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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10864/2018**
BHARTIYA SARVAJAN HITEY SAMAJ PARTY Petitioner
Through: Mr. Sanjeev Kumar Singh & Mr.
Shushmit Kumar Trivedi, Advs.
Versus
THE ELECTION COMMISSION OF INDIA Respondent
Through: Mr. P.R. Chopra, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.10.2018

CM No.42372/2018 (for exemption)

1. Allowed, subject to just exception.
2. The application is disposed of.

W.P.(C) 10864/2018 & CM No.42371/2018 (for stay)

1. This petition, though not on the Roster of this Bench, has been received at about 1235 hours in terms of General Direction dated 15th October, 2018 of Hon'ble the Chief Justice, owing to the Roster Bench Judge being on leave.
2. The petition, under Article 226 of the Constitution of India, impugns the communication dated 25th September, 2018 of the respondent Election Commission of India (ECI) informing the petitioner that "first graphic / sketch of the proposed symbols given by you is not clear and even there are two such symbols, which are matching either with earlier allocated symbol or earlier reserved symbol" and further informing the petitioner that the petitioner can again apply for allocation and advising the petitioner to give the list of minimum 10 to 15 free symbols.

3. This petition came up first before this court on 10th October, 2018 when on account of the Hon'ble Presiding Judge being on leave, the petition was adjourned to 16th October, 2018.
4. On enquiry as to the urgency today, the counsel for the petitioner states that the notification for the election to the Legislative Assembly of the State of Chhattisgarh has been issued today and hence the urgency.
5. On further hearing the counsels, it transpires that under Clause 10B(A)(ii) of the Election Symbols (Reservation and Allotment) Order, 1968, a unrecognized political party can apply for an election symbol at any time commencing from the date six months prior to the date of expiry of the term of the Legislative Assembly and latest by five clear days before the date on which the notification of the election is scheduled to be issued.
6. The counsels, on enquiry, state that they do not immediately have available with them the date of expiry of the term of the Legislative Assembly.
7. The petitioner made the application for allocation of symbol only on 9th August, 2018 and which as aforesaid has been rejected on 25th September, 2018.
8. The counsel for the respondent states that the petitioner cannot now under the aforesaid Rule, be allocated a symbol as the period therefor has expired.
9. It appears that the petitioner has not acted with expediency. The petitioner, though immediately after 25th September, 2018 could have applied again, but did not do so. This petition also is dated 6th October,

2018 and was filed on 6th October, 2018 and re-filed on 8th October, 2018 and as aforesaid got listed on 10th October, 2018. On 10th October, 2018 also, though the counsel for the petitioner, in accordance with General Direction issued by the Hon'ble the Chief Justice and circulated with the cause list, of urgent matters of the Roster Bench being taken up by this Bench, did not have the matter listed before this Bench on 10th October, 2018 itself.

10. For the aforesaid reasons, today there is no reason to, merely because the petition was filed before the issuance of the notification, as is contended, grant any indulgence to the petitioner.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 16, 2018

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