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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

W.P.No.20733 of 2021

Puthiya Tamilagam Party
Rep by its State General Secretary
V.K.Aiyar
No. 1/2 - A V. Gangadharan Street
Nungambakkam,
Chennai - 600 034.

...Petitioner

Vs

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

2. The Secretary
Tamil Nadu State Election Commission
No.208/2 Jawaharlal Nehru Road
Arumbakkam, Chennai - 600 106.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the 2nd Respondent culminating in its letter bearing number Lr. No. Rc.No.2408/2021/EG-B2 dated 17.09.2021 quash the same as illegal Arbitrary and consequently direct the Second Respondent to consider the representation of the petitioners political party dated 14.09.2021 and allot a common Television Symbol to the petitioners political party.

For the Petitioner : Mr.N.L.Rajah,
Senior Counsel,
for Mr.P.K.Rajesh Praveen Kumar

For the Respondents : Mr.T.R.Rajagopalan,
Senior Counsel,
for Mr.Niranjan Rajagopalan,
for the first respondent



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Ms.R.Anitha,
Counsel for State,
for Mr.Siva Shanmugam,
for the second respondent

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The petitioner, a registered unrecognised political party, complains of the refusal by the State Election Commission to allot the television symbol to the petitioner for the forthcoming elections to local bodies in the State. The petitioner refers to a publication issued by the Tamil Nadu State Election Commission on March 23, 2020 pertaining to, inter alia, allotment of symbols. According to the amendment introduced by the said notification, paragraph 7(1)C of the Tamil Nadu Local Bodies Election Symbols (Reservation and Allotment) Order, 2019 provides for a concession to candidates of unrecognised political parties which were earlier recognised parties. The petitioner relies on the following part of the provision:

"7(1)C - Concession to candidates set up by registered (unrecognised) political parties and to unrecognised parties which were earlier recognised parties more than 6 years back.

If a registered unrecognised political party has been allotted with a Common Symbol in the elections conducted by the Election Commission of India and not cancelled subsequently, the said registered unrecognised political party may request the Tamil Nadu State Election Commission to continue to allot the same Common Symbol in the Local Body Elections conducted by the Tamil Nadu State Election Commission also subject to the following conditions: ..."

2. According to the petitioning political party, the several provisos to the substantive provision quoted above are not relevant for the present purpose as the provisos were not referred to in the State Election Commission dealing with the petitioner's request or reconsidering its stand in such regard. The petitioner's plea to obtain the common symbol of a television set was contained in its representation of September



14, 2021. This petition was instituted immediately upon receipt of the State Election Commission's letter of September 17, 2021 by which it declined the common symbol to the petitioner.

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3. When this petition was received by the court on September 24, 2021, a prima facie view was expressed upon noticing that the only reason given in the impugned letter of September 17, 2021 was the above-quoted paragraph 7(1)C of the relevant Order of 2019 along with the first proviso thereto. The following tentative view was expressed by this court in the order dated September 24, 2021:

"4. If, what the petitioner suggests, is correct and it is the fact that the television symbol was issued by the ECI to the petitioner in course of the 2016 Assembly elections and the allotment of such symbol has not been subsequently cancelled or the same symbol allotted to any party by ECI for the 2019 Parliamentary elections or the 2021 Assembly elections, even the rule quoted by the State Election Commission may entitle the petitioner to retain the same symbol."

4. It was with such observation that this court required the State Election Commission to reconsider its stand and indicate its considered view. The State Election Commission proceeded to reconsider the matter and, by its letter dated September 25, 2021, declined the petitioner's request for the television symbol all over again. In the relevant letter, the State Election Commission took into account a letter dated May 2, 2016 issued by the Election Commission of India. It is evident that 15 parties were named in such letter by the Commission and the common symbols allotted to such parties were indicated. However, the petitioner's name did not figure in the list of 15 parties nor did the common symbol of television appear therein. The State Election Commission also refers to the instructions issued by the Election Commission of India to the Chief Electoral Officer, Tamil Nadu, on March 30, 2016 in connection with the election to the Assembly in the State. The letter refers to, inter alia, the petitioning party herein and it appears that such party had indicated that it would contest in 65 Assembly constituencies. The common symbol which was allotted to the petitioner was the television set. Paragraph 3 of the letter dated March 30, 2016 issued by the Election Commission provided as follows:



Order, 2019, the television symbol that had been initially allotted in 2016 to the petitioner stood cancelled because of the petitioner's non-compliance with paragraph 10B of the Symbols Order of 1968.

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8. WP No.20733 of 2021 is dismissed. There will be no order as to costs. WMP Nos.21995 and 21996 of 2021 are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Secretary
Tamil Nadu State Election Commission
Arumbakkam, Chennai - 600 106.

+1CC to M/s.G.R.Associates, Sr.No.50759

+1CC to Mr.S.Siva Shanmugam, Advocate, Sr.No.50942

W.P.No.20733 of 2021

CP (CO)

K.RK. (04.10.2021)