

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.35410 of 2016

and

W.M.P.Nos.30479 to 30481 of 2016

Tamil Manila Congress (Moopanar)
rep. by its President G.K.Vasan,
No.4 Ashoka Road,
Alwarpet, Chennai-18.

... Petitioner

Vs

1.The Election Commission of India
rep. by its Secretary,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.

2.The State Election Commission
rep. by its Secretary,
No.208/2, Jawaharlal Nehru Road,
Opp. CMBT, Arumbakkam,
Chennai-600 106.

.... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records from the file of the 1st respondent in Proceedings No.56/Symbol/2016/PPS-II/Vol.I/154, dated 5.2.2016 and in Proceedings F.No.56/Symbol/2016/PPS-II/Vol.I/279 dated 4.3.2016 and quash the same and further directing the respondents to allot Bicycle Symbol to the petitioner.

For Petitioner : Mr.B.S.Gnanadesikan,
Senior Counsel
for M/s.B.S.G. Firm

For Respondents: Mr.Niranjan Rajagopalan,
Standing Counsel for R1
Mr.B.Nedunchezhiyan,
Standing Counsel for R2

O R D E R

Challenging the correctness of the Proceedings
No.56/Symbol/2016/PPS-II/Vol.I/154, dated 5.2.2016 and
Proceedings F.No.56/Symbol/2016/PPS-II/Vol.I/279 dated 4.3.2016

of the 1st respondent, namely, the Secretary, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001 and to quash the same and for further direction, directing the respondents to allot Bicycle Symbol to the petitioner, the present Writ Petition has been filed.

2. Mr.B.S.Gnanadesikan, learned Senior Counsel appearing for the petitioner assailing the reasonings assigned by the 1st respondent in their impugned proceedings submitted that Shri.G.K.Moopanar, being the General Secretary of All India Congress for a period of eight years had difference of opinion due to some political reasons with the All India Congress Committee, therefore, he decided to quit the Congress and finally, floated the regional party called ''Tamil Maanila Congress (Moopanar)'' in March, 1996. An application seeking recognition of the party and for Bicycle Symbol was also presented before the 1st respondent on 02.04.1996. The Election Commission of India, the 1st respondent herein, recognising the Tamil Maanila Congress (Moopanar) as a State Party also allotted Bicycle Symbol. With the said symbol, the petitioner party has taken part in the Election held in the year 1996 and also won 20 out of 20 Parliamentary seats contested and won 39 out of 40 seats contested in Tamil Nadu Legislative Assembly Election besides 5 seats in Puducherry Legislative Assembly. Thereafter, even in the year 2001, the petitioner party also won 23 seats in Tamil Nadu Legislative Assembly and 2 seats in Puducherry Legislative Assembly. With all these contributions made to the party, Mr.G.K.Moopanar, the Founder President of the Tamil Maanila Congress (Moopanar) died in the year 2001 and thereafter, the present petitioner Shri.G.K.Vasan was elected as President of the party. After some time, they decided to merge with Indian National Congress and the said merger function took place in Madurai in the presence of Smt.Sonia Gandhi, President of All India Congress Committee before the large gathering.

3. Arguing further, the learned Senior Counsel for the petitioner submitted that 18 out of 23 party MLAs from Tamil Nadu and 1 out of 2 MLAs from Puducherry and 1 member of Rajya Sabha had also merged with the Indian National Congress Party. However, questioning the said merger, one of the then Sitting Legislatures belonging to the petitioner party in Puducherry Legislative Assembly, approached the 1st respondent. The Election Commissioner of India, the 1st respondent herein also accepting his case passed an order dated 22.3.2004 holding that the said merger would not wipe off the party and the remaining surviving group of the parent party can represent the party, but will not continue as a recognized political party and the said order further stated that the petitioner party would not be entitled to the allotment of Bicycle Symbol, but it was entitled to the benefit of Para 10A of the Symbol Order. However, again,

certain difference of opinion arose in 2014, as a result, the petitioner as a President and large number of his followers including Ex.M.Ps., Ex.M.L.As., 2 sitting M.L.As., Former Mayors, Former Union Chairman and Councilors of Local Body including the Sitting President of Tamil Nadu Congress Committee left the party and joined Tamil Maanila Congress (Moopanar). Finally, the petitioner was once again elected as President in the General Council Meeting held at Chennai and the petitioner party also constituted Executive Committee, Political Affairs Committee, State Office Bearers, District Presidents, Presidents of various wings and constituted Village Level Committees throughout the State of Tamil Nadu.

4. Continuing his argument, Mr.Gnanadesigan, the learned Senior Counsel for the petitioner also submitted that when the party is effectively functioning in the ground level, the petitioner applied for Bicycle Symbol on 21.01.2015 which was lost due to the merger took place in 2002. But the 1st respondent replied to the petitioner that they could apply later as it was premature move. Again, another application was filed on 18.02.2015 followed by the remainder on 29.10.2015. The Election Officer of the 1st respondent rejected the same on the ground that the Bicycle Symbol is a reserved symbol of some state recognized political parties and the said symbol cannot be allotted as common symbol for any party. Again, the petitioner made one another representation on 22.02.2016 and the same was also rejected by the 1st respondent on 04.03.2016. Aggrieved thereby, a Review Petition dated 08.03.2016 was filed by the petitioner followed by a request dated 10.3.2016 and some more additional grounds were raised on 14.3.2016, requesting to allot the original Bicycle Symbol to the petitioner party. But for the reasons best known to them, the said request was not considered. Finally, the petitioner applied for 'Coconut Farm' Symbol which is not in the list, however, the same was granted. Thereafter, when the petitioner party contested in the election, they suffered heavy loss for the reason that many of the party's voters, fans, followers etc. were unaware of the Coconut Farm as the symbol. Their candidates lost in the election considerably. Therefore, they realised that the Bicycle Symbol has been prevailing in the minds of the voters and followers in the State of Tami Nadu and Puducherry.

5. Under such circumstances, when the earlier order passed by the 1st respondent on 22.03.2004 has made it clear that the said merger will not wipe off the party and the remaining surviving group of the parent party can represent the party, but will not continue as a recognized political party, the petitioner has once again approached the 1st respondent to consider their case in the light of the Explanation vi of Para 10B of the Election Symbols (Reservation and Allotment) Order 1968, which

was introduced by amendment dated 10.07.2013 and one another amendment took place on 26.6.2015. But the 1st respondent, without considering the case of the petitioner in the light of the legal position adumbrated in Explanation vi of Para 10 B of the Election Symbols (Reservation and Allotment) Order 1968 wrongly passed the impugned order, hence the same is liable to be quashed, the learned Senior Counsel pleaded.

6. Assailing the impugned order it was further argued that one of the reasons stated by the 1st respondent shows that there are difficulties in allotment of the Bicycle Symbol since the Bicycle symbol of the petitioner party also happens to be the reserved symbol of recognized State Parties in other States, namely, to the Samajwadi Party, which is a State Party in Uttar Pradesh, the Telugu Desam Party, which is a recognized State Party in the States of Andhra Pradesh and Telangana and Jammu and Kashmir National Panthers Party in the State of Jammu and Kashmir and since the said Symbol was already allotted to these parties, the said Bicycle Symbol being the reserved symbol in the respective States even prior to the year 1997, the provisions of the paragraph 9 of the Election Symbols Order, placing restriction on the allotment of the same symbol to different parties having been inserted in the Symbols Order, the request of the petitioner cannot be considered. The said reasonings given by the 1st respondent do not go with the Explanation vi of Para 10B of the Election Symbols (Reservation and Allotment) Order 1968, it is pleaded.

7. Arguing further, the learned Senior Counsel for the petitioner submitted that a reading of the impugned order clearly states that the impugned order has failed to make any mention about these vital provisions and even in the counter affidavit filed by the 2nd respondent, no reference has been made. Further, the State Election Commissioner has stated that the claim made by the petitioner deserves to be considered by this Court or by remand, the 1st respondent may be directed to re-examine the case of the petitioner in the light of Explanation vi of Para 10 B A. Again referring to a decision of the Apex Court in the case of Dr.Subramanian Swamy vs. Election Commission of India through its Secretary reported in (2008) 14 Supreme Court Cases 318, the learned Senior Counsel submitted that a proper reading of the said judgment indeed supports the case of the petitioner herein, inasmuch as, the Apex Court in the said judgment has stated that para 10 and 10A were to the effect that the party which lost the symbol 6 years back can try and get the same symbol, whereas this has been completely overlooked by the respondents in this case, as a result, the petitioner has been put to grave prejudices, hence the impugned order is liable to be quashed.

8. No counter affidavit has been filed by the Election Commission of India. Opposing the above prayer, a detailed Counter Affidavit has been filed by the Tamil Nadu State Election Commission, the 2nd respondent herein.

9. Mr.Niranjan Rajagopalan, learned Counsel appearing for the 1st respondent submitted that after the Tamil Maanila Congress (Moopanar) merged with the Indian National Congress in the year 2002, they have also come out from the Indian National Congress and when they contested in the year 2016, they were allotted with Coconut Farm Symbol. Subsequently, when the 2nd respondent published the Tamil Nadu Government Gazette Extraordinary, on the eve of Local Body Election 2016 containing the list of recognized political parties and their symbols, it was made clear that the petitioner political party, being a registered party, but unrecognised party in the State of Tamilnadu is entitled to have only preference over independents in the allotment of free symbols in the local body elections. Later on, the Tamil Nadu State Election Commission has also issued the Tamil Nadu Local Body Elections Symbols (Reservation and Allotment) Order, 2016 in the light of the powers conferred under Articles 243K and 243ZA of the Constitution of India read with relevant Sections of the Acts and Rules 33, 34 and 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995, Rules 31, 32 and 33 of the Tamil Nadu Panchayats, Third Grade Municipalities, Municipalities and Corporations (Elections) Rules, 2006. When this respondent enquired with the Election Commission of India, it was informed that the petitioner party has been allotted with a symbol of 'Coconut Farm' under paragraph 10B of the Election Symbols (Reservation and Allotment) Order 1968. Accepting the same, they contested the following election. Therefore, having accepted and contested on the Coconut Farm Symbol, they cannot, once again, maintain the present Writ Petition as the order passed by the 1st respondent is perfectly valid.

10. Taking support from the judgment of the Hon'ble Apex Court in the case of Dr.Subramanian Swamy vs. Election Commission of India through its Secretary reported in (2008) 14 Supreme Court Cases 318, Mr.Niranjan Rajagopalan, learned Standing Counsel for the 1st respondent submitted that the petitioner has come to this Court challenging the impugned order as though they have got a right over a property of the party on a wrong notion that the Cycle Symbol is their tangible property, particularly, when the Apex Court has held that a symbol is not a tangible thing nor does it generate any wealth and is only the insignia which is associated with the particular political party so as to help the millions of illiterate voters to properly exercise their right to franchise in favour of the candidate of their choice belonging to a particular party. It is undoubtedly a very relevant factor but along with it, the voter also can and does

vote in favour of the party. However, when the petitioner has already accepted the Coconut Farm Symbol, they cannot challenge the present impugned order, it is pleaded.

11. Mr.B.Nedunchezhiyan, learned Standing Counsel appearing for the 2nd respondent restating the stand taken in the counter affidavit submitted that the allotment of symbol to political parties by the Election Commission of India is governed by the Election Symbols (Reservation & Allotment) Order, 1968. Now the Election Commission of India has substituted para 10B in the allotment order, providing concessions to candidates set up by the Registered (unrecognised) parties and to unrecognised parties which were earlier recognised parties more than 6 years back with regard to concession of allotment of symbol. As per the said amendment, if a political party has been allotted with a Common Symbol in the elections conducted by the Election Commission of India, it may request to Tamil Nadu State Election Commission to continue to avail the same common symbol in the Local Body Elections, 2016 to be conducted by the Tamil Nadu State Election Commission also subject to certain conditions made thereunder. Accordingly, they approached the 2nd respondent while notifying local body elections in the State of Tamil Nadu. The petitioner party was allowed with a symbol of 'Coconut Farm' as per Paragraph 10B of the Election Symbols (Reservation and Allotment) Order, 1968, therefore, they are not entitled to allot with Bicycle Symbol now.

12. Heard the parties on both sides.

13. It is not in dispute that Tamil Maanila Congress (Moopanar) was founded by Shri.G.K.Moopanar, who was in the month of March, 1996 applied to the respondents to recognise the said party and for allotment of Bicycle Symbol in their application dated 02.04.1996. The Election Commission of India accepting the said application, recognising the Tamil Maanila Congress (Moopanar) as a State Party allotted the Bicycle Symbol. Using the said symbol when elections were held in the State of Tamil Nadu in the year 1996, the petitioner party contested and won 20 out of 20 parliamentary seats contested and also won 39 out of 40 seats contested in the Tamil Nadu State Legislative Assembly Election besides 5 seats in Puducherry Legislative Assembly. It is also stated that in the year 2001 also, the petitioner party won 23 seats in Tamil Nadu Legislative Assembly and 2 seats in Puducherry Legislative Assembly. Later on, having some difference of opinion with the All India Congress Party, they parted with and moved an application for allotment of the same symbol. Whereas, the Election Commission of India by its order dated 22.03.2004, inter alia, has held that the petitioner party will hereafter be treated only as a registered-unrecognized party under Section 29A of the Representation of the People Act, 1951, however, the party can avail of the benefit under para 10A of the

Symbols Order subject to the fulfilment of the requirements thereunder.

14. Since the order passed by the 1st respondent dated 22.03.2004 has made it clear that the petitioner can avail the benefit of concession made under Para 10A of the Symbols Order, it is useful to extract the Para 10 A and 10B and also Explanation vi to Para 10B of the Election Symbols Order here under :

''[10-A. CONCESSION TO CANDIDATES SET UP BY AN UNRECOGNIZED PARTY WHICH WAS EARLIER RECOGNISED AS A NATIONAL OR STATE PARTY- If a Political Party, which is unrecognised at present but was a Recognised National or State Party in any State or Union Territory not earlier than six years from the date of notification of the election, sets up a candidate at an election in a constituency in any State or Union Territory, whether such party was earlier recognised in that State or Union Territory or not, then such candidate may, to the exclusion of all other candidates in the Consultancy, be allotted the symbol reserved earlier for that party when it was a Recognised National or State Party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union Territory, on the fulfilment of each of the following conditions, namely:-

a. that an application is made to the Commission by the said party for the exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

b. that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), ©, (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

c. that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment:

Provided that nothing contained in this paragraph shall apply to a candidate set up by the said party at an election in any constituency in a State or Union Territory where the same symbol is already reserved for some other National or State Party in that State or

Union Territory].

[10B - Concession to candidates set up by registered (unrecognised) parties and to unrecognised parties which were earlier recognised parties more than 6 years back.

'Subject to the provisions of clause (b) of subparagraph (3) of paragraph 12, the candidates set up by a registered unrecognised political party at the general election to the Legislative Assembly of a State or to the House of the People may be allotted a common symbol, subject to fulfilment of the following conditions:

(A) At a general election to the Legislative Assembly:

- i. The party sets up candidates at least in 5% (five percent) of the assembly constituencies in the State, subject to a minimum of three constituencies in States having forty or less seats;
- ii. In the case of election on expiry of the normal term of the Legislative Assembly, the intimation with regard to its intention to contest election under sub-clause (i) is given by the party to the Commission at any time during the period commencing from the date six months prior to the date of expiry of the term of the Assembly and latest by five clear days before the date on which the notification (or the first of the notifications in the case of a phased election) of the election is scheduled to be issued.
- iii. In the case of dissolution of the Legislative Assembly before the expiration of its normal term, the intimation with regard to its intention under sub-clause (i) is given by the party to the Commission at any time from the date of dissolution of the Legislative Assembly and latest by five clear days before the date on which the notification (or the first of the notifications in the case of a phased election) of the election is scheduled to be issued;
- iv. The party shall give the names of ten symbols, in order of preference, from out of the list of free symbols notified by the Commission under Paragraph 17 of this Order.

Provided that a party may, if it so desires, also propose three new symbols of their choice with the names and clear design and drawings of symbol, in the order of preference, for allotment to its Candidates, which the Commission may consider for allotment as its common symbol if there is, in its opinion, no objection in allotting such symbol:

Provided further that the symbols proposed by the parties shall have no resemblance to the existing reserved symbols or free symbols, not shall have any religious or communal connotation or depict any bird or animal.

Provided also that no proposal for a new symbol shall be entertained by the Commission unless it is made at least three months before the date of expiry of term of the Assembly concerned or within one month of the premature dissolution of the Assembly, as the case may be:

(v) The party also gives an undertaking that if the party does not set up candidate in the minimum number of constituencies as prescribed in condition (i) above, its candidate shall not be entitled to allotment of a common symbol on the date of allotment of symbols to them and, in addition, the party shall be liable for such punitive action as the Commission may consider appropriate;

(vi) The list containing the serial numbers and names of the constituencies where the party is setting up candidates is submitted to the Commission latest by 5 clear days before the date on which the notification (or first of the notification in the case of a phased election) of the election is scheduled to be issued.

.....
.....

Explanation vi to 10B

(vi) Notwithstanding anything contained in paragraph 10A, a political party which was earlier a recognised political party and which lost its recognition more than 6 years back will also be eligible under this paragraph to the concession of allotment of the symbol which was earlier reserved for the party, at a general election to the House of the People or to the Legislative Assembly of a State, held after expiry of six years since the party lost its recognition, subject to the fulfilment of each of the conditions specified under Clause (A) or (B), as the case may be, except the condition in sub-clause (iv) of clause (A) and sub-clause (v) of clause (B)].''

15. A perusal of the impugned order clearly shows and supports the contentions made by the learned Senior Counsel for the petitioner that neither the explanation given in (vi) to

Para 10 B nor 10 A has been considered by the 1st respondent while answering the claim of the petitioner. This apart, the counter affidavit filed by the 2nd respondent also does not speak anything about the applicability of the aforementioned provisions, that also shows that the arguments advanced by the petitioner were not properly considered by the 1st respondent. Secondly, when the petitioner party was formed on 2.4.1996 and allotted with the Bicycle Symbol, they contested in the State Assembly Election held in the year 1996 and also the Parliamentary Elections, while so, even prior thereto, the Telugu Desam Party in Andhra Pradesh and Samajwadi Party in Uttarpradesh were having this Bicycle Symbol in their respective States, but this also has been overlooked by the first respondent in the impugned order. Thirdly, as per Explanation vi to Para 10 B, if a political party who lost its recognition more than six years back is eligible to, as one time concession for allotment of symbol that was earlier reserved for the same party, this also has not been considered anywhere in the impugned order. Besides, it was pleaded that merger was not accepted by the first respondent, being so, it needs to be examined whether the petitioner can reclaim the old symbol. Therefore, the concession claimed by the petitioner party has not been considered by the 1st respondent. Hence, for all these reasons mentioned supra, the impugned Proceedings dated 05.02.2016 and 04.03.2016 of the Election Commission of India are liable to be set aside. Accordingly, they are set aside. While setting aside the impugned proceedings, this Court, directs the 1st respondent to re-examine the issues raised by the petitioner on merits and in accordance with law as indicated above, within a period of eight weeks from the date of receipt of a copy of this Order.

16. The learned Senior Counsel for the petitioner sought permission of this Court to file a fresh application before the 1st respondent in respect of their claim. Finding no objection, liberty is granted to the petitioner to file a fresh application raising all the grounds. On receipt of such application with documents, if any filed, the 1st respondent is directed to consider the same afresh, on merits and in accordance with law.

17. With the above observation and direction, the Writ Petition is partly allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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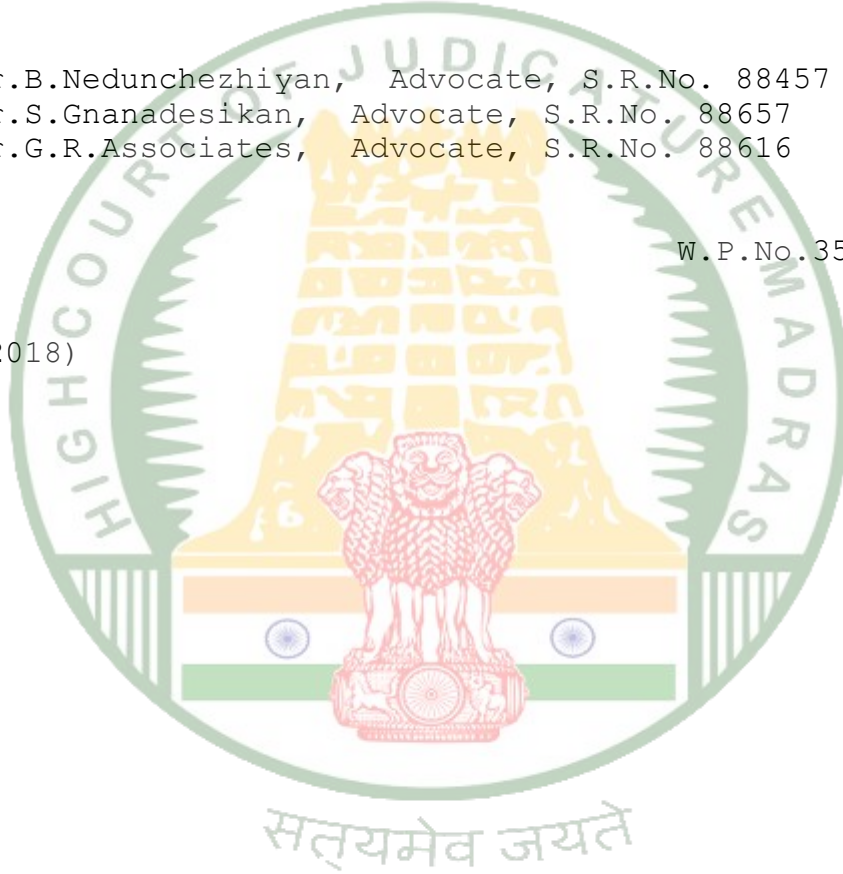
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+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No. 88457
+1cc to Mr.S.Gnanadesikan, Advocate, S.R.No. 88657
+1cc to Mr.G.R.Associates, Advocate, S.R.No. 88616

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