

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.09.2017
CORAM
The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.23295 of 2017
and
WMP.No.24391 of 2017

P.A.Joseph

.. Petitioner

vs.

1.The Election Commission of India,
rep. by Chief Election Commissioner,
Ashoka Road,
New Delhi-110 001.

2.The Department of Law and Justice,
rep. by its Secretary,
26, Mansingh Road,
Jaisalmer House,
New Delhi-110 011.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari calling for the records in respect of the impugned communication issued by the first respondent vide No.4/3/ECI/LET/FUNC/JUD/SDR/Vol.IX/2017 dated 04.08.2017 and quash the same as illegal and against the powers conferred under Article 324 of the Constitution of India read with Section 29 A, 123 (3) of the Representation of People Act, 1951 and Section 16(A) of the Election Symbols (Reservation and Allotment) Order, 1968.

For Petitioner

: Mr.K.M.Vijayan
Senior Counsel
for M/s.E.Vijay Anand

For Respondents

: Mr.Niranjana Rajagopalan
for M/s.G.R. Associates
for 1st respondent
Mr.Su.Srinivasan
Asst. Solicitor General
for 2nd respondent

ORDER

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

This writ petition is directed against a communication No.4/3/ECI/FUNC/JUD/SDR/Vol.IX/2017, dated 4th August, 2017 to the petitioner in reply to his letter dated 30th May, 2017 seeking inter alia cancellation of the registration of a political party which makes derogatory speeches against true faith and allegiance to the Constitution of India as by law established, principles of socialism, secularism and democracy, sovereignty, unity and integrity of India.

2. The relevant part of the communication impugned is extracted herein below for convenience:

"As regards action against registered Political Parties, it may be noted that in the Law, there is no provision to cancel the registration of any registered political party. This has been settled in the Hon'ble Supreme Court's Judgment in Indian National Congress (I) Vs. Institute for Social Welfare & others (AIR 2002 SC 2158). The Hon'ble Supreme Court has held that a party can be de-registered only in the following circumstances:-

- (i) Where a Political Party has obtained registration by practicing fraud or forgery.
- (ii) Where a registered Political Party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of Section 29A(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 the provisions of Section 29A(5) of the Act and
- (iii) Any like ground where no enquiry is called for on the part of the Commission."

3. In Indian National Congress (I) v. Institute of Social Welfare and others, reported in (2002) 5 SCC 685, the Supreme Court considered the question of whether in the absence of any express power in Representation of People Act, 1951, the Election Commission is empowered to deregister a registered political party. The question was answered in the negative, the only exceptions being cases of obtaining registration by fraud;

amendment of nomenclature, rules or regulations, which may evince absence and/or want of faith and/or withdrawal of allegiance to the constitutional principles of secularism, socialism, democracy and the sovereignty, unity and integrity of India.

4. It may be pertinent to refer to Section 29-A of the Representation of People Act, 1951 set out herein below for convenience:

"29A. Registration with the Election Commission of associations and bodies as political parties. –

(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made, –

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:–

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its

members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be

communicated to the Commission without delay."

5. The said Section confers power to register any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of Part IV-A of the Act, which might make an application to the Election Commission for its registration as a political party for the purposes of the Act. Sub-sections (2) to (5) prescribe the requisites of an application for registration. Sub-section (6) of Section 29-A empowers the Election Commission to call for such other particulars as the Election Commission might deem fit. Sub-section (7) empowers the Election Commission to decide either to register the association or body as a political party for the purposes of Part IV-A or not so to register it and to communicate its decision to the association or body after giving the representatives of the association or body reasonable opportunity of being heard. Proviso to sub-section (7) prohibits registration as a political party unless memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5). In other words, the memorandum or rules and regulations are to contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India. On a combined reading of various sub-sections of Section 29A of the Representation of People Act, 1951, the Election Commission may refuse to register an association or body as a political party unless that association or political party bears true faith and allegiance to the Constitution of India as by law established and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

6. The question of whether power under Section 29-A to register or to refuse to register by necessary implication empowers the Election Commission to cancel the registration is in doubt. The aforesaid question has clearly been decided against the petitioner in *Indian National Congress (I) v. Institute of Social Welfare and others* (supra). In the said judgment, the Supreme Court held as follows:

"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 29-A 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 the 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 29-A is required to act judicially and in that view of the matter the act of the Commission is quasi-judicial.

.....
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 a political party under Section 29-A of the Act, acts quasi-judicially and decision rendered 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 at

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 part 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 have no application."

7. Mr.K.M.Vijayan, learned Senior Counsel appearing on behalf of the petitioner cited the Seven Judge Bench judgment of the Supreme Court in Abhiram Singh v. C.D.Commanchen (dead) by legal representatives and others, reported in (2017) 2 SCC 629. The aforesaid judgment does not deal with Section 29-A of the Representation of People Act, 1951. The question of whether a political party once registered can be deregistered on the ground of corrupt practices or electoral offences was neither in issue nor answered. We are thus bound by the judgment of the Supreme Court in Indian National Congress (I) (supra).

8. Mr.Niranjan Rajagopalan, learned counsel appearing on behalf of Election Commission submitted that the Election Commission has made a recommendation to the Government to amend the provisions of Representation of People Act, 1951 to empower the Election Commission to deregister political parties and/or cancel their registration if such political parties are found to have committed corrupt practices.

9. However, in A.C.Jose v. Sivan Pillai and others, reported in AIR 1984 SC 921 cited by Mr.Niranjan Rajagopalan, learned counsel appearing on behalf of the Election Commission, the Supreme Court held "where a particular direction by the Commission is submitted to the Government for approval, as required by the Rules, it is not open to the Commission to go ahead with implementation of it as its own sweet will even if the approval of the Government is not given".

10. Until such time, as the recommendation of the Election Commission is accepted, it is doubtful whether a political party once registered can be deregistered except in the three circumstances mentioned by the Supreme Court in Indian National Congress (I) (supra). It is however expected that respondent No.2 will take an early decision on the recommendation of the Election Commission.

11. The writ petition is disposed of. No costs. Consequently, W.M.P.No.24391 of 2017 is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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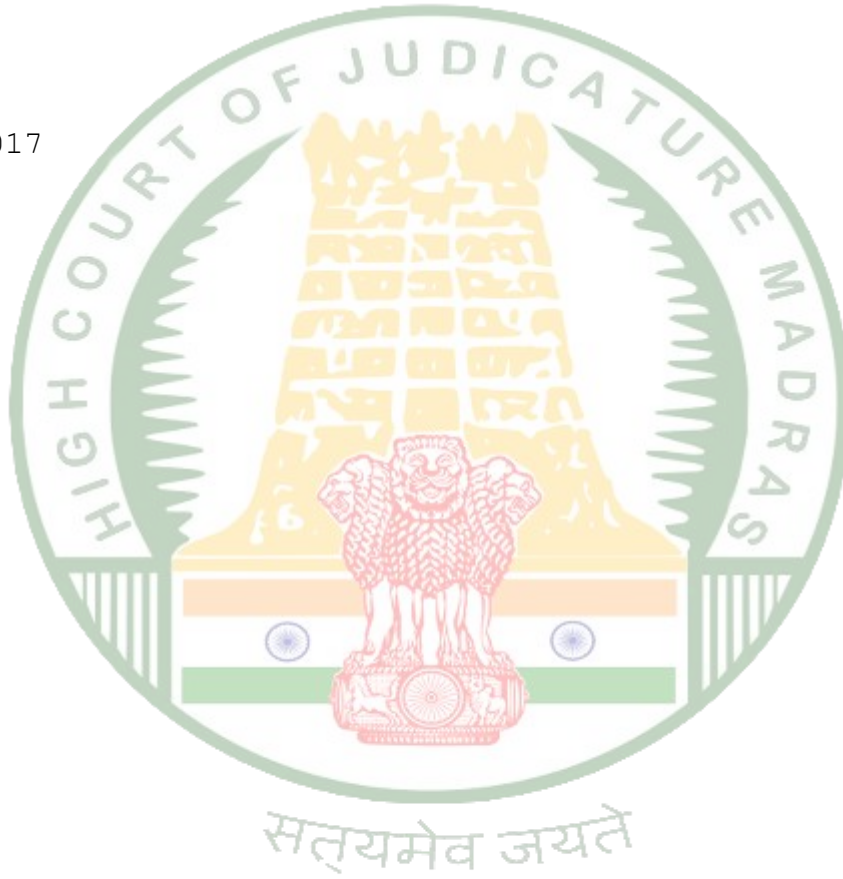
1.The Chief Election Commissioner,
Election Commission of India,
Ashoka Road, New Delhi-110 001.

2.The Secretary,
Department of Law and Justice,
26, Mansingh Road,
Jaisalmer House,
New Delhi-110 011.

+1 cc to M/s.E.Vijay Anand Advocate sr 63611
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W.P.No.23295 of 2017

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