

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 29th August, 2011

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W.P.(C) 6314/2011

ASIT KUMAR ROY

..... Petitioner

Through: Mr. Aruneshwar Gupta, Mr. Manish
Rahav & Mr. Nikhil Singh, Adv.

Versus

ELECTION COMMISSION OF INDIA & ANR Respondents

Through: Mr. R.P. Chopra, Adv. for R-1.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? Not necessary
2. To be referred to the reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

RAJIV SAHAI ENDLAW, J.

1. The petition impugns the order dated 3rd March, 2010 of the respondent no.1 Election Commission of India refusing the application of the petitioner for registration of his political party in the name and style of "Voters Party" under Section 29A of the Representation of People Act, 1951.

2. The petition also impugns the order dated 12th January, 2011 of the respondent no.1 registering a political party in the name of “Voters Party” on the application of the respondent no.2 Shri Ram Krishna Tomer u/S 29A (supra).

3. The petition in so far as challenging the order dated 3rd March, 2010 refusing registration to the petitioner has been preferred after 1½ years therefrom. Upon it being put to the counsel for the petitioner as to why the petition should not be dismissed on the ground of laches and acquiescence alone, the counsel for the petitioner states that the petitioner was under the belief that registration under the name of Voters Party having been refused to petitioner, registration in the same name would not be allowed to the respondent no.2 also. It is also stated that the petitioner being but a General Secretary of the unregistered Voters Party, it takes time for the political party to take a decision to impugn the order.

4. The petitioner has been refused registration for the reason of the application for registration having been made beyond the period of 30 days from the date of formation of the party, i.e. the application of the petitioner

being time barred. The respondent no.1 in this regard has referred to the admission of the petitioner himself, of many candidates in the past having conducted various elections of Lok Sabha and State Assemblies under the name of Voters Party and held that the same was indicative of the parties having been formed much prior to 1st January, 2010 as was claimed in the application submitted by the petitioner.

5. The counsel for the petitioner has argued that the respondent no.1 having refused registration to the petitioner for the reason of the application having been preferred after 30 days of Voters Party having come into existence, could not have granted registration to the respondent no.2. It is argued that if Voters Party had existed as has been believed while refusing the application of the petitioner, then the application for registration of the respondent no.2 was also barred by time.

6. In this regard, it may be noted that while the petitioner had applied for registration on 20th January, 2010, the respondent no.2 had applied on 19th December, 2008.

7. Though the application of the respondent no.2 is earlier in point of time than that of the petitioner but the counsel for the petitioner has contended that the application of the petitioner has not been rejected on this ground and thus the same would be irrelevant.

8. He on the contrary contends that there is arbitrariness in the orders; that the ground on which the petitioner has been denied registration has not been considered while granting registration to the respondent no.2.

9. It has been enquired from the counsels as to whether there has to be any particular form/mode for formation of a political party i.e whether it is required to be registered as a society or enrolled in any other fashion.

10. Both counsels state that there is no such requirement; even an association of persons can apply for registration under Section 29A.

11. The respondent no.1 has disbelieved the case of the petitioner, of Voters Party having been formed on 1st January, 2010 for the reason of the petitioner himself in the letter dated 11th December, 2009 having stated of candidates in the elections held prior thereto also, having contested under

the name of Voters Party.

12. The counsel for the petitioner has explained that the name Voters Party was being used by the National Foundation for Education & Research (NAFER) a registered society and certain persons believing in the ideology of NAFER, while contesting elections independently were using the banner of Voters Party; however subsequently on 1st January, 2010 a decision was taken by members of NAFER to form a political party by the name of Voters Party and the application for registration was filed within 30 days on 20th January, 2010.

13. However, the counsel has not been able to show that it was the claim of the respondent no.2 also that the Voters Party which he sought to get registered had existed at any time prior to 30 days before the date of formation disclosed in the application of the respondent no.2. It is however contended by the counsel for the petitioner that the respondent no.2 is using the same lineage. However admittedly the association of persons forming a party, of which registration was sought by the respondent no.2 is different from the association of persons claiming to be General Secretary

whereof the petitioner had sought registration. Thus merely because the name Voters Party was stated by the petitioner to have been in use for more than 30 days prior to his application and in fact since prior to 30 days of the application of the respondent no.2 also, would not disentitle the respondent no.2 from making the application and/or would not make the application of the respondent no.2 to be time barred. The respondent no.1 while considering whether an application under Section 29A for registration is within time or not, is concerned with the date of formation of the political party and not with the use of the same name by someone else. While the petitioner claimed his political party to have been in existence as a part of NAFER much prior to the date of its formation stated in the application for registration, the respondent no.2 did not.

14. Otherwise, as far as the *inter se* dispute between the petitioner and the respondent no.2 about use of the name “Voters Party” is concerned, the same are private disputes and would not fall under the Public Law Remedy to be considered in this petition.

15. There is another aspect of the matter. The application of the petitioner was rejected 1½ years ago. The petitioner was then aware of the pendency of the application of the respondent no.2 for registration under the same name. If the petitioner desired to stop the respondent no.1 from considering the said application, the petitioner ought to have acted diligently. The petitioner by the long delay of 1½ years has allowed the respondent no.1 to grant registration to the respondent no.2. The only error urged in the order granting registration to the respondent no.2 as aforesaid, is of the application of the respondent no.2 also being barred by time. However no merit is found therein. The petitioner, by delay having allowed another party to be registered in the name sought by the petitioner, for this reason also is not entitled to impugn the order rejecting his application.

16. There is thus no merit in the petition; the same is dismissed. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

AUGUST 29, 2011/pp