

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No.25973 of 2016 (O&M)**

**Date of Decision : 25.04.2017**

Communist Party of India (Marxist Leninist)  
(Liberation)

....Petitioner

Versus

State Election Commission, U.T.Chandigarh  
and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER  
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

....

Present: Mr. Arjun Sheoran, Advocate  
for the petitioner.

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**MAHESH GROVER, J.** (Oral)

This is a petition under Article 226 of the Constitution of India where the petitioner desires that para 4(d) of the Municipal Corporation of Chandigarh Election Symbols (Reservation & Allotment) Order, 2016 be declared as unconstitutional. The said para is extracted herebelow :-

“The candidates belonging to unrecognised parties registered by Election Commission of India shall be treated as Independent candidates for all purposes including number of proposers required and allotment of symbols. They shall not be given any preference over other independent candidates in allotment of free symbols.”

The petitioner claims itself to be a registered political party which has fought several elections in the State as well and pleads that

the aforesaid clause in so far as it treats a registered political party and an independent candidate on the same footing in the matter of allotment of symbols, is discriminatory as they would have a preferential right over other independent candidates to gain access to a symbol. It is argued that in not doing so the registered political parties faced a disadvantage in the electoral arena. It is argued that the Election Commission of India in Election Symbols and the Allotment Order, 1968 offers a preferential treatment to the registered political parties in terms of Paragraph 12 thereof which we also extract herebelow :-

**“[12. Choice of symbols by other candidates and allotment thereof-**

(1) Any candidate at an election in a constituency in any State or Union territory, other than- (a) a candidate set up by a National party, or (b) a candidate set up by a political party which is a State party in that State, or 3 { (c) a candidate referred to in paragraph-10 or paragraph-10A or paragraph-10B} shall choose, and shall be allotted, in accordance with the provisions hereafter set out in this paragraph, one of the symbols specified as free symbols for that State or Union territory by notification under paragraph 17.

(2) ... ..

(3) Where the same free symbol has been chosen by several candidates at such election, then -

(a) if, of those several candidates, only one is a candidate set up by an unrecognised political party and all the rest are independent candidates, the returning officer shall allot that free symbol to the candidate set up by the unrecognised political party, and to no one else;...”

From the above it is sought to be contended that once the Election Commission of India acknowledges the registered political parties to give them a preferential treatment in the matter of allotment of symbols, the other election commissions are bound by the same and no order can be made by any State election commission that is not in conformity with the 1968 Order passed by the Election Commission of India. Even though this argument has been raised but it is candidly conceded by the learned counsel for the petitioner that every election commission of the State would have powers to make its own rules.

Apart from this, an argument has been raised with reference to Rule 13 of the Municipal Corporation of Chandigarh Election of Councillors Rules, 1995 to contend that the national and state parties recognized for the time being by the Election Commission of India would also be recognized in the Union Territory of Chandigarh under Section 29A of the Representation of the People Act, 1951 and the rules and procedure made thereunder. For the purpose of reference Rule 13 is extracted herebelow :

**“13. Symbols :-** (1) For the purpose of the election to the Municipal Corporation of Chandigarh, the National

Parties and State Parties as are recognised for the time being by the Election Commission of India in the Union Territory of Chandigarh, under section 29 A of the Representation of the People Act, 1951 and the rules and procedure made thereunder, shall be recognised as such by the Election Commission. The Election 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 in the Union Territory of Chandigarh. The Election 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 Election Commission.

(b) The National Parties and the State Parties *\*recognised* 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.

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

(1-A) The Election 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.

(2) Where at any such election, more nomination papers than one are delivered by or on behalf of a candidate, 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 20 even if that nomination paper has been rejected.

(3) 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 18.”

It is not in dispute that the petitioner is no longer a State party and though registered would come within the ambit of unrecognized party. Therefore the petitioner cannot derive any advantage from the afore-extracted rule. The offensive clause 4(d) of the Municipal Corporation of Chandigarh Election Symbols (Reservation & Allotment) Order, 2016 clearly lays down a distinction between an unrecognized and registered party. Both are mentioned in the same breath thereby implying that an unrecognized party though registered would be treated at par with an independent candidate in the matter of allotment of symbols. We are of the opinion that the learned counsel for the petitioner has failed to highlight any infirmity or conflict in the said clause particularly when

nothing has been shown to us that 2016 Order governing the allotment of election symbols could not have been passed to offer clauses which are not in conformity with those passed by the Election Commission of India in 1968. No legally sustainable argument has been raised.

It is thus contended by the learned counsel for the petitioner that clause 4(d) of 2016 Order be interpreted in the way that registered political parties are given a preferential right over the independent candidates. We are of the opinion that in the absence of any legal infirmity shown we would not like to introduce an interpretation when the language of the 2016 Order is unambiguous. It is settled principle of law that every provision has to be read as it is and the court would be reluctant to introduce any other interpretation which the language of the order does not suggest.

No ground to interfere.

Dismissed.

(MAHESH GROVER)  
JUDGE

25.04.2017  
dss

(SHEKHER DHAWAN)  
JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |