

(2009) 02 AHC CK 0180
In the Allahabad High Court
Case No : Writ Petition No. 1143 (MB) of 2009

Vinod Shanker Misra

APPELLANT

Vs

Election Commission of India

RESPONDENT

Date of Decision : 20-02-2009

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 10, 5
Constitution of India, 1950 — Article 324
Representation of the People Act, 1951 — Section 29A

Citation : (2011) 1 RCR(Civil) 463 : (2011) 1 RCR(Civil) 463

Hon'ble Judges : Shabihul Hasnain, J;Pradeep Kant, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This petition, by an advocate, is styled as Public Interest Litigation whereas the Petitioner has prayed for quashing of the order dated 6.1.2007 issued by the Election Commission of India after summoning the same from the Respondent Commission to the extent by means of which it has been decided/directed that "In all States/U. Ts. Except in the States of Assam and Sikkim where its (Bahujan Samaj Party's) candidates will have to choose another symbol from out of the list of free symbols specified by the Commission", and also for a writ in the nature of mandamus directing the opposite party, the Respondent Commission to permit the BSP candidates to contest the election on the symbol allotted to it i.e. "Elephant" throughout the territory of India including the State of Assam and Sikkim and to allot some other election symbol to " Asom Gana Parishad" and "Sikkim Sangram Parishad".

2. A preliminary objection has been raised by the Respondent counsel that this petition itself would not be maintainable as the Petitioner has no locusstandi to file a writ petition for the relief claimed, he having no interest in the subject matter and for that matter he is not even a member of Bahujan Samaj Party and even if he was a member he still would not have any right to challenge the order

of the Election Commission of India, he not being an aggrieved person in any manner.

3. Further submission of the Respondent counsel is that the symbol of Elephant has rightly been allotted to the Bahujan Samaj Party and the discretion exercised by the Election Commission of India, that too with the consent and agreement of the National Party, cannot be open to challenge in the present proceedings.

4. The Petitioner's contention is that the Election Symbols (Reservation and Allotment) Order, 1968 recognized and classified the political parties and the symbols have to be allotted as per the provisions given therein. Argument is that in view of Para 8(1) of the said Order, a candidate set up by a National Party at any election in any constituency in India shall choose and shall be allotted the symbol re-served for that party and no other symbol.

5. Relying upon the said provision, it has been submitted that the allotment of any other symbol as against the symbol of Elephant in the States of Assam and Sikkim, is per-se without jurisdiction and authority and, therefore, the Bahujan Samaj Party should be allowed to contest the election only on the symbol of Elephant.

6. The power of superintendence, direction and control of all elections to Parliament and to the legislature of every State is vested by the Constitution of India in the Election Commission of India. The Election Commission of India in exercise of the powers contained in Article 324 of the Constitution read with Section 29 A of the Representation of the People's Act, 1951 (43 of 1951) and Rules 5 and 10 of the Conduct of Elections Rules, 1961 and all other powers enabling in this behalf, made the order known as "The Election Symbols (Reservation and Allotment) Order, 1968. Clause 4 of the said order, states, that in every contested elections symbol should be allotted to a contesting candidate in accordance with the provisions of the Order and different symbols should be allotted to different contesting candidates at an election in the same constituency. Clause 5 deals with the classification of symbols and prescribes as under:

5. CLASSIFICATION OF SYMBOLS:

(1) For the purpose of this Order symbols are either reserved or free.

(2) Save as otherwise provided in this Order, a reserved symbol is a symbol which is reserved for a recognized political party for exclusive allotment to contesting candidates set up by that party.

(3) A free symbol is a symbol other than a reserved symbol

7. The Bahujan Samaj Party which was earlier a State party was later on recognised as National Party and was allotted the symbol of Elephant. As per the argument of the Respondent counsel at the time of allotment of symbol, the Bahujan Samaj Party being registered as a National Party, it was disclosed to

Bahujan Samaj Party that in the State of Assam and Sikkim, the Elephant was the symbol of State party and therefore, it has to choose a different symbol for the election for those States which was agreed to by the Bahujan Samaj Party and the symbol of Elephant as aforesaid was allotted to Bahujan Samaj Party but for the aforesaid two States.

8. The argument of the learned Counsel for the Respondent is that firstly the Bahujan Samaj Party itself has agreed for allotment of symbol of Elephant with the given terms and conditions of not having that symbol for the State of Assam and Sikkim, therefore, the Petitioner cannot raise such a dispute and secondly the Commission was having full power under Clause 18 to allot the symbol in the manner aforesaid.

9. Clause 18 of the said Orddr gives power to the Commission to issue instructions and directions which reads as under:

Power of the Commission to issue instructions and directions:

- (a) for the classification of any of the provisions of this Order;
- (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and
- (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or makes insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections.

10. Thus in a case where some difficulty is realised by the Commission in relation to implementation of the provisions of the order and in relation to any matter with respect to reservation and and allotment of the election symbols, the Commission has the power to issue necessary instructions and directions for meeting such a situation. Therefore, if the Election Commission has allotted symbols in the manner aforesaid it cannot be said that it has allotted the symbol illegally and without jurisdiction.

11. Even otherwise under para 8(1) of the Order 1968 there is a direction for a candidate who is set up by a National party to contest the election of having that very symbol which has been allotted to the National Party and no other symbol. Sub Clause (1) says that a candidate set up by a National Party at any election in any constituency "shall choose and shall be allotted" the symbol "reserved for that party and no other symbol", clearly shows that such a candidate who is set up by a National Party cannot choose any other symbol but for the symbol of the National Party.

12. It is also evident by the fact that under Clause 12, which prescribes choice of symbols by other candidates and allotment thereof says 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, (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 10A, 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 under paragraph 17. This leaves no doubt that the candidate who is set up by a National party or by any other political party necessarily has to choose that very symbol which has been allotted to that party and is not free to choose any other symbol.

13. There is, thus, no prohibition for the Election Commission in allotting different symbol to a National Party in a particular State if the circumstances so exist, but the only restriction is that whosoever is the candidate of that National party he will have to choose that very symbol which has been allotted to the National Party by the Election Commission of India and no other. That being so the plea that for the State of Assam and Sikkim, the symbol of Elephant should have been allotted, cannot be supported by any provision of the aforesaid Order. Any candidate who intends to contest the election on the Ticket of Bahujan Samaj Party in the State of Assam and Sikkim is to choose and would be allotted that very symbol which has been reserved for National party in that State.

14. Considering the pleas raised from both the sides, we are of the opinion that the Petitioner having no locus standi to raise any grievance regarding allotment of symbol to the Bahujan Samaj Party by the Election Commission of India, in the States of Assam and Sikkim and he having not been able to establish as to whose cause he is espousing and whether the Bahujan Samaj Party apparently for whose benefit the Petitioner has filed this writ petition, was at all aggrieved, the petition is neither maintainable on his behalf nor the pleas raised have any merits.

15. The allotment of symbol to a political party exclusively lies within the domain of the Election Commission. If a symbol is allotted to a National Party, it cannot be challenged by each and any individual on such grounds on which the Petitioner has laid his claim.

16. We, therefore, do not find any merit in the petition, which is hereby dismissed.