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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 19.02.2018

Date of Decision: 09.03.2018

+ W.P.(C) 10728/2017 & C.M.Nos.4089/2018,43913/2017.

T. T. V DHINAKARAN

.....PETITIONER

Through Mr. Kapil Sibal, Senior Advocate, Dr.
A.M. Singhvi, Senior Advocate, Ms.
Meeankshi Arora, Senior Advocate
with Mr.Vivek Singh, Mr. N. Raja
Senthoo Pandian, Mr. Amit Bhandari,
Mr.Mohit Paul, Advocates.

versus

THE ELECTION COMMISSION OF INDIA

AND ORS.

...RESPONDENT

Through Mr.P.R.Chopra, Advocate for
R-1.

Mr.Anwesh Madhukar with Mr.Anand
Kannan, Advocates for Applicant.

Mr.C.S.Vaidhyanathan, Senior Advocate for
R-3.

Mr.Guru Krishna Kumar, Senior Advocate
with Mr.Balaji Srinivasan, Ms.Vaishavani
Subrahmanyam, Ms.Pratiksha Mishra,
Mr.Abhishek Bharti, Ms.Sristhi Govil,
Mr.Ram Shankar, Advocates for R 2 & 4.

Mr.Mukul Rohatgi, Senior Advocate with
Ms.Diksha Rai with Ms.Palak Mahajan,
Advocates for R-5.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

C.M.No.2994/2018(for interim relief)

1. This order disposes of an interim application preferred by the Petitioner, who being aggrieved by the order dated 23rd November, 2017 passed by the Respondent No. 1/Election Commission of India (hereinafter referred to as ECI), has challenged the same by way of a writ petition under Articles 226 & 227 of the Constitution of India on various grounds, including the plea that the decision of the Respondent No. 1/ECI is based on fabricated and untested materials produced by the Respondent Nos. 2 to 5, which the Petitioner was not allowed to rebut. However, pleadings in the writ petition are yet to be completed and though the Respondents have filed their counter affidavits, the same are still not on record.

2. In these circumstances, the Petitioner has filed the present application seeking the following directions:-

“a. Issue a direction to the Respondents to permit the group led by the Petitioner and the Respondent No.6 to use a suitable name for carrying out its political activities, during the pendency of the present Writ Petition;

b. Issue a direction to the Respondents, permitting/allocating the group led by the Petitioner herein and the Respondent No.6 to use the Symbol of “Pressure Cooker” for the purpose of Local Bodies Elections likely to be held in April, 2018 or any other

election, during the pendency of the present Writ Petitions.”

3. The background in which the present application has been moved by the Petitioner is that vide the impugned order dated 23rd November, 2017 (hereinafter referred to as Impugned Order), the Respondent No. 1/ECI had decided the election dispute in favour of the Respondent Nos. 2 to 5 and thereby held that the group led by the Respondent No. 2 will be entitled to use the name of the party 'All India Dravida Munnetra Kazhagam (AIADMK)' and its reserved 'Two Leaves' symbol. The Petitioner submits that it is actually the Petitioner and Respondent No. 6 who are the real leaders of the AIADMK party and due to the Impugned Order, the Petitioner and his group of cadres and leaders have been left without any name or symbol and are, therefore, unable to ventilate their political aspirations during the pendency of the writ petition. The Petitioner further points out that due to the absence of any party name and symbol, he and his group of leaders and supporters are not even being granted police permission to organize political meetings as they do not have any identifiable name.

4. The Petitioner claims in the present application that he not only has an enormous support from the members and cadre of the AIADMK party but also enjoys great support from the general public. By placing reliance on an interim order dated 22.03.2017 passed by the Respondent No. 1/ECI, it is contended that when the issue as to which out of the two rival factions of the party would be entitled to the name and symbol reserved for the party was pending, the Respondent

No. 1/ECI, while directing that none of the rival groups would be permitted to use the name or symbol of the party, had directed that both the groups would be known by such names as they may choose for their respective groups and would also be allotted such different symbols as they may choose from the list of free symbols issued by the Respondent No. 1/ECI for the Assembly bye-election. The Petitioner, therefore, claims that keeping in view the fact that this Court is examining the legality of the Impugned Order and the difficulties being faced by the Petitioners and his supporters to ventilate their political aspirations in the absence of any name or symbol, during the pendency of this Writ Petition, a similar order as passed by Respondent No. 1/ECI on 22.03.2017 during the pendency of the election dispute before it, may be passed by this Court to enable the Petitioner and his supporters to effectively participate in political activities.

5. Upon notice being issued in the present application, Respondent No. 1/ECI has filed a short affidavit and has opposed the application mainly on two grounds. The first ground being that since the group led by the Petitioner is not a political party registered with Respondent No. 1/ECI there is no question of the Respondent No. 1/ECI assigning any name or symbol to the Petitioner or his group. The second plea taken by Respondent No. 1/ECI is that since the real cause for the Petitioner to file the present application is claimed to be the forthcoming local body elections likely to be held in the State of Tamil Nadu in April 2018, the Petitioner ought to approach the State Election Commission of Tamil Nadu, which is the sole authority for

assigning names and symbols for local body/authority elections as the Respondent No. 1/ECI has no role in conducting them.

6. Respondent Nos. 2 to 4 have filed a common reply, wherein besides opposing the application on the ground of lack of territorial jurisdiction by invoking the doctrine of *forum conveniens*, it has also been contended that the allocation of a name and symbol to a political party is a statutory power which is neither vested in a writ court nor can be exercised by it. The Respondents, while denying the claim of the Petitioner that he and Respondent No. 6 are the real leaders of the AIADMK party, have contended that the present application is wholly without any cause of action as the Petitioner and Respondent No. 6 are free to carry out their political activities by registering themselves as a political party and thereafter applying for a name and symbol in accordance with the Election Symbols (Reservation & Allotment) Order, 1968 (hereinafter referred to as Symbols Order) and there is no reason why they should be allotted a symbol or name without applying for registration as a political party.

7. Respondent No. 5 has also filed a similar reply, raising a preliminary plea that the most convenient forum for agitating the issues raised in this application are the Courts in Chennai, since all the parties, except Respondent No. 1/ECI, are residents of the State of Tamil Nadu. It has been further averred that the AIADMK party's main sphere of influence is in the state of Tamil Nadu and the Union Territory of Puducherry and the said party has been recognized as a state party by the Respondent No. 1/ECI in the state of Tamil Nadu and Puducherry. According to Respondent No. 5, the most proximate

connection to the issues raised and the parties involved in the present petition, is with the High Court of Judicature at Madras, which is also the *forum conveniens* to entertain the present application. It is also contended that the relief sought by the Petitioner is beyond the scope and powers of this Court, which is sitting only in judicial review of the order passed by the Respondent No. 1/ECI. It is further stated that under the Representation of the People Act (hereinafter referred to as the Act) and the Symbols Order, even the Respondent No. 1/ECI does not have any power to give a name or symbol to a group of persons who are not registered as a political party. The emphasis of Respondent No. 5's reply is that the Petitioner can only be granted a name and a symbol in accordance with the provisions of the Act and Symbols Order. Another ground urged by Respondent No. 5 to oppose the application is that this Court, vide its order dated 04.12.2017, had already considered the impact of the Symbols Order and had declined to grant any interim order allotting the symbol of "Hat" to the Petitioner, as had been claimed by him. Respondent No. 5 has also contended that the Impugned Order passed by the Respondent No. 1/ECI clearly shows that the group led by the Petitioner comprises only of 150 members of the total 2140 members of the AIADMK party and, thus, it had become clear that there was only one original party and there was no group within the party, as is being claimed by the Petitioner.

8. Arguing for the Petitioner, Mr. Kapil Sibal, learned Senior Counsel, at the outset states that there is no reason for any of the Respondents to oppose the Petitioner's application, since the relief

sought by the Petitioner causes no prejudice to any of the Respondents. He submits that even otherwise, the present proceedings are merely a continuation of the proceedings before the Respondent No. 1/ECI, and since a similar relief was granted by the Respondent No. 1/ECI itself, vide its interim order dated 22.03.2017 in Dispute Case No. 2 of 2017, there can possibly be no objection from any party to a similar relief being granted at this stage of the proceedings. Mr. Sibal further urges that when the group led by Respondent No. 3 had approached Respondent No.1/ECI during the pendency of the election dispute for interim orders, their situation was similar to the situation of the Petitioners at the time of approaching this court. He submits that at the time of approaching Respondent No. 1/ECI, the support received by both the rival factions from the legislative wing of AIADMK was as follows:

I. 12 MLAs out of 134 of the AIADMK supported the faction led by Respondent No. 3 while 122 MLAs supported the Petitioner-led-faction.

II. 37 out of 50 Members of Parliament of the AIADMK were in support of the Petitioner-led-faction.

9. With reference to the Impugned Order, Mr. Sibal submits that the numerical strength of the two rival factions, at the time of approaching this Court, was as follows:

I. 111 MLAs out of 134 MLAs of the AIADMK supported the faction led by Respondent No. 3 and 20 MLAs supported the Petitioner-led-faction.

II.6 out of 50 Members of Parliament of AIADMK were in support of the Petitioner-led-faction.

10. Highlighting the similarity in both the situations, when the Petitioner and the Respondent Nos. 2 to 4 had approached the Respondent No.1/ECI and this Court respectively in almost converse positions, Mr. Sibal submits that since in a similar situation Respondent No. 1/ECI had, in this dispute itself, granted a relief similar to the one sought by the Petitioner in the present application, its position before this court is inconsistent with the approach adopted by it in this case itself. He submits that by opposing this application, the Respondents are trying to force the Petitioner to register the group led by him as a separate political party, thereby giving up his claim in the main Writ Petition to the AIADMK name and its "Two Leaves" symbol. Mr. Sibal contends that as long as the Petitioner's claim on the "Two Leaves" symbol is pending, he cannot be forced to register a new political party.

11. Mr. Sibal further contends that the group led by the Petitioner has a fundamental right under Article 19(1)(c) of the Constitution of India to form an association and, since a political party is merely an association of persons, there is a fundamental right of a political faction to form an association to carry out all its political activities, including carrying out any political campaign. He contends that no political party or faction thereof can carry out any political campaign without a name and without associating the name of such faction with a symbol, since in the Indian electorate, which consists of literate and illiterate individuals, an elector votes mainly on the basis of symbols.

12. Mr. Sibal further contends that in the event this Court were to not grant a name and symbol to the Petitioner's faction, it would amount to the Petitioner, not having any remedy in the eyes of law against the decision of Respondent No.1/ECI, as the Petitioner would be forced to register a new political party to exercise his right to form a functional political association, and thereby give up his claim and render his own petition infructuous.

13. Mr. Sibal further contends that the relief sought by the present application is not in any way limited to a particular election but is being sought for conducting all political activities during the pendency of the present Writ Petition. While drawing this Court's attention to Prayer (a) in the Application, where a direction to the Respondent No. 1/ECI to permit the Petitioner-led-faction to use a suitable name for carrying out its political activities has been sought, as also to Prayer (b), where a direction has been sought enabling the use of the 'Pressure Cooker' symbol by the Petitioner-led-faction for the purposes of the local body election or 'any other election' during the pendency of the Writ Petition, Mr. Sibal submits that during the proceedings before the Respondent No.1/ECI, even after the proposed election was countermanded on 9.04.2017, the interim order dated 22.03.2017 was still continued by Respondent No.1/ECI by its order dated 20.04.2017. Mr. Sibal further submits that this goes to show that even in the event of no impending election, the Respondent No. 1/ECI had extended the interim relief granted by it to allow both the factions to conduct their political activities during the pendency of the election dispute. He, thus, contends that in light of the order dated 20.04.2017 of

Respondent No. 1/ECI, the Respondents cannot now take the stand that since there are no impending elections, the Petitioner-led-faction cannot be granted a name and symbol to conduct its political activities.

14. As regards the power of this Court to grant the relief prayed for by the Petitioner, Mr. Sibal submits that this Court, while exercising its writ jurisdiction under Articles 226 and 227, has the power to do complete justice qua the parties and hence can grant the interim relief so prayed for by the Petitioner. To buttress this argument he relies on interim orders passed by the Supreme Court of India in *WP(C) 177/2009* titled ***Viduthalai Chiruthaigal Katchi v Election Commission of India*** and *W.P(C) 532/2008* titled ***Desiya Murpokku Dravida Kazagam & Anr. v Election Commission of India***, in which an interim arrangement has been made by the Supreme Court by allotting a symbol to registered unrecognised political parties for a limited period.

15. Mr. Sibal has further attempted to distinguish the present Application from the earlier CM No.43911/2017 in this writ petition, which was disposed of by this Court vide its order dated 04.12.2017 by rejecting the Petitioner's prayer for grant of a particular symbol and instead directed the Petitioner to approach the Returning Officer to consider his request as per the procedure laid down in Clause 12 of the Symbols Order. He contends that the order dated 04.12.2017 was passed by this Court in a situation where the notification for conduct of elections to the RK Nagar Election had already been issued and the Petitioner had already approached the Returning officer, whereas the present situation shows that the Petitioner has already won the RK

Nagar Assembly election by a margin of 40,000 votes while campaigning under the 'Pressure Cooker' symbol. He, thus, submits that the present Application raises an issue which is materially different from the issue decided by this Court on 04.12.2017.

16. Dr. Abhishek Manu Singhvi, who appears for the Petitioner in the connected writ petition, also supports the Application of the Petitioner herein and submits that the Petitioner-led-faction has a fundamental right to form an association and conduct political activities, which the Respondents, by objecting to this Application, are attempting to stall. It is his contention that a democratic form of government has been read into the basic structure of the constitution. He further submits that since the existence of political parties is implicit in the nature of democracy, the group led by the Petitioner, which is a rival faction of the present form of AIADMK, has a fundamental right to take part in the democratic process by associating under a common symbol for conducting political activities, while their rights are being determined in this Court. If the Petitioner's faction, he states, is not granted a common symbol under which it can campaign and associate with the common public, the Petitioner's Fundamental Right as guaranteed under Article 19(1)(c) shall stand abrogated. To fortify this argument he places reliance on the judgment of the Supreme Court in *Kanhiya Lal Omar v R. K. Trivedi* (1985) 4 SCC 628.

17. Dr. Singhvi also contends that the interim reliefs prayed for would not prejudice the rights of any party and, in fact, if the same is not allowed, it would cause irreparable harm to the Petitioner. He

submits that it is apparent that the only reason the Respondents have so vehemently objected to this Application is to delay and frustrate the political rights of the Petitioner. He contends that since the Impugned Order has allowed the Respondent Nos. 2 to 5 to campaign politically under the AIADMK party name and the "Two Leaves" symbol, if the Petitioner-led-faction (which still consists of a considerable number of persons associated with the AIADMK and still lays a claim to the AIADMK name and the "Two Leaves" symbol) is not granted a name and symbol under which it can campaign as a unified group, it would create a non-level playing field in Tamil Nadu politics in favour of the Respondents. He further submits that it is necessary for a political party or a faction to associate itself with the public via political campaigns and other political activities, for which it needs a common name and symbol, and contends that the more this process is delayed, the greater would be the irreparable harm caused to the Petitioner. He contends that the relief sought by the Petitioner is merely a correctional measure for the imbalance created by the Impugned Order which, if granted, would result in the creation of a level playing field and restoration of political equilibrium in Tamil Nadu politics.

18. Dr. Singhvi further contends that there is no bar on such an interim relief, as is being contended by the Respondents, and on the other hand submits that since this is an unoccupied field of law, with no precedents to guide this court, the burden to demonstrate any such prohibition, which would need to be specific and unequivocal to limit the powers of a writ court, lies on the persons asserting the existence of the same, i.e. the Respondents. His submission, thus, is that this

burden has not at all been discharged by the Respondents, who have not been able to bring to the notice of this Court any such specific prohibition which would bar this Court from allowing the interim arrangement sought by the Petitioner.

19. Dr. Singhvi finally contends that since the present Application seeks an interim relief, this court should examine whether, once a *prima facie* case has been established by the Petitioner, the balance of convenience is in his favour and/or whether irreparable loss will be caused to him if such a relief is not granted. He states that since notice has already been issued in the writ petition, it is evident that a *prima facie* case has been established by the Petitioner. What is now to be considered is whether the balance of convenience is in the Petitioner's favour and whether irreparable harm would be caused to him if his prayer is rejected by this Court. His plea, thus, is that it is necessary for the creation of a level playing field in Tamil Nadu politics, between the Petitioner and the Respondent Nos. 2 to 5, that the Petitioner's Application is allowed. He contends that in the event the relief sought is not granted to the Petitioner, the Respondent Nos. 2 to 5 will get an unfair advantage over the Petitioner-led-faction, during the pendency of the determination of their rights in this Court. On the aforesaid premise, he asserts that the above two conditions have been met by the Petitioner for the grant of the interim relief sought in this Application. He has also placed reliance on the decision of the Supreme Court in the case of ***Ramesh Chandra Sankla & Ors v. Vikram Cement & Ors.*** (2008) 14 SCC 58 in support of his plea that

the power of this Court under Article 227 of the Constitution is very wide and must be used to advance the ends of justice.

20. On the other hand, Mr. P. R. Chopra, learned counsel for the Respondent No.1/ECI, while opposing the Application submits that the Petitioner-led-faction is not entitled to have a reserved symbol allotted to it because such a symbol can only be reserved for a recognised political party for exclusive allotment to the contesting candidates set up by that party. He places reliance on Paragraph 5 of the Symbols Order which lays down the classification of symbols into "free" and "reserved" symbols. He also relies on Paragraphs 6A, 6B and 6C of the Symbols Orders to contend how the Petitioner-led-faction is not a recognised political party and, even if it were to register itself as a political party, it would not meet the criteria as prescribed in Paragraphs 6A and 6B of the Symbols Orders so as to entitle it to reserve a symbol for its exclusive use. To buttress this point he relies on the order dated 19.12.1997 passed by the Respondent No.1/ECI in *In Re: Rashtriya Janata Dal-Application for its Recognition as a National Party*. His submission, thus, is that since the Petitioner-led-faction is not a recognised political party but merely a splinter group, there is no provision as per law that can entitle them to seek reservation of a symbol for their exclusive use.

21. Arguing for Respondent No. 3, Mr. C. S. Vaidyanathan, Learned Senior Advocate, at the outset contends that this Court does not have territorial jurisdiction to entertain the Writ Petition on the ground of the principle of *forum non-conveniens*. He submits that the political party AIADMK, in respect of which this entire dispute has

arisen, is a registered political party i.e. recognised in the State of Tamil Nadu and Puducherry. Further, he submits that all the parties to the present Petition, except Respondent No.1/ECI, are based in Tamil Nadu. He also refers to a number of suits arising out of disputes concerning the AIADMK party, which are stated to be pending in the Madras High Court. He, thus, contends that only the Madras High Court has the jurisdiction to entertain the writ petition in which the present Application has been filed. He relies in this regard on the decision of the Supreme Court in *Kusum Ingots & Alloys Ltd. v Union Of India* (2004) 6 SCC 254 and the observations of this Court in the case of *Sterling Agro Industries Ltd. & Ors v. Union of India & Ors.* AIR 2011 Delhi 174.

22. Mr. Vaidyanathan further submits that the immediate cause for filing this interim Application, as represented by the Petitioner, is the impending election to the local bodies in the month of April 2018, which submission according to him is factually incorrect as, till date, no notification for any election has been issued. He, therefore, contends that there is no immediate cause to file the present Application. He contends that even otherwise, the Respondents have not, in any manner, prevented the Petitioner from conducting his political activities, but the same cannot be allowed to be carried out at the expense of the identity of the original AIADMK party. He contends that if the Petitioner-led-faction seeks a common identity, the Petitioner can register a political party. He further submits that the pendency of a challenge to the Impugned Order, cannot be a ground to

exempt the Petitioner from following the statutory procedure laid down for allotment of symbols.

23. Mr. Vaidyanathan further contends that there exists a procedure prescribed by law for a group to register as a political party and thereafter reserve a name and symbol for itself. The said procedure is prescribed under the Act, the Symbols Order and the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2016 (hereinafter referred to as the State Symbols Order). He contends that the Petitioner, by preferring this Application, is attempting to circumvent the prescribed procedure and any such relief, as sought by the Petitioner, would violate the Act, Symbols Order and the State Symbols Order. He further submits that the law contemplates only splinter groups within a political party and once, either of the said groups is found to be the original party, there cannot be a splinter group arraying itself against the original political party, which would go against the very basic idea behind political parties as envisaged in the Act and the Constitution of India. He has also placed reliance on a decision of the Supreme Court in *K. Prabhakaran v P. Jayarajan* [(2005) 1 SCC 754] to contend that persons like Respondent No. 6, who have criminal backgrounds, ought to be prevented from entering politics and his submission, thus, is that even on this ground the Petitioner is not entitled to any discretionary relief from this Court.

24. The final submission of Mr. Vaidyanathan is that the proceedings before this Court are not in the nature of an appeal, but in the nature of a judicial review of the order of the Respondent No. 1/ECI and, therefore, cannot be termed as a continuation of the

proceedings before Respondent No. 1/ECI, as has been urged by the Petitioner. He further contends that since the right to contest an election is merely a statutory right and not a fundamental right, such an interim relief cannot be granted even under Articles 226 & 227 of the Constitution of India, under which the Petitioner has approached this court.

25. Arguing for Respondent No. 5, Mr Mukul Rohatgi, learned Senior Advocate, besides reiterating the submissions made by Mr. Vaidyanathan, contends that the only manner in which a group can seek a symbol is by following the procedure prescribed in the Act and Symbols Orders. He also contends that there has been no material change in circumstances since 04.12.2017, when this court had passed an order rejecting the Petitioner's interim prayer to continue the interim order dated 22.03.2017 passed by the Respondent No. 1/ECI allowing the Petitioner to use the "Hat" symbol for contesting elections. He contends that the Petitioner's prayer in the present Application is no different from what was sought by him in the application which was disposed of by this Court on 04.12.2017. The Petitioner, he contends, is trying to agitate a stale claim under the garb of altered circumstances, while there has been no change as such.

26. Mr. Rohatgi further contends that the Petitioner's claim, that the rejection of this Application would lead to an abrogation of his fundamental rights, is without any basis. He submits that there is no fundamental right provided under the Constitution to contest elections, and the same is only a statutory right emanating primarily from the Act, which can be exercised only as per the statutory provisions

creating the said right. He submits that the Petitioner has tried to colour his right in such a manner so as to seek a relief from this Court under its writ jurisdiction, which otherwise he would not be entitled to.

Mr. Rohatgi also contends that the reliance by the Petitioner on the interim orders passed by the Respondent No. 1/ECI during the pendency of the election dispute before it, is wholly misconceived. He submits that the Respondent No. 1/ECI is a specialized tribunal dealing with election disputes and has very wide and plenary powers in such matters, whereas this Court cannot sit as an appellate court while exercising its power of judicial review and pass orders similar to the interim orders passed by the Respondent No. 1/ECI. Mr. Rohatgi also reiterates the plea that this Court does not have territorial jurisdiction to entertain the present Petition and Application by invoking the principle of *forum non-conveniens*, and contends that once all but one of the parties is situated within the jurisdiction of the Madras High Court, the Petitioner is not justified in approaching this Court, especially when various other disputes between the same parties are pending before the Madras High Court.

27. Arguing for Respondent Nos. 2 & 4, Mr. Guru Krishnakumar, learned Senior Advocate, has also stressed that there is no provision in law to reserve a symbol for a group of people who have no statutory recognition as a political party. He has brought to the notice of the court the State Symbols Order, which provides for the specifications, reservation, choice and allotment of symbols at elections to local bodies in the State of Tamil Nadu and for matters connected therewith.

He draws our attention to Paragraphs 2 (i) and 2 (d) of the State Symbols Order and submits that the State Symbols Order, similar to the Symbols Order, creates a dual classification of symbols as "free and "reserved" symbols and allows for grant of a reserved symbol only to recognised political parties. He further refers to Paragraphs 2 (h), 2(j) and 2(k) to establish that the Petitioner is not in any way covered by the definition of a "political party" let alone a "recognised political party". His contention thus is that the Petitioner is seeking a direction to do something which is contrary to law.

28. Mr. Krishnakumar submits that the Petitioner's plea that the Respondent No. 1/ECI is precluded from objecting to the interim arrangement prayed for by the Petitioner in the present Application, since it had allotted both the rival factions a name and symbol for their exclusive use during the pendency of the election dispute before it (which arrangement is similar to the one being prayed for in this Application), is wholly without any basis. He submits that the situation in which the interim order dated 22.03.2017 was passed by the Respondent No. 1/ECI, was materially different in comparison to the situation in which the Petitioner has approached this Court through this Application. At that time, no decision qua the rights of the parties to use the AIADMK name and the "Two Leaves" symbol had been taken and there was an impending bye-election in the RK Nagar Constituency. Hence, an interim arrangement was necessary to protect the rights of the parties. Further, as per the Respondent No. 1's/ECI's interim arrangement, neither party was allowed to use the "Two Leaves" symbol and the AIADMK party name. On the contrary, in the

current situation, the Respondent Nos. 2 to 5 have been held to be the AIADMK party and have been granted the right to use the AIADMK party name and the "Two Leaves" symbol. Further, since there is no impending election in the near future, it is evident that equivalence cannot be drawn by the Petitioners with the interim order dated 22.03.2017.

29. Mr. Krishnakumar finally submits that if the Petitioner is apprehensive about prejudicing his claim in the current petition by registering his group as a political party, he can seek protection from this Court before approaching the Respondent No. 1/ECI.

30. Having heard the learned counsel for the parties at length and having perused the record, I find that, though great pains have been taken by learned counsel for the Respondents to contend that the relief sought in the present Application is not only de hors the statutory scheme of the Symbols Order but is also beyond the power of this Court while exercising judicial review under Articles 226 and 227 of the Constitution of India, the issue arising for my consideration in the present interim Application is not about the prescribed procedure for recognition of a political party and allotment of a symbol to the party, but is slightly different.

31. In my considered opinion, the primary issue arising in the present Application is whether after the Election Commission of India has come to a conclusion as to which of the two rival factions would be entitled to the name and symbol reserved for the AIADMK party (by exercising its jurisdiction under Paragraph 15 of the Symbols Order), should the unsuccessful faction be asked to first register itself

as a new political party and seek recognition from the Election Commission of India and only then carry out its political activities, even while its challenge to the Election Commission of India's order is pending adjudication before this Court?

32. The other connected issue would be whether, in view of the Respondent No. 1's/ECI's interim orders (in which the Respondent No. 1/ECI had granted the rival factions the right to use a party name and free symbol of their choice, without requiring them to follow the otherwise mandatory procedure under the Act and the Symbols Order, to carry out their respective political activities during the pendency of the election dispute before it), would this Court be denuded of its power to pass a similar interim order/relief in a substantially similar claim/situation between the two parties, merely because it is not exercising its appellate but writ jurisdiction under Articles 226 and 227 of the Constitution of India.

33. Another ancillary issue on which great emphasis has been placed by the learned Senior Counsel for the private Respondents is whether this Court has the territorial jurisdiction to entertain the present Application, in the light of the admitted position that this Court has upon hearing both parties at the admission stage, already issued notice in the writ petition, wherein pleadings are yet to be completed.

34. Before dealing with the rival contentions of parties, it would be appropriate to set out the brief facts leading to the filing of the writ petition in which the present Application has been filed. It emerges from the record that after the death of its General Secretary and the

then Chief Minister of Tamil Nadu, Dr. J. Jayalalitha, on 05.12.2016, an internal dispute arose in the All India Anna Dravida Munnetra Kazhagam (hereinafter referred to as the AIADMK), a State recognized political party in the state of Tamil Nadu and Union Territory of Puducherry. The AIADMK party had been allotted the "Two Leaves" symbol as its reserved symbol in Tamil Nadu and Puducherry by the Respondent No. 1/ECI under the provisions of the Symbols Order. On 16.03.2017, Respondent Nos. 2 to 4 filed a petition under Paragraph 15 of the Symbols Order before Respondent No. 1/ECI (registered as Dispute Case No. 2 of 2017) challenging the appointment of Respondent No. 6 (Smt. V.K. Sasikala) as the General Secretary of the AIADMK party on 29.12.2016, and sought a direction to allot the reserved "Two Leaves" symbol of the AIADMK party to the political group led by Respondents Nos. 2 to 4.

35. During the pendency of aforesaid Dispute Case, Respondent No. 1/ECI passed an interim order dated 22.03.2017 prohibiting both the rival groups (i.e., the group led by the Petitioner and Respondent No. 6 on the one hand, and the group led by the Respondent Nos. 2 to 4 on the other hand) from using the AIADMK party name and its reserved "Two Leaves" symbol, and directed that both the groups be allotted such names and symbols, as they may choose for their respective groups, from the list of free symbols notified by the Respondent No. 1/ECI for the purposes of the Bye-Election from II-Dr. Radhakrishna Nagar Assembly Constituency in Tamil Nadu. The said bye-election was initially slated to be held in April 2017, but was subsequently postponed to December 2017. Consequently, the Group

led by the Petitioner was allotted the Symbol "Hat" and the name "*All India Anna Dravida Munnetra Kazhagam (Amma)*". Upon passing of the Impugned Order, which is the subject of the present Writ Petition, the interim order passed on 22.03.2017 stood vacated and consequently, the Petitioner and his group were left without any name or symbol.

36. At this stage, it may also be noted that while preferring the present Writ Petition, the Petitioner had filed an Application being C.M. No.43904/2017 seeking a direction that the "Hat" symbol, which had been allotted to him vide the interim order dated 22.03.2011 passed by Respondent No. 1/ECI, may be continued to be retained by him and he may be permitted to use the same in the bye-elections for the R.K. Nagar Assembly Constituency, which bye-elections were then slated for April 2017. This court disposed of the Petitioner's Application vide its order dated 04.12.2017 directing the Returning Officer to consider the request of the Petitioner already pending with him, for allotment of the symbol "Hat". The Returning Officer, however, after rejecting the Petitioner's request for allotment of the symbol "Hat" allotted him the symbol "Pressure Cooker", with which he contested the bye-election in the R.K. Nagar Assembly Constituency as an independent candidate and won the same with a huge margin.

37. In light of these facts, the Petitioner has approached this Court vide this Application seeking an interim arrangement directing the Respondents to permit the group led by the Petitioner to use a suitable name and to use the symbol of "Pressure Cooker" for carrying out its

political activities and contesting elections during the pendency of the proceedings before this Court.

38. At this stage, it would be appropriate to refer to the relevant provisions of the Symbols Order, which regulates the mode and requisite conditions for allotting symbols to individuals and political parties. The relevant paragraphs for determining the issues raised in the present Application are reproduced hereinbelow:-

“2. Definitions and interpretation..—(1) In this Order, unless the context otherwise requires, —

(a) to (c) xxx

(d) “contested election” means an election in a parliamentary or an assembly constituency where a poll is taken;

(e) to (g) xxx

(h) “political party” means an association or body of individual citizens of India registered with the Commission as a political party under section 29A of the Representation of the People Act, 1951.

(i) “State” includes the National Capital Territory of Delhi and the Union Territory of Pondicherry;

(j) “Sub-paragraph” means a sub-paragraph of the paragraph in which the word occurs;

(jj) “Union Territory” means Union Territory other than the National Capital Territory of Delhi and the Union Territory of Pondicherry; and

(k) Words and expressions used but not defined in this Order but defined in the Representation of the People Act, 1950, or the rules made thereunder or in the Representation of the People Act, 1951, or the rules made thereunder shall have the meanings respectively assigned to them in those Acts and Rules.

4. Allotment of symbols – In every contested election a symbol shall be allotted to a contesting candidate in accordance with the provisions of this Order and different symbols shall be allotted to different contesting candidates at an election in the same constituency.

5. Classification of symbols.—

(1) For the purpose of this Order symbols are either reserved or free.

(2) Save as otherwise provided in this Order, a reserved symbol is a symbol which is reserved for a recognised political party for exclusive allotment to contesting candidates set up by that party.

(3) A free symbol is a symbol other than a reserved symbol.

6. Classification of political parties – (1) For the purposes of this Order and for such other purposes as the Commission may specify as and when necessity therefore arises, political parties are either recognised political parties or unrecognised political parties.

(2) A recognised political party shall either be a National party or a State party.

6A. Conditions for recognition as a State Party – A political party shall be eligible for recognition as a State party in a State, if, and only if, any of the following conditions is fulfilled:

(i) At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least two members to the Legislative Assembly of that State at such general election; or

(ii) At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or

(iii) At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total

number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or

(iv) At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25 members or any fraction thereof allotted to that State;] or

(v) At the last general election to the House of the People from the State, or at the last general election to the Legislative Assembly of the State, the candidates set up by the Party have secured not less than eight percent of the total valid votes polled in the State.

6B. Conditions for recognition as a National Party – *A political party shall be eligible to be recognized as National party, if, and only if, any of the following conditions is fulfilled:*

(i) The candidates set up by the party, in any four or more States, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in each of those States at that general election; and, in addition, it has returned at least four members to the House of the People at the aforesaid last general election from any State or States; or

(ii) At the last general election to the House of the People, the party has won at least two percent of the total number of seats in the House of the People, any fraction exceeding half being counted as one; and the party's candidates have been elected to that House from not less than three States; or

(iii) The party is recognized as State party in at least four States.

6C. Conditions for continued recognition as a National or State party – *If a political party is recognised as a State party under paragraph 6A, or as a National party under paragraph 6B, the question whether it shall continue to be so recognised after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State concerned, shall be dependent upon the fulfillment by*

it of the conditions specified in the said paragraphs on the results of that general election.

8. Choice of symbols by candidates of National and State Parties and allotment thereof –

(1) A candidate set up by a National Party at any election in any constituency in India shall choose, and shall be allotted, the symbol reserved for that party and no other symbol.

(2) A candidate set up by a State Party at an election in any constituency in a State in which such party is a State Party, shall choose, and shall be allotted the symbol reserved for that Party in that State and no other symbol.

(3) A reserved symbol shall not be chosen by, or allotted to, any candidate in any constituency other than a candidate set up by a National Party for whom such symbol has been reserved or a candidate set up by a State Party for whom such symbol has been reserved in the State in which it is a State Party even if no candidate has been set up by such National or State Party in that constituency.

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

(c) a candidate referred to in paragraph 10 or paragraph 10A;

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) Where any free symbol has been chosen by only one candidate at such election, the returning officer shall allot that symbol to that candidate and to no one else.

(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; and, if, those several candidates, two or more are set up by different unrecognised political parties and the rest are independent candidates, the returning officer shall decide by lot to which of the two or more candidates set up by the different unrecognised political parties that free symbol shall be allotted, and allot that free symbol to the candidate on whom the lot falls, and to no one else:

Provided that where of the two or more such candidates set up by such different unrecognized political parties, only one is, or was, immediately before such election, a sitting member of the House of the People, or, as the case may be, of the Legislative Assembly (irrespective of the fact as to whether he was allotted that free symbol or any other symbol at the previous election when he was chosen as such member), the returning officer shall allot that free symbol to that candidate, and to no one else;

(b) if, of those several candidates, no one is set up by any unrecognised political party and all the independent candidates, but one of the independent candidates is, or was, immediately before such election a sitting member of the House of the People, or, as the case may be, of the legislative Assembly, and was allotted that free symbol at the previous election when he was chosen as such member, the Returning Officer shall allot that free symbol to that candidate, and to no one else; and

(c) if, of those several candidates, being all independent candidates, no one is, or was, a sitting member as aforesaid, the returning officer shall decide by lot to which of those independent candidates that free symbol shall be allotted, and

allot that free symbol to the candidates on whom the lot falls, and to no one else.

15. Power of Commission in relation to splinter groups or rival sections of a recognised political party – *When the Commission is satisfied on information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party, the Commission may, after taking into account all the available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard, decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival sections or groups.*

39. In the light of the submissions made by the learned counsel for the parties as also the provisions of the Symbols Order, there can be no doubt, as is sought to be contended by the learned counsel for the Respondents, that the allotment of symbols is governed by the Symbols Order issued by the Respondent No. 1/ECI. There can also be no doubt that no party or individual has an absolute right to ask for a particular symbol. There can be no doubt that even though the right to elect is fundamental to a democracy, it is not a Fundamental Right under the Constitution and even the right to obtain a symbol is only a statutory right which, by virtue of the very nature of the right, has to be subject to the statutory limitations imposed by the Symbols Order itself, challenge where to has already been negated by the Apex Court in *Sadiq Ali & Anr v. The Election Commission of India & Ors.* [(1972) 4 SCC 664]. Therefore, there is no gainsaying that before a party or individual can be allotted a symbol it has to fulfill the

mandatory requirements prescribed in the Symbols Order and Section 29(A) of the Act.

40. There is also merit in the contention raised by the learned counsel for the Respondents that, only after a group completes the modalities of applying to the Respondent No. 1/ECI for registration as a political party under Section 29(A) of the Act, furnishes positive evidence of its strength to the Respondent No. 1/ECI and furnishes documents in relation to the votes polled by its members in the last general elections, can it claim the allotment of a reserved symbol. Learned counsel for both the Respondent No. 1/ECI and Respondent Nos. 2 to 5 have referred to various orders passed by the Respondent No. 1/ECI to contend that in the past, whenever two factions have arisen in a recognized party, the only manner in which the splinter group can be allotted a symbol is by following the uniform procedure prescribed in the Symbols Order. The Symbols Order envisages that a political party, howsoever formed, should first get itself registered as per the procedure under Section 29(A) of the Act, whereafter it has to show the minimum poll performance, as laid down in the Symbols Order, for recognition as a National or State Party. It is only then that a party can seek allotment of a reserved symbol by the Respondent No. 1/ECI.

41. In this context, it may also be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of ***Subramanian Swamy v. Election Commission of India through its Secretary [(2008) 14 SCC 318]***, wherein the Supreme Court, after examining the provisions of the Act and the Symbols Order, upheld the allotment of

reserved symbols only to recognised political parties by observing in para 22 as under:-

“22. Learned counsel for the Respondent is undoubtedly correct in arguing that concept of recognition is inextricably connected with the concept of symbol of that party. It is but natural that a party must have a following and it is only a political party having substantial following in terms of Paras 6-A, 6-B and 6-C which would have a right for a reserved symbol. Thus, in our opinion, it is perfectly in consonance with the democratic principles. A party which remains only in the records can never be equated and given the status of a recognised political party in the democratic set up. We have, therefore, no hesitation in rejecting the argument of Dr. Swamy that in providing the symbols and reserving them for the recognised political parties alone amounted to an undemocratic act.”

42. At this stage, reference may also be made to the following observations of the Election Commission in its order passed in ***Rashtriya Janata Dal-Application for its Recognition as a National Party*** dated 19.12.1997, on which reliance has been placed by Learned counsel for the Respondent No. 1/ECI:-

“15. Therefore, the Commission has now, unanimously, decided, as a policy matter, that the provisions of paras 6 and 7 of the Symbols Order would be strictly applied hereafter, and a political party which is formed as a result of split in a recognised National or State party, would not be straightaway recognised merely on the ground that it is a break-away or splinter group of a recognised party and that such group enjoys the support of certain MPs and MLAs. Such new party shall hereafter have to get itself registered under Section 29A of the Representation of the People Act, 1951, contest a general election on its own manifesto, policies and programmes and obtain a mandate from the electorate for its recognition in terms of paragraphs 6 and 7 of the Symbols Order.

16. *Having regard to such policy the prayer of the present applicant party for recognition as a National party under paras 6 and 7 of the Symbols Order cannot be maintained or sustained. Accordingly, that prayer is hereby rejected.”*

It may also be useful to refer to a decision of this Court reported as 238(2017)DLT 723 titled ***Swaraj India v. State Election Commission & Ors.***, wherein this Court after examining the various decisions of the Supreme Court opined as under in para 30:-

“30. Given the historical backdrop in which the Symbols Order, 1968 was introduced and on a conspectus of the judicial pronouncements documenting the entire scheme and purpose of the Election Symbols Order, 1968, there is no manner of doubt that ECI is vested with the plenary powers of superintendence, direction and control of all elections to the Parliament and to the Legislature of every State and the Symbols Order, 1968 is issued by the ECI in exercise of the powers conferred on it by Article 324 of the Constitution of India read with Section 29A of the RP Act, Rules 5 and 10 of the Conduct of Election Rules, 1961 (hereinafter referred to as “Conduct Rules”) and all other enabling provisions.”

43. In my opinion, however, the question in the present case is not whether an unregistered and unrecognized group can seek allotment of a reserved symbol without fulfilling the conditions prescribed in the Act and Symbols Order. In fact, in the view of the settled legal position, the statutory nature of the Act, and the Symbols Order, there can be no doubt about the fact that a group has to first register itself as a party and only then can it claim allotment of a reserved symbol.

44. However, in my opinion, the real issue in the facts of the present case is slightly different. The issue arising for my consideration is whether a splinter group or faction, which at the time

of initiation of the election dispute before the Commission, had the support of the majority of the party members, but for various reasons was not found to be the real party by the final orders of the Respondent No. 1/ECI (the validity of which order is still under the scrutiny of this Court), ought to be compelled to first register itself as a political party and then follow the process of seeking recognition and claiming a reserved symbol from the Respondent No. 1/ECI? Alternatively, is such a party entitled to beseech this Court for an interim arrangement so as to ensure that it can carry out its political activities during the pendency of its challenge to the decision of the Respondent No. 1/ECI, without giving up its right to contend that it is 'the group' which is actually entitled to the name and symbol of the party.

45. Having considered the various judgments relied upon by the counsels for the parties, I find that none of the decisions cited at the Bar actually deals with this question. In the various decisions relied on by the learned counsel for both sides, there is no pending dispute about the actual representatives of the party in question. In all of these cases, the splinter group approached the Respondent No. 1/ECI or the courts for the allotment of a common symbol. However, in the present case, the very question of who the true/actual representatives of the AIADMK party are, is pending adjudication before this Court. There has been no final determination of the question as to which is the splinter group and which group truly/actually represents the AIADMK party. In such circumstances, one of the groups claiming to be the actual representatives of the AIADMK party has approached this

Court for the allotment of a common symbol as an interim relief to enable them to carry out their political activities. The only Orders which throw a little light on the approach to be adopted in such a case is the order dated 23.03.2017 passed by the Respondent No. 1/ECI in this very dispute, and the order dated 19.12.1997 passed by the Respondent No. 1/ECI in the case of ***Rashtriya Janata Dal- Application for its Recognition as a National Party***. Learned counsel for the Respondents has relied on the latter, though in a different context.

46. At this stage, reference may be made to the relevant paragraphs of the interim order passed by Respondent No. 1/ECI on 22.03.2017 in this very election dispute between the parties.

"12. Having regard to the above facts and circumstances and the practical difficulties in evaluating and adjudicating upon the huge evidence running into more than 20,000 pages adduced by both the parties- that too filed late in the evening yesterday (21st March, 2017)- and the oral submissions made by their learned senior counsels, the Commission is not in a position to give any final decision at the present juncture in the short time available mentioned above. Consequently, the Commission is left with no other option in these compelling circumstances but to make an interim order which may be fair to both the contending groups. In order to place both the rival groups on even keel to protect their rights and interests, and going by the past precedents in such cases, the Commission hereby makes the following interim order, purely for the purposes of the current bye-election from II-Dr. Radhakrishnan Nagar Assembly constituency in Tamil Nadu, pending the final determination of the dispute raised by the Petitioners in their petition dated 21st March, 2017 in terms of para 15 of the Symbols Order:-

(a) Neither of the two groups led by the Petitioners (Sh. E. Madhusudhanan, Sh. O. Panneerselvam and Sh. S.

Semmalai) and the Respondents (Smt. VK. Sasikala and Sh. T T V Dhinakaran) shall be permitted to use the name of the party 'All India Dravida Munnetra Kazhagam' simplicitor;

(b) Neither of the aforesaid two groups shall also be permitted to use the symbol 'Two Leaves', reserved for 'All India Dravida Munnetra Kazhagam ';

(c) Both the groups shall be known by such names as they may choose for their respective groups, showing, if they so desire, linkage with their parent party 'All India Dravida Munnetra Kazhagam '; and

(d) Both the groups shall also be allotted such different symbols as they may choose from the list of free symbols notified by the Election Commission for the purposes of the current bye-election from II-Dr. Radhakrishnan Nagar Assembly Constituency in TamilNadu.

47. Before dwelling further on the issue, it may also be appropriate to refer to paragraphs 17, 18, 20 & 22 of the Respondent No. 1's/ECI's decision dated 19.12.1997 in the case of ***Rashtriya Janata Dal- Application for its Recognition as a National Party*** dated 19.12.1997, which read as under:-

“17. Though we have rejected the prayer of the applicant party for grant of recognition to it as a National party, which would have entitled it to the reservation of an exclusive election symbol under the Symbols Order, the alternative prayer of the party to allow it to have a common symbol on the basis of which it may contest the coming general election to the House of the People deserves to be considered sympathetically. It cannot be disputed that the present applicant party has a substantial following, which consists of a large number of sitting and former MPs and MLAs of Bihar. The Speakers of the House of the People and Bihar Legislative Assembly and Chairmen of the Council of States and Bihar Legislative Council have also recognised the party as a separate party, in their Houses, having regard to the size of their Legislature groups in those Houses under the Tenth Schedule to the Constitution of India. Asking such a party to go to the electorates of different constituencies with different

election symbols would not only be unfair to the party, but also to those electorates, as that would cause confusion in their minds. This may defeat the very purpose of the symbols system, evolved by the Commission since the time of the first general elections in the country after it achieved independence 50 years ago. The symbols system in elections was adopted because an overwhelmingly large percentage of electors was then illiterate and still continues to be so. The symbols system helps electors in identifying, with ease and without confusion, the political party of their choice. Therefore, in the interest of free and fair elections and the healthy growth of democracy where the electors exercise their franchise without confusion, it would be desirable that a political party of the size and proportion as that of the present applicant party is permitted to approach the electorates in different constituencies with a common symbol.

18. It is true that unrecognised political parties are not normally allotted any common symbol for contesting elections. But all unrecognised political parties cannot claim to be treated at par or on the same footing. The Symbols Order already provides for certain distinctions being drawn, even amongst the unrecognised parties, in the matter of allotment of symbols to the candidates set-up by such parties. Para 12 of the Symbols Order which governs the allotment of symbols to candidates set-up by unrecognised parties already provides for a preferential treatment being given to the candidates of unrecognised political parties, which were previously recognised as State or National parties, or if such candidates are sitting MPs or MLAs. Moreover, an unrecognised political party, which does not have any MPs or MLAs in its fold, cannot claim validly a parity with another unrecognised political party which has, among its members, a large number of MPs or MLAs who, but for the above mentioned technicality, answer the test laid down in the Symbols Order for recognition under paras 6 and 7 of the Symbols Order. The distinction sought to be drawn by the Commission in favour of the present applicant party can also be justified on the ground that the party is already recognised by the other highly important Constitutional authorities, namely, the Speakers of the House of the People and Bihar

Legislative Assembly and the Chairmen of the Council of States and Bihar Legislative Council.

20. *Having regard to all the above material considerations and peculiar facts and circumstances of the present case, and particularly the fact that general election to constitute the 12th Lok Sabha is on the anvil and that the Commission has, in the past, in respect of certain political groups, not applied the provisions of paras 6(2) and 6(3) of the Symbols Order with full vigour and has given them recognition, the Commission feels that it would not be fair, at this juncture, to make a total and complete departure from the past, and leave the present applicant party to fight ensuing elections on different symbols in different constituencies. Therefore, the Commission is, unanimously, of the view that, despite the rejection of the applicant party's prayer for recognition as a National party, the party may be given the limited concession of contesting forthcoming general election to the House of the People (for constituting the 12th Lok Sabha) on a common symbol in the State of Bihar. Accordingly, the Commission hereby directs that the symbol "Hurricane Lamp" will be allotted to the candidates duly set-up by the present applicant party, after fulfilling the requirements of para 13 of the Symbols order in respect of each such candidate, in any Parliamentary Constituency in the State of Bihar. In order to remove any confusion in the minds of electors, the said symbol "Hurricane Lamp" will not be allotted to any other candidate in the State of Bihar, even in those constituencies where the present applicant party does not set up any candidate. Such limited concession will also be available to the party, if it duly sets up any candidate in any other Parliamentary or Assembly Constituency in any other State/Union Territory, where general elections or bye-elections are held simultaneously with the ensuing general election to the House of the People. The party will have to give intimation of all such Parliamentary and Assembly constituencies to the Commission, and to the Chief Electoral Officer of the State concerned, within three days after the date of issue of the notification calling the election.*

22. *For the removal of doubt, the Commission would also like to clarify that the above directions are being issued by the*

Commission, in exercise of its plenary powers of superintendence, direction and control, inter alia, of all elections to Parliament and State Legislatures conferred on it by Article 324 of the Constitution read with para 18 of the Symbols Order. That para expressly empowers the Commission to issue instructions and directions, inter alia, for the removal of any doubt or difficulty which may arise in relation to the implementation of any provisions of that Order and in relation to any matter with respect to the allotment of symbols for which that Order makes no provision or makes insufficient provision and provision is in the opinion of the Commission necessary for smooth and orderly conduct of elections. The Symbols Order has been held by the Supreme Court as a compendium of the Commission's instructions and directions."

48. While dealing with the peculiar facts of this case, where the Petitioner is seeking allotment of a symbol as an interim measure, I cannot also lose sight of the fact that in our country, as observed by the Supreme Court in paragraph 18 of its decision in **Sadiq Ali** (*supra*) (reproduced hereinbelow), a large part of the electorate is illiterate and there is a special importance of a common symbol, as it is this pictorial representation which helps the electorate identify the candidate of their choice. In a country like ours where the electorate belongs to diverse social and economic backgrounds, a common symbol helps promote a feeling of unity:-

"18. It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of election law of India. In some countries, details in the form of

letters of alphabet or numbers are added against the name of each candidate while in others, resort is made to symbols or emblems. The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice." (emphasis added)

49. Thus, while there is merit in the contention of the learned counsel for the Respondents that the only route through which a group of persons can seek registration, recognition and then allotment of a symbol is prescribed by the statute and the mandatory conditions prescribed therein have to be followed before a group of persons can stake their claim to a reserved symbol, the issue in the present case is only whether the present Petitioner and his group of supporters (who admittedly still have the support of 6 MPs, 20 MLA's and other party members as per the Impugned Order) are entitled to pray for such an interim arrangement whereby he and his supporters can carry out their political activities by using a common symbol? Alternatively does the Petitioner have to be compelled to follow the statutory procedure under the Act and Symbols Order by first registering a separate political party, thereby making the present petition itself a fait-accompli. In my considered opinion, compelling the Petitioner and his supporters to get registered as a new political party and then apply for a symbol to the Respondent No. 1/ECI, as urged by the Respondents, cannot be accepted for two reasons.

50. The first reason is that the Respondent No. 1/ECI has exercised its plenary powers and granted similar protections not only in the present case, but even in the case of **Rashtriya Janata**

Dal-Application for its Recognition as a National Party vide its order dated 19.12.1997, wherein the Respondent No. 1/ECI, in the interest of free and fair elections and healthy growth of democracy, had permitted an unrecognized party to approach the electorate in a different Constituency with a common symbol, even though the provisions of the Symbols Order only permitted use of a common symbol only by recognized political parties.

The second, and perhaps more important reason, is that the challenge to the order passed by the Tribunal (which, according to the Petitioners, was passed on the basis of wholly untested and fabricated evidence) is still pending adjudication before this Court under its writ jurisdiction under Article 227 of the Constitution of India. Even though the said jurisdiction is not appellate and only envisages a judicial review, can it be said that the power of a writ Court under Article 227 of the Constitution of India is so restricted that it cannot be invoked even if the Court finds grave injustice being met out to one of the parties, by non-grant of an interim order, when there is no real prejudice to the party opposing the Application. Reference may also may be made to the observations of the Supreme Court in paragraph 91 of its decision in ***Ramesh Chandra & Ors (supra)***, wherein the Court observed as under:-

“91. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised ex debito justitiae i.e. to meet the ends of justice. It is equitable in nature. While exercising

supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must “advance the ends of justice and uproot injustice”.”

51. I also find that not only the Respondent No. 1/ECI but even the Supreme Court has, when the facts so warranted, directed allotment of symbols by way of an interim arrangement. Vide order dated 27.03.2009 in *Desiya Murpokku Dravida Kazhagam & Anr. v. Election Commission of India* bearing W.P.(C)No.532/2008, and vide order dated 27.04.2009 in *Viduthalai Chiruthaigal Katchi v. Election Commission of India* bearing W.P.(C)No.177/2009, the Apex Court directed the Election Commission of India to allot common symbols to registered unrecognized political parties as an interim measure for ensuing elections. I see no reason why, while exercising jurisdiction under Articles 226 & 227 of the Constitution of India, this Court should be denuded of the power to pass such an order, as may be in the interest of justice and equity in the peculiar facts of the case, especially since Respondent Nos. 2 to 5, who have been entitled to the exclusive use of the AIADMK party name and ‘Two leaves’ symbol vide the Impugned Order, would not be prejudiced by such an order allotting a separate ‘non-identical’ common symbol to the splinter group. The only reason, which is not very difficult to gauge, why Respondent Nos. 2 to 5 are objecting to the present interim Application is to deny the Petitioner and his group a level playing field in the

political sphere, which a writ Court (which is not only a Court of record but also a Court of equity) ought not to permit.

52. At this stage, I must also deal with the objections questioning the territorial jurisdiction of this Court, on the ground of *forum conveniens*, raised by learned counsel for Respondent Nos. 2 to 6. In this regard, it may be useful to refer to the judgment of this Court in ***Sonu Sardar v. Union of India*** bearing WP(C) No. 441/2015, wherein this Court has correctly summarized the law on the doctrine of *forum conveniens* after considering the judgments in *Sterling Agro Industries Ltd. v. Union of India and Ors.* and various other precedents relied on by the counsel for both sides:-

*“27. In view of the foregoing, it is clear that the courts should generally decide disputes upon which they have jurisdiction. They may decline to exercise such jurisdiction only if there are compelling reasons for not doing so. In doing so, the courts must apply a balancing test and reject to exercise jurisdiction only if there are compelling reasons keeping the Latin maxim *Judex tenetur impertiri judicium suum in mind.*”*

On this issue, the foremost thing which I find relevant is that the Respondent No. 1/ECI, who passed the Impugned Order, has not contended either in its reply or arguments, the principle of *forum conveniens* or that this Court does not have territorial jurisdiction to entertain the present Application. Secondly, the reliefs prayed for are essentially in respect of the Respondent No. 1/ECI, which is located within the jurisdiction of this Court.

53. Thirdly, merely because the majority of the Respondents are situated in the State of Tamil Nadu, does not render this Court as a *forum non-conveniens* to entertain the present application. This is especially so since the Respondent Nos. 2 to 6, who are situated in the State of Tamil Nadu, are neither the subjects of the interim relief prayed for nor affected (let alone prejudiced) by such an interim relief, if granted. It is not sufficient to contend or show that there is a relatively more convenient forum to entertain the present application. It must be shown that this Court is a *forum non-conveniens*. For the reasons aforementioned, I am not inclined to accept the contention of the Respondent No. 2 to 5 that this Court is a *forum non-conveniens* to entertain the present Application.

54. Before I conclude, I must also deal with the objection raised by Mr. Mukul Rohtagi, learned Senior Counsel for Respondent No. 5, that the present Application seeks a review of the earlier order dated 04.12.2017 passed by this Court. In my considered opinion, the present objection is wholly without merit. I find that Application bearing C.M.No.43911/2017, which was decided by this Court on 04.12.2017, was filed at a stage when the Petitioner had already approached the Returning Officer for allotment of a particular symbol and the Returning Officer was already seized of the issue of allotment of a symbol to the Petitioner. Even otherwise, the election process had already been initiated for the bye-election of the R.K. Nagar constituency in Chennai and, therefore, this Court disposed of the Application by

directing the Petitioner to request the Returning Officer for the relief sought by him.

55. The circumstances, however, at this stage are wholly different. Even though the Petitioner has prayed that the interim relief be granted to him for contesting the local body elections in Tamil Nadu likely to be held in April, 2018, which averment has been denied by the Respondents by contending that the elections are not likely to take place in the near future, the prayer of the Petitioner is not restricted to the local body elections alone. In fact, the Petitioner has not at all confined his prayer to any particular election, but has sought interim directions so that his group can continue to carry out its political activities as a unified entity during the pendency of the challenge to the Impugned Order before this Court.

56. For all the aforementioned reasons, I find considerable merit in the prayer made by the Petitioner and the Application deserves to be allowed. However, keeping in view the nature of the relief sought in the Application, while upholding the Petitioner's right to seek the use of a common name and symbol by way of an interim arrangement during the pendency of the Writ Petition, I deem it appropriate to direct the Respondent No. 1/ECI, which has the necessary expertise to deal with allotment of symbols, to pass an appropriate order permitting the Petitioner and his group of persons to use a common symbol (preferably "Pressure Cooker" as used by the Petitioner during the last election for the R.K. Nagar constituency) and also permit them to

use the name of their choice, after giving them an appropriate hearing.

57. The needful shall be done within three weeks. Needless to say the aforesaid directions are being passed without prejudice to the rights and contentions of the parties in the main petition.

58. The Application is allowed in the above terms, with no order as to costs.

MARCH 09, 2018

sr

(REKHA PALLI)
JUDGE