

\$~28 (2021 Cause List)

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

Date of Decision 17th November, 2021

+ W.P.(C) 2495/2021

BHARTIYA JANTA DAL INTEGRATED Petitioner

Through: Mr. S. Yadav, Advocate with
Mr. D.B. Yadav, Advocate

versus

THE GOVT. OF INDIA & ORS. Respondents

Through: Mr. Vijay Joshi, Advocate for
R- 1/UOI.

Mr. Sidhant Kumar, Advocate
for R-2/ECI.

Mr. Sumeet Pushkarna,
Standing Counsel with Mr.
Devanshu Lahiry, Advocate for
R-3/State Election Commission.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through hybrid mode [physical and virtual hearing].

1. The petitioner, Bhartiya Janta Dal Integrated ["BJDI"] is a political party, registered with the Election Commission of India ["ECI"], but not recognised either as a national party or a State party. BJDJ contested elections to the Municipal Corporation of Delhi

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[“MCD”] in 2021. The grievance with which it has approached this Court is that the candidates belonging to the BJDI were not allotted a common symbol, but were compelled to contest on individual symbols for the MCD election, akin to independent candidates.

2. The relief sought in the writ petition is as follows: -

*“(a) Issue a writ, direction, order more in the nature of writ of mandamus or any other appropriate writ/order/directions thereby directing the respondents not to treat the candidates of unrecognized Political Party as Independent Candidate in MCD Election but to treat them as a candidate of unrecognized political party.
(b) Pass such other or further order as may be deemed fit and necessary by the court in favour of the petitioner at large and against the respondents.”*

3. Mr. S. Yadav, learned counsel for BJDI, submits that, as a registered political party under the Representation of the People Act, 1951 [“RP Act”], albeit unrecognised, BJDI is entitled to be treated, for the purposes of the MCD election also, as a political party with a common symbol. He submits that this is the practice in the case of unrecognised parties for elections to the Lok Sabha and Legislative Assemblies.

4. Mr. Sidhant Kumar, learned counsel for the respondent no.2 – Election Commission of India [“ECI”] submits that in respect of MCD elections, the ECI has no role and the appropriate authority is only the State Election Commission [“SEC”].

5. Mr. Sumeet Pushkarna, learned counsel for the SEC, disputes the contention raised by Mr. Yadav. He relies upon the judgment of the Supreme Court in *Subramaniam Swamy vs. Election Commission*

of India (Through its Secretary)¹ and the judgment of a Coordinate Bench of this Court in *Swaraj India vs. State Election Commission and Anr.*², to contend that an unrecognised party is not entitled to a common symbol in the MCD elections.

6. Having heard learned counsel for the parties, I am of the view that the petitioner has not made out a case for the relief sought.

7. Section 29A of the RP Act provides for registration of political parties. The eligibility criteria for recognition as a “State party” or a “National party” are stated in Paragraphs 6A and 6B respectively, of the Election Symbols (Reservation and Allotment) Order, 1968 [“1968 Order”]. All other political parties remain registered, but are treated as unrecognised. It is undisputed that BJD I does not meet the criteria for recognition in either category.

8. Paragraph 1(2) of the 1968 Order clarifies that it applies to elections for parliamentary and assembly constituencies. Various paragraphs of the 1968 Order deal with allotment of symbols to candidates, including those put up by political parties. The allotment of common symbols to candidates set up by a registered unrecognised political party is governed by Paragraph 10B of the 1968 Order, which was inserted by a notification dated 16.09.2011.

9. As far as elections to the MCD are concerned, the applicable order is the Municipal Corporation of Delhi Election Symbols (Reservation and Allotment) Order, 2017 [“2017 Order”]. The 2017 Order has been made by the SEC in exercise of powers conferred by

¹ (2008) 14 SCC 318

² (2017) 238 DLT 723

Section 7 of the Delhi Municipal Corporation Act, 1957 (as amended by the Delhi Municipal Corporation (Amendment) Act, 2011), and Rule 15 of the Delhi Municipal Corporation (Election of Councillors) Rules, 2012 [“2012 Rules”]. The terms “National Party”, “Delhi State Party” and “other State Party” have been defined in Paragraph 2 of the 2017 Order as follows: -

“2. Definitions, Interpretation:

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(d) ‘National Party’ means a party recognized by the Election Commission of India as such under Section 29-A of the Representation of the People Act, 1951, to which a reserved symbol has been allotted for election to Lok Sabha/Assembly Constituency in the NCT of Delhi by Election Commission of India.

(e) Delhi State Party means a State Party recognized by the Election Commission of India for N.C.T. of Delhi under Section 29-A of the Representation of the People Act, 1951 to which a reserved symbol is allotted for election to Lok Sabha/Assembly Constituency from NCT of Delhi.

(f) Other ‘State Party’ means a party recognized by the Election Commission of India in a State or States (Other than N.C.T. of Delhi) under Section 29-A of the Representation of the People Act, 1951 to which a reserved symbol is allotted for election to Lok Sabha/Assembly Constituency in that State or States.”

10. Recognised national parties and Delhi State parties are recognised for the purposes of elections to the MCD by virtue of Paragraph 3(a) of the 2017 Order. Such parties are entitled to the same symbols as allotted by the ECI for other elections.

11. As far as unrecognised parties are concerned, Paragraph 4(d) of the 2017 Order provides as follows: -

“4. Choice of Symbol by candidates of National and State Parties and allotment thereof:

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*(d) The candidates belonging to unrecognized parties registered by Election Commission of India **shall be treated as independent candidates for all purposes** including number of proposers required i.e. 10 proposers of the ward to which the nomination is filed and for allotment of symbols. **They shall not be given any preference over other independent candidates in allotment of free symbols or allotment of only one free symbol to all its candidates in any of a Municipal Corporation of Delhi.**”³*

12. It appears that the relief sought by BJDI is directly in the teeth of Paragraph 4(d) of the 2017 Order. Whatever be the situation as far as the 1968 Order is concerned, that would apply only to parliamentary and State assembly elections. It has not been incorporated into the regulatory scheme for MCD elections. In fact, Paragraph 4(d) of the 2017 Order, which applies to elections to the MCDs, specifically excludes allotment of a common symbol to candidates of unrecognised parties.

13. It was put to Mr. Yadav that the petitioner has not even referred to the said provision in the writ petition, leave alone to lay a challenge to the *vires* thereof. Mr. Yadav submits that the petitioner need not challenge the provision, and is nonetheless entitled to the relief sought. He refers to Rule 15 of the 2012 Rules, which provides as follows:-

“15. Symbols – (1) For the purpose of election to a Municipal Corporation of Delhi, the National Parties and State Parties for the National Capital Territory of Delhi, as are recognized for the time being by the Election

³ Emphasis supplied.

Commission of India in the National Capital Territory of Delhi, under section 29A of the Representation of the People Act, 1951 and the rules and procedure made thereunder, shall be recognized as such by the Commission. The Commission shall recognize the parties and adopt symbols subject to the following conditions, namely:-

(a) The National Parties and the State Parties **recognized by the Election Commission of India** shall be recognized under the very same name by the Commission.

(b) The National Parties and the State Parties **recognized by the Election Commission of India** shall use only those very symbols which are reserved for them by the Election Commission of India and not any other symbol, and

(c) The facsimiles of the symbols thus allowed shall not be different from the facsimiles prescribed and recognized by the Election Commission of India.

(2) A candidate shall be deemed to have been set up by a political party only if the candidate has made a declaration to that effect in the nomination paper first filed by him and duly supported by all authorized to such effect by the party concerned.

(3) The Commission shall also adopt free symbols as have been notified by the Election Commission of India for the time being in respect of elections to Lok Sabha and Legislative Assembly for the National Capital Territory of Delhi.

(4) **The Commission shall specify by notification in the official Gazette, the symbols that may be chosen by candidates and the restrictions to which their choice shall be subject.**

(5) Where at any such election, more nomination papers than one are delivered by or on behalf of a candidates, the declaration as to symbols, made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under rule 24 even if that nomination paper has been rejected.

(6) A failure to complete, or a defect in completing the declaration as to symbols in a nomination paper shall not be deemed to be a defect of a substantial character within the meaning of sub-rule (4) of rule 22.”⁴

14. I am unable to accept Mr. Yadav’s contention. Rule 15(1) deals only with parties which are recognised by the ECI. BJDI is admittedly not so recognised. Rule 15(4) empowers the SEC to notify restrictions regarding allotment of symbols to candidates. Paragraph 4(d) of the 2017 Order is made under this power, and BJDI’s claim is wholly inconsistent with it. Rule 15 of the 2012 Rules, therefore, cannot come to its assistance.

15. The judgment of the Supreme Court in *Subramanian Swamy*⁵ concerned a challenge to Paragraph 10A of the 1968 Order. The Supreme Court repelled the challenge, holding that the concepts of “recognition” and allotment of a symbol are inextricably connected.⁶ To this extent, the judgment supports the case of the respondents, as far as interpretation of the 2017 Order is concerned. However, it may be mentioned that this judgment precedes the insertion of Paragraph 10B in the 1968 Order.

16. The judgment of this Court in *Swaraj India*⁷ is directly on the issue raised in this petition. In that case also, a claim by an unrecognised party to a common symbol for the MCD election was rejected. In addition, the Court held that Paragraph 4(d) of the 2017 Order was not *ultra vires* the powers of the SEC. The relevant

⁴ Emphasis supplied.

⁵ Supra (Note 1)

⁶ Supra, paragraph 22.

⁷ Supra (Note 2)

observations of the Court are reproduced below:-

“45. There is nothing in the Constitution, the RP Act, the DMC Act, DMC Rules or any other Statute, which prohibits unrecognized political parties from setting up candidates at an election or curtails the right of independent candidates to contest the election. Simply because the SEC may refuse recognition to a political party cannot prevent such a party from nominating candidates to contest the municipal elections. The benefits that registration provides to a political party, have been spelt out in the RP Act. One of the said benefits of recognition to a registered political party is that a common symbol can be allotted to all the candidates nominated by it. Therefore, a newly formed political party is not entitled as a matter of right to claim exclusive allotment of a common election symbol for the benefit of the candidates nominated by it at the Municipal elections. Instead, its candidates are required to choose from one of the free symbols notified by the respondent No. 1/SEC.

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47. In view of the legal position and the judicial precedents cited above, the petitioner cannot raise a grievance that it is being discriminated against or being placed at a disadvantageous position vis-à-vis recognized registered political parties. Merely because the ECI has elected to relax the norms by granting a common symbol to unrecognized registered political parties or because five other State Commissions in the country have done so, cannot be a ground to find fault with the decision of the respondent No. 1/SEC which has declined to carve out any such classification for unrecognized registered political parties for the purpose of contesting the impending MCD Elections, 2017.

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49. Once it is held that in the absence of a statutory right, there is no fundamental right or a common law right that can be invoked by the petitioner to claim a common

symbol, its plea that directions be issued to the respondent No. 1/SEC to reserve a common symbol for candidates nominated by it to contest in the MCD Elections, 2017, falls to the ground. It is not as if the petitioner has been placed on a different footing vis-à-vis other unrecognized registered political parties. Counsel for the respondent No. 1/SEC had handed over a list of 27 parties out of which, a large number are duly registered, whose request on similar lines has been turned down very recently. **As the position stands today, it cannot be stated that there has been any discrimination against the petitioner on account of declining reservation of a common symbol for its exclusive use on the ground that it is not a recognized political party.** This time, the petitioner shall have to enter the fray by participating in the MCD Elections as an unrecognized registered political party and making a place for itself under the sun. **Only after proving its mettle, can it seek recognition as a registered political party and as a corollary thereto, claim entitlement to a common symbol for its candidates.**”⁸

17. Following the judgment in *Swaraj India*⁹, and for the reasons aforesaid, I am of the view that the present writ petition is entirely devoid of merits. The petition is accordingly dismissed.

PRATEEK JALAN, J.

NOVEMBER 17, 2021

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⁸ Emphasis supplied.

⁹ Supra (Note 2)