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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.6702 and 6892 of 2021

W.P.No.6702 of 2021:-

Indiya Jananayaga Katchi,
registered political party
under Section 29A of the R.P. Act, 1951,
rep. By its President Ravi Pachamoothoo,
No.9, III Avenue, 34th Street, Ashok Nagar,
Chennai, Tamil Nadu 600 083 .. Petitioner

Vs.

1.The Chief Election Commissioner of India,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi 110 001

2.The Secretary,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi 110 001

3.The Chief Election Officer,
State Election Commission,
Public (Election) Department,
Secretariat, Chennai 9. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the respondents to consider the application of the petitioner dated 02.03.2021 and allot "Pen with Nib with seven rays" or any other symbol amongst the free symbols to be used as common symbol for the petitioner's party from the free symbol list as the election symbol for the petitioners Indiya Jananayaga Katchi(IJK) in the 2021 Assembly Elections for the State of Tamil Nadu and Puducherry.



For Petitioner : Mr.AR.L.Sundaresan, Sr. Counsel,
for Dr.V.Venkatesan

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For Respondents : Mr.Niranjan Rajagopalan

W.P.No.6892 of 2021 :-

All India Samathuva Makhal Katchi
46 Ramakrishna Street
North Usman Road
T. Nagar
Chennai - 600 017.
rep by its Founder - President
Mr. R. Sarathkumar.

... petitioner

Vs

1.The Chief Election Commissioner of India
Election Commission of India
Nirvachan Sadhan
Ashoka Road
New Delhi - 110001.

2.The Secretary
Election Commission of India
Nirvachan Sadhan
Ashoka Road
New Delhi - 110001.

3.The Chief Election Officer
State Election Commission
Public (Election) Department
Secretariat
Chennai - 600 009.

... respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus directing the Respondents to consider the Application of the Petitioner dated 01.03.2021 and Allot a Free symbol to be used a Common symbol by out party from the Free Symbol List as the Election Symbol for the Petitioners All India Samathuva Makhal Katchi for the 2021 Tamil Nadu State Assembly Elections to be held on 06.04.2021 within a specified time.

For Petitioner : Mr.P.Chandrasekaran

For Respondents : Mr.Niranjan Rajagopalan



COMMON ORDER

(made by the Hon'ble Chief Justice)

These two petitions are by two political parties in the State complaining of the rejection by the Election Commission of their applications to be allotted an election symbol each for the ensuing assembly elections scheduled to be held on April 6, 2021.

2. The Election Commission is represented and it refers to the Election Symbols (Reservation and Allotment) Order, 1968 and clause 10B thereof. According to the Election Commission, an application for the allotment of a symbol may be made by any political party wishing to contest the elections subject to certain conditions, one of them being that the application ought to be made at least five days before the notification is issued and ought to be supported by the signatures of a fixed number of its office-bearers.

3. In both the cases here, the applications for grant of an election symbol were made prior to March 7, 2021. March 7, 2021 was the cut-off date since the notification pertaining to the State Assembly Elections was published on March 12, 2021.

4. The Election Commission says that though both the applications were received within the time permissible, the applications were found to be defective, and, as such, rejected since the signatures of the office-bearers of either applicant were not available with the Election Commission. In other words, the Election Commission says that a political party has to indicate the signatures of its office-bearers to the Election Commission for a future application by such political party to be assessed whether it emanates from the appropriate source.

5. On a query from this Court, the Election Commission says that in addition to All India Samathuva Makkal Katchi and Indhiya Jananayaga Katchi, there is a third applicant, Puthiya Thamizhagam, whose application has been rejected on identical grounds.

6. It is further submitted on behalf of the Election Commission that though the applications were technically defective, both the petitioners herein immediately submitted the signatures of the office-bearers of the relevant parties. However, such curing of defect took place after March 7, 2021 had passed. The Election Commission reasons that since the application in proper form cannot be seen to have been made in the absence of the signatures of the office-bearers being furnished, the prayer in either case has been rejected.



7. The right to vote or the right to participate in any election, also includes a right to stand in the elections. The applications in the present cases were filed within time, but were found to be defective. The requirement in the said Order of 1968 is the adherence to the time for applying for symbols. There is no provision for the correction of a defective application.

8. In matters of the present kind, a constructive and liberal view should be taken to allow greater participation in the festival of democracy. As much as a citizen has a right to vote, a citizen also has a right to stand for election, subject to the applicable rules.

9. The stand taken by the Election Commission has to be appreciated. The Election Commission submits that if the two petitioners herein renew the applications already made within time in course of the day, the Election Commission will reconsider the same in appropriate perspective.

10. Accordingly, W.P.Nos.6702 of 2021 and 6892 of 2021 are disposed of by permitting the petitioning party in either case to immediately renew the applications for allotment of symbol filed with the Election Commission for the Election Commission to consider the same afresh and communicate a decision by March 17, 2021. This order is made since the last date for filing nominations is March 19, 2021, as informed by the Election Commission.

11. So that no injustice is done to a person who has not approached the Court in similar circumstances, the Election Commission will immediately communicate the gist of this order to the other party, Puthiya Thamizhagam, and give Puthiya Thamizhagam an opportunity to renew its application and represent the same in course of today for reconsidering the matter on the same lines as in respect of the two petitioning parties herein. There will be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



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To:

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1.The Chief Election Commissioner of India,
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3.The Chief Election Officer,
State Election Commission,
Public (Election) Department,
Secretariat, Chennai 9.

+2cc to M/s.G.R.Associates , Sr.No. 16805,16807
+1 cc to M/s.P.Chandrasekar, Advocate Sr.No. 16547

W.P.Nos.6702 and 6892 of 2021

RSV(CO)
RMP(25/03/2021)