

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM :

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND

The Hon'ble MR.JUSTICE R.MAHADEVAN

W.P. No.15275 of 2013

and

M.P.No.1 of 2013

Varaaki,

A Journalist and the Founder President,
Indian Makkal Mandram,
No.2/3, Suthanada Bharathi Street,
Ganapathy Puram, Tambaram East,
Chennai-59.

... Petitioner

Vs.

1. The Election Commission of India,
rep. by its Chief Election Commissioner,
Nirvachan Sadan,
Ashoka Road, New Delhi-110 001.
2. The Government of Tamil Nadu,
rep. by its Chief Secretary,
Fort St. George, Chennai-9.
3. The District Collector,
Kancheepuram District.
4. The Superintendent of Police,
Kancheepuram District.
5. The District Collector,
Villupuram District.
6. The Superintendent of Police,
Villupuram District.
7. Arumugam
8. The Vanniyar Sangam,
rep. by its State President Kaduvetti Guru @
J.Gurunathan, Plot No.5/2, New No.19,
East Joes Road,
Saidapet, Chennai.

9. The Pattali Makkal Katchi,
rep. by its Founder and President S.Ramadass,
No.10, Kamatchi Amman Kovil Street,
Thindivanam Taluk,
Villupuram District.

10. Anbu Mani Ramadoss

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus to directing the first respondent to derecognize the 9th respondent's political party name Pattali Makkal Katchi as functioning against the object of the Section 29-A (5) of the Representation of People Act, 1951.

For Petitioner : Mr.P.Vijendran
For Respondents : Mr.Niranjan Rajagopal for
M/s.G.R.Associates for R1
Mr.R.Vijayakumar
Additional Government Pleader
for R2 to R6
Mr.K.Balu for R9
R7, 8 & 10 - No Appearance

O R D E R

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

The issue of de-recognition of a political party on account of its alleged conduct would be within the domain of the Election Commission of India. But the stand of the Election Commission of India is that in view of the settled legal position, apart from three exceptions, such a power has not been conferred on the Election Commission of India. The learned counsel for the Election Commission of India has cited (2002) 5 SCC 685 [Indian National Congress (I) v. Institute of Social Welfare and others.]. The operative paragraph 41 reads as under:-

"41. To sum up, what we have held in the foregoing paragraph is as under:

1. That there being no express provision in the Act or in the Symbols Order to cancel the registration of a political party, and as such no proceeding for deregistration can be taken by the Election Commission against a political party for having violated the terms

of Section 29-A(5) of the Act on the complaint of the respondent.

2.The Election Commission while exercising its power to register political party under Section 29-A of the Act, acts quasi-judicially and decision render by it is a quasi-judicial order and once a political party is registered, no power of review having been conferred on the Election Commission, it has no power to review the order registering a political party for having violated the provisions of the Constitution or for having committed breach of undertaking given to the Election Commission the time of registration.

3.However, there are exceptions to the principle stated in paragraph 2 above where the Election Commission is not deprived of its power to cancel the registration. The exceptions are these:

(a)where a political party has obtained registration by practising fraud or forgery;

(b)where a registered political party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of Section 29-A(5) of the Act or intimating the Election Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy or it would not uphold the sovereignty, unity and integrity of India so as to comply with the provisions of Section 29-A(5) of the Act; and

(c)any like ground where no enquiry is called for on the party of the Commission.

4.The provisions of Section 21 of the General Clauses Act cannot be extended to the quasi-judicial authority. Since the Election Commission while exercising its power under Section 29-A of the Act acts quasi-judicially, the provisions of Section 21 of the General Clauses Act has no application."

2. The moot point, however, remains whether the Election Commission of India is contemplating to address the Law Commission of India or the Government of India in respect of any

of these issues, an aspect, on which the learned counsel appearing for the Election Commission of India states that he has no instruction at present.

3. The learned counsel for the petitioner has however drawn our attention to the proposed Electoral Reforms as recommended by the Election Commission of India and Report No.255 of the Law Commission of India dealing with the Electoral Reforms of March 2015. The learned counsel for the petitioner has drawn our attention to Chapter III, more specifically Clause 3.2, which reads as under:-

"3.2 The NCRWC in its Report on Electoral Processes and Political Parties appropriately recognised that "no electoral reforms can be effective without reforms in the political party system" and it recognised the following areas of immediate concern here:

- 1."Structural and organisational reforms
 - party organisations - National, State and local levels - inner party democracy
 - regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.
- 2.Party system and governance - Mechanisms to make parties viable instruments of good governance.
- 3.Institutionalization of political parties - need for a comprehensive legislation to regulate party activities, criteria for registration as a national or State party - de-recognition of parties". (emphasis supplied)

4. It is the submission of the learned counsel for the petitioner that the allegations made in the writ petition against respondent No.9/Pattali Makkal Katchi, as a political party, fall within the parameter of "fraud", as set out by the Hon'ble Supreme Court in paragraph 41 of the aforesaid judgment. This, he say so, in the context of the own election manifesto of the said respondent No.9, where they have talked against women being treated as an instrument and calling for liberation of women, to take their own decisions. It is his submission that in the context of the episode of violence, which in turn was the sequitur to an intercaste marriage between a dalit and a vanniyar, respondent No.9 seeks to say one thing and instead, do another thing.

5. In the aforesaid context, we may note that in respect of the violence which occurred, in a separate writ petition, we are monitoring to ensure not only that the compensation is fully paid (which has been done substantially), but also the action of the administrative machinery, which may have neglected its duties, as also the criminal consequence to the offending individuals must follow as a sequitur.

6. The learned counsel for respondent No.9 has categorically denied all allegations.

7. At present, we would not like to observe anything further, especially keeping in mind that it is the own case of the petitioner that the Election Commission of India should act in the conspectus of the aforesaid parameters and not the Court. This is a call which the Election Commission of India would have to take and communicate its decision to the petitioner within a maximum period of three months of the receipt of this order, keeping in mind the limitation of its powers.

8. The petitioner also seeks to canvass that such powers should be read into the enactment in pari materia, in respect of the conduct of the Advocates, which was dealt with in the judgment of the Division Bench of this Court in Manikandan Vathan Chettiar and another v. Bar Council of Tamil Nadu, rep. by its Secretary, High Court Buildings, Chennai and another, reported in CDJ 2015 MHC 7472, holding that the power of the Bar Council to revoke the licence to practice permanently or suspend it for a fixed term would also include the incidental power of interim suspension pending disposal of disciplinary proceedings for professional misconduct. However, so far as the recognition or de-recognition of political parties is concerned, as to what can be done and in what situation, has already been dealt with by the Hon'ble Supreme Court in its judgment in Indian National Congress (I), cited supra.

9. In view of the aforesaid position, no further directions are required in this matter and the writ petition is accordingly closed. No costs. Consequently, M.P.No.1 of 2013 is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.
2. The Chief Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai-9.
3. The District Collector,
Kancheepuram District.
4. The Superintendent of Police,
Kancheepuram District.
5. The District Collector,
Villupuram District.
6. The Superintendent of Police,
Villupuram District.

+1cc to M/s.G.R.Associates, Advocate, S.R.No.45479
+1cc to Mr.P.Vijendran, Advocate, S.R.No.45177
+1cc to Mr.K.Balu, Advocate, S.R.No.45083
+1cc to the Government Pleader, S.R.No.45056

W.P.No.15275 of 2013

KJI (CO)
CA(24/08/2016)

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