election symbol does not suffer from any legal or constitutional infirmities requiring this Courts, interference in exercise of its jurisdiction under Article 226 of the Constitution of India.

13. We have elaborately heard the learned counsel appearing on either side and perused the records. We have given our anxious consideration to the rival submissions made during the course of hearing of this writ petition.

14. Symbols admittedly assume great importance in elections in India wherein large number of the electorate is illiterate. In All Party Hill Leaders' Conference, Shillong Vs. Captain W.A. Sangma and Others, , the Supreme Court observed thus:

"For the purpose of holding elections, allotment of symbol will find a prime place in a country where illiteracy is still very high. It has been found from experience that symbol as a device for casting votes in favour of a candidate of one's choice has proved an invaluable aid. Apart from this, just a people develop a sense of honour, glory and patriotic pride for a flag of one's country, similarly great fervour and emotions are generated for a symbol representing a political party. This is particularly so in a parliamentary democracy which is conducted on party lines. People after a time identify themselves with the symbol and the flag. These are great unifying insignia which cannot all of a sudden be effaced."

15. The Election Commission of India in exercise of the powers under Article 324 of the Constitution of India read with Section 29-A of the Representation of the People Act, 1951 and Rules 5 and 10 of the Conduct of Election Rules, 1961 and all other powers enabling it in this behalf made of Symbols Order, 1968. The Symbols Order, 1968 has been made by the Election Commission to provide for specification, reservation, choice and allotment of symbols at elections in Parliamentary and Assembly Constituencies for the recognition of political parties in relation thereto and for matters connected therewith. The Election Commission felt that it is necessary and expedient to provide, in the interest of purity of elections, to the House of People and Legislative Assembly all over State and in the interest of the conduct of such elections in a fair and efficient manner, for the specification, reservation, choice and allotment of symbols for the recognition of political parties in relation thereto and for matters connected therewith. The Symbols Order, 1968 provides for classification of symbols. For the purposes of the Order, symbols are either reserved or free. A reserve symbol is a symbol which is reserved for a recognized political party for exclusive allotment to contesting candidates set up by that party. The Order inter alia provides

conditions for recognition of a political party as a recognized national party and as well as the conditions for recognition as a State party with which we are not concerned for the present in this writ petition. The fact remains that the petitioner's political party is only a registered political party and not yet a recognised State party. Clause 8 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. Likewise, a candidate set up by a State Party at an election in any constituency in State in which such party is a State Party, shall choose, and shall be allotted the symbol reserved for that party in that State and no other symbol. Reserved symbols shall not be chosen by, or allotted to, any candidate in any constituency other than the 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 under the Symbols Order, 1968. Clause 12 provides that any candidate at an election in a constituency in any State or Union Territory other than-(a) a candidate set up by a National party, or (b) a candidate set up by a political party which is a State party in that State, or (c) a candidate referred to in paragraph 10 or paragraph 10-A, shall choose, and shall be allotted, in accordance with the provisions hereafter set out in this paragraph, one of the symbols specified as free symbols for that State or Union Territory by notification. The only concession made in the Rules is that where the same free symbol has been chosen by several candidates at such election, then if, of those several candidates, only one is a candidate set up by an unrecognized political party and all the rest are independent candidates, the returning officer shall allot that very symbol to the candidate set up by the unrecognized political party, and to no one else; and, if of those several candidates, two or more are set up by different unrecognized political parties and the rest are independent candidates, the returning officer shall decide by lot to which of the two or more candidates set up by the different unrecognized political parties that free symbol shall be allotted.

16. A perusal of the Symbols Order, 1968 makes it clear that there is no provision in the said Order for the allotment of a reserved symbol as prayed for by the petitioner-political party. But the Symbols Order, 1968 does not take into consideration all situations including the one that had cropped up in the present case where a political party has come up in between two elections and it has secured enough following.

17. There is no difficulty in agreeing with the submission made by the learned senior counsel appearing on behalf of the Election Commission that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot issue writ, direction or order compelling the Election Commission to act contrary to law. But the question that falls for consideration is whether the Election Commission is helpless in tackling with any peculiar situations that may arise like the one in hand and whether it had applied its mind to the peculiar situation pleaded by the petitioner-political party in passing the impugned order dated

10-2-2003?

18. In A.P.H.L. Conference, Shillong case (supra), the Supreme Court while referring to the power of the Election Commission under Article 324 of the Constitution of India observed "that the Commission is empowered on its own right under Article 324 of the Constitution and also under Rules 5 and 10 of the Rules to make directions in general in widest terms necessary and also in specific cases in order to facilitate a free and fair election with promptitude."

19. In Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , the Apex Court while construing Article 324 of the Constitution of India observed:

"..... there are two limitations laid on the Election Commission's plenary character in exercise of its power. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection, with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as a fair play-in-action in a most important area of the constitutional order, viz., elections."

It is further observed:

"The Commission is entitled to exercise certain powers under Article 324 itself on its own right, in an area not covered by the Acts and the rules. Whether the power is exercised in an arbitrary or capricious manner is a completely different question."

(Emphasis is of ours).

It is also observed:

"We do not find any limitation in Article 324(1) from which it can be held that where the law made under Article 327 or the relevant rules made thereunder do not provide for the mechanism of dealing with a certain extraordinary situation, the hands of the Election Commission are tied and it cannot independently decide for itself what to do in a matter relating to an election. We are clearly of opinion that the Election Commission is competent in an appropriate case to order..... where necessary."

(Emphasis is added).

20. In Election Commission of India Through Secretary Vs. Ashok Kumar and Others, , the Apex Court while construing the words "superintendence", "direction" and "control" employed in Article 324 of the Constitution of India observed:

"Article 324 of the Constitution contemplates constitution of the Election Commission in which shall vest the superintendence, direction and control of the preparation of the electoral rolls for, and conduct of, all elections to Parliament and to the Legislature of every State and of elections to the office of President and Vice-President held under the Constitution. The words "superintendence, direction and control" have a wide connotation so as to include therein such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding the elections to their completion."

21. In Special Reference No. 1 of 2002 Ref. by President, , the Supreme Court observed:

"..... Article 324 of the Constitution operates in areas left unoccupied by legislation and the words "superintendence", "direction" and "control" as well as "conduct of all elections" are the broadest terms which would include the power to make all such provisions."

22. An analysis of the judgments referred to hereinabove would make it abundantly clear that Article 324 of the Constitution of India operates in areas left unoccupied by legislation and the words "superintendence", "direction" and "control" as well as "conduct of all elections" are the broadest terms which would include the power to act in specific cases in order to ensure free and fair elections. Article 324 is a reservoir of power, which enables the Election Commission to act in specific cases and issue appropriate instructions and directions to the Returning Officers and all other concerned depending upon the circumstances in order to enable the electorate to exercise its franchise freely and fairly to choose candidates of their choice in any given election. This power includes to issue suitable directions even in the matter of allotment of symbols if the area is not occupied by the Symbols Order, 1968.

23. We do not find any difficulty whatsoever to agree with the submission made by the learned Senior Counsel appearing on behalf of the Election Commission that a recognised political party under the provisions of the Symbols Order, 1968 is not entitled for either reservation or exclusive allotment of any particular common election symbols for the candidates proposed to be set up by it.

24. In the instant case, the Election Commission pleads its inability to consider the request of the petitioner mainly on the ground that similar request made by a large number of similarly situated registered unrecognised political parties has been rejected. There are 662 registered unrecognised political parties similarly situated like the petitioner party as on the date. A large number of unrecognised parties have, in the past, approached the Commission for allotment of a common symbol to them, which the Commission rejected.

25. We have perused the records made available by the Election Commission pursuant to the directions of this Court. The record does not disclose any comparison to have been made by the Election Commission of India between the petitioner political party and the other registered unrecognised political parties. It

is not evident from the record as if all the 662 registered unrecognised political parties or a large number of those unrecognised parties have, in the past, approached the Commission and their request has been rejected.

26. The first question that is required to be taken into consideration by the Election Commission of India is whether the other unrecognised political parties, whatever may be their number, are similarly situated to that of the petitioner political party and their request has been turned down by it. The Election Commission cannot treat all the unrecognised political parties on the same footing and such treatment may amount to treating the unequals as equals. Such a view would be violative of Article 14 of the Constitution of India.

27. The records made available do not reflect any collective decision of the Election Commission to reject the request of the petitioner for allotment of a separate symbol to its candidates in the ensuing elections ?g a temporary measure till it is recognised as a political party in accordance with law. The Commission does not contend that it had no power to issue such directions as prayed for by the petitioner. Its apprehension is exercise of its power to issue any such direction may be tainted as a discriminatory one. But the Election Commission never made any comparative assessment of the situation and request made by the petitioner with that of the request made by other political parties whose request is stated to have been turned down by it. It is not clear from the objections as well as from the records as to whether any other registered political party made similar request for allotment of a common symbol pending consideration of its claim for recognition and that too in the special circumstances like the one pleaded by the petitioner in the case on hand.

28. It is not a case where the Election Commission has no power to consider the request of the petitioner but the question is that of exercise of its power. It is for the Election Commission to decide as to whether facts and circumstances require its interference for the purposes of giving appropriate directions in the matter as prayed for by the petitioner. It is needless to observe that the paramount consideration in consideration of all such cases is to ensure free and fair election where every candidate including the candidates set up by political parties shall have equal opportunities to effectively participate in the electoral process enabling them to seek mandate of their masters.

29. The existence of political parties is implicit in the nature of democratic form of Government which our country has adopted. "The use of a symbol, be it a donkey or an elephant, does give rise to a unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties, have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while

the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis - in other words, "on systematized differences and unresolved conflicts". That is the essence of our system.....(See Kanhiya Lal Omar Vs. R.K. Trivedi and Others,).

30. Variety of circumstances may have to be taken into consideration by the Election Commission to consider the request of the petitioner and its decision may ultimately depend upon such consideration of all the relevant factors.

31. In the light of the law declared by the Apex Court that the power of the Election Commission under Article 324 of the Constitution of India operates in areas left unoccupied by legislation and the words "superintendence", "direction" and "control" are the broadest terms, which include the power to make the orders in specified cases, the Election Commission, in our considered opinion, is required to re-examine the request of the petitioner political party for the allotment of a separate symbol to its candidates in the ensuing elections till the petitioner is given the status of a recognised political party in accordance with the provisions of the Symbol Orders, 1968 and u/s 29-A of the Representation of the People Act, 1951 and Rules 5 and 10 of the Conduct of Elections Rules, 1961. The Election Commission is required to reconsider whether the case on hand is a fit case for issuing appropriate directions or instructions in exercise of its power under Clause 18 of the Symbols Order, 1968 as well as under Article 324 of the Constitution of India.

32. Appropriate decision in this regard shall be taken as expeditiously as possible, preferably within a period of three weeks, from the date of receipt of a copy of this order. It is needless to observe that before the Commission takes an appropriate decision in the matter, an opportunity of being heard may be provided to the petitioner. There shall be an order accordingly.

33. The writ petition is accordingly disposed of. No order as to costs.