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

% **Date of Decision :04.04.2024**

+ **W.P.(C) 3171/2024 and CM APPL.13078/2024**

JANATA PARTY

..... Petitioner

Through: Mr. H. S. Phoolka, Sr. Adv.
alongwith Mr. Sarawat Sarin and Mr.
Surpreet Kaur, Advs.

versus

ELECTION COMMISSION OF INDIA & ANR. Respondents

Through: Mr. Sidhant Kumar, Mr. Om Batra
and Mr. Sarthak Sareen, Advs. for
ECI.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J (Oral)

1. The present petition under Article 226 of the Constitution of India, 1950 has been filed by the petitioner-Janata Party, through Mr. Jai Prakash Bandhu who claims to be the President of the petitioner. The petitioner is a political party that was founded on 23.01.1977. It is a registered-unrecognised political party within the meaning of Section 29A of the Representation of the People Act, 1951. It seeks the following reliefs in the present petition:

“a) Quash and set aside the Impugned letter dated 11.11.2022 and 13.03.2023 and direct the respondent to continue with the president Sh. Jai Prakash Bandhu for the petitioner.

b) Further to direct the respondents to take on record the other office bearer elected for elections held on 17.01.2023 which was communicated by the president to the respondent vide letter dated 19.01.2023 and keep



the record of the office bearers.

c) Direct the respondent to continue with the symbol of the petitioner/ janta party i.e chakrahdhar in the ensuing lok sabha elections.

d) Direct the Respondent to register and take on record the office bearer of the petitioner as informed vide letter dated 19.01.2023.

c) Pass such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. Briefly stated, the facts are that in the 2021 elections of the petitioner, Mr. Jai Prakash Bandhu was elected as the President and Mr. Raj Kapoor Prasad Yadav as the General Secretary of the petitioner. As per Article VI¹ of the Constitution of the petitioner their tenure was for two years i.e., till 20.01.2023. The said development was taken on record by the respondent/ECI as is evident from the letter dated 19.02.2021, which reads as under:

“File No.-56/ 185/2018/PPS-111/852

Date: February 19, 2021

To,

*National President,
"Janata Party",
G /42, East Vinod Nagar,
Delhi- 110091.*

Subject- “Janata Party”, an unrecognized political party registered under section 29A of the Representation of the People Act, 1951-elected members of office bearers – reg.

Sir,

Regarding your letters dated 02.02.2021 and 03.02.2021 on the above subject, I am directed to say that, based on the documents received in the Commissions, the following action has been taken on record:

The tenure will be from 21.1.2021 to 20.1.2023.

¹ Term of Councils

The term of every Council, every Committee and all office bearers thereof, shall ordinarily be two years.



Chairman : Jai Prakash Bandhu

Vice President : Anandirai

Principal General Secretary : Raj Kapoor Prasad Yadav alias
Rajkishore Yadvendu

Treasurer : Abhishek Kumar

The above tenure and election of office bearers depend on the fact that the entire executive body or any executive body member should not have been re-elected or expelled by the political party during the above tenure, and no internal dispute or any court case should have been filed in the party related to the above post.

SD/-

Sincerely,
(Manish Kumar)
Under Secretary”

3. It is stated in the petition that Raj Kapoor Prasad Yadav was suspended from the post of General Secretary and also from the primary membership of the petitioner for an indefinite period for his anti-party activities, after which Raj Kapoor Prasad Yadav started filing frivolous complaints against the petitioner and its top office bearers to the ECI and other bodies. Consequently, the impugned letter dated 11.11.2022 was issued by the ECI, which reads as under:

“No.56/185/2018/PPS-III Dated: 11th November, 2022
To,

Sh. Raj Kapoor Parsad Yadav G/42, Purvi Vinod Nagar, Delhi – 110091.	Sh. Jai Prakash Bandhu, G/42, Purvi Vinod Nagar, Delhi – 110091.
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Subject :- “Janata Party”, a registered un-recognized Political Party,
under Section 29A of R.P. Act, 1951-regarding.

Sir/Madam,

I am directed to state that it seems that there is an internal dispute in the party regarding office bearers. You are, therefore, advised to resolve



internal dispute within the party either amicably or else by the Orders of a competent Court.

In this context, reference is invited to the decision of the Hon'ble Delhi High Court in Chandra Prakash Kaushik Vs. Election Commission of India (LPA No 522 of 2011 decided on 16 March 2012) relating to dispute between two groups of Akhil Bharatiya Hindu Mahasabha, a registered unrecognized party. In the said Judgment, it has been held that the Commission cannot adjudicate in matter of internal disputes of a registered unrecognized party.

Yours faithfully,

*Sd/-
(Dilip Kumar Verma)
Principal Secretary"*

4. The petitioner (through Jai Prakash Bandhu) made representation to the respondent/ECI requesting to set aside the impugned letter dated 11.11.2022 and submitted that there is no such internal dispute within the petitioner. However, ECI is stated to have not taken any action on the said representation.

5. It is further averred in the petition that since the tenure of the erstwhile National Council of the petitioner was upto 20.01.2023, fresh elections of the petitioner were held in 2023.

6. In the 2023 elections of the petitioner, Jai Prakash Bandhu claimed himself to be elected as the President of the petitioner. Jai Prakash Bandhu sent a letter dated 19.01.2023 to the respondent ECI informing the respondent that he has taken charge as president of the petitioner alongwith thirty other newly appointed officer bearers and requested the respondent to register the names of the office bearers of the petitioner on record. However, the ECI is stated to have issued the impugned letter dated 13.03.2023, which reads as under:

"File No.56/08/PPS-III/2023

Date:- 13.03.2023



To,
Shri. Jaiprakash Bandhu,
G/42, East Vinod Nagar,
New Delhi – 110091

Subject – Regarding “Janata Party”, a registered unrecognized political party under section 29A of the representation of the peoples act, 1951.

Sir,

I am directed to inform you regarding captioned subject in relation to your letters dated 31.01.2023 and 06.03.2023 that the commission vide order dated 11.11.2022 had declared internal dispute within “Janata Party” and you have neither produced order of the competent court regarding its adjudication nor produced any settlement agreement whereby it can be confirmed that the internal dispute within the party has come to an end. Hence you refer to the letter dated 11.11.2022 of the commission.

SD/-
Sincerely,
(Kuldeep Kumar Sarsar)
Section officer”

7. Learned counsel for the respondent/ECI has justified the aforesaid communication and has drawn attention to the fact that the ECI has received communications dated 1st February 2022, 30th September 2022, 31st October 2022, 2nd November 2022, 8th November 2022, 10th November 2022, 12th November 2022 and 6th January 2023, whereby rival claim/s have been made to the post of President of the petitioner party.

8. It is submitted that vide letter 31.10.2022 Mr. Raj Kapoor communicated to ECI the expulsion of Jai Prakash Bandhu from the petitioner along with a resolution passed in support thereof dated 08.08.2022. The said resolution also stated that elections of the petitioner were to be held on 01.11.2022. It is submitted that vide letter dated 02.11.2022, Mr. Raj Kapoor claimed to be elected as the President in the said elections held on 01.11.2022. It is further submitted that vide e-mail



dated 10.11.2022, one Mr. Navneet Chaturvedi also claimed to be the President of the petitioner elected on 28.11.2021 and disputed the claim of both Jai Prakash Bandhu and Raj Kapoor. It is emphasised that it was in this context the first impugned letter dated 11.11.2022 came to be issued by the respondent.

9. It is also submitted that claim of Jai Prakash Bandhu of having been elected as the President of petitioner in the purported election held on 17.01.2023 is disputed by Mr. Navneet Chaturvedi in a Civil Suit [CS SCJ 228/2023] pending before the Ld. Civil Judge, Tis Hazari Court, in which Mr. Navneet Chaturvedi claims to be the President of the petitioner. Consequently, the second impugned letter dated 13.03.2023 was issued by the respondent.

10. Learned counsel for the respondent submitted that ECI has no role to play in adjudication of the disputes between rival factions of a registered-unrecognised political party, such as the petitioner. It is submitted that ECI cannot adjudicate the validity of internal election of the petitioner. It is further submitted that it is for the person seeking to act as the officer bearer, in this case Mr. Jai Prakash Bandhu, who is required to obtain an order of the Civil Court, interlocutory or final to be recorded as the office bearer by the respondent. To support these submissions, reliance has been placed on the decisions of Division Bench of this Court in *Swami Chakrapani v. Election Commission of India*², *Chandra Prakash Kaushik v. Election Commission of India*³ and *Hans Raj Jain v. Election Commission of*

² 2021 SCC OnLine Del 4432

³ (2012) 129 DRJ 265 (DB) : 2012:DHC:1852-DB



India⁴.

11. Learned senior counsel for the petitioner submitted that the stand adopted by the ECI in the impugned letters contradicts the fundamental tenets of democracy, specifically the principle of majority rule. The ECI's position, whereby they suspend the functioning of office bearers in an unrecognized political party upon receipt of a letter raising dispute until the office bearer obtains a court declaration, is not only unlawful but also unreasonably impairs the functioning of the concerned political party. It is submitted that office bearers recognized by the ECI before a dispute arose are entitled to continue their functions until a disputant obtains a court order challenging their authority. It is submitted that the ECI's interpretation would render the functioning of every political party unfeasible. Democratically elected office bearers, recognized by the ECI, risk losing their power if a dissatisfied minority or individual lodges a complaint with the ECI. Such an interpretation is both unlawful and irrational. Lastly, it is submitted that the ECI's reliance on the judgment of ***Swami Chakrapani*** (supra) and ***Chandra Prakash Kaushik*** (supra) is misguided. In that case, there was a longstanding dispute with regard to the election, and the individual claiming the presidency was not recorded as the president in records maintained by the ECI. It is submitted that, in the present case, there were no disputes regarding office bearers in 2021, as evidenced by the letter dated 19.02.2021, attached as Annexure P-5 to the writ petition. Mr. Jai Prakash Bandhu was duly accepted and declared as the president/chairman of the party by the ECI; disputes arose subsequently.

⁴ 2015 SCC OnLine Del 8173



12. I have perused the record and heard learned counsel for the parties. I find merit in the contention of learned counsel for the respondent that the present case is covered by the dicta laid down in the judgment rendered by Division Benches of this court in **Chandra Prakash Kaushik** (supra) and **Swami Chakrapani** (supra). The reasons are enumerated hereunder.

13. In **Chandra Prakash Kaushik** (supra), a Division Bench of this Court has *inter alia* held that ECI has no jurisdiction to adjudicate rival claims of registered-unrecognized political parties and in case any person wants to exercise rights as President/office bearer, it is for him/her to seek a declaration qua the same; he/she cannot be allowed to hold office or to exercise powers thereof in the absence of a valid adjudication by a Court of law. Relevant extracts of the said judgment are as under:

“6. Neither is there any provision in the Act nor have any of the counsels controverted that the respondent No. 1 ECI has no jurisdiction or mechanism to adjudicate rival claims of unrecognized political parties registered with it....

9....We are further of the view that in the face of such challenges, it is for the person who is wanting to exercise rights as President/office bearer to seek a declaration to such office and he cannot be allowed to hold office or to exercise powers thereof merely for the reason of the others having not approached the Court of law. We may however clarify that we have so concluded in view of there being no unequivocal document before us of the election of the respondent No. 2 Swami Chakrapani as office bearer of ABHM in accordance with its constitution. Rather what is before us is, material to show that there have been disputes since the year 2004 as to the internal management of ABHM and which do not appear to have been resolved at any point of time. Merely because the persons who had filed the suit chose not to pursue the same cannot confer any legitimacy to the respondent No. 2 Swami Chakrapani when a large number of other persons concerned with ABHM are continuing to dispute the claim of respondent No. 2 Swami Chakrapani. We have also perused the written statement filed by the respondent No. 2 Swami Chakrapani in the suit aforesaid and from which also we are unable to cull out any clarity on the matter. Moreover the said suit was filed in the year 2007 while what was



for consideration in the year 2010 was the election of the respondent No. 2 for the period 2010-12

10. ABHM as aforesaid is not a recognized political party. Though the term “recognized political party” is not defined in the Act but the Explanation to Section 52 thereof provides that “recognized political party” means a political party recognized by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The said Order vide Clause 15 thereof empowers the ECI, when there are rival sections or groups of a political party each of whom claims to be that party, to after taking into account all the available facts and circumstances and hearing representatives of the sections or groups, decide which of such rival section or group is that recognized political party; such decision of ECI is made binding on all such rival sections or groups. However the said Clause does not apply to unrecognized political parties as ABHM is ECI was/is thus not empowered to in the face of rival claims of respondent no. 2 Swami Chakrapani and others take any decision as to whose claim was correct. That being the position, ECI could not have on 11.11.2010 recognized respondent no. 2 Swami Chakrapani as the President/office bearer of ABHM. We are thus of the view that the decision dated 11.11.2010 of ECI of preferring the claim of respondent no. 2 Swami Chakrapani over that of others was clearly beyond the powers/jurisdiction of ECI. Axiomatically the corrective action of ECI on 14.01.2011 is found to be in accordance with law and thus cannot be faulted with. We may mention that the Supreme Court in Janata Dal (Samajwadi) v. Election Commission of India (1996) 1 SCC 235 has held the ECI empowered to rescind its orders even in the absence of any specific power therefor. It was held that Section 21 of the General Clauses Act, 1897 applies. ECI was thus empowered to, on 14.01.2011 rescind the earlier order dated 11.11.2010 which as aforesaid was beyond its powers/jurisdiction.

11. We are further of the view that in the absence of ECI being empowered to decide such inter se disputes of an unrecognized political party, the decision dated 11.11.2010 was an administrative decision, not taken in exercise of any quasi judicial powers. The Supreme Court in R.R. Verma Vs. UOI (1980) 3 SCC 402, has held that decisions in administrative matters cannot be hidebound by the rules and restrictions of judicial procedure.

14. Review petition bearing no. 403/2012 preferred against the judgment of **Chandra Prakash Kaushik** (supra) was dismissed by the Division Bench vide order dated 13.07.2012, in which it was held as under:



“2.The only question of law which is decided is to the effect that since ABHM is an unrecognized political party any internal dispute in the said party is not to be decided by the Election Commission of India (ECI). This position is made abundantly clear in para 11 of the judgement. If Swami Chakrapani claims that he continues to be the President and further faction within the said political party which is disputed the said claim of Shri Chakrapani i.e. the inter se internal disputes has to be resolved by Civil Court. Because of this reason we made it clear that if Swami Chakrapani claims himself to be the President it is for him to seek a declaration to this effect. However in case Swami Chakrapani feels that his claim to the Presidentship of ABHM is beyond the pale, it may be for the faction to approach Court of Law.

3. We reiterate that in so far as the subject matter of writ petition or LPA is concerned, the same was limited to the powers of the ECI where it was held that ECI did not have any power to exercise any quasi-judicial powers and decide these issues pertaining to unrecognized political party. In support of this conclusion we had referred the judgment of Supreme Court in R.R. Verma v. UOI (1980) 3 SCC 402 wherein it is held that decision in administrative matters cannot be hidebound by the rules and restrictions of judicial procedure.”

15. SLP bearing no. 9116-9118/2013 filed against the said judgment of **Chandra Prakash Kaushik** (supra) was dismissed *in limine* on 06.05.2013

16. In **Swami Chakrapani** (supra), a Division Bench of this court has reiterated that it is not for the ECI to resolve the inter-se disputes in a registered-unrecognised political party and the only remedy available to a person who wants to exercise his or her rights as President/office bearer, is to take recourse to filing a declaratory suit or any other appropriate civil remedy. Relevant extracts of the said judgment are as under:

“(iv) Challenge to the orders of the Division Bench was unsuccessful and the SLP was dismissed in limine on 06.05.2013. Reading of the order of the Division Bench leads to an inevitable conclusion that the only remedy available to the Appellant is to seek a declaration in a civil suit with regard to his claim to be a National President of ABHM. The Division Bench clearly observed that it was beyond the powers and jurisdiction of ECI to recognize the Appellant as the President, more so, in view of the inter se disputes, where several rival persons were claiming to be the



party President. It was also observed that notwithstanding the dismissal of the civil suit for non-prosecution, filed by one of the rival groups, Appellant could not be recognized as the National President, in the absence of any material to show that he was the elected President and especially in face of the material on record, showing internal disputes in the Management since 2004. The Division Bench also held that in case any person wanted to exercise his or her rights as President/office bearer, it was for him to seek a declaration to that effect and he cannot be allowed to hold office merely for the reason that the others have not approached the Court of Law.

(v) It may also be useful at this stage to allude to the order of the Division Bench dated 13.07.2012, passed in the Review Petition, wherein it was held that the inter se disputes have to be resolved in a civil suit and if the Appellant claimed himself to be the President, it was for him to seek a declaration to that effect. It was reiterated that the ECI does not have the power to exercise any quasi-judicial powers and decide the inter se disputes pertaining to unrecognized political party.

(vi) *The learned Single Judge in the impugned judgment has taken note of the orders passed by the Division Bench and noted that despite the said orders, the Appellant has yet again raised the same contentions. Having so observed, the learned Single Judge, in our view, rightly rejected the plea raised by the Appellant on the ground that once the said plea was rejected by the Division Bench and the order was upheld by Hon'ble the Supreme Court, the only remedy available to the Appellant was to seek a declaration, in case he desires to stake a claim to the presidency of ABHM.*

(vii) *Moreover, as brought out by the Interveners, in the applications being CM Appls.34412/2020 and 11804/2021, there are two suits presently pending bearing Civil Suit No. 344/2020 and Civil Suit No. 147/2021 before the Trial Courts at Delhi and the inter se disputes between different groups are yet to be resolved. It is also pointed out that that two criminal complaints, bearing Nos. 18831/2016 and 20918/2016 which have a nexus with the present issue are also pending.*

(viii) *In view of the aforesaid aspects of the matter and the judgments aforementioned, this Court disagrees with the Appellant that his claim of being the National President is undisputed and that there are no rival claims to the said position. As held by the Division Bench, it is not for the ECI to resolve the said disputes and in case the Appellant desires, he is at liberty to take recourse to filing a declaratory suit or any other appropriate civil remedy to claim the National presidency of ABHM.*



Thus, in our view, no direction can be issued to the ECI by this Court to recognize the Appellant as a National President of ABHM, in the wake of disputes pending in that regard and no infirmity can be found by the impugned judgment passed by the learned Single Judge.”

17. SLP bearing no. 21194/2021 filed against the judgment of **Swami Chakrapani** (supra) was dismissed *in limine* on 07.02.2022.

18. In **Hans Raj Jain** (supra), a Division Bench of this court has held that Section 29A(9) of the Representation of the People Act 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.

19. In the present case, the alleged status of Jai Prakash Bandhu as President of the petitioner is disputed by various rival factions of the petitioner. As noticed hereinabove, a civil suit filed by Mr. Navneet Chaturvedi [CS SCJ 228/2023] is still pending in which the said Navneet Chaturvedi claims to be the President of the petitioner. In the said suit the application under Order VII Rule 11 of CPC filed by Jai Prakash Bandhu stands dismissed. Moreover, vide letter 31.10.2022 Mr. Raj Kapoor communicated to ECI that Jai Prakash Bandhu had been expelled from the party and enclosed a resolution dated 08.08.2022 to substantiate the same. The said resolution also stated that elections of the petitioner were to be held on 01.11.2022. Vide letter dated 02.11.2022, Mr. Raj Kapoor claimed to be elected as the President of the party in the said elections purportedly held on 01.11.2022. As held by a Division Bench of this Court in the aforesaid cases, it is not for the ECI to resolve these disputes. No direction can be issued to the ECI by this court to recognize the petitioner as a President of



petitioner, in the wake of disputes pending in that regard.

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.

21. Reliance placed by the petitioner on the letter dated 19.02.2021 is misplaced. The said letter itself notes that the tenure of Jai Prakash Bandhu as the president/chairman and other office bearers of the petitioner was till 20.01.2023 and not beyond that; further, the said letter states as under:

“The above tenure and election of office bearers depend on the fact that the entire executive body or any executive body member should not have been re-elected or expelled by the political party during the above tenure, and no internal dispute or any court case should have been filed in the party related to the above post.”

22. Thus, recognition of office bearers by the ECI was subject to certain conditions. As already stated above, internal disputes exist in the petitioner in relation to the post of president and other officer bearers. In the said conspectus, the action of ECI in issuing the impugned letters cannot be faulted.

23. In view of the aforesaid, the prayer/s in the present petition cannot be acceded to in the light of the law laid down in **Swami Chakrapani** (supra) and **Chandra Prakash Kaushik** (supra). Accordingly, the present petition, alongwith pending application/s, is dismissed.

APRIL 4, 2024/hg

SACHIN DATTA, J