

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7093 of 2019

Jharkhand Mukti Morcha through its authorized representative Mr. Pranav Kumar aged about 41 years, having its Central Office at Tetar Toli Briyatu, Ranchi Jharkhand and Regional Office at House of Kavi Bhushan Prasad, near Agriculture Research Centre, Bhupatipur, Patna-800020

... .. Petitioner

Versus

1. The Chief Election Commissioner, Election Commission of India, Nirwahan Sada, Ashok Road, New Delhi.
2. The Secretary, Election Commission of India, Nirwahan Sadan, Ashok Road, New Delhi.
3. Janta Dal United, having its registered Office at 7 Jantar Mantar, New Delhi, having its Regional Office at Bir Chand Patel Marg, Patna-1

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Sanjay Singh, Mr. Anurag Saurav, Advocates
For the Respondents	:	Mr. Siddhartha Prasad, Advocate

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date : 10-04-2019

The present writ petition has been filed for the following reliefs –

“(i) For issuance of writ in the nature of certiorari quashing of order dated 08.03.2019 passed by Election Commission of India i.e. Respondent no. 2 whereby and whereunder Respondent no. 2 on the complain of Respondent no. 3 i.e. Janta Dal (United) directed the petitioner to not use their reserve symbol (Bow and Arrow) for contesting election in the State of Bihar on the ground that the symbol bow and arrow is creating deception/confusion in the mind of voters with the symbol of Janta Dal United.

(ii) For issuance of writ in the nature of mandamus directing the respondent authorities specially Respondent no. 1 and 2 to provide concession to the petitioner for use of symbol



“Bow and Arrow” in the present election as the symbol of petitioner and Respondent no. 3 does not contain any similarity and petitioner is a recognize party using the said symbol for last 30 years and non using of the symbol in the general election with effect the vote of the petitioner.

(iii) For Quashing of letter bearing 56/11/LET/ECI/PP/PPS – 11/2017 DATED; 27.03.2019 whereby and whereunder the respondent commission has rejected the application filed by the petitioner.

(iv) For granting stay on the operation of order dated: 08.03.2019 passed by respondent commission till the disposal of writ application as the nomination of present election has already been started and sudden withdrawal of symbol will cause irreparable damages to the petitioner.

(v) For any other relief or reliefs which may the petitioner is entitled in the eye of law.”

2. At the very outset, a preliminary objection has been raised by learned counsel for the respondent no. 1 with respect to non-maintainability of the writ petition in view of the specific bar contained in Article 329(b) of the Constitution of India. It is submitted that the present petition has been filed after notification of the election and the only remedy available with the petitioner would be by way of filing an election petition at the appropriate stage. It is further submitted that a petition of the present nature would have effect of stalling the election proceedings and hence cannot be entertained.

3. Learned counsel for the petitioner submits that the impugned order dated 08.03.2019 (Annexure-6) has been passed in an



arbitrary manner and in outright violation of the principles of natural justice inasmuch as neither proper notice was served upon the petitioner nor a copy of the impugned order has been served upon it till date. It is submitted that in such circumstances, this Court can well interfere in the matter.

4. Having heard the parties and on consideration of the rival submissions, this Court is of the view that once the election has been notified, the bar contained in Article 329(b) of the Constitution of India comes into operation, in view of which the petitioner would only have remedy by way of filing an election petition at the appropriate time for redressal of its grievances.

5. In this regard reference may be made to the case of *Manda Jaganath Vs. K.S. Rathnam and others*; (2004) 7 SCC 492 and it has been observed as follows --

“13. It is to be seen that under Article 329(b) of the Constitution of India there is a specific prohibition against any challenge to an election either to the Houses of Parliament or to the House of Legislature of the State except by an election petition presented to such authority and in such manner as may be provided for in a law made by the appropriate legislature. Parliament has by enacting the Representation of the People Act, 1951 provided for such a forum for questioning such elections hence, under Article 329(b) no forum other than such forum constituted under the RP Act can entertain a complaint against any election.

14. The word “election” has been judicially defined by various authorities of this Court to mean any and every act



taken by the competent authority after the publication of the election notification.

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21. Learned Senior Counsel for the respondent candidate contended that the case of the first respondent before the High Court came within the exceptions noted by this Court in M.S. Gill case which permits filing of a writ petition under Article 226 of the Constitution in certain exceptional cases. He contended that the facts in this case also show that but for the intervention of the High Court the progress in the election would have been stalled. With due respect to learned counsel, we do not agree with this argument because by not allotting a symbol claimed by the first respondent the Returning Officer has not stalled or stopped the progress of the election. The said respondent has been treated as an independent candidate and he is permitted to contest with a symbol assigned to him as an independent candidate, and consequently there is no question of stalling the election. His grievance as to such non-allotment of the symbol will have to be agitated in an election petition (if need be) as held in S.T. Muthusami.

22. Learned counsel then contended that non-allotment of a symbol which the first respondent was legally entitled to would not be a ground of challenge available to him in the election petition under Section 100 of the Representation of the People Act, 1951, therefore the High Court is justified in entertaining the petition. We do not think this argument of learned counsel is correct because as has been held by this Court in M.S. Gill case sub-clause (iv) of Section 100(1)(d) of the Representation of the People Act, 1951 is a widely-worded residual clause which this Court in the said judgment of M.S. Gill case termed as “catch-all clause”. It



is further stated in the said judgment that the said section has been added to absolve everything left over and the same is exhaustive of all grievances regarding any election, hence, in our opinion, this argument of learned counsel for the first respondent should also fail.”

5. In the circumstances, the writ petition stands dismissed.

BT/-

(Vikash Jain, J)

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