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

+ W.P.(C) 1669/2016

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..... Petitioner

Through: Mr.Upamanyu Hazarika, Sr. Adv.
with Mr.Paul Roy Paske, Adv.

versus

COMMUNIST PARTY OF INDIA (MARXIST)
& ORS

..... Respondent

Through: Mr.P.R. Chopra, Advocate for R-2.
Mr.Jasmeet Singh, CGSC with Mr.Srivats
Kaushal, Adv. for R-3.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
04.05.2016

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: MS. G. ROHINI, CHIEF JUSTICE (Oral)

1. This public interest petition has been filed with a prayer to quash the orders dated 20.09.1989 and 14.07.2015 passed by the Election Commission of India/Respondent No.2 herein.
2. We have heard Sh.Upamanyu Hazarika, the learned Senior Counsel appearing for the petitioner and Sh.P.R.Chopra, the learned counsel appearing for the Election Commission of India.
3. By order dated 20.09.1989 of the respondent No.2, the respondent No.1 herein has been registered as a National Party under Section 29A of the Representation of the People Act, 1991 subject to the provisions of the

Elections Symbols (Reservation and Allotment) Order, 1968. In the year 2012, there appears to be a representation seeking de-registration of respondent No.1 and that the same was disposed of by the respondent No.2 by order dated 19.11.2012 stating that in view of the judgment of the Supreme Court dated 10.05.2002 in **Civil Appeal Nos.3320-21/2001** titled ***Indian National Congress (I) vs. Institute of Social Welfare & Ors. (2002) 5 SCC 685***, the Election Commission of India does not have power to de-register any political party except on certain limited grounds mentioned therein and since no evidence has been furnished in support of the allegations made in the representation, the relief claimed for de-registration cannot be granted.

4. Referring to the said decision dated 19.11.2012, the representation/complaint dated 10.06.2015 made by the petitioner herein seeking de-recognition of respondent No.1/Party has been rejected by the respondent No.2 by letter dated 14.07.2015. Hence the present petition.

5. It is vehemently contended by Sh.Hazarika, the learned Senior Counsel that even as per the ratio laid down in ***Indian National Congress (I) vs. Institute of Social Welfare & Ors.***, the Election Commission of India is a quasi-judicial authority and therefore, it is bound to act judicially while considering a complaint/representation for de-recognition of a party. Pointing out that no reasons were assigned by the respondent No.2 while rejecting the complaint of the writ petitioner, the learned counsel submitted that the impugned order is liable to be set aside on that ground alone.

6. The relevant paragraphs relied upon by Sh.U. Hazarika from the decision from ***Indian National Congress (I) vs. Institute of Social Welfare & Ors.*** may be reproduced hereunder for ready reference:

"30. We shall now examine Section 29-A of the Act in the light of the principles of law referred to above. Section 29-A deals with the registration of a political party for the purposes of the Representation of the People Act. Sub-Section (1) of Section 29A of the Act provides who can make an application for registration as a political party. Sub-sections (2) and (3) of the said Section lay down making an application to the Commission. Sub- sections (4) and (5) of the said Section provide for contents of the application. Sub-section (7) of Section 29 provides that the Election Commission after considering all the particulars in its possession and any other necessary and relevant factors and after giving the representatives of the association reasonable opportunity of being heard shall decide either to register the association or body as a political party or not so to register it and thereupon the Commission is required to communicate its decision to the political party. Further, sub-section (8) of Section 29-A attaches finality to the decision of the Commission.

31. From the aforesaid provisions, it is manifest that the Commission is required to consider the matter, to give opportunity to the representative of political party and after making enquiry and further enquiry arrive at the decision whether to register a political party or not. In view of the requirement of law that the Commission is to give decision only after making an enquiry, wherein an opportunity of hearing is to be given to the representatives of the political party, we are of the view that the Election Commission under Section 29A is required to act judicially and in that view of the matter the act of the Commission is quasi-judicial.

32. This matter may be examined from another angle. If the directions of the High Court for considering the complaint of the respondent that some of the appellants/political parties are not functioning in conformity with the provisions of Section 29A is to be implemented, the result will be that a detailed enquiry has to be conducted where evidence may have to be adduced to substantiate or deny the allegations against the parties. Thus, a lis would arise. Then there would be two contending parties opposed to each other and the Commission

has to decide the matter of de-registration of a political party. In such a situation the proceedings before the Commission would partake the character of quasi-judicial proceeding. De-registration of a political party is a serious matter as it involves divesting of the party of a statutory status of a registered political party. We are, therefore, of the view that unless there is express power of review conferred upon the Election Commission, the Commission has no power to entertain or enquire into the complaint for de-registering a political party for having violated the Constitutional provisions.

33. However, there are three exceptions where the Commission can review its order registering a political party. One is where a political party obtained its registration by playing fraud on the Commission, secondly it arises out of sub-section (9) of Section 29-A of the Act and thirdly, any like ground where no enquiry is called for on the part of the Election Commission, for example, where the political party concerned is declared unlawful by the Central Government under the provision of the Unlawful Activities (Prevention) Act, 1967 or any other similar law.

34. Coming to the first exception, it is almost settled law that fraud vitiates any act or order passed by any quasi-judicial authority even if no power of review is conferred upon it. In fact, fraud vitiates all actions. In *Smith vs. East Elloe Rural Distt. Council*, it was stated that the effect of fraud would normally be to vitiate all acts and order. In *Indian Bank vs. Satyam Fibres (India) Pvt. Ltd.*, it was held that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to courts of law, but also statutory tribunals which do not have power of review. Thus, fraud or forgery practised by a political party while obtaining a registration, if comes to the notice of the Election Commission, it is open to the Commission to de-register such a political party."

7. It is clear from the legal position noticed above that the respondent

No.2 under Section 29-A is required to act judicially and the decision if any taken under Section 29-A shall be supported by reasons. Since no reasons are assigned, the impugned order dated 14.07.2015 is hereby set aside and the writ petition is disposed of with a direction to the respondent No.2 to reconsider the representation of the petitioner and pass an appropriate order afresh in accordance with law as expeditiously as possible preferably within 12 weeks from today.

8. Writ petition is accordingly disposed of.

CHIEF JUSTICE

JAYANT NATH, J

MAY 04, 2016

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