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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
BEFORE
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **W.P.(C) 2137/2023 & CM APPL. 8070/2023**

Between: -

GOVIND YADAV,
S/O LATE SHRI TULSI RAM YADAV,
R/O. 4, LAXMAN COMPLEX,
323, NAPIER TOWN, RUSSEL CHOWK,
JABALPUR (MADHYA PRADESH).
PIN-482001PETITIONER

(Through: *Mr. Pathak Rakesh Kaushik, Advocate.*)

VERSUS

UNION OF INDIA
THROUGH
THE SECRETARY, LEGISLATIVE DEPARTMENT,
MINISTRY OF LAW & JUSTICE.RESPONDENT No.1

ELECTION COMMISSION OF INDIA,
THROUGH-
THE CHIEF ELECTION COMMISSIONER,
NIRVACHAN SADAN, ASHOKA ROAD,
NEW DELHI-110001.RESPONDENT No.2

NITISH KUMAR
S/O. LATE KAVIRAJ RAM LAKHAN SINGH
R/O. 1, ANNE MARG, PATNA 800001 (BIHAR)
AND
7, CIRCULAR ROAD, PATNA-800001 (BIHAR)

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Signing Date:30.08.2024
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By:PURUSHAINDRA
KUMAR KAURAV

.....RESPONDENT No.3

ANEEL PRASAD HEGDE
S/O. LATE HALADY NARAYAN HEGDE
R/O. 7, JANTAR MANTAR ROAD,
NEW DELHI-110001

.....RESPONDENT No.4

RAM CHANDRA PRASAD SINGH
S/O. LATE SUKHDEO PRASAD SINGH
R/O. C-402, SWARNA JAYANTI SADAN,
DR. B.D. MARG, NEW DELHI-110001
AND
MUSTAFAPUR TOLA, VILLAGE- MALTI, P.O. &
P.S.- ASTHAWAN, DISTT.- NALANDA (BIHAR)

.....RESPONDENT No.5

RAJIV RANJAN SINGH ALIAS LALAN SINGH
S/O. LATE JWALA PRASAD SINGH
R/O. AB-11, PANDARA ROAD,
NEW DELHI-110003.

AND

B-85, BUDHA COLONY, EAST BORING CANAL
ROAD, PATNA – 800001 (BIHAR)

.....RESPONDENT No.6

KISHAN CHAND TYAGI
S/O. LATE JAGRAM SINGH TYAGI
R/O. 9, SOUTH AVENUE,
NEW DELHI-110001

AND

C-14, LOHIA NAGAR, GHAZIABAD, UTTAR
PRADESH

.....RESPONDENT No.7

AFAQUE AHMAD KHAN
R/O. 7, JANTAR MANTAR ROAD,
NEW DELHI-110001

.....RESPONDENT No.8

JAVED RAZA
S/O. LATE MEHDI RAZA
R/O.116, CHAUDHARANA,
DISTRICT- UNNAO, UTTAR PRADESH 209801

.....RESPONDENT No.9

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By:PURUSHAINDRA
KUMAR KAURAV

ARUN KUMAR SRIVASTAVA
S/O. LATE BANSI BAHADUR LAL
R/O. 16A/1010, VASUNDHARA, DISTRICT
GHAZIABAD, UTTAR PRADESH- 201012

.....RESPONDENT No.10

(Through: Mr. Sidhant Kumar and Mr. Om Batra, Advocates.)

Reserved on: 05.08.2024
Pronounced on: 29.08.2024

JUDGMENT

The seminal questions which stand posed in the instant petition relate to the scope and extent of inquiry into the authenticity of the information concerning internal changes (office bearers etc.) in a political party, mandated to be furnished to the **Election Commission of India** (*hereinafter referred to as "ECI"*) under **Section 29A(9)** of the **Representation of the People Act, 1951** (*hereinafter referred to as "RP Act"*) and justiciability of the disputes arising from internal elections for the selection of office bearers within registered political parties in India.

2. The facts of the case at hand are that the petitioner is an expelled member of **Janata Dal United** (*hereinafter referred to as "JDU"*), which is a recognized State political party under the provisions of the **Election Symbols (Reservation and Allotment) Order, 1968** (*hereinafter referred to as "Symbols Order"*). In compliance with the provisions of Section 29A(9) of the RP Act, JDU is purported to have notified the ECI regarding amendments in its list of office bearers through a series of correspondences dated 10.11.2016, 13.11.2019, 18.02.2021, 03.08.2021 and 27.09.2021, among others.

3. The petitioner seeks directions to annul these changes, incorporated in the record of the political parties maintained by the ECI, for being made in violation of Section 29(A)(9) of the RP Act. Additionally, the petitioner seeks a declaration from this Court that the internal party elections conducted by JDU in the years 2016, 2019, and 2022 were in breach of the party's constitution. The petitioner also seeks various other interconnected directions, all of which have a bearing on the principal issue at hand, as outlined hereinbefore.

4. According to the petitioner, he was one of the founding members of the Janata Dal political party and played a significant role in its formation. Subsequently, he contested the General Elections from the Jabalpur parliamentary constituency in Madhya Pradesh on a Janata Dal ticket. The petitioner asserts a long-standing political career, highlighting his appointment as National Secretary of the Janata Dal (Youth Wing) in 1997. He further claims to have been elevated to the position of National General Secretary of Janata Dal (Youth Wing) in 2001. In 2003, he was appointed National President of the JDU (Youth Wing), a position he held again in 2006. In 2010, he was elected as State President of the JDU for the Madhya Pradesh Unit. The petitioner asserts that he has occupied various significant roles within Janata Dal and subsequently, within JDU.

5. The grievance of the petitioner emanates from a communication dated 11.04.2016, whereby, the ECI was informed that *Mr. Nitish Kumar* has been elected as the president of JDU through an organizational election held under the JDU constitution. The petitioner contends that the purported election of *Mr. Nitish Kumar* as president of JDU took place on 10.04.2016 *vide* the forum of National Executive. He submits that even though the election before the

National Executive dated 10.04.2016 was disputed, the National Council, *vide* its decision dated 23.04.2016, ratified the alleged election of respondent no.3. He avers that such ratification is against the party's constitution and in violation of internal democracy of the political party. He draws the attention of this Court towards a letter dated 25.04.2016, wherein, the aforementioned election of *Mr. Nitish Kumar* was informed to the ECI. The petitioner, therefore, challenges the election of respondent no.3 by the National Executive, subsequent ratification made by the National Executive and consequently, the contents of the letter dated 25.04.2016 submitted to the ECI.

6. The petitioner also objects to various other aspects, including internal correspondences, and claims to have submitted a representation dated 04.10.2016 along with three other individuals, highlighting illegalities in the organizational elections of JDU. The petitioner argues that the scheduled internal party elections were overridden by fresh notices, and rival members were declared as party office bearers using emergency provisions of the party's constitution. He asserts that all subsequent appointments following the purportedly flawed election of *Mr. Nitish Kumar* as JDU President were made in contravention of the party's constitution and were orchestrated to advance certain vested interests.

7. A similar complaint appears to have been lodged by another complainant, *Mr. Thakur Balbir Singh*, which was addressed by the ECI in its communication dated 07.02.2017. In its response, the ECI confirmed the receipt of complaints from *Mr. Amitava Dutta*, *Mr. Balbir Singh Thakur*, and *Mr. Govind Yadav* (the petitioner herein). According to the ECI, the grievances presented by the abovesaid members pertained to internal party elections. The ECI noted that,

pursuant to Section XVII of the JDU constitution, the appropriate forum for addressing such disputes would be outside its purview. Furthermore, the ECI informed that there is a provision for disciplinary action under the party's constitution, and the complaints were thus, addressed in accordance with this position.

8. The petitioner subsequently submitted a detailed representation to the ECI on 10.03.2017. In its reply dated 24.05.2017, the ECI reiterated its stance that it does not engage in inquiries into such disputed internal matters and directed the petitioner to adhere to the position articulated in its letter dated 07.02.2017. The petitioner further asserts that when he approached the party forum on 08.10.2017, the acting president of JDU acknowledged his grievance and instructed that *Mr. Chotubhai Amarsang Vasava* was authorized to remove all office bearers until a new president was elected, in his capacity as acting president of JDU. The petitioner contends that, notwithstanding the decision taken at the party forum, the ECI has failed to recognize the office bearers elected in accordance with the party's constitution and has instead accorded recognition to a rival faction of the party.

9. In view of the sequence of events delineated before this Court thus far, *Mr. Pathak Rakesh Kaushik*, learned counsel appearing on behalf of the petitioner has advanced the following broad submissions:-

- (i) The position taken by the ECI that it lacks jurisdiction to interfere or adjudicate internal party election disputes is manifestly flawed and improper. Learned counsel contends that the ECI is unequivocally vested with the authority to scrutinize the veracity of documents and is

duty-bound to investigate the authenticity of internal party elections.

- (ii) He submits that since the ECI is endowed with the authority under Section 29A(9) of the RP Act to collect information regarding registered political parties, there exists a jurisprudential obligation upon the ECI to verify the authenticity of the information provided and the *bonafides* of the individual submitting such information, thereby, imposing a reverse obligation on the ECI to ensure the integrity of the data it receives.
- (iii) He contends that the functions of the ECI are *quasi-judicial* rather than purely administrative simpliciter. He asserts that registered political parties are required to adhere to the mandate of Section 29A(9) of the RP Act, which obligates them to promptly communicate to the ECI any changes concerning the party's name, head office, office bearers, address, or any other material matters.
- (iv) He submits that the purported elections of *Mr. Nitish Kumar* as the president of JDU in October 2016 and in 2019 and 2022 were conducted fraudulently and in flagrant violation of the JDU constitution and its rules. He further asserts that other respondents, currently serving as office bearers, have similarly transgressed the internal constitution, thereby illegitimately assuming positions of authority within the party.
- (v) To substantiate his contentions, learned counsel for the petitioner has placed reliance on the decision of the

Supreme Court in the case of *Sadiq Ali v. Election Commission of India*¹ to contend that the ECI is empowered to determine the *bonafide* faction of a political organization by applying three definitive tests. This is especially pertinent in the context of the Symbols Order and the allotment of reserved party symbols.

10. *Mr. Sidhant Kumar*, learned counsel appearing on behalf of the respondent-ECI countered the aforesaid submissions made by learned counsel for the petitioner and made the following submissions:-

- (i) He contends that the communications issued by the ECI, which are the subject matter of challenge in the present writ petition, correctly assert that the ECI has no role in adjudicating the validity of internal elections within political parties. He further submits that the petitioner has not contested the ECI's decisions dated 07.02.2017 and 24.05.2017.
- (ii) According to him, there are two contending factions within the party i.e., one led by *Mr. Chotubhai Amarsang Vasava* and the other by *Mr. Nitish Kumar*, each claiming to be the legitimate office bearer and president of JDU. In its orders dated 17.11.2017 and 25.11.2017, the ECI recognized *Mr. Nitish Kumar* as the legitimate office bearer of the party. The petitioner's representations were rejected in both orders, primarily on the ground that the petitioner must seek a declaration from a competent court to challenge the validity of the organizational elections.

¹(1972) 4 SCC 664.

- (iii) He submits that the ECI's authority to interfere into a political party's internal affairs is confined to the Symbols Order, which applies solely to situations where factions or splinter groups within a party claim to represent the main party. In the present case, there are no competing claims from factions seeking recognition as the party itself. Consequently, the ECI cannot, by any stretch of imagination, be expected to adjudicate internal party disputes, such as matters of expulsion or other similar issues.
- (iv) Learned counsel has placed reliance on the decisions of this Court in the cases of *S.S. Karana v. Election Commission*², *Hans Raj Jain v. Election Commission of India*³, a decision of the High Court of Madras in the case of *J. Jayachandran v. Election Commissioner of India*⁴ and on a decision of the High Court of Madhya Pradesh at Jabalpur in *W.P. 3246 of 2021* titled as *Shaikh Shahrukh v. Youth Congress Election Authority and Ors.*

11. I have considered the arguments presented by both the parties and perused the record.

12. The RP Act was enacted to regulate the conduct of elections to the Houses of Parliament and the Legislative Assemblies of each State, to define the qualifications and disqualifications for membership of these bodies, to address and curtail corrupt practices and other

² 1993 SCC OnLine Del 257.

³ 2015 SCC OnLine Del 8173.

⁴ 2021 SCC OnLine Mad 6343.

offences associated with such elections, and to resolve disputes arising in connection with the electoral process.

13. Part IV-A of the RP Act, which governs the registration of political parties, was introduced by Amendment Act 1 of 1989, effective from 15.06.1989. Section 29A delineates the procedural framework for the registration of associations or bodies as political parties with the ECI. Section 29B addresses the entitlement of political parties to accept contributions, while Section 29C pertains to the disclosure of donations received by the political parties.

14. In addition to the provisions for the registration of associations or bodies as political parties with the ECI, Rule 5 of the **Conduct of Elections Rules, 1961** (*hereinafter referred to as “1961 Rules”*) mandates the ECI to specify the symbols available for selection by the candidates in the parliamentary and assembly constituencies, as well as the restrictions applicable to such choices. Rule 10 of the 1961 Rules pertains to the preparation of the list of contesting candidates. Furthermore, the Symbols Order was framed under the authority of Articles 323 and 324 of the Constitution of India, in conjunction with Section 29A of the RP Act read with Rules 5 and 10 of 1961 Rules.

15. Having noted the pertinent provisions related to political parties, the allotment of symbols, and their registration, it is now essential to consider the principal provisions outlined in Section 29A of the RP Act. Section 29A(1) stipulates that any association or body of Indian citizens identifying itself as a political party and seeking to benefit from the provisions of Part IV-A of the Act must apply to the ECI for registration as a political party under the Act. This application must be signed by the Chief Executive Officer of the association or

body and either presented to the Secretary of the ECI or sent to the Secretary by registered post.

16. As per sub-Section 4 of Section 29A of the RP Act, the application shall require to contain the following details:

- “(a) the name of the association or body;*
- (b) the State in which its head office is situated;*
- (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;*
- (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.”*

17. Sub-Section 5 of Section 29A mandates that an application under Section 29A(1) must be accompanied by a copy of the memorandum or the rules and regulations of the association or body, irrespective of its designation. This memorandum or rules and regulations must specifically include a provision affirming that the association or body will uphold true faith and allegiance to the Constitution of India as established by law, as well as to the principles of socialism, secularism and democracy, and will uphold the sovereignty, unity and integrity of India.

18. Under sub-Section 6 of Section 29A, the ECI is empowered to request additional particulars from the association or body as deemed necessary. Furthermore, sub-Section 7 of Section 29A requires the ECI to make a decision regarding the registration of the association or body as a political party under the RP Act. In making this decision, the ECI must consider all relevant particulars and factors, including providing a reasonable opportunity to be heard to the representatives of the association or body.

19. The proviso to sub-Section 7 of Section 29A of the RP Act stipulates that no association or body shall be registered as a political party under sub-Section 7 unless the organisations' Memorandum of Rules and Regulations complies with the provisions outlined in sub-Section 5. Furthermore, sub-Section 9 mandates that once an association or body has been registered as a political party, any changes to its name, head office, office-bearers, address, or any other material matters must be communicated to the ECI without undue delay.

20. In the present case, the adjudication hinges on whether the scope of scrutiny or inquiry is solely administrative or *quasi-judicial* in nature. An examination of the framework of Section 29A of the RP Act, which encompasses the submission of applications, provision for submission of certain information along with applications, adjudication or decision-making on such applications, and adherence to the principles of natural justice before issuing any order, clearly indicates that the functions under Section 29A are not merely administrative. Instead, the functions assigned to the ECI under Section 29A involve *quasi-judicial* elements. The aforesaid view is also fortified by a decision of the Supreme Court in the case of ***Indian National Congress (I) v. Institute of Social Welfare***⁵.

21. The Supreme Court in the said decision, has held that the ECI under Section 29A of the RP Act is required to act judicially and in that view of the matter, the act of the ECI is *quasi-judicial*. Paragraph 41 of the said decision reads as under:

⁵ (2002) 5 SCC 685.

“41. To sum up, what we have held in the foregoing paragraph is as under:

1. That there being no express provision in the Act or in the Symbols Order to cancel the registration of a political party, and as such no proceeding for deregistration can be taken by the Election Commission against a political party for having violated the terms of Section 29-A(5) of the Act on the complaint of the respondent.

2. The Election Commission while exercising its power to register a political party under Section 29-A of the Act, acts quasi-judicially and decision rendered by it is a quasi-judicial order and once a political party is registered, no power of review having been conferred on the Election Commission, it has no power to review the order registering a political party for having violated the provisions of the Constitution or for having committed breach of undertaking given to the Election Commission at the time of registration.

3. However, there are exceptions to the principle stated in paragraph 2 above where the Election Commission is not deprived of its power to cancel the registration. The exceptions are these:

(a) where a political party has obtained registration by practising fraud or forgery;

(b) where a registered political party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of Section 29-A(5) of the Act or intimating the Election Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy or it would not uphold the sovereignty, unity and integrity of India so as to comply with the provisions of Section 29-A(5) of the Act; and

(c) any like ground where no enquiry is called for on the part of the Commission.

4. The provisions of Section 21 of the General Clauses Act cannot be extended to the quasi-judicial authority. Since the Election Commission while exercising its power under Section 29-A of the Act acts quasi-judicially, the provisions of Section 21 of the General Clauses Act have no application.”

22. It is, therefore, held that the functions performed by the ECI under Section 29A of the RP Act are essentially *quasi-judicial* in

nature, and any order issued thereunder constitutes a *quasi-judicial* order.

23. In the context of sub-Section 9 of Section 29A of the RP Act and its contours, a Division Bench of this Court in *S.S. Karana (supra)* has held that following the registration of an association or body as a political party, any alteration to its name, head office, office bearers, address, or other material matters must be promptly communicated to the ECI without any delay. This requirement ensures that any changes to the details initially provided in the registration application, as mandated by sub-Section (4), are updated for the facility of the political party. The obligation rests with the political party to inform the ECI of such changes so that corrections can be made in its record and communications can be accurately addressed. The Court observed that no specific duty imposed upon the ECI or neglect thereof could be demonstrated in light of the said provision. In paragraph 6 and 7 of the judgment, the Court further ruled that matters concerning the internal affairs of a political party, including any deviations, cannot be contested in a petition under Article 226 of the Constitution of India. The relevant portion has been culled out below for reference:-

*“6. The entire argument by counsel for the petitioner was that under sub-section (9) it is the duty of the Election Commission to see that a registered political party complies with its memorandum or rules and regulations and if any political party does not conform to them, a writ petition would lie. A reading of sub-section (9) shows that after an association or body has been registered as a political party, any change in its name, head-office, office bearers, address or in any other material matters shall be communicated to the Commission without delay. This only shows that if there is any change in the particulars, which were contained in the application at the time of registration, as required by sub-section (4), that has to be intimated to the Election Commission for the facility of the political party and there is no duty enjoined on the Election Commission. **The duty***

is cast on the political party, that if there is any change in the aforesaid particulars, the Election Commission may be informed immediately so that it may make correction in its record and if there is any communication to be addressed, it may be addressed in the name of the correct person and at the correct address. The petitioner does not disclose as to what duty was enjoined upon the Election Commission, which it has failed to carry out.

7. It is urged by the learned counsel for the petitioner that the members on the AICC attending the Suraj Kund Session agreed to deviate from the party constitution and thereby illegally empowered the President of the AICC to nominate two members to the Working Committee, who according to the constitution of the organisation have to be elected. To our mind it is internal affair of the political party and deviation, if any, cannot be called in question in a petition under Article 226 of the Constitution of India.”

24. In another decision, in the case of **Hans Raj Jain (supra)**, a Division Bench of this Court held that, although there are guidelines mandating the incorporation of specific provisions, in the rules or constitution of an association or body seeking registration as a political party, regarding internal democracy, organizational elections at various levels, and the methods of such elections, neither Section 29A of RP Act nor the aforementioned guidelines impose a requirement for the ECI to conduct an inquiry into the fairness or validity of elections held for the positions of office bearers within the political party. The relevant portion of the said decision has been extracted below for reference:-

“19. ECI, in exercise of powers conferred by Article 324 of the Constitution of India and Section 29A of the RP Act has issued “Guidelines and Application Format for Registration of Political Parties under Section 29A of the Representation of the Act, 1951.” Though the said Guidelines inter alia require that there should be a specific provision in the Rules/Constitution of the association or body of persons seeking registration as political party regarding internal democracy in the party, organizational elections at different levels, mode of such elections etc. but there is nothing, either in Section 29A or in the said Guidelines requiring an inquiry to be conducted into the fairness and validity of the elections held for the post of office

bearers of such political party. The objection of the petitioner that the elections of the Executive Committee of AAP were held arbitrarily without adopting democratic procedure is of no avail. Similarly, though the said Guidelines require the application for registration to be accompanied with individual affidavits from at least 100 members of the Party but there is again no requirement for the ECI to, prior to registration investigate into the validity of the said affidavits if otherwise on face they are affidavits of members of such party. Similarly, we do not find any provision requiring ECI to inquire/investigate if in the documents furnished the address of any office bearer of a political party seeking registration is shown at different two addresses. Section 18 of the Representation of the People Act, 1950 to which reference is made only contains prohibition against registration on the electoral rolls for more than one constituency. Violation thereof has, in *Pothula Rama Rao v. Pendyala Venakata Krishna Rao* (2007) 11 SCC 1 and in *Ramnarain Ramgopal Chamediya v. Ramchandra Jagoba Kadu* AIR 1958 BOMBAY 325, been held to be not fatal. There is no provision in Section 29A or in the Guidelines for scrutiny/investigation to be done and for the reason of not doing of which the petitioner finds fault with the registration. It is significant that no person who may have been shown as a member of the party has come forward to say that he/she was shown a member of the party without his/her consent. Similarly no person at whose address AAP may have shown its office has come forward to say that he had not allowed AAP to use its premises as an officer or had not given NOC therefor. A political party is like a club and in respect whereto the law is clear that the Courts will not interfere in its indoor management.

20. Mention may also be made of S.S. Karanav. Election Commission where a Division Bench of this Court held that Section 29A(9) requiring a registered political party to communicate to ECI any change in its name, head office, office bearers, address or any other material matter does not enjoin any corresponding duty on the ECI to exercise any such power over the political parties."

25. In *Hans Raj (supra)*, the allegation that the election of the Executive Committee of a particular political party was held arbitrarily without adopting democratic procedure, was considered to be of no avail. The Court took note of the decision in the case of *S.S. Karana (supra)* and held that there is no provision in Section 29A or

the manner/method of the election of the office bearers within a political party.

26. In the case of **J. Jayachandran (supra)**, a Division Bench of the Madras High Court examined the provisions of Section 29A(9) of the RP Act and its implications. The Court held that Section 29A(9) requires that once an association or body has been registered as a political party, any changes to its name, head office, office bearers, address, or other relevant details must be communicated to the ECI without undue delay. The Court in paragraph 14 of the said decision held that the ECI has no authority to look into the internal elections of a political party. The relevant paragraph is reproduced as under:-

“14. It is not governed by any of the provisions of the Constitution or even the provisions of the Act of 1951 so as to direct the Election Commission not to approve or recognise the internal elections of the party. Moreover, we have already held that the Election Commission of India has no authority to look into the internal elections of a political party. In view of the above, the judgment in the case of All India Anna Dravida Munnetra Kazhagam v. State Election Commissioner (supra) would have no application as a direction therein in the concluding paragraph was in reference to the elections to local bodies and not a private body.”

27. The petitioner has placed significant reliance on the decision in the case of **Sadiq Ali (supra)** to substantiate his argument that the ECI is not precluded from exercising its plenary powers concerning the allotment of symbols and issuing directions in connection therewith. The petitioner contends that, as established in **Sadiq Ali (supra)**, the ECI possesses the authority to resolve disputes when two rival claimants seek the allotment of a political party's symbol.

28. In **Sadiq Ali (supra)**, the Supreme Court reviewed an order issued under Paragraph 15 of the Symbols Order, wherein, the ECI determined that, for the purpose of symbol allocation in elections, the

political party led by Shri Jagjivan Ram was deemed to be the Indian National Congress and thus, entitled to the symbol of "*Two Bullocks with Yoke*," which was reserved for the Indian National Congress. In the context of the controversy addressed in *Sadiq Ali (supra)*, the Supreme Court has affirmed that an order under Paragraph 15 of the Symbols Order is warranted when the ECI is satisfied, based on information in its possession, that rival factions or groups of a recognized political party claim to represent that party on the symbol reserved. In such instances, the ECI adjudicates the matter by considering all pertinent facts and circumstances, and after providing an opportunity to the representatives of the factions or groups and other relevant individuals, to be heard.

29. Similarly, in *Janata Party v. Election Commission of India*⁶, a Division Bench of this Court has held that there is no corresponding provision that empowers the ECI to resolve disputes between rival factions or groups of an unrecognized political party. This needs to be read in consonance with Clause 15 of the Symbols Order, which specifically grants the ECI the authority to adjudicate disputes between rival factions or groups of a recognized political party. The relevant extract of the said judgment is referred below:-

"20. Unlike Clause 15 of the Election Symbols (Reservation And Allotment) Order, 1968, which empowers ECI to decide disputes between rival sections or groups of a "recognised political party" each of whom claims to be that party, there is no corresponding provision that empowers ECI to decide disputes between rival sections or groups of a "unrecognized political party", like the petitioner."

30. A detailed examination of the scope of adjudication of disputes between rival factions and their competing claims reveals that such an

⁶ 2024 SCC OnLine Del 2642.

obligation to adjudicate is strictly limited to recognized political parties as established in *Umed Singh v. Election Commission of India*⁷. The relevant extract of the said decision reads as under:-

“12. Further, in terms of the settled law, ECI cannot adjudicate the inter se disputes pending between rival sections or groups of a “unrecognized political party”. In Janata Party (supra), this Court has noted that unlike Clause 15 of the Symbols Order, 1968, which empowers ECI to decide disputes between rival sections or groups of a “recognised political party” each of whom claims to be that party, there is no corresponding provision that empowers ECI to decide disputes between rival sections or groups of a “unrecognized political party”, like ABHM.”

31. From the preceding discussion, it is evident that there is a distinct divergence in the scope and nature of the examination and the *quasi-judicial* function carried out by the ECI under Section 29A(9) of the RP Act as compared to the Symbols Order.

32. Although the function of the ECI is *quasi-judicial* in nature, under Section 29A of the RP Act, its role must remain strictly within the boundaries established under the Act. This provision primarily concerns the registration of any association or body of individual citizens of India as a political party. The scope of inquiry under Section 29A is delineated forthwith as:-

- (i) Whether the applicant desirous of being registered as a political party fulfils the necessary requirements as has been stipulated under Section 29A of the Act of 1951 such as the same is signed by the Chief Executing Officer of the association or body (whether such Chief Executing Officer is known as secretary or by any other designation)?

⁷ 2024 SCC OnLine Del 3680.

- (ii) Whether the application is presented to the Secretary of the ECI?
- (iii) Whether such an application contains the name of association or body?
- (iv) Whether it specifies the State in which the association or body has its head office/officer?
- (v) Whether it specifies the address at which official letters and communication should be sent?
- (vi) Whether it specifies the names of the president, secretary, treasurer and other office bearers;
- (vii) Whether it specifies the numerical strength of its members, and if there are categories of its members, the numerical strength of each category;
- (viii) Whether it has local units, if so, at what level?
- (ix) Whether it is represented by any member or members in either House of Parliament or any State Legislature, and if so, whether the number of such member or members has been enclosed along with a copy of memorandum of rules and regulations of the association or body?
- (x) Whether the memorandum contains a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established?
- (xi) Whether it adheres to the principles of socialism, secularism, and democracy, and to uphold the sovereignty, unity, and integrity of India?

33. The ECI is also empowered to call for any additional particulars from the association or body as it deems necessary. After considering all the relevant particulars in its possession, the ECI is required to

issue a necessary order, after providing the representatives of the association or body with a reasonable opportunity to be heard. Furthermore, Section 29A(9) mandates that any change in the association's or body's name, head office, office bearers, address, or any other material matters must be communicated to the ECI without any delay.

34. It is thus evident from Section 29A that the task of the ECI is primarily limited to considering the applications for registration of any association or body of individual citizens as a political party and ensuring that any subsequent material changes are promptly communicated to maintain accurate records. Once a political party is registered, Section 29A does not confer upon the ECI any supervisory jurisdiction to review whether the party adheres to its constitution or to scrutinize the conformity of its internal elections with its constitutional provisions. Such an examination is not contemplated by a plain reading of Section 29A of the RP Act.

35. The Supreme Court, in the case of *Indian National Congress (supra)*, elucidated three exceptions under which the ECI is empowered to review its order regarding the registration of a political party.

36. Firstly, the ECI may review its decision if the registration was secured through fraud or misrepresentation. Secondly, such a review may occur if issues arise under sub-Section (9) of Section 29A of the Act. Thirdly, the ECI can reassess its registration if circumstances warrant, such as when the political party is declared unlawful by the Central Government under the Unlawful Activities (Prevention) Act, 1967, or any other similar legislation, thereby obviating the need for further inquiry.

37. The Court has elaborated in detail that fraud fundamentally undermines any act or order issued by a *quasi-judicial* authority, regardless of whether it possesses an explicit power of review. Furthermore, if a political party alters its nomenclature, association, rules, or regulations in a manner that contravenes the stipulations of Section 29A(5), or if it notifies the ECI that it no longer adheres to the Constitution of India, or the principles of socialism, secularism, and democracy, or fails to uphold the sovereignty, unity, and integrity of India, such changes would necessitate compliance with the provisions of Section 29A(5). In such instances, the foundational basis upon which the political party obtained its registration stands effectively nullified, thereby allowing the ECI, in its ancillary capacity, to revoke the party's registration.

38. This principle reinforces the notion that once recognition is granted by the ECI, a political party's status remains largely inviolable, with cancellation permissible only under narrowly defined exceptions. As delineated by the Supreme Court in *Indian National Congress (supra)*, these exceptions do not encompass the adjudication of internal elections for office bearers. It would be apposite to note here that a dispute between the rival factions of a political party each claiming to be identified as the political party itself and a dispute regarding the mode/manner/method of internal elections for the selection of office bearers of a political party, are completely distinct disputes. The jurisdiction to adjudicate the former emanates from the Symbols Order, however, the latter controversy is not justiciable before the ECI or before this Court under Article 226 of the Constitution.

39. Having traversed the relevant jurisprudence and upon examining the facts of the instant case, the reliefs sought in the present writ petition, are as follows:-

- (i) To declare certain changes communicated by Respondent Nos. 3 to 10 as illegal;
- (ii) To adjudge the letters dated 10.11.2016, 13.11.2019, 18.02.2021, 03.08.2021, 27.09.2021, and others issued by the JDU as in contravention of the JDU constitution;
- (iii) To annul the processes of organizational elections held by the JDU in 2016, 2019, and 2022, alleging them to have been conducted fraudulently;
- (iv) To declare the alleged expulsion of the petitioner as null and void;
- (v) To invalidate all directions and decisions of the JDU from 2016 onwards, along with any similar reliefs.

40. The Court noted the following factual matrix as presented by the ECI. On 02.11.2000, JDU was duly registered under Section 29A of the RP Act. On 30.07.2013, the party notified the ECI regarding the election of *Mr. Sharad Yadav* as its president. Subsequently, on 11.04.2016, it informed the ECI of *Mr. Nitish Kumar's* election as president, which was ratified by the National Council on 23.04.2016. On 13.11.2019, JDU communicated that elections were conducted, and *Mr. Nitish Kumar* was re-elected as president. On 27.09.2021, the national office bearers were reconstituted, with respondent No.6 of the writ petition being appointed as president. On 14.02.2023, respondent No.6 was reappointed as president. However, as per the letter dated 04.01.2024, *Mr. Nitish Kumar* was re-elected as president following respondent No.6's voluntary resignation from the position.

41. It is pertinent to observe that the dispute at hand was initially raised by one faction of JDU under paragraph 15 of the Symbols Order. *Vide* interim order dated 17.11.2017, it was determined that by the test of majority, as affirmed by the Supreme Court in *Sadiq Ali (supra)*, it was in favour of the faction led by *Mr. Nitish Kumar*. This faction demonstrated overwhelming majority support, both within the legislative wing and the National Council of the party, which is the apex organizational body. Consequently, the interim order recognized the group led by *Mr. Nitish Kumar* as the legitimate JDU faction under paragraph 15 of the Symbols Order. As a result, this faction was granted the entitlement to use the reserved symbol, the *Arrow*, as the officially recognized State party in Bihar.

42. It is also crucial to note that the petitioner's objections in the proceedings under the Symbols Order were addressed and rejected in accordance with paragraph 4 of the said order by the ECI, which established that the disputes concerning internal party elections fell outside its purview and should be resolved through appropriate forums or competent courts. Subsequently, the final and comprehensive order dated 25.11.2017 reaffirmed this stance, rejecting the petitioner's objections and recognized the faction led by *Mr. Nitish Kumar* as the legitimate JDU under paragraph 15 of the Symbols Order.

43. The petitioner contends that, according to his interpretation, the party's internal forum has declared the elections conducted by JDU to be invalid, citing the letter dated 20.09.2017, which purportedly designates *Mr. Chhotu Bhai Amarsangh Vasava* as the acting party president. However, this contention lacks merit when considered against the ECI's orders. The Court has noted that the final order dated 25.11.2017 from the ECI recognized *Mr. Nitish Kumar* as the party

president and his faction as the legitimate State party in Bihar. As such, the letter dated 20.09.2017, issued by the rival faction that lost its claim under the Symbols Order, cannot be given credence.

44. The nature of the reliefs sought in the present writ petition, as well as their examination in light of the settled law, fall wholly outside the ambit of the inquiry contemplated under Section 29A of the RP Act. As elucidated in the preceding discussion, the principles established in the case of *Sadiq Ali (supra)* do not support the reliefs sought in this writ petition.

45. In light of the foregoing discussion, the Court finds no compelling reason to interfere in the present writ petition or to grant the relief sought by the petitioner. The petition lacks merit and falls outside the jurisdictional scope of Article 226 of the Constitution of India. Consequently, the writ petition is hereby dismissed along with pending application(s). No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

AUGUST 29, 2024
p'ma/p