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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15th November, 2022

+ **W.P.(C) 15616/2022 & CM APPL. 48621/2022**

UDDHAV THACKERAY

..... Petitioner

Through: Mr. Kapil Sibal and Mr. Devadatt Kamath, Senior Advocates with Mr. Amit Anand Tiwari, Mr. Vivek Singh, Ms. Devyani Gupta, Ms. Tanvi Anand, Mr. Rajesh Inamdar, Mr. Rohit Sharma, Ms. Aparajita Jamwal, Mr. Sunny Jain and Mr. Harsh Pandey, Advocates.

versus

THE ELECTION COMMISSION OF INDIA & ANR.

..... Respondents

Through: Mr. Siddhant Kumar, Ms. Vidhi Udayshankar, Ms. Manyaa Chandhok, Mr. Shivankar Rao and Mr. Gurpreet Singh Bagga, Advocates for R-1/ECI. Mr. Rajiv Nayar, Mr. Maninder Singh and Mr. Neeraj Kishan Kaul, Senior Advocates with Mr. Chirag Shah, Mr. Utsav Trivedi, Mr. Himanshu Sachdeva, Ms. Manini Roy, Mr. Saurabh Seth, Mr. Prabhas Bajaj, Mr. Dhruv Sharma and Mr. Aniket Pawar, Advocates for R-2. Mr. Mahesh Jethmalani, Senior Advocate with Mr. Ravi Sharma, Ms. Mugdha Pande, Ms. Shivani Bhushan, Ms. Kanjini Sharma, Mr. Piyush Tiwari and Mr. Ashish

Yadav, Advocate for Intervenor
(Gulabrao Patil).

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. There is a split between members of the 'Shivsena' is a recognized political party in the State of Maharashtra. One group/faction is led by Sh. Eknathrao Sambhaji Shinde [**'Respondent No. 2'**] and the other by Sh. Uddhav Thackeray [**'Petitioner'**]. Both claim to be the president of the original Shivsena party, and stake claim to its poll symbol of 'bow and arrow' [**'the symbol'**]. In this background, before Election Commission of India/Respondent No. 1 [**'ECI'**], a dispute petition under Para 15 of the Election Symbols (Reservation and Allotment) Order, 1968 [**'Symbols Order'**] was filed by Respondent No. 2 on 19th July, 2022 [**'Dispute Petition'**].¹ Therein, claiming that he represents the majority faction of Shivsena Party, Respondent No. 2 has sought, *inter alia*, allotment of the symbol to the group led by him. Pending final adjudication of the Dispute Petition, ECI passed an interim order dated 08th October, 2022, [**'Impugned Order'**], freezing the symbol as under:

"(40) Having regard to the above facts and circumstances as indicated under para 38 & 39 above, it is evident that the time available is not adequate to ensure the due process which is required to be completed for the proceedings under Para 15, as indicated in para 37 above. However, the Commission takes note of the urgency involved with regard to use of party symbol and party name due to the schedule of the bye-elections announced.

¹ Bearing Dispute Case No. 1 of 2022 titled *Eknathrao Sambhaji Shinde v. Uddav Thackeray*.

(41) Accordingly, in order to place both the rival groups on even keel and to protect their rights and interests, and going by the past precedence, the Commission hereby makes the following Interim Order, to cover the purpose of the current Bye-elections and to continue till the final determination of the dispute in the matter in terms of Para 15 of the Symbols Order:-

- a) Neither of the two groups led by Sh. Eknathrao Sambhaji Shinde (Petitioner) and other led by Sh. Uddhav Thackeray (Respondent) be permitted to use the name of the party “Shivsena” simplicitor;*
- b) Neither of the two groups shall also be permitted to use the symbol “Bow & Arrow”, reserved for “Shivsena”;*
- c) Both the groups shall be known by such names as they may choose for their respective groups, including, if they so desire, linkage with their parent party “Shivsena”; 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-elections.*

*(42) Accordingly, both the groups are hereby directed to furnish, latest by 01:00 PM on **10th October, 2022**:*

- (i) The names of their groups by which they may be recognized by Commission and to this end, give three options in order of preference, anyone of which may be approved by the Commission and;*
- (ii) The symbols which may be allotted to the candidates set up, if any, by the respective groups. They may indicate the names of **three** free symbols, in the order of their preference, anyone of which may be allotted to their candidates by the Commission.”*

2. While the Impugned Order freezes the ‘Bow and Arrow’ symbol and prohibits the use of the name ‘Shivesena’ simplicitor by either group, it permits both the factions to instead use free symbols for the bye-elections, which were just round the corner when the Impugned Order was passed.

3. Final adjudication of the Dispute Petition is still pending, but the bye-

elections have been concluded on 03rd October, 2022 and the candidate set-up by the Petitioner's faction has been declared successful. ECI, in its recent order dated 12th November 2022, has afforded both parties an opportunity to file necessary documents and submit essential information by 23rd November, 2022 and it appears the proceedings are swiftly moving towards culmination. As all issues urged on merits are still open which can be urged before ECI, the most appropriate course would be to dispose of the Petition with a simplicitor request to ECI to complete adjudication in a time-bound manner.

4. However, Mr. Kapil Sibal, Senior Counsel, assisted by Mr. Devadatt Kamath, Senior Counsel, on behalf of the Petitioner, strongly submits that notwithstanding the conduct of bye-elections, this Court should set aside the Impugned Order and defreeze the symbol, with a direction to ECI to take a decision afresh, as the Impugned Order is patently illegal, without jurisdiction and unsustainable, both in law and on facts. Their submissions are briefly recorded hereinbelow:

- (a) Issue as to maintainability of the Dispute Petition, has neither been considered nor decided, whereas, it was imperative for ECI to have dwelled upon the same as a preliminary issue.
- (b) Impugned Order was passed without adhering to principles of natural justice. Petitioner was not afforded any oral hearing, contrary to the mandate of Para 15 of the Symbols Order, as well as ECI's past practice, and also without ensuring timely supply of the documents filed by Respondent No. 2. There has never been a case where ECI has passed such interim freezing order without affording an opportunity of

hearing the parties.

- (c) None of the parameters for grant of interim order i.e., *prima facie* case, balance of convenience or irreparable injury, were considered while passing the Impugned Order. Further, in absence of any arguments by Respondent No. 2 on balance of convenience or irreparable injury, the interim order ought not to have been passed.
- (d) Supreme Court, while refusing to stay the proceedings *vide* order dated 27th September 2022, has not decided the issue of maintainability of the Dispute Petition, hence it is open for Petitioner to agitate this before this court.
- (e) No dispute petition under Para 15 of Symbols Order can lie unless there exist splinter groups or rival sections of a recognized political party. However, ECI has not ascertained / satisfied itself in this regard in the instant case. ECI's assumption regarding existence of two rival factions is incorrect in as much as:
 - i. Respondent No. 2 himself admits that the Petitioner is, and continues to be, rightfully elected President of the party; and
 - ii. The question of disqualification of Respondent No. 2 is still pending adjudication before the Supreme Court and the action of ECI is premised on an underlying assumption that the Supreme Court will decide in favour of Respondent No. 2 holding that he has not given up party membership.
- (f) Considering the conduct of ECI exhibiting procedural unfairness, the Petitioner does not expect any justice. Some examples of which attest to this aspect are:

“a. The ECI failed to consider the multiple requests made by the Petitioner on

29.07.2022, 13.08.2022, 23.08.2022, 22.09.2022, 28.09.2022, 01.10.2022 for supply of documents filed by Respondent No. 2. It may be noted that communications were issued by ECI in the interregnum relating to filing of submissions and documents, but in none of them did the ECI direct Respondent No. 2 to supply documents nor did it supply the documents itself. [communications dated 10.08.2022, 28.08.2022] For the first time on 29.09.2022, ECI directed parties to supply documents to each other. However, Respondent No. 2 did not comply with the directions.

b. On 04.10.2022, an email was sent by the counsel for Respondent No. 2 providing a google drive link to the documents filed by them on 08.08.2022, 23.08.2022 and 23.09.2022. However, the access code was initially not provided. Only after repeated calls / emails was the access code provided on behalf of Respondent No. 2. No access was provided till 18:13 PM. Once the drive was accessible, it was found that it contained documents running into thousands of pages without any arranging or indexing as per the Commission's directions dated 29.09.2022 [Pleadings @ Pg. 268].

c. On 07.10.2022, the ECI directed the petitioner to respond to para 18 Application of Respondent No. 2 by 08.10.2022, even though no notice had been issued on the same.

d. Faced with non-grant of further time by the Commission, the petitioner submitted a preliminary reply on 07.10.2022, categorically taking the objection that in light of non-supply of documents filed by Respondent No. 2, there had been violation of principles of natural justice resulting in grave prejudice to the petitioner. Reply to the application filed by Respondent No. 2 on 04.10.2022 was also filed on 08.10.2022.”

5. *Per contra*, Mr. Rajiv Nayar, Mr. Maninder Singh and Mr. Neeraj Kishan

Kaul, Senior Advocates for Respondent No. 2, make following submissions:

- (a) Petitioner had taken up a similar line of argument before Supreme Court, which was not accepted in its order dated 27th September, 2022, and the Court refused to stay the proceedings before ECI. Petitioner cannot seek another bite at the cherry by seeking stay of ECI proceedings.
- (b) Despite multiple opportunities, Petitioner failed to file any document in his favour by the prescribed deadline; thus ECI had to pass an interim order, in the fitness of things.
- (c) If the Petitioner feels so prejudiced by the freezing order, it would be best that ECI is directed to dispose of the proceedings in a time-bound manner.
- (d) ECI has plenary powers to adjudicate upon intra-party dispute, under Para 15 of the Symbols Order, which has been recognised by the Supreme Court in several judgments.²
- (e) Even on facts, in light of Para 15 of the Symbols Order, the prayers made by Respondent No. 2 in the Dispute Petition are maintainable.

6. Mr. Siddhant Kumar, counsel for ECI, has made the following submissions:

- (a) Petitioner has no basis for making unsubstantiated allegations of bias against a constitutional body such as ECI, which has the responsibility for superintendence, direction and control of elections to be conducted in India.

² *Sadiq Ali & Anr. v ECI & Ors.*, (1972) 4 SCC 664; *All Party Hill Leaders Conference v. Captain WA Sangma*, (1977) 4 SCC 161; *Mohinder Singh Gill v. Chief Election Commissioner*, (1978) 1 SCC 405 and

- (b) The Impugned Order has been passed in accordance with law. In all cases where there are disputes between rival factions, considering the interests of rival factions as well as the general public, pending adjudication of such disputes, a freezing order is an appropriate course of action.
- (c) Petitioner's insistence on a decision on maintainability as a preliminary issue, cannot be sought as a matter of right. ECI is free to devise its own procedure, and is in fact conducting an expedited proceeding in the matter.

7. The Court has considered the aforementioned submissions.

8. The Symbols Order was enacted by the ECI, in exercise of powers conferred upon it under Article 324 Constitution of India, 1950, read with Section 29A of the Representation of Peoples Act, 1951 and Rules 5 and 10 of the Conduct of Election Rules, 1961. The general power of ECI to issue instructions and directions, stemming from Para 18 of the Symbols Order. Para 15 of the Symbols Order was enacted to deal with the precise situation that has emerged in the instant case. Since the petition revolves around jurisdiction of ECI and maintainability of the Dispute Petition, it would be apposite to refer to the provisions relevant to the instant dispute, which are as follows:

“The Conduct of Election Rules, 1961.

Rule 5.— Symbols for elections in parliamentary and assembly constituencies.—

(1) The Election Commission shall, by notification in the Gazette of India, and in the Official Gazette of each State, specify the symbols that may be

Edapaddi P. Palaniswami v. TTV Dinakaran, (2019) 18 SCC 219.

chosen by candidates at elections in parliamentary or assembly constituencies and the restrictions to which their choice shall be subject.

(2) Subject to any general or special direction issued by the Election Commission either under sub-rule (4) or sub-rule (5) of rule 10, where at any such election], more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under rule 10 even if that nomination paper has been rejected.”

“Election Symbols (Reservation and Allotment) Order, 1968

Para 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.

Para 18. – Power of Commission to issue instructions and directions.–

The Commission, may issue instructions and directions—

- (a) for the clarification of any of the provisions of this Order;*
- (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and*
- (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or makes insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections.”*

9. Para 15 of the Symbols Order was brought into force to deal with a situation where there are rival sections or groups of a recognised political party, each of which claims to be that party. The state of affairs or dispute that has been referred to ECI in the pending dispute petition is the exact situation that is contemplated under para 15 of the Symbols Order. ECI has the power to decide if one or none of the rival groups is a recognised

political party. Therefore, the argument of non-maintainability of the Dispute Petition before ECI to render the impugned interim order to be without jurisdiction, is a wholly incorrect submission before the ECI. Nonetheless, it is still open for Petitioner to make such submissions as he deems fit, and this court is not making any comment or opinion on the merit of proceedings before the ECI.

10. As regards Mr. Sibal's contention that no petition under para 15 of Symbols Order can lie unless there exist splinter groups or rival sections of the recognised political party, it must be noted that there is sufficient material on record before ECI to embark upon para 15 of the Symbols Order. There are two rival factions, i.e., Petitioner and Respondent No. 2, both claiming to be the original or majority faction. This hard truth cannot be discounted, therefore, ECI's jurisdiction is plainly demonstrable from the pleadings before ECI to meet the *prima facie* test for assuming jurisdiction. As regards the contention that Respondent No. 2 had given up his membership on 23rd June, 2022, and therefore he cannot claim to represent the party and/ or that he has no support from anyone else and has alone maintained the petition are issues which would require deliberation in detail. The Impugned Order does not deal with the same and ECI has not given any finding thereon, as yet. Therefore, no opinion needs to be expressed by this Court on this issue and it's is best left open for adjudication in the appropriate proceedings.

11. The Petitioner has raised a jurisdictional objection regarding non-maintainability of the Dispute Petition before ECI, and the Court is

confident that the same would be examined on its own merits by ECI while rendering the final decision, notwithstanding the lack of trust exhibited by the Petitioner.

12. There is another reason why this Court is reluctant to reflect any detailed opinion on issues which touch upon Respondent No.2's *locus standi* to file the Dispute Petition. Both parties agree that issue of disqualification of Respondent No. 2 is pending before the Supreme Court. Moreover, on a perusal of Petitioner's written submissions filed before the Supreme Court,³ which were handed over across the court for the perusal of the undersigned, it is noticed that Petitioner had prayed before the Supreme Court for stay of Dispute Petition while substantial questions of law, as framed by the Supreme Court in order dated 23rd August, 2022, were pending consideration before the Constitution Bench. It was contended that proprietary demands that proceedings before ECI ought to await the outcome of the said proceedings. Before the Supreme Court, it was also argued that the proceedings before ECI should not continue as Respondent No. 2 has voluntarily given up his membership of Shivsena and it would thus not be appropriate to permit Election Commission to proceed with the Dispute Petition. Therefore, concededly, the issue of disqualification is pending before the Supreme Court. Nonetheless, upon a request made for stay of Dispute Petition, it was categorically declined by the Supreme Court *vide* order dated 27th September, 2022, as under:

"IA No 101776/2022 & IA No 101777/2022

1 The interlocutory application for impleadment/intervention is allowed.

³ In W.P. (C.) No. 468/2022 and other connected matters [lead matter being W.P. (C) No. 493/2022].

2 We have heard Mr Kapil Sibal and Dr Abhishek Manu Singhvi, senior counsel appearing on behalf of the petitioner in support of the application for stay of the proceedings before the Election Commission.

3 Mr Neeraj Kishan Kaul, Mr Maninder Singh and Mr Mahesh Jethamalani, senior counsel appeared on behalf of the contesting parties.

4 Mr. Tushar Mehta, Solicitor General appeared on behalf of the Governor and Mr Arvind Datar, senior counsel appeared on behalf of the Election Commission of India.

5 There shall be no stay of the proceedings before the Election Commission.

6 The Interlocutory Application seeking stay shall accordingly stand dismissed.”

13. Therefore, proceedings before ECI were not interdicted despite Petitioner having raised jurisdiction issues.

14. As regards Mr. Sibal’s contention that ECI has passed an interim order without affording the opportunity of oral hearing to the parties, which, according to him, is violative of ECI’s consistent practice, certain factual aspects must be taken note of. In the Impugned Order, ECI has taken note of requests for adjournment made by Mr. Vivek Singh, Advocate who appeared on behalf of the Petitioner. The relevant portion of the said order reads as under:

“(13) On 08.08.2022, Sh. Chirag Shah, Advocate on behalf of petitioner Sh. Eknathrao Sambhaji Shinde submitted the following:

- (i) Affidavits of 12 out of 19 MPs of Shivsena, who supports Sh. Eknathrao Sambhaji Shinde.*
- (ii) Affidavits of 40 out of 55 MLAs of Shivsena, who supports Sh. Eknathrao Sambhaji Shinde.*
- (iii) Different charts which shows number of office bearers at various level of the party.*
- (iv) True Translated copy of the contents of affidavits filed by members of Shivsena.*

(v) Affidavit and Vakalatnama wherein the petitioner has authorized Sh. Chirag J Shah, Sh. Utsav Trivedi, Sh. Sidharth Dharmadhikari, Sh. Himanshu Sachdeva and Sh. Manni Roy to act appear and appeal on his behalf.

(14) On 08.08.2022, Sh. Vivek Singh, Advocate submitted a Vakalatnama of the Respondent Sh. Uddhav Thackeray wherein, Sh. Uddhav Thackeray has authorized Sh. Vivek Singh, Ms. Devyani Gupta and Ms. Tanvi Anand, Advocates to act, appear and plead etc. on his behalf in the Dispute Case No. 01 of 2022.

(15) Sh. Vivek Singh, has moved an application dated 06.08.2022 received in the Commission on 08.08.2022, and requested to Defer/adjourn the proceedings in Dispute No. 1 of 2022 for 4 weeks before the Commission wherein the Commission's order dated 22.07.2022 has been referred and informed the Commission that a bare reading of the petition under Para 15 of the Symbols Order filed by the petitioner (Sh. Eknath Shinde) discloses that his claim to the Symbol is solely based on the ground that the Petitioner has alleged support of the majority of MLAs and MPs of the party. However, the petitioner in his application has suppressed a vital fact that the very status of the petitioner and his so-called supporters as MLAs is the subject matter of disqualification proceedings which the matter is sub-judiced before Hon'ble Supreme Court.

i. In the application, the Hon' Court's order dated 04.08.2022 in WP(C) No. 493/2022 has been referred which states that - "Meanwhile, we are informed by Mr. Arvind Datar, learned Senior counsel appearing on behalf of the Election Commission that it has fixed 8th August, 2022 as the date for the petitioner to file an affidavit in the matter pending before it. According to the learned Senior counsel, the proceedings may take some time as voluminous evidence is usually submitted by the parties which must be considered by the Election Commission. The learned Senior counsel, therefore, states that no orders may need to be passed by this Court interdicting proceedings before the Election Commission. In these circumstances, we grant liberty to the petitioner to file an application before the Election Commission for seeking time."

ii. In view of this, the applicant has sought relief as below:-

- (a). Defer/adjourn the proceedings in Dispute No. 1 of 2022 for 4 weeks; and
- (b). Pass any such further orders or reliefs which Hon'ble Commission may deem fit and proper in the facts and circumstances of the case.

(16) On 10.08.2022, Commission granted first extension of time vide its letter informed Sh. Vivek Singh to furnish the written submission along with their respective documents to support the claim, if any by 23.08.2022.

(17) On 23.08.2022, Sh. Chirag Shah, Advocate on behalf of petitioner Sh. Eknathrao Sambhaji Shinde in addition to his claim vide letter dated 08.08.2022, submitted thousands of affidavits (in bundles, claimed by total 1,20,192 members) filed by members of Shivsena.

(18) On 23.08.2022, Sh. Vivek Singh, counsel of Sh. Uddhav Thackeray, again moved an application dated 23.08.2022 and requested to Defer/adjourn the proceedings in Dispute No. 1 of 2022 for 4 weeks in view of the pendency of WP(C) No. 493/2022 in the apex court.

xx ... xx ... xx

(23) On 28.09.2022, Sh. Vivek Singh counsel of Sh. Uddhav Thackeray has requested to provide the documents submitted by Sh. Eknathrao Sambhaji Shinde and another extension of 3 weeks' time to file reply.

xx ... xx ... xx

(25) Sh. Vivek Singh, counsel for Sh. Uddhav Thackeray, has moved an application dated 28.09.2022 received on 30.09.2022 wherein it is informed that the Hon'ble Supreme Court has dismissed the stay application on the proceeding at the Commission in the matter and further requested the Commission to grant the group another three weeks time to file the reply and submit requisite documents. No further extension was granted.

xx ... xx ... xx

(31) On 07.10.2022, Sh. Vivek Singh, counsel for Sh. Uddhav Thackeray, referred to the Commission's letter dated 29.09.2022 and filed a preliminary reply at 04:35 PM, wherein it was informed that due to the large quantum of documents, it was difficult to file reply within stipulated time including the fact that the documents filed by the other group has not been supplied despite repeated requests. In view of above, the Commission was requested not to pass any order without affording oral hearing in the matter to demonstrate the frivolity of the claim made on behalf of group led by Sh. Shinde.

(32) On 07.10.2022, at 08:35 PM, Commission vide its letters, referred to the Commission's letters dated 29.09.2022 and 07.10.2022 and invited comments from the group led by Sh. Thackeray on the letter dated 04.10.2022 of Sh. Chirag Shah. Both the groups were also advised to furnish the proof of service to the other group of the documents filed at the Commission by 2:00 pm of 08.10.2022

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(33) On 07.10.2022, at 8:20 PM, Sh. Vivek Singh, counsel for Sh. Uddhav Thackeray, referred to the Commission's letter dated 29.09.2022 wherein the last day to reply in the matter was extended till 07.10.2022 and informed the Commission that the Commission has issued directions (as mentioned in Para 30 above) even before the end of deadline for filing reply. It was also informed that the group has also filed a preliminary reply on 07.10.2022 which has also been served to other group by way of email. Reference was also made to Sh. Chirag Shah's letter dated 04.10.2022 comments on which were requested by the Commission and informed the Commission that any reply to any application filed by a party is necessitated only if notice is issued whereas the Commission has not issued any notice in this regard. Further, in view of the large number forged and fabricated documents filed by the other group has requested the Commission another three to four weeks' time to scrutinize the documents filed by the other side. The Commission will take a call on the issue of extension of three to four weeks for filing reply at appropriate time."

15. In the afore-noted circumstances, ECI made the following observations:

"(37) The steps envisaged under Para 15 proceedings, prior to hearing the Parties, inter-alia, require both parties to the dispute to submit their respective documentary evidence of support claimed by them in the organisational and legislative wings of the Party. They may also submit the list of members of various Committees formed in the internal party elections held. Thereafter, the Commission initiates the hearing of such representatives of the groups as desire to be heard. This is consistent with the past approach of the Commission. In the present case the process of submission of documents was initiated vide order of the Commission of 22.07.2022 (see para10 above) and the time line has been extended several times. Therefore, the steps/process which is required to be completed before the date of hearing, when fixed, is at present still in progress."

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(39) Shri Vivek Singh, has in his letter of 07.10.2022, has sought another 4 weeks of time before the start of formal hearing in order to prepare and carefully understand the documentation filed by the rival faction. That, a clear time frame is required, after submission of documents and, listing of the date of formal hearing by the Commission, is a correct point. However, the said time frame, as will be decided by the Commission in its assessment, needed to ensure the due process to be followed by the Commission, is incongruent to the timelines being invoked by the two groups. Extension of

time lines simplicitor, may have a definite bearing/ consequences on the smooth conduct of the announced bye-elections, as, both the Parties to the dispute have claimed exclusive use of the Shivsena Symbol “Bow & Arrow” and the Party name of “Shivsena”. They have highlighted that the date of nomination commenced on October 7 & will close on October 14 and one group in particular has sought an expeditious decision. Thus, an independent timeframe in public interest & in discharge of ECI's statutory responsibilities has come into being and must be accounted for by the Commission, immediately, to address the statutory spaces generated by the schedule of bye-elections notified on 03.10.2022. The Commission is duty bound to ensure that all electoral steps of the bye election are free of any confusion and contradiction and thus its next step are necessarily agnostic to the possibility of either of the faction participating in the poll.

(40) Having regard to the above facts and circumstances as indicated under para 38 & 39 above, it is evident that the time available is not adequate to ensure the due process which is required to be completed for the proceedings under Para 15, as indicated in para 37 above. However, the Commission takes note of the urgency involved with regard to use of party symbol and party name due to the schedule of the bye-elections announced.”

16. Petitioner's counsel had sought four weeks' time before the start of a formal hearing. However, ECI was duty bound to ensure that the electoral steps of bye-elections are completed within time. It took note of the urgency *qua* allotment of symbol, on account of announcement of the schedule of bye-elections, and made the directions for freezing. Therefore, the Court does not find any procedural infraction on the part of ECI in taking such a view. Petitioner, who repeatedly took time before ECI for furnishing necessary documents, cannot now turn around and allege violation of principles of natural justice and criticize ECI.

17. Mr. Sibal also argued that the Petitioner was not supplied with the documents filed by Respondent No. 2, despite repeated requests. It has also been argued that ECI's counsel before the Supreme Court had agreed for

extension of time, in the event an application was made, and therefore there was no delay on his part. In this regard, reference was made to order dated 4th August, 2022, which reads as follows:

“2. Meanwhile, we are informed by Mr. Arvind Datar, learned Senior counsel appearing on behalf of the Election Commission that it has fixed 8th August, 2022 as the date for the petitioner to file an affidavit in the matter pending before it. According to the learned Senior counsel, the proceedings may take some time as voluminous evidence is usually submitted by the parties which must be considered by the Election Commission. The learned Senior counsel, therefore, states that no orders may need to be passed by this Court interdicting proceedings before the Election Commission. In these circumstances, we grant liberty to the petitioner to file an application before the Election Commission for seeking time.”

18. In the opinion of the Court, ECI's counsel had only agreed for accommodating the Petitioner's request for extension of time. However, since adequate time was not available for ECI to complete proceedings under Para 15, taking note of the urgency involved with regard to the party symbol and name, in light of the scheduled and upcoming bye-elections, pending final determination, the course of action adopted by ECI was within its jurisdiction under Para 18 of Symbols Order, as well as the plenary powers of ECI as recognized by the Supreme Court.⁴

19. At this juncture, it must also be noted that although it was argued that the procedure adopted by ECI is a one-off in the instant case, however, this Court's attention has been drawn to similar such orders made by ECI,⁵ wherein, pending adjudication of dispute under Para 15 of the Symbol Orders, ECI directed the reserved symbol to remain frozen until final

⁴ *Edapaddi P. Palaniswami v. TTV Dinakaran*, (2019) 18 SCC 219.

⁵ Dispute Case No. 01/2021 (*Sh. Chirag Paswan and Ors. V. Sh. Pashupati Kumar Para and Ors.*); Dispute Case No. 2/2017 (*Sh. E. Madhusudan and two Ors. V. Smt. V.K. Sasikant and Anr.*), and *In Re: Dispute in Uttarakhand Kranti Dal*.

adjudication of disputes. There is thus nothing unusual or extraordinary in the present case.

20. In light of the fact that there is no interdiction by the Supreme Court regarding the proceedings to be conducted by ECI, in the opinion of the Court, it would be in the interest of both the parties as well as the general public, that the proceedings are concluded expeditiously. Accordingly, ECI is directed to adjudicate the Dispute Petition under Para 15 of the Symbols Order as expeditiously as possible.

21. For the foregoing reasons, the present petition is dismissed along with pending applications.

SANJEEV NARULA, J

NOVEMBER 15, 2022

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(Corrected and released on 19th November, 2022.⁶)

⁶ The operative portion of this Order was dictated in the open court, and reasoning has been supplied subsequently in-chamber.