

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6604 OF 2010

Smt. Shaluka w/o.Milind Gaikwad,
Age-38 years, Occu-President & Founder
of Satya Shodhak Samaj Party,
R/o.30, Anand Sagar Housing Society,
CIDCO, New Nanded,
Tq. & Dist. Nanded.

PETITIONER

VERSUS

1] The Union of India.

2] The Election Commission of India
Through the Secretary,
Nirvachansadan, Ashoka Road,
New Delhi.

RESPONDENTS

...

Mr.H.H.Padalkar, Advocate for the petitioner
Mr.Alok Sharma, Advocate for respondent no.2

...

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 06.04.2018
Pronounced on : 11.04.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2] This Petition is filed seeking directions to the respondent to consider and decide the representation dated 24.05.2010 in respect of registration of '*Satya Shodhak Samaj Party*' as a political party for nation and issue registration certificate in favour of the petitioner under the Representation of People's Act, 1951. It is further prayed to quash and set aside the letter dated 5th March, 2010, issued by under Secretariat of the Election Commission of India i.e. respondent no.2.

3] It is the case of the petitioner that on 23rd December, 2004, the petitioner and other members of the party formed a political party in the name of '*Satya Shodhak Samaj Party*' [for short '*said party*']. Thereafter, proposal in respect of registration of the said party as political party was submitted before the Election

Commission, Mumbai. On 8th August, 2005, the Maharashtra State Election Commission has given recognition to the party of the petitioner as a political party. However, said recognition is to the extent of State of Maharashtra. Thereafter on 03.11.2008, the member of the said party has decided to expand the said party in the entire nation as a political party. Thereafter on 25.11.2008 the petitioner submitted proposal for registration of the said party as a political party to expand its activities through out the nation, under the Representation of People's Act, 1951, to respondent no.2. On 17.02.2009, 20.08.2009 and 23.09.2009 the Commission i.e. respondent no.2 has raised certain objections. Thereafter, the petitioner has removed all the objection within time.

4] It is further the case of the petitioner that, on 23.09.2009, respondent

no.2 issued a letter to the petitioner and raised objection that, the petitioner had submitted application on 25.11.2008 in the same name under Section 29-A of the Representation of People's Act, 1951, wherein the date of formation of party has been mentioned as 03.11.2008. Clarification is sought how the same Association has been shown to have been formed on two different dates. Thereafter, by letter dated 09.10.2009, the petitioner has replied that the establishment of the said party took place on 23.12.2004. It is further stated in the said letter that neither the said party is established on 30.06.2005 nor on 03.11.2008, but it is established on 23.12.2004. Considering the above clarification given by the petitioner, respondent no.2, by letter dated 05.05.2010, informed the petitioner that, the said party was formed on 23.12.2004, and application was

made on 25.11.2008 for registration of the said party. The said application was received by the Commission on 25.11.2008. It is further stated in the said letter that the said application should have been made within 30 days from the date of formation of party as required under Section 29-A [2] [b] of the Representation of People's Act, 1951, and therefore, the application in respect of registration of the said party has been rejected in view of the above said provision.

5] It is further the case of the petitioner that, thereafter the petitioner has filed fresh representation clarifying that the said party was formed as a political party on 23.12.2004 confined to the extent of jurisdiction State of Maharashtra. On 03.11.2008, the said party decided to register and seek recognition at national level, and therefore on 25.11.2008 the proposal was submitted for expanding the

jurisdiction of the said party through out the Nation. According to the petitioner, its decision of formation of political party is 03.11.2008, and as per Section 29-A [2] [b] of the Representation of People's Act, 1951, the said proposal is submitted on 25.11.2008 i.e. within thirty days from the date of formation of the said party, respondent no.2 ought to have acceded to the request of the petitioner to register said party at national level.

6] Learned counsel appearing for the petitioner invites our attention to the judgment of the Supreme Court in the case of *Indian National Congress (I) Vs. Institute of Social Welfare & others*¹ and submits that, while explaining scope, ambit and purport of Section 29-A of the Representation of People's Act, 1951, the Supreme Court held that, in view of the mandate of said Section

1 [2002] 5 SCC 685

opportunity of hearing needs to be given to the representative of the political party at the time of considering application for registration of such party at national level. It is further observed by the Supreme Court 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.

Therefore, learned counsel submits that, the petition deserves to be allowed.

7] On the other hand, Advocate Mr. Alok Sharma appearing for respondent no.2, invites our attention to the affidavit in reply filed on behalf of respondent no.2 and made following submissions:

The Satyashodak Samaj Party had applied for the registration under Section 29-A of Representation of People's Act, 1951,

vide its application dated 25.11.2008 [i.e. after more than one and half years of its formation]. The same was scrutinized by the Election Commission of India [for short 'ECI'] and certain defects had been pointed out. It was also suggested that they change the name of the party, for the reason that a party under the similar name was under consideration for registration in the ECI. This was communicated to the applicant vide letter no.56/27/2009/PPS-I, dated 17.03.2009. It is further informed that pursuant to the said letter, the petitioner/applicant furnished the letters dated 20.04.2009 and 10.06.2009 [received in the office of ECI on 27.04.2009 and 16.06.2009 respectively]. The respondent no.2 highlights the fact that the said application was made without changing the party's name and had also failed to rectify the defects pointed out. Therefore, the Election Commission of India again

directed the petitioner to rectify the defects and the change the party's name vide letter dated 20.08.2009.

8] It is further submitted that the petitioner submitted reply on 05.09.2009 and on perusal of the reply, the ECI observed that the party was already registered with the Maharashtra State Election Commission in the name of "Satyashodhak Samaj Paksha" vide letter dated 08.08.2005. It was also observed that the petitioner in fact had indicated two [2] separate dates for its formation. The 1st date at the time of seeking of registration with the State Election Commission, Maharashtra and the 2nd on 03.11.2008 at the time of seeking of registration of under Section 29-A of the Representation of People's Act, 1951, with the ECI. Therefore, the ECI vide letter dated 23.09.2009 directed the petitioner to clarify the actual date of the formation of the party. It is submitted

that the petitioner submitted that the actual date of the formation of the party was 23.12.2004. The same was communicated on 13.10.2009. Therefore for the reason that the party was formed on 23.12.2004 and the 1st application for registration of the party was made on 03.11.2008 which was received on 25.11.2008, the petitioner's party was informed vide letter dated 05.03.2010 that in view of the provisions of Section 29-A [2] [b] of the Representation of People's Act, the application had to be made within 30 days from the formation of the party and since the application was made beyond the date it was held to be time barred in view of the said provisions of the Representation of People's Act, 1951. Therefore, the petitioner was informed accordingly vide communication dated 03.03.2010 and the demand draft of Rs.10,000/- towards the process fees was also returned to the petitioner.

9] It is further submitted that the petitioner party furnished reply on 25.05.2010, requesting the ECI to reconsider their application for registration as a political party. However, the ECI being bound by the provisions of the Representation of People's Act, 1951, informed the petitioner that as their application was time barred, the same cannot be processed. It is to bring to the notice of the Court that a party desirous of being registered under Section 29-A of the Representation of Peoples Act, 1951, has to fulfill the criteria as laid down in the Act. In the present case the party / petitioner by her own admission has admitted that they have failed to fulfill the requisite criteria, hence the decision taken by the ECI is just and proper. It is further submitted that the petitioner's request to modify the provision of the Act in its favour

is not tenable, as the said Act has been enacted by Parliament. Their further contention that so far as the formation of the party to work in the entire country is concerned the date of formation is 3.11.2008 is also not acceptable for the reason that no party can be formed on two different dates / occasions. It is further submitted that at best, it can be treated as widening the scope and the area of activity of the party rather than the formation of the party once again. It is further clarified that, the earlier registration of the party with the State Election Commission, Maharashtra State is not relevant to the applicability of Section 29-A of the Representation of People's Act, 1951. The said provision governs the procedure of registration of political party with the Election Commission of India. It is further submitted that in view of the provision of Section 29-A [8] the decision of the ECI is

final. Therefore, there is no merit in the petition and hence it deserves to be dismissed as not maintainable. That, as respondent no.2 has dealt with the issue at length hence it is submitted that para-wise reply to the petition is not required. It is, however, submitted that any allegation, contention or submission made by the petitioner is contrary to what has been specifically admitted herein is denied as it sets out and traversed in sariation.

10] We have heard the learned counsel appearing for the petitioner and learned counsel appearing for respondent no.2 at length. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein and annexures thereto and also reply filed by respondent no.2. It is evident from the averments in the affidavit in reply filed by respondent no.2 that the petitioner applied for the

registration of "Satyashodhak Samaj Paksha" under Section 29-A of the Representation of the Peoples Act, 1951, vide its application dated 25.11.2008. It further appears that the said application was scrutinized by the ECI and certain deficiencies had been pointed out. It was also suggested that the petitioner should change the name of the party for the reason that party under the similar name was under consideration for registration with the ECI. It further appears that letter was written on 17.03.2009 to the petitioner communicating the defects pursuant to the said letter. It appears that the petitioner sent a letter on 28th April, 2009 and 10th June, 2009, which was received in the office of respondent no.2 on 27th April, 2009 and 16th June, 2009 respectively. However, it appears that, the petitioner failed to rectify the defects pointed out. It further appears that respondent no.2 again directed

petitioner to rectify defect and change the party's name vide order dated 20th August, 2009. It further appears that reply was filed by the petitioner on 5th September, 2009 and on the perusal of the reply, respondent no.2 observed that the party was already registered with the Election Commission, State of Maharashtra, in the name of "Satyashodhak Samaj Paksha", vide letter dated 08.08.2005. It was also observed that the petitioner in fact had indicated two [2] separate dates for its formation. The 1st date at the time of seeking of registration with the State Election Commission, State of Maharashtra and the 2nd on 03.11.2008 at the time of seeking of registration of under Section 29-A of the Representation of People's Act, 1951, with the ECI. Therefore, the ECI vide letter dated 23.09.2009 directed the petitioner to clarify the actual date of the formation of the party. It is submitted

that the petitioner informed the actual date of the formation of the party as 23.12.2004, and same was communicated on 13.10.2009 to respondent no.2.

11] Therefore, it appears that the aforesaid facts stated by respondent no.2 have not been disputed by the petitioner. However, the Supreme Court had occasioned to consider the provisions of Section 29-A of the Representation of the People's Act, 1951, and while interpreting the provisions of Section 29-A of the Representation of the People's Act and explaining its scope, the Supreme Court in para no.31 held thus:

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.

[Underlines added]

12] Upon careful perusal of the affidavit in reply filed by respondent no.2, nowhere it is stated that the opportunity of hearing was given to the petitioner while passing the impugned decision, which was communicated to the petitioner by letter dated 5th March, 2010 [Exhibit-P Page-15] of the Petition. In that view of the matter, the

Petition is allowed. The impugned decision / letter dated 5th March, 2010 stands quashed and set aside.

13] We direct respondent no.2 to consider and decide the representation dated 24th May, 2010, filed by the petitioner on it's own merits and after affording an opportunity of hearing to the petitioner, and also keeping in view the judgment of the Supreme Court in the case of *Indian National Congress (I) Vs. Institute of Social Welfare & others [supra]*, as expeditiously as possible.

14] Rule is made absolute in above terms. The Writ Petition stands disposed of accordingly.

[S.M.GAVHANE]
JUDGE

[S.S.SHINDE]
JUDGE