



W.P.No.31661 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 14.03.2024

ORDERS PRONOUNCED ON : 20.03.2024

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

Writ Petition No.31661 of 2023

Gandhiyawathi T.Ramesh

.. Petitioner

Versus

1. The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi – 110 001.

2.The President
Bharatiya Janata Party
J.P.Nadda
6A, Pandit Deen Dayal Upadhyaya Marg
New Delhi – 110 002.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the 1st respondent to consider the representation of the petitioner dated 27.09.2023 and cancel the Lotus symbol allotted to Bharatiya Janata Party and pass such further or other order.



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For the Petitioner : Mr.M.L.Ravi
for Mr.T.Sivagnanasambandan

For the Respondents: Mr.Niranjan Rajagopalan for R1

ORDER

(Order made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

This is a Public Interest Litigation filed by the petitioner, who claims to be the Founder-President of a political party viz., *Ahimsa Socialist Party*, bearing Registration No.56/102/2016-17/PPS-I.

2. It is the case of the petitioner that the 2nd respondent, viz., the *Bharatiya Janata Party* is allotted with the Lotus symbol. The lotus is the national flower of India. As per Section 5 of the Election Symbols (Reservation & Allotment) Order, 1968 some symbols are exclusively allotted for the recognized political parties and there are free symbols that are available to be allocated to unrecognized parties and independent candidates. It is unjust to allot the national flower to a political party, as the Lotus symbol represents the nation. The symbol is also a sacred religious symbol, therefore, it cannot be



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included in the list of symbols. Thus, the allotment leads to unfair advantage and the election will not be free and fair and thus would be violative of Article 14 of the Constitution of India. When the petitioner made a representation dated 27.09.2023, non-consideration thereof is also illegal. Hence the present Writ Petition.

3. An additional affidavit is also filed on behalf of the writ petitioner.

It is contended that the action is illegal as per Section 3 of the State Emblem of India (Prohibition of Improper Use) Act, 2005. It is further averred that the Lotus flower is auspicious to almost all the Indian religions such as Hinduism, Buddhism, Jainism and Sikhism. Hindu deities *Vishnu*, *Shiva*, *Brahma*, *Ganesha*, *Durga*, *Kali*, *Saraswathi* and *Lakshmi* are portrayed on a Lotus in iconography. Lord *Vishnu* in the Hindu religion is described as “Lotus-eyed”. *Bhagavad Gita* contains a version, by which it can be seen that the Lotus flower is sacrosanct. The Baha-i-Faith Community has also adopted the Lotus as their symbol in the design of the Lotus temple built in New Delhi. Therefore, the use of the religious symbol would be a corrupt practice as per Section 123 (3) of the Representation of Peoples Act, 1951.



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4. We have heard *Mr. M.L. Ravi* , learned counsel appearing on behalf of the petitioner and *Mr Niranjan Rajagopal* , learned counsel appearing on behalf of the 1st respondent – Election Commission.

5. *Mr.M.L.Ravi* , learned counsel appearing for the petitioner by taking this Court through an additional typed set of papers filed by him during the hearing would rely upon an Article published by the Botanical Survey of India, authored by *Mr.Anirban Roy*, titled as '*The Sacred Lotus – Indian National Flower* ' and would submit that the national flower is an important national symbol. Further relying upon the extracts from the website of the Government of India he would submit that there can be no dispute that the Lotus flower is the national flower of India. It is even the Haryana State's emblem. It is also the State flower of Karnataka. Therefore, when the Lotus is both the National Flower as well as the sacred religious symbol, it cannot be allotted as a symbol to the 2nd respondent – political party. In support of his submission, he would rely upon the Judgment of the Hon'ble Supreme Court of



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India in the case of *Abhiram Singh Vs. C.D.Commachen and Ors.*,¹ more

specifically in paragraph No.74 it has been held as follows:-

“74. The upshot of the above discussion clearly is that under the constitutional scheme mixing religion with State power is not permissible while freedom to practice, profess and propagate religion of one's choice is guaranteed. The State being secular in character will not identify itself with any one of the religions or religious denominations. This necessarily implies that religion will not play any role in the governance of the country which must at all times be secular in nature. The elections to the State Legislature or to Parliament or for that matter or any other body in the State is a secular exercise just as the functions of the elected representatives must be secular in both outlook and practice. Suffice it to say that the constitutional ethos forbids mixing of religions or religious considerations with the secular functions of the State. This necessarily implies that interpretation of any statute must not offend the fundamental mandate under the Constitution. An interpretation which has the effect of eroding or diluting the constitutional objective of keeping the State and its activities free from religious considerations, therefore, must be avoided. This Court has in several pronouncements ruled that while interpreting an enactment, the Courts should remain cognizant of the constitutional goals and the purpose of the Act and interpret the provisions accordingly.”

6. The Learned Counsel would thus contend that under the constitutional scheme mixing religion with State power is not permissible. The election to the State legislature or Parliament is a secular exercise and the same must be secular in outlook and practice. Therefore, the Election Commission cannot mix religion in the election by including the Lotus symbol under the

¹ (2017) 2 SCC 629



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Symbols Order. By producing an extract from the website of the High Court of Judicature, Allahabad, he would submit that a Public Interest Litigation in PIL.No.1397 of 2020 with a similar prayer is pending before the said Court.

7. The learned counsel would rely upon the Judgment of the Gujarat High Court in the case of ***Ramabhai Ashabhai Patel Vs. Dabhi Ajitkumar Fulsinhji and another²***, to submit that using religious symbols would even invalidate the election. He would further submit that a similar issue is also pending before the Delhi High Court and that the issue requires detailed consideration by this Court.

8. *Mr Niranjan Rajagopal* , learned counsel appearing on behalf of the Election Commission of India would submit a Writ Petition in W.P.(C). No. 7151 of 2012 was filed before the Delhi High Court and the same was dismissed by an order dated 09.11.2012. The very question was considered and rejected in the said case. The said case also referred to the earlier decision in W.P.(C). No.7495 of 2008 for the same prayer, which was also dismissed. The

2 AIR 1963 Guj 315



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learned counsel also produced the Division Bench Judgment of the Delhi High Court dated 12.11.2008, whereunder the Writ Petition filed by one *Shaheen Parvez* was dismissed by the Division Bench. The petitioner - *Shaheen Parvez* had also filed SLP (C) No.4900 of 2009 against the Judgment of the Delhi High Court, which was also dismissed. One *Syed Waseem Rizwi* had filed a Writ Petition (C) No.908 of 2021 before the Hon'ble Supreme Court of India, however withdrew the same with liberty to approach the Delhi High Court.

9. We have considered the rival submissions made on either side and perused the material records of the case.

10. On a specific query, we were informed that the symbol was allotted to the second respondent – political party about the year 1989 and the same has been consistently allotted to the said political party in all the elections. Firstly, regarding the contention as to the use of religious symbols is concerned, even assuming for a moment that the Lotus Flower is a sacred religious symbol, Section 123 (3) of the Representation of Peoples Act, 1951, reads as follows:-



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“The appeal by a candidate or his agent or by any other person with the consent of a candidates or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.”

(Emphasis supplied)

11. First of all, the relevant notification declaring Lotus as a national flower is not produced. There are many flowers which are used for religious purposes by people belonging to different religions. However, taking the case of the petitioner as it is, from the proviso, it would be clear that when the symbol is allotted under the Act, the same cannot be deemed to be a religious symbol or a national symbol. Thus, when the Election Commission has framed the Election Symbols (Reservation and Allotment) Order, 1968, included and allotted the symbols as per the Rules, it cannot even be contended as a corrupt practice, within the meaning of Section 123 (3) of the Representation of Peoples Act, 1951.

12. Further, the reliance placed on Section 3 of the State Emblem of



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India (Prohibition of Improper Use) Act, 2005 is also misplaced as the same relates to the State emblem. No provision or rule is brought to the notice of this Court prohibiting the use of the National Flower or a State flower as election symbols. Therefore, when there is no provision of law or rule prohibiting the inclusion of National Flower in the Election Symbols (Reservation and Allotment) Order, 1968 by the Election Commission and allotting the same to the political party, no ground is made out for the Court to interfere.

13. It can also be seen that a similar prayer restraining the 2nd respondent from using Lotus as an election symbol has been specifically made in W.P.(C) No.7495 of 2008 and the Division Bench of the Delhi High Court had dismissed the Writ Petition on 12.11.2008. The Special Leave Petition preferred against the same was also dismissed. Yet another Writ Petition filed with the same prayer was also dismissed by the Delhi High Court. Another Writ Petition filed by the petitioner before the Hon'ble Supreme Court of India was also withdrawn by him. Thus, the matter is no longer *res- integra* . The Public Interest Litigation cannot re-agitate the self-same issue.



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14. For the above reasons, this Writ Petition is bound to fail and is accordingly dismissed. Consequently, W.M.P.No.31289 of 2023 stands closed.

(S.V.G., C.J.,)

(D.B.C., J.,)

20.03.2024

Index : Yes
Speaking order
Neutral Citation : Yes
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To

The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi – 110 001.



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THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

(Order of the court was made by the Hon'ble Chief Justice)

Learned counsel for the petitioner, at this stage, seeks withdrawal of the sum of Rs.20,000/- (Rupees Twenty Thousand Only) deposited. Learned counsel, graciously submits that the petitioners, out of the said amount, would like to donate a sum of Rs.10,000/- (Rupees Ten Thousand Only) to the Tamil Nadu State Legal Services Authority.

In the light of that, a sum of Rs.10,000/- (Rupees Ten Thousand Only) be remitted to the Tamil Nadu State Legal Services Authority. The petitioner is permitted to withdraw the remaining sum of Rs.10,000/- (Rupees Ten Thousand Only).

(S.V.G., CJ.)

(D.B.C., J.)

20.03.2024

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THE HON'BLE CHIEF JUSTICE
AND
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