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W.P.No.4315 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.02.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.P.No.4315 of 2024

Tamil Maanila Congress (M)
Rep. by its President
G.K.Vasan, M.P.
No.4, Asoka Road
Alwarpet, Chennai 600 018

.. Petitioner

Vs.

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

2.The Chief Electoral Officer
State of Tamil Nadu
Fort St. George
Chennai 600 009

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the 1st respondent to allot “bicycle” symbol to Tamil Maanila Congress (M) based on the order of the 1st respondent dt.14.03.2019, subject to the minimum number of seats to be



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contested by TMC (M) in the State of Tamil Nadu for the ensuing General Election for the House of People, 2024, by considering the petitioner's representation dated 06.02.2024.

For Petitioner : Mr.T.Saikrishnan
For Respondents : Mr.Niranjana Rajagopal
for M/s.G.R.Associates

ORDER

(Order of the Court was made by R. MAHADEVAN, J.)

Seeking a mandamus to the first respondent to consider the petitioner's representation dated 06.02.2024 for allotment of symbol “Bicycle” to Tamil Maanila Congress (M) for the ensuing general election for the House of People, 2024, based on the order of the first respondent dated 14.03.2019, the present writ petition came to be filed before this court.

2.According to the petitioner, the Tamil Maanila Congress (M) was recognised as a political party by the Election Commission of India, the first respondent herein, on 02.04.1996 and “Bicycle” symbol was allotted to them. However, the attempts made by the petitioner in the years 2014, 2015 and 2016, for getting allotment of “Bicycle” symbol from the first respondent, ended in vain. Therefore, the petitioner preferred WP.No.35410 of 2016, which



was partly allowed by the learned Judge, by order dated 19.12.2018, the

relevant passage of which is usefully extracted below:

“15.A perusal of the impugned order clearly shows and supports the contentions made by the learned Senior Counsel for the petitioner that neither the explanation given in (vi) to Para 10 B nor 10 A has been considered by the 1st respondent while answering the claim of the petitioner. This apart, the counter affidavit filed by the 2nd respondent also does not speak anything about the applicability of the aforementioned provisions, that also shows that the arguments advanced by the petitioner were not properly considered by the 1st respondent. Secondly, when the petitioner party was formed on 2.4.1996 and allotted with the Bicycle Symbol, they contested in the State Assembly Election held in the year 1996 and also the Parliamentary Elections, while so, even prior thereto, the Telugu Desam Party in Andhra Pradesh and Samajwadi Party in Uttar Pradesh were having this Bicycle symbol in their respective States, but this also has been overlooked by the first respondent in the impugned order. Thirdly, as per Explanation vi to Para 10 B, if a political party who lost its reorganization more than six years back is eligible to, as one time concession for allotment of symbol that was earlier reserved for the same party, this also has not been considered anywhere in the impugned order. Besides, it was pleaded that merger was not accepted by the first respondent, being so, it needs to be examined whether the petitioner can reclaim the old symbol. Therefore, the concession claimed by the petitioner party has not been considered by the 1st respondent. Hence, for all these reasons mentioned supra, the impugned proceedings dated 05.02.2016 and 04.03.2016 of the Election Commission of India are liable to be set aside. Accordingly, they are set aside. While setting aside the impugned proceedings, this Court directs the 1st respondent to re-examine the issues raised by the petitioner on merits and in accordance with law as indicated above, within a period of eight weeks from the date of receipt of a copy of this order.

16.The learned Senior Counsel for the petitioner sought permission of this Court to file a fresh application before the 1st respondent in respect of their claim. Finding no objection, liberty is granted to the petitioner to file a fresh application raising all the grounds. On receipt of such application with documents, if any filed, the 1st respondent is directed to consider the same afresh, on merits and in accordance with law.”

2.1. Pursuant to the aforesaid order, the petitioner filed an application



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requesting for allotment of “Bicycle” symbol for the Parliamentary election held during 2019. Upon considering the same, the first respondent passed the following order on 14.03.2019:

“Having considered all aspects of the matter, and having regard to the judgement of the Hon'ble High Court, the application of Tamil Manila Congress (Moopanar) for concession in the allotment of “Bicycle” symbol to their candidates being set up at the current General Election to the House of the People, 2019 in the State of Tamil Nadu under the provisions of Para 10 B of the Election Symbols (Reservation and Allotment) Order, 1968, has been accepted by the Commission. Accordingly, the Commission has decided to extend the concession sought under Para 10 B to candidates of TMC(M) for the forthcoming General Election to the House of the People, 2019 in the State of Tamil Nadu.

In the event of the above said party failing to meet the requirement of the minimum number of candidates as prescribed in Para 10 B of the said Symbols Order, 1968, then the said common symbol shall not be available to its candidates.”

However, the petitioner was unable to avail the benefit granted in the aforesaid order of the first respondent.

2.2. The petitioner further submitted that during the year 2020, the President of the Party was elected as a Member of Parliament to the Upper House from Tamil Nadu on behalf of TMC(M). Thereafter, the petitioner approached the first respondent by way of representation dated 01.02.2024 to allot “Bicycle” symbol to TMC(M) based on the earlier order of the first respondent dated 14.03.2019 subject to the minimum number of seats to be



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contested by TMC(M) in the State of Tamil Nadu for the ensuing General Election for the House of the People, 2024. Subsequently, on 06.02.2024, they again approached the first respondent and handed over Annexure I and II along with a covering letter. However, no order has been passed on the same. Therefore, the present writ petition came to be filed for the aforesaid relief.

3.Today, when the matter was taken up for consideration, Mr.Niranjan Rajagopal, learned counsel appearing for the respondents, placed a copy of the communication dated 22.02.2024 addressed to the petitioner, wherein, it is stated as follows:

“Subject:- Allotment of common symbol – regarding.

Sir/Madam,

I am directed to refer to your application dated 01.02.2024 received in the commission on 05.02.2024, requesting for allotment of common symbol to the candidates of your party for the upcoming General Election to the Lok Sabha, 2024 in the State of Tamil Nadu and to state that the application is incomplete as the Annexure-I, Annexure-II and Annexure-III of the prescribed proforma is not annexed with the said application. You may furnish a duly filled fresh application along with requisite annexures latest by five clear days before the date on which notification (or the first notification in the case of phased election) of the election is scheduled to be issued.

2. Further, you may refer to links – 'Conditions for allotment' and 'Proforma for application' available at the Commission's website with following path : <https://www.eci.gov.in/election-symbol>”



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Therefore, the learned counsel submitted that for allotment of symbol in question, the petitioner will have to submit fresh application along with requisite annexures latest by five working days before the date on which notification of the election is scheduled to be issued.

4. On the above submissions, Mr. Saikrishnan, learned counsel for the petitioner submitted that the petitioner is inclined to submit an application afresh, enclosing all the necessary annexures as mentioned in the communication dated 22.02.2024 of the first respondent. The learned counsel further submitted that the case of the petitioner had already been considered by the first respondent *vide* order dated 14.03.2019, pursuant to the order of the learned Judge dated 19.12.2018 passed in WP.No.35410 2016 and hence, the present application also, may be directed to be considered by the first respondent, in the light of the earlier order dated 14.03.2019.

5. In reply, Mr. Niranjan Rajagopal, learned counsel for the respondents fairly submitted that every aspects projected by the petitioner as well as the annexures to be filed along with the application, will be considered and necessary orders be passed on merits and in accordance with law, by the authorities.



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6. In view of the above, this writ petition stands disposed of, granting liberty to the petitioner to submit a fresh application enclosing the necessary annexures and documents, within the time stipulated in the communication dated 22.02.2024 of the first respondent. On receipt of such application, the authorities concerned shall consider the same and pass orders, on merits and in accordance with law, as well as in the light of the order dated 14.03.2019 passed by the first respondent, as expeditiously as possible. It is made clear that the enclosures furnished by the petitioner along with the fresh application, shall be tagged and considered along with the application originally filed. No costs.

[R.M.D,J.] [M.S.Q, J.]
23.02.2024

Neutral Citation : Yes/No
gya

Issue order copy by 26.02.2024

To

1. The Secretary
Election Commission of India
Nirvachan Sadan



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Ashoka Road
New Delhi 110 001

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R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

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2.The Chief Electoral Officer
State of Tamil Nadu
Fort St. George
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