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W.P.No.8371 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.8371 of 2024

Marumalarchi Dravida Munnetra Kazhagam,
rep. by its General Secretary Vaiko, M.P.,
New No.12, Rukmani Lakshmipathi Road,
Egmore, Chennai-600 008.

.. Petitioner

VS

1.The 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.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the respondents to upload the authorised office bearers of the petitioner in the website of the respondents and allot the "Top" symbol to Marumalarchi Dravida



W.P.No.8371 of 2024

Munnatra Kazhagam in the State of Tamil Nadu for the ensuing General Election for the House of People, 2024 and Tamil Nadu State Legislative Assembly, 2026 based on the application dated 12.03.2024 submitted by the petitioner under para 10-B of the Election Symbols (Reservation and Allotment) Order, 1968.

For the Petitioner : Mr.Ajmal Khan
Senior Counsel
for Mr.R.Murali

For the Respondents : Mr.Niranjan Rajagopalan

ORDER

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

We have heard Mr.Ajmal Khan, learned Senior Counsel for Mr.R.Murali, learned counsel for the petitioner; and, Mr.Niranjan Rajagopalan, learned counsel for the respondents.

2. Initially, the writ petition is filed seeking direction to consider the application of the petitioner for grant of "Top" symbol.

3. We had heard the matter yesterday for some time. Yesterday, during the course of hearing, learned Senior Counsel for the appellant submitted that they would make an



W.P.No.8371 of 2024

application/representation and the respondent Election Commission of India be directed to decide the same by 9.00 A.M. on 27.03.2024.

4. Acceding to his request, we had asked the Election Commission of India to decide the application/representation given by the petitioner for allotment of "Top" symbol by 9.00 A.M. today. The Election Commission of India decided the application/representation of the petitioner. Unfortunately, the petitioner's application/representation came to be rejected.

5. Learned Senior Counsel for the petitioner submits that the Election Symbols (Reservation and Allotment) Order, 1968 [for brevity, "*the Symbol Order, 1968*"] has not been properly considered and adhered to by the respondents. According to learned Senior Counsel, the classification of symbol can only be (i) reserved symbol; and, (ii) free symbol. The symbol "Top" was the reserved symbol for the petitioner political party. The petitioner political party was unrecognized in the year 2010, however, was allotted "Top" symbol in all the elections, even in the Assembly Elections of 2020. Initially, the Election Commission of India made a query that the petitioner has



W.P.No.8371 of 2024

failed to upload the particulars of the authorised office bearers of the petitioner political party on the website of the Election Commission of India. The same was erroneous. In September, 2023 itself the details of the office bearers were uploaded. The application/representation of the petitioner has been rejected on an erroneous ground.

6. It is further submitted that, as per Para 10B of the Symbol Order, 1968, the petitioner's application ought to have been considered. Even, as per Para 12 of the Symbol Order, 1968, the candidate can choose and shall be allotted one of the symbols specified as free symbols for that State or Union Territory by notification under Para 17. As the said symbol is not being allotted to the petitioner political party for which the same was reserved, it has to be a free symbol and, in that event, the petitioner would be entitled for allotment of the same.

7. It is further submitted that under Para 18(c) of the Symbol Order, 1968, the Election Commission of India has power to issue instructions and directions in relation to any matter with respect to the reservation and allotment of symbols and recognition of political



W.P.No.8371 of 2024

parties, for which the Symbol Order, 1968 makes no provision or makes insufficient provision.

8. Learned Senior Counsel submits that even assuming without admitting that the petitioner political party is not entitled for “Top” symbol as the same is not free symbol, still the Election Commission of India has power to consider the same. Learned Senior Counsel relies upon the judgment of a Division Bench of the Andhra Pradesh High Court in the case of *Telangana Rashtra Samithi, Hyderabad, rep. by its General Secretary v. Election Commission of India, rep. by its Secretary, New Delhi, (2004) 1 ALT 382*.

9. Learned counsel for the respondents submits that Para 10B(B)(i) of the Symbol Order, 1968, would disentitle the petitioner from claiming the said symbol. The petitioner would have been entitled for allotment of a common symbol to its candidates, had the petitioner party set up candidates at least in a minimum of two Parliamentary constituencies in the State. The petitioner has made a representation that it is setting up only one candidate in the State for the Parliamentary election.



W.P.No.8371 of 2024

WEB COPY

10. Learned counsel further submits that there is no notification issued suggesting “Top” to be a free symbol. It is further submitted that the notification containing list of political parties and symbols has to be issued. It is further submitted that the process of election has commenced. As such, under Article 329 of the Constitution of India, no further orders can be passed. Learned counsel for the respondents affirms that the application/representation of the petitioner for allotment of “Top” symbol has been rejected.

11. Considering the exigency in the matter, we had taken up the matter today.

12. There is no dispute that the petitioner political party is contesting from only one constituency in the State. As per Para 10B(B)(i) of the Symbol Order, 1968, the petitioner political party is required to set up candidates at least in a minimum of two Parliamentary constituencies, in which it seeks allotment of a common symbol to its candidates. The petitioner does not satisfy Para 10B(B)(i) of the Symbol Order, 1968. Today, there is no notification



W.P.No.8371 of 2024

suggesting "Top" to be a free symbol. If there would be a notification suggesting "Top" is a free symbol, then the case of the petitioner, certainly, could have been considered. In that event, the Returning Officer could have considered the case of the petitioner.

13. In the absence of notification notifying "Top" symbol as free symbol, the same cannot be construed as free symbol. There may be various reasons for not notifying the same as free symbol such as in case the petitioner political party would have set up candidates for two Parliamentary constituencies, then the petitioner would have right to claim the said symbol, though the petitioner is an unrecognized political party.

14. Be that as it may, it would be now too late in the day to consider the case of the petitioner, as the last date for filling up the nomination is today up to 3.00 P.M. and the said time is almost over.

15. It is always open for the Election Commission of India to issue instructions/directions for smooth and orderly conduct of the elections as specified in Para 18 of the Symbol Order, 1968.



W.P.No.8371 of 2024

WEB COPY

16. In the case of *Telangana Rashtra Samithi*, supra, relied upon by learned Senior Counsel for the petitioner, the Andhra Pradesh High Court did not venture to interfere in the matter, but only directed the Election Commission to re-examine the matter, which order we had already passed yesterday and the Election Commission of India had examined and rejected the application as contended by learned counsel for the respondent.

17. Considering the facts and circumstances of case, more particularly the fact that today is the last date for filling up the nomination and the said time is almost over, it will not be possible for us now to pass any further orders in the matter.

18. The writ petition, accordingly, stands disposed of. There shall be no order as to costs.

(S.V.G., CJ.)

(D.B.C., J.)

27.03.2024

Index : Yes/No
Neutral Citation : Yes/No
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W.P.No.8371 of 2024

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To

- 1.The Secretary,
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