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W.P.No.35566 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.03.2023

Pronounced on : 24.04.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.35566 of 2016

Desiya Deiveega Murpokku Kazhagam
Rep. by its Founder President,
V.G.Chittrarasu
s/o.Govindasamy,
Pasumpon Complex, Meensuruty,
No.4/220, Udayarpalayam, Ariyalur District,
Tamilnadu, PIN 612 903.

.. Petitioner

Vs

1.Election Commission of India
Rep by its Under Secretary,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001

2.Election Commission of India
Rep by its Chief Election Commissioner,
Nirvachan Sadan,
Ashoka Road, New Delhi-110 001.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to call for records



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relating to the order made in F.No.56/90/2016/PPS-I/446 dated 13.05.2016 passed by the first respondent and quash the same and consequently direct the respondents to process the application of the petitioner by allotting the proposed viz., Desiya Deiveega Murpokku Kazhagam to the petitioner.

For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr.Niranjan Rajagopalan

ORDER

The petitioner is the Desiya Deiveega Murpokku Kazhagam, a party formed on 05.03.2015. The avowed objective of the party is the promotion of peace and harmony by avoiding religious and caste differences, promotion of economic and social growth bearing faith and allegiance to the principles enshrined in the Constitution of India such as socialism, secularism and democracy.

2. The party desired to contest elections for the purpose of which it was necessary to have the same registered. The Representation of Peoples Act, 1951 (Act) provides for registration in terms of Section 29A and an application was submitted on 30.03.2016 accompanied by all requisite annexures.



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3. While awaiting the processing of the application and registration of the party, the petitioner instead received the impugned order rejecting the application. The basis of the order is that the name proposed for the party, Desiya Deiveega Murpokku Kazhagam, has a religious connotation and hence cannot be allotted.

4. The first respondent, being the Election Commission of India, (ECI / R1) called upon the petitioner to furnish alternate names for consideration. Certain other particulars were also sought with which the petitioner has no grievance.

5. Though the petitioner, vide letter dated 14.07.2016 responded stating that the proposed name neither intends to, nor conveys any religious connotation, the present writ petition has also been filed pointing out various discrepancies both in terms of the procedure as well as the basis of the rejection.

6. The main argument of the petitioner is that the proposed name particularly the term '*Deiveega*', conveys the virtues of nobility, devotion and purity that are universal in nature. The term has no religious connotation, and, in any event, has not been used to convey any such connotation. The word Desiya means 'national', Deiveega means



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'divine/pure/noble', Murpokku means 'progressive' and a Kazhagam connotes a 'body' or an 'association'.

7. The petitioner challenges the conclusion of the respondent by reading in a religious connotation, that is neither express nor implied in the proposed name. In fact, according to the petitioner, the proposed name fortifies the element of secularism which is enshrined in the Constitution and it is in this context that the word 'Deiveega' should be understood.

8. Incidentally it is also pointed out that no opportunity has been granted to the petitioner prior to the passing of the impugned order and there is thus, violation of principles of natural justice as well. Section 29A (7) provides for such opportunity, which has been denied in this case.

9. Since both learned counsel have been heard in detail on the merits of the matter, it does not seem appropriate that the matter be remanded to R1 merely to correct the procedural violation of lack of opportunity and hence while observing that there has indeed been such violation committed in this case, I proceed to decide the matter on the legal and larger question that presents itself.



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10. Section 29A of the Act reads thus:-

29A. Registration with the Election Commission of associations and bodies as political parties.—

(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made,—

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:—

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;



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(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body: Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay."



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11. The statutory provision does not specify any detailed parameters in regard to the proposed name except to state in sub-section (5) of section 29A, that the name and the objects of the association shall be aligned with the principles of socialism, secularism and democracy, and shall uphold the sovereignty, unity and integrity of India.

12. There is some history to the issue of religious symbolism in the names of political parties and the challenge that has been put forth over the years by concerned citizens. Historically, this aspect of the matter had not engaged the attention of the authorities and there are political parties whose names contain express religious symbolism.

13. The history and the trajectory of events over the years in regard to this issue, is set out in a counter affidavit filed by R1 in W.P.(C) No.908 of 2021 before the Hon'ble Supreme Court of India in *Syed Waseem Rizwi v Election Commission of India and another*. The prayer therein is for a mandamus to be issued directing the ECI to cancel the symbol or name allotted to political parties which in any way symbolize any religion, as such a practice would violate the social fabric of the Constitution.



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14. In W.P.No.112 of 2004, *N.Kunju v Election Commissioner of India and Ors*, the challenge was to the use of religious phrases of words in the name of political parties. Though the writ petition was dismissed on technical grounds, that appears to have been the trigger for R1 to have formulated a policy not to permit names involving religious connotation, in the names of political parties.

15. Thus, in 2005, R1 took a policy decision to the effect that no political party would be registered that contained a religious name or connotation thereof. Pursuant thereto, R1 claims not to have registered any political party, which did not conform to that standard.

16. In 1994, the Representation of the People (Amendment) Bill, 1994 had proposed that a proviso to be added to sub-section 7 of Section 29A of the Act expressly stipulating that no associations bearing a religious name would be registered as a political party.

17. The Bill was not passed and with the dissolution of the then Lok Sabha in 1996, lapsed. In academic interest, the proposed proviso is extracted below:-

“Provided that no association or body shall be registered as a political party under this sub-section



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(a) the association or body bears a religious name or

(b) the memorandum or rules and regulations of such association or body do not conform to the provisions of subsection(5).”

18. The aforesaid developments culminated in order dated

19.05.2014 bearing no. 56/2014/PPS-I wherein R1 states as follows:-

‘Whereas, in connection with registration of political parties under Section 29A of the Representation of the People Act, 1951, the Commission has directed that the names of political parties seeking registration should not have any religious connotation and that the names should not be similar to the names of existing political parties that may lead to confusion;

Whereas, it has been noticed that in some cases new political parties seeking registration under Section 29A have adopted names that are translated versions of names of existing political parties; and

Whereas, the Commission has received complaints that permitting new political parties to be registered under the translated versions of names of prominent parties is bound to adversely affect the interests of the existing parties and enable the new parties adopting such names to derive undue advantage out of the goodwill and popularity enjoyed by the former;

Now, therefore, having considered all aspects of the matter, the Commission has decided that henceforth political parties with names which are translated versions, either in Hindi, English or any regional language, of the names of existing recognized National or State Political Parties shall not be granted registration under Section 29A of



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RP Act, 51, and such parties shall have to suitably change/modify their names for seeking registration.'

19. Pursuant thereto, guidelines were provided for in Annexure II to the application for registration wherein one of the points reads '*has the name of the applicant party / organization being given clearly ? The name should be clearly different from the name of existing parties. Also, no part of the name should have any religious, communal or caste connotation*'.

20. R1 then issued letter dated 24.01.2017 inviting the attention of all Chief Electoral Officers in the States and Union Territories to the guidelines for their attention and scrupulous compliance. The Delhi High Court in the decision dated 29.04.2016, in *Citizen Rights Foundation and Another v Union of India and another* [W.P.(C) No.2844 of 2016] dealt with the identical issue.

21. The above trajectory of events and the policy laid down by the Election Commission of India was taken note of by the High Court and the writ petition came to be closed on that basis. In the present case, the petitioner has, in the column marked 'remarks', responded in the affirmative and this constitutes the only basis for the rejection of the petitioner's application.



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22. Admittedly there is no statutory sanction for order dated 19.05.2014. The argument of the respondents is that Section 29A is wide enough to provide for, in public interest, parameters prescribing name of political parties and such guidelines must be deemed to have the authority of the statute itself.

23. For its part, the petitioner relies upon decisions of the Hon'ble Supreme Court in the cases of i) *Indian Ex-Servicemen Movement and others v. Union of India and others* [(2022) 7 SCC 323], ii) *M/s.Sandur Micro Circuits Ltd. v. Commissioner of Central Excise, Belgaum* [(2008) 14 SCC 336] iii) *Kunwar Pal Singh (Dead) By Lrs. v. State of U.P. and others* [(2007) 5 SCC 85] and of this Court in iv) *Pandurangan v. The Sub-Registrar, Reddiarpalayam, Pondicherry and others* [2007 (1) CTC 641], to bring home the settled administrative law position that statutory Rules cannot override the provisions of the Statute itself and in any event, Executive instructions cannot override either statutory provisions or the Rules.



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24. In the present case, the reference to religious connotation finds no place in Section 29A of the Act and thus, the respondents cannot merely by issue of an Executive Order or a set of guidelines impose such restrictions, over and above what the Statute prescribes.

25. A preliminary question thus arises as to whether the guidelines/Annexure II have statutory mandate and whether it binds the parties. In this context, it is appropriate to note the following judgments of the Hon'ble Supreme Court of India.

- (i) *Shri Sadiq Ali and another v. The Election Commission of India, New Delhi and others* [(1972) 4 SCC 664]
- (ii) *Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and Ors* [(1978) 1 SCC 405]
- (iii) *A.C.Jose v. Sivan Pillai and others* [(1984) 2 SCC 656]
- (iv) *Kanhiya Lal Omar v. R.K.Trivedi and others* [(1985) 4 SCC 628]
- (v) *Union of India v. Association for Democratic Reforms and another* [(2002) 5 SCC 294]

26. In *Sadik Ali* (supra), three Judges of the Hon'ble Supreme Court were concerned with the interpretation of the Election Symbols (Reservation and Allotment) Order, 1968. The challenge was on the ground that the order was ultravires the power that vested in the Election Commission of India.



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27. Upon consideration of Articles 324 and 327 of the Constitution of India dealing with Superintendence, direction and control of elections to be vested in an Election Commission and Power of Parliament to make provision with respect to elections to Legislatures respectively, as well as the conduct of Election Rules, 1961, the Court held that the 1968 Election Symbol Order was intravires the powers of the Election Commission of India. They also reiterated the contention that Parliament cannot delegate the power to make provisions in respect of the allotment of symbols to the Election Commission. Article 325 provides that the power of superintendence, direction and control of elections shall vest in the Election Commission.

28. Article 327 provides for the power of Parliament to make provisions in respect of elections but such power is circumscribed by the opening words of Article 327 which are '*subject to the provisions of this Constitution*'. Thus, the Court held that the Election Commission has full power under Article 324 to regulate all matters in relation to superintendence, direction and control of elections and such power was exercised by it directly and not as a delegate of the Parliament or any other authority.



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29. In *Mohinder Singh Gill*, 5 Judges of the Hon'ble Supreme Court considered the scope of the powers of the Election Commission under Article 324 and held that such power was wide and operated in those areas left unoccupied by legislation.

30. In *A.C.Jose*, an appeal was filed challenging an order of the Kerala High Court upholding a Notification which provided for casting of votes by means of electronic machines. Dealing with the interplay of powers of the ECI under Article 324, the Court held that such powers are meant to supplement rather than supplant the law in matters of superintendence, direction and control.

31. Article 324 must be read in harmony with Articles 326 and 329 and not in isolation thereof. Thus the ECI was held to validly exercise complete executive power in regard to matters entrusted to it, being superintendence, direction and control of elections.



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32. In *Kanhiyalal Omar* too, the Hon'ble Supreme Court held that the phrase '*superintendence, direction and control*' necessarily included all powers that are required to be exercised for smooth conduct of elections, subject only to laws made under Articles 327 or 328. This conclusion was reiterated in the case of *Association for Democratic Reforms*.

33. There is thus ample precedent for the position that orders passed by R1 are a consequence of the power vested under Article 324 of the Constitution of India and the applicable and relevant provisions of the Act. Such orders thus would bind all parties and carry with them statutory force.

34. The counter filed in the matter of *Syed Waseem Rizwi* reveals that a distinction has been made by R1 in relation to legacy names (i.e.) names of political parties registered prior to 2005, and those registered post 2005 when the policy decision came to be implemented.

35. R1 has opined in the counter filed in re. *Sayed Rizwi* that there may not be a necessity to tinker with or amend legacy names, since such modification may result in some amount of confusion to the public, leaving it to the Court to decide that issue. However, they are categorical



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that from 2005 onwards, the clear policy of R1 was to deny registration to any political party that contained names having religious connotations.

36. No doubt, neither order dated 19.05.2014 nor the guidelines in Annexure II accompanying the application form for registration are under challenge in this writ petition. However, one of the primary points argued relates to whether at all the ECI has the authority to issue such guidelines and whether they constitute an excess of authority.

37. In light of the discussion in the preceding paragraphs, I have no doubt that the power of R1 to issue orders in the nature of Executive instructions is wide and expansive in matters concerning regulation of elections and the preliminary objection is answered in favour of the respondents.

38. Coming to the facts of the case on hand, the term contained in the name of the petitioner, and objected to by R1, is 'Deiveega', on the ground that the term has a 'religious connotation'. The word 'connotation' indicates only that the word in question could have either a positive, negative or neutral meaning. Such meaning is to be culled or understood from the context in which it is used. Thus, 'connotation' is a word which implies the meaning of another word which it qualifies.



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39. In *Abhiram Singh v C.D. Commachen* (2017) 2 SCC 629, seven judges of the Hon'ble Supreme Court heard a reference on whether an appeal to the Electorate by a candidate on the ground of religion, race, caste, community or language would constitute a corrupt practice in the electoral process.

40. Three Hon'ble Judges held that such an appeal must be construed as corrupt practice whether addressing the religion, race, caste, community of the candidate himself or the elector, whereas three other Hon'ble Judges held that such an appeal on the grounds of religion, race, caste, community or language would constitute a corrupt practice, only if it related to the candidate and not otherwise.

41. Thus, there was a conflict of interest as to whether the reference to religion, race, caste, community or language was to be seen only in the context of the candidate or of both the candidate and of the elector/voter. The conflict was answered by the then Hon'ble Chief Justice, who concurred with the view that appeals of those considerations would constitute corrupt practice whether they were rendered in the context of the candidate or the elector. The wider view thus prevailed with the slim vote of one.



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42. The relevance of that judgment is on account of the fact that in both cases, the question that arose related to whether any religious appeal in the electoral process would compromise the integrity of the process itself. The cleavage of opinion was only as regards which group of stakeholders would attract the bar under Section 129 of the Act.

43. However, all Hon'ble Judges were of the unanimous view that an appeal on the ground of religion (and other considerations, with which we are not concerned in this Writ Petition) would constitute a corrupt practice. Thus, one would have to examine whether at all the use of the word '*Deiveegam*' has a religious connotation.

44. A word of religious connotation could imply, or mean, any number of words in Tamil, none of which would be capable of precise and perfect translation to English. It has, however, to be set in context and understood, *Noscitur a sociis*, a facet of the principle *Ejusdem generis*, which means that a word is understood by the words with which it is associated, or that accompany it.



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45. In the present case and applying the above principle, the word ‘Deiveega’ is juxtaposed with specific words that precede and succeed it. It has thus to be read and understood in the context of those words being, Desiya, Murpokku and Kazhagam and must not be read in isolation.

46. A Kazhagam is an association. The words Desiya and Murpokku connote ‘patriotism’ and ‘progress’, respectively. Thus, the meaning of the word ‘Deiveega’ seen in the company of the words Desiya and Murpokku, would be ‘divinity’ which is not an overtly religious term. True, one facet of the word ‘Deiveega’ is ‘Godly’. However, such an interpretation does not sit well in the context of the name of the petitioner, read in full.

47. After all, patriotism could well be the highest form of religion and Indian culture and ethos revere the Country, placing her on an exalted pedestal, as Mother India. The use of the word Deiveega in the name of the petitioner thus hardly contains or indicates any religious connotation, *stricto sensu*, and must be understood only in this context.

48. The bar is meant to eliminate any advantage that a party might gain by using an element of a religious nature, to the detriment of other political parties. The sentiment of nationalism is however, one that



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embraces rather than curtails. It is cohesive and brings together, and cannot be seen as being divisive.

49. In light of the discussion above, the impugned order is set aside and R1 is directed to accept the name of the petitioner. The petitioner's application for registration shall be processed and, subject to the petitioner furnishing the other requirements/details called for, shall be accepted within a period of four weeks from petitioner's response as aforesaid.

50. This writ petition is allowed. No costs.

24.04.2023

Index: Yes/No
Speaking/non-speaking order
Neutral Citation: Yes/No
Ssm/sl

To

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



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DR. ANITA SUMANTH,J.

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