

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

% **Date of decision: 21st March, 2016.**

+ **W.P.(C) 2501/2016**

JAI MAHA BHARATH PARTY

..... Petitioner

Through: Mr. Shri Bhagawaan Shri Rangadeva
Shri Anantha Vishwa Vishnudeva
Prabhu, President of petitioner-in-
person.

Versus

**THE CHIEF ELECTION COMMISSIONER, ELECTION
COMMISSION OF INDIA & ANR.**

..... Respondents

Through: Mr. Pankaj Chopra and Mr. Y.R.
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CMs. No.10712/2016 & 10713/2016 (both for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

**W.P.(C) 2501/2016 & CMs No.10710/2016 (for directions) & 10711/2016
(for stay)**

3. This petition dated 15th March, 2016 and which has come up for the first time today seeks the reliefs of:

- (i) stay of Assembly General Elections 2016 of States of Assam, West Bengal, Tamil Nadu, Puducherry and Kerala going to be

announced by the respondents Election Commission of India (ECI) in the first week of March, 2016;

(ii) mandamus to the respondents ECI to allot the petitioner a new common symbol to contest the Assembly General Elections 2016 of the aforesaid States;

(iii) quashing of all resemblances, religious connotations, communal connotations and depictions of animal symbols which are already allotted to the registered recognized Political Parties under para 10B of the Election Symbols (Reservation and Allotment) Order 1968;

(iv) quashing of Election Symbols (Reservation and Allotment) Order, 1968 (Election Symbols Order) and the Election Symbols (Reservation and Allotment) (Amendment) Order, 2015 dated 26th June, 2015 (Election Symbols Amendment Order); and,

(v) mandamus to the respondents ECI to permanently register proposed common symbol of the petitioner, a registered unrecognized Political Party, to contest any General Election to the Legislative Assembly of all States and Lok Sabha, all over India, forever under the umbrella of one common symbol.

4. The petition is drawn and filed by the National President of the petitioner who has also been heard.

5. It is *inter alia* the case of the petitioner (a) that it is registered under Section 29A of the Representation of People Act, 1951 as a National Level

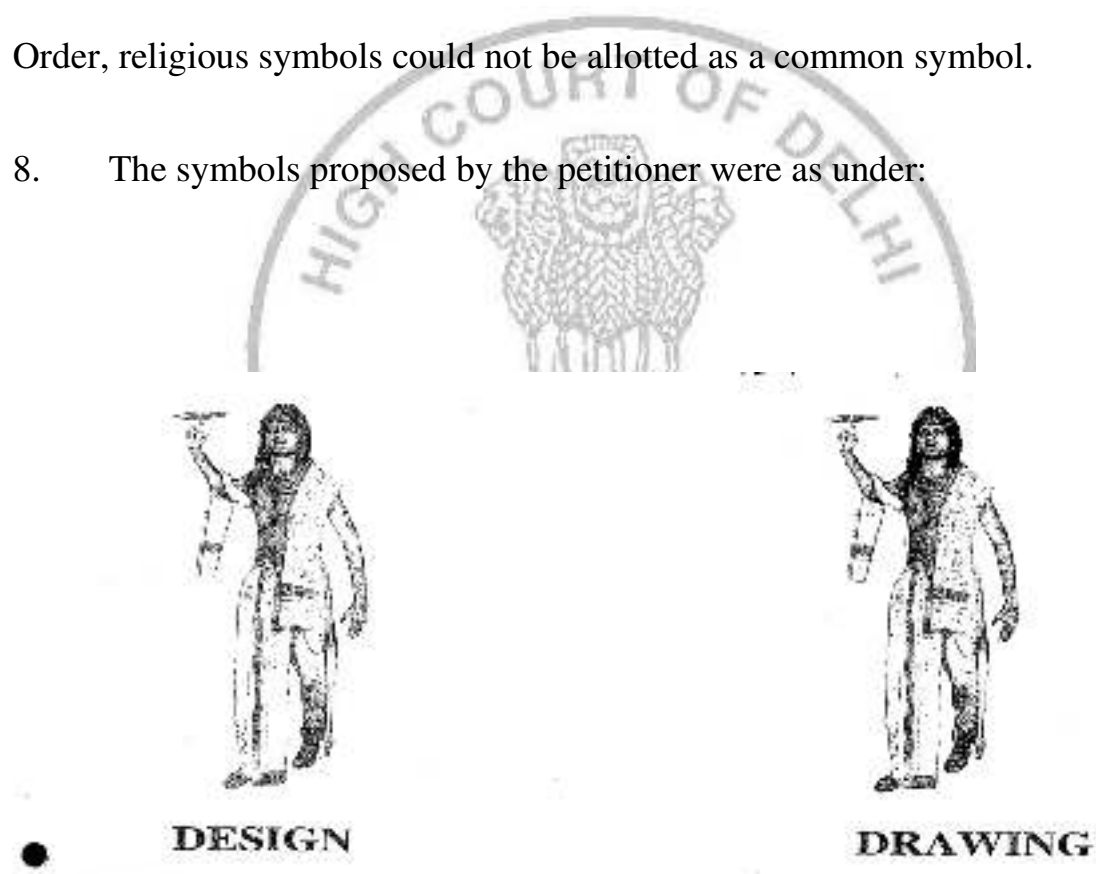
Political Party; (b) that it made an application for a new common symbol to contest Lok Sabha General Election 2014 all over India; (c) however it was not allotted a common symbol due to the arbitrary, illegal and unconstitutional Election Symbols Order and the Election Symbols Amendment Order; (d) that the same was challenged by the petitioner before the Supreme Court in W.P.(C) No.279/2014 and W.P.(C) No.31/2015 which were disposed of vide orders dated 2nd December, 2014 and 1st July, 2015; (e) that though the petitioner participated in the Lok Sabha General Election 2014 but the respondents ECI allotted 13 different election symbols in different Parliamentary Constituencies to the candidates set up by the petitioner; (f) that the said conduct of the respondents ECI is absolutely unfair and impure and violative of Articles 14, 19, 21, 39, 41 & 51 of the Constitution of India; (g) that the petitioner on 21st January, 2016 submitted a proposal to the respondents ECI for allotment of a new common symbol for the Assembly Elections due in the year 2016 and the schedule whereof was likely to be published in the first week of March 2016; (h) however the respondents ECI vide its letter dated 4th February, 2016 has denied the said proposal of the petitioner; (i) that the petitioner filed W.P.(C) No.153/2016 in the Supreme Court in this regard; (j) that though the Supreme Court vide

order dated 11th March, 2016 dismissed the petition but with observations that if the petitioner approached the High Court, the High Court will look into the merits of the case and decide the same in accordance with law; (k) that the symbols proposed by the petitioner had no religious connotation; (l) considered in this light, the symbol of Bharatiya Janta Party (BJP) also connotes to Lord Vishnu and Goddess Laxshmi, the symbol of Indian National Congress also represents the manner in which blessing is given, the symbol of Bahujan Samaj Party (BSP) is the vehicle of Lord Indra and so on; (m) that the action of the respondents ECI suppresses new Political Party and safeguards old and established political groups.

6. I may mention that W.P.(C) No.279/2014 and W.P.(C) No.31/2015 earlier filed by the petitioner were on 2nd December, 2014 and on 1st July, 2015 respectively disposed of observing that with the issuance of the Election Symbols Amendment Order enabling registered unrecognized Political Parties desirous of contesting election and having more than 5% seats in Assembly Constituencies of that State to get a common election symbol, the principal prayer with which the petitioner had approached the Court stood granted.

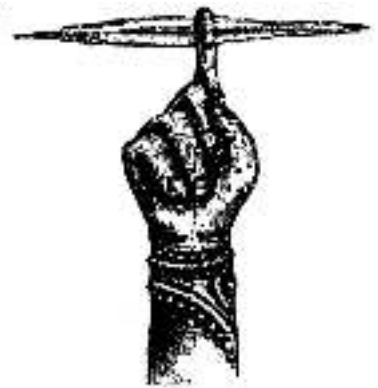
7. I may further notice that the respondents ECI vide its letter dated 4th February, 2016 refused the request of the petitioner for allotment of common symbol to the candidates set up by the petitioner in the General Election in the Legislative Assemblies of Assam, Kerala, West Bengal, Tamil Nadu and Puducherry observing that the common symbol proposed by the petitioner had religious connotation and as per para 10B of the Election Symbols Order, religious symbols could not be allotted as a common symbol.

8. The symbols proposed by the petitioner were as under:

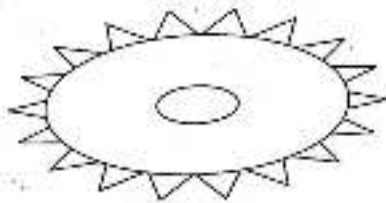




DESIGN



DRAWING



DESIGN



DRAWING

9. It may yet further be noted that though the petitioner has alleged that the symbols already allotted to other Political Parties also have religious connotations but the petitioner has not impleaded those Political Parties as parties to the petition and there is no challenge in the petition to allotment of those symbols. The challenge in the petition is thus confined to the refusal dated 4th February, 2016 of either of the three symbols proposed by the petitioner for contesting the Assembly Elections aforesaid.

10. The President of the petitioner during the hearing also, with reference to the aforesaid symbols, stated that they could not be said to be having any religions connotation.

11. I may at the outset notice that the schedule for the General Election to the Legislative Assemblies of the aforesaid States was notified by the respondents ECI on 4th March, 2016 and the election process has thus begun. Supreme Court as far back as in ***N.P. Ponnuswami Vs. Returning Officer Namakkal Constituency*** AIR 1952 SC 64, in the context of the meaning to be ascribed to the word 'election' in Article 329(b) of the Constitution of India held that it refers to the entire process which consists of several stages and embraces many steps and that if any irregularities are committed while election is in progress and they belong to the category or class which under the law by which the elections are governed would have the effect of vitiating the election and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress. In ***Supreme Court Bar Association Vs. B.D. Kaushik*** (2011) 13 SCC 774 also it was reiterated that once election process has started, the Court should not ordinarily interfere with the said process by

granting injunction and that the election process commences when the schedule of the election is fixed. A Division Bench of this Court also recently in ***Vijay Mahajan Vs. Akhil Bhartiya Mahajan Shiromani Sabha*** MANU/DE/1769/2015 held that the election process commences after a list of valid voters is drawn up and the process of finalizing the electoral roll must precede the notification publishing the schedule of the election and the schedule of the election would mean voters to be notified the dates on which nomination forms can be obtained, the date by which nominations can be filed, the date on which the nominations would be scrutinized, the date on which list of eligible candidates would be published and followed lastly by the date when the polling would be held and the date on which counting would take place. A Division Bench of the High Court of Punjab and Haryana also in ***Baldev Raj Vs. State of Punjab*** MANU/PH/1370/2008 held that the schedule of the elections having been notified, the writ petitions could not be entertained. An exhaustive discussion on the subject is also to be found in the judgment of the Single Judge of this Court in ***Sekar @ Balasunderam Vs. Election Commission of India*** MANU/DE/0185/2002 where it was observed that though the writ petition had been filed on the alleged ground of failure of the Election Commission of India to discharge

its constitutional obligation but in substance sought the relief of deferment of elections and interfered with the election process and the writ petition would thus be hit by bar under Section 329(b) of the Constitution of India.

12. This petition, first relief wherein is of stay of election, cannot be entertained and the petition is liable to be dismissed on this ground alone.

13. The question of consideration of validity of the order dated 4th February, 2016 of the respondents ECI would otherwise not arise, as under the Election Symbols Amendment Order, common election symbol has to be allotted to the recognized Political Party, only if they contest more than 5% of the Assembly seats and the petitioner will have to make a fresh application at the time of the next Assembly Elections, if contesting more than 5% of the seats.

14. The petitioner of course has also impugned the Election Symbols Amendment Order. The petitioner however forgets that if the Election Symbols Amendment Order goes, then the petitioner as an unrecognized Political Party would not be entitled to an election symbol *per se*. If however the challenge thereto is confined to the second Proviso to paragraph 10B(A) thereof *inter alia* providing that symbols proposed shall not have any

religious or communal connotation, then also, I find no merit in the challenge thereto. The Preamble of our Constitution secures to all the citizens *inter alia* fraternity assuring the dignity of the individual and the unity and integrity of the State and sets up India as a secular State and prohibits discrimination on the grounds of religion. In this light, the provision prohibiting election symbols having religious or communal connotation cannot be found fault with.

15. I am even otherwise of the view that the challenge to the orders / decisions of the respondents ECI can be on very limited ground. Supreme Court in ***Election Commission of India Vs. Ashok Kumar*** (2000) 8 SCC 216 reiterated that power vested in a constitutional functionary like the Election Commission is a trust and in view of the same having been vested in high functionary can be expected to be discharged reasonably, with objectivity and independence and in accordance with law. On an analysis of the earlier judgments, it was further held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage and that the non-obstante clause with which Article 329 opens, pushes out Article 226 where the dispute takes the

form of calling in question an election. It was observed that the founding fathers of the Constitution have consciously employed the use of the words “no election shall be called in question” in the body of Section 329(b) and thus the words provide the determinative test for attracting applicability of Article 329(b) and that if the petition presented to the Court ‘calls in question an election’, the bar of Article 329(b) is attracted; Else, the action taken or orders issued by Election Commission are open to judicial review without however interrupting, obstructing or delaying the progress of the election.

16. The petitioner here has not urged any ground to show any procedural impropriety in the order impugned in this petition i.e. the communication dated 4th February, 2016 and has also not alleged any bias and *mala fide*. I even otherwise do not find any error in the decision of the respondents ECI of, the three symbols proposed by the petitioner indeed having religious connotation and the first association in the mind on seeing the symbols is with the Hindu Religion and the symbols thus are clearly in contravention of paragraph 10B supra and have been rightly denied to the petitioner. In fact, Dr. Saiyid Mohd. Saadullah in the Constituent Assembly, while representing the philosophy and the idea which our National Flag represents, debated that the “emblem now embodied in our National Flag ought to remind every

administrator and every citizen of the federation of India that we should forget the past and look to the future and try to carry on the tradition of that Buddhist emperor Ashoka this Chakra was a religious emblem and we cannot disassociate our social life from our religious environment.” Supreme Court in ***Mullapudi Venkata Krishna Rao Vs Vedula Suryanarayana*** 1993 Supp (3) SCC 504 held that the depiction of anyone in the attire of Lord Krishna blowing a 'shanku' and quoting the words from the Bhagavad Gita addressed by Lord Krishna to Arjuna, is to every Indian symbolic of Hindu religion and the use thereof by a candidate would amount to use of a religious symbol to prejudicially affect the election of the candidate of the rival political party.

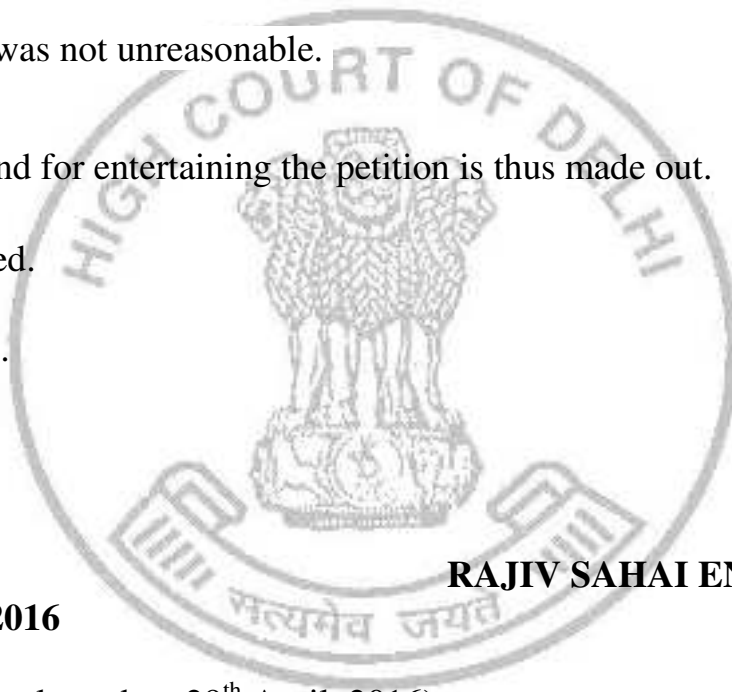
17. I may lastly refer to ***Kanhiya Lal Omar Vs. R.K. Trivedi*** (1985) 4 SCC 628 upholding the validity of the Election Symbols Order and holding the same to be sustainable by Article 324(1) of the Constitution of India and not unconstitutional. Similarly, in ***Krishna Mohini Vs. Mohinder Nath Sofat*** (2000) 1 SCC 145 it was observed that the Scheme of Election Symbols Order shows that it does not deal with unregistered political parties and deals with registered political parties only. In ***Desiya Murpokku Dravida Kazhagam Vs. Election Commission of India*** 2012 (7) SCC 340

the amendment of the year 2000 to the Election Symbols Order mandating that in order to be recognized as a State party in the State, not less than 6% of the total valid votes polled in the State should have been polled in favour of the party and the party should have returned at least two members to the Legislative Assembly of the State, was upheld. It was held that the decision of the Election Commission setting down a benchmark for recognition as the political party was not unreasonable.

18. No ground for entertaining the petition is thus made out.

Dismissed.

No costs.



RAJIV SAHAI ENDLAW, J.

MARCH 21, 2016

Bs/gsr..

(Corrected and released on 29th April, 2016)