



\$~64

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

%

Date of Decision: 01.04.2024+ **W.P.(C) 4666/2024**

VIDUTHALAI CHIRUTHAIGAL KATCHI Petitioner
 Through: Mr. Rajiv Nayyar, Sr. Adv., Mr. Dayan Krishnan, Sr. Adv. along with Mr. Rishi Agrawala, Ms. Devika Mohan, Mr. Ankit Banati, Mr. Parminder Singh, Mr. Prabhav Bahuguna, Mr. Abhay Agnihotri and Mr. Harsh Mittal, Adv.

versus

ELECTION COMMISSION OF INDIA Respondent
 Through: Mr. Ankit Agarwal, SC along with Mr. Ashish Shukla and Mr. Atul Raj, Adv. for ECI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

CM APPL.19105/2024 (Exemption from filing certified copies of annexures) and **CM APPL.19106/2024** (Exemption from filing typed copies of dim annexures)

Allowed, subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 4666/2024 and CM APPL.19104/2024 (Stay)

1. The present petition has been filed by the petitioner seeking setting aside of the impugned letter dated 27.03.2024 bearing No. 56/Misc/2024/PPS-II issued by the respondent and to allot the "POT"



symbol to the petitioner to contest the 2024 General Elections.

2. Prior to passing of the aforesaid order dated 27.03.2024, the respondent/ECI *vide* its letter dated 21.03.2024 had rejected the petitioner's request for allotment of a common symbol. The said letter was assailed *vide* Writ Petition (civil) No.4529/2024 before this court, which was disposed of *vide* order dated 27.03.2024, *inter alia*, with the following directions:-

“2. Learned senior counsel for the petitioner contends that a bare perusal of the aforesaid communication shows that the same is in contravention of relevant provisions of Election Symbols (Reservation and Allotment) Order, 1968, particularly Clause 10B(B) read with Explanation Nos.(i) and (ii) thereof.

3. After some hearing, learned standing counsel for the respondent submits that the aforesaid communication dated 21.03.2024 be treated as withdrawn. It is directed accordingly.

4. Learned standing counsel for the respondent further submits that a fresh order shall be passed taking into account the pleas raised by the petitioner in the present petition. He submits that a speaking order shall be passed during the course of the day itself and shall be duly communicated to the petitioner.

5. Learned senior counsel for the petitioner submits that since today is the last date of filing nomination in the State of Tamil Nadu, the petitioner shall be filing its nomination/s under the "POT" symbol. This court has not expressed any opinion as regards the permissibility thereof.

6. The present petition along with the pending application stands disposed of in the above terms.”

3. In the aftermath of the aforesaid order dated 27.03.2024 being passed by this Court, the impugned letter dated 27.03.2024 has been issued by the respondent, whereby the ECI has rejected the petitioner's application seeking “POT” as a common symbol under para 10B of the Election Symbols (Reservation and Allotment) Order, 1968.

4. The impugned letter dated 27.03.2024 reads as under:-



“ORDER

Subject: - In compliance with the Hon'ble High Court of Delhi 's Order dated 27.03.2024 in Writ Petition No. 4529 of 2024 in the matter of Viduthalai Chiruthaigal Katchi for allotment of Common Symbol under Para 1 OB of the Election Symbols (Reservation & Allotment) Order, 1968.

Whereas, Viduthalai Chiruthaigal Katchi (hereinafter referred to as 'the party ') is an unrecognized Political Party, registered with the Commission under Section 29A of Representation of the People Act, 1951; and

2. Whereas, the party had applied for common symbol under Para 10B of the Election Symbols (Reservation & Allotment) Order, 1968 (hereinafter referred to as 'Symbols Order') on 20.02.2024 in connection with the General Election to the House of the People 2024 in Parliamentary Constituencies of Tamil Nadu, Karnataka, Andhra Pradesh, Telangana and Kerala; and

3. Whereas, it has been found that

a) The application was incomplete as the party has not furnished the list of Parliamentary Constituencies where the party wishes to field its candidates and also the Notarized ' Declaration' to the effect that it has authorized office bearers as per the record of the Commission and it has submitted Contribution Statement & Annual Audit Report for the last three Financial Years & Election Expenditure Statements for the last two elections which the party has contested;

b) On the date of application, as per the records of the Commission, there were no authorized office bearer of the party;

c) The Office of Chief Electoral Officer - Tamil Nadu has furnished a report stating that the party has not furnished the Contribution Statement and Annual Audit Report for the last three Financial Years;

d) The Office of Chief Electoral Officer - Tamil Nadu has furnished a report stating that the party has not furnished the Election Expenditure Statements for the last two elections which the party has contested; and

4. Whereas, para (ii) of Explanation to Para 10B of the Election Symbols (Reservation & Allotment) Order, 1968 states that:- "A party that has availed of the concession on two occasions shall, however, be eligible for the concession in any subsequent general election subject to the condition that on the previous occasion when the party availed of the facility, the



votes polled by all the contesting candidates set up by the party at the general election in the State concerned was not less than one percent of the total valid votes polled in that State. "; and

5. Whereas, the party has availed this facility on two earlier occasions-

i. During the simultaneous General Election to the Legislative Assemblies of Tamil Nadu and Puducherry where the party was allotted symbol 'Ring' as its Common Symbol;

ii. During the General Election to the House of People 2019 where the party was allotted two symbols namely ' Pot' and ' Stool' in states of Andhra Pradesh and Telangana; and

6. Whereas, in the elections contested (mentioned in para 5 above) by the party, it has not secured the minimum requirement of 1 % of the total valid votes polled in the mentioned State(s) to avail the facility for the third or more time (as mentioned in Para 4 above); and

7. Whereas, the Commission vide its letter no. 56/Symbol/2024/PPS-II/Vol-XV, dated 21.03 .2024 rejected the Party's request for allotment of common symbol as the party has already availed this facility during two general elections and has not secured minimum required 1 % of the total valid votes polled in the States for availing the facility for third (or more) time; and

8. Whereas, even if the party would have resolved the shortcomings of the application as mentioned in Para 3 above, the party would still not have been eligible for allotment of common symbol in view of the position explained in Para 4, 5 & 6 above.

9. Now, therefore, the application of Viduthalai Chiruthaigal Katchi dated 20.02.2024, seeking allotment of common symbol during the General Election to the House of the People 2024 in parliamentary constituencies of Tamil Nadu, Karnataka, Andhra Pradesh, Telangana and Kerala, has been considered and is being rejected under provisions of Para 10B of Symbols Order.”

5. It can be seen that apart from the technical grounds referred to in para 3 of the aforesaid order, the substantive ground for rejecting the petitioner's application seeking common election symbol for the upcoming General Elections is that the petitioner was not eligible in terms of para (ii) of the



explanation to para 10B (B) of the Election Symbols (Reservation and Allotment) Order, 1968.

6. Para 5 and 6 of the impugned letter specifically records that the petitioner has availed the concession contemplated under para 10B of the Election Symbols (Reservation and Allotment) Order, 1968 and pursuant thereto, it did not fulfil the pre-requisite to avail the facility and concession for another occasion, inasmuch as in the previous elections, it had not secured 1% of the total valid votes polled, which is the minimum requirement prescribed under explanation (ii) to para 10B (B) of the Election Symbols (Reservation and Allotment) Order, 1968.

7. Learned senior counsel for the petitioner has contended that the impugned order is contrary to the scheme of Election Symbols (Reservation and Allotment) Order, 1968, inasmuch as the common symbol which is allotted thereunder is for the concerned state alone. Attention is drawn to para 10B (B) (i) of the Election Symbols (Reservation and Allotment) Order, 1968, which reads as under:

“(i) The party set up candidates at least in a minimum of two parliamentary constituencies in the State, in which it seeks allotment of a common symbol of its candidates”.

8. On the basis of the above, it is contended that in Kerala, Telangana and Karnataka, petitioner has not previously sought any common symbol for any election under para 10B of the Election Symbols (Reservation and Allotment) Order, 1968 and therefore, the petitioner’s application for the “POT” symbol for the said States was in the nature of a fresh application, which was liable to be allowed without fail. Further, it is submitted that in respect of Andhra Pradesh, the petitioner had applied for a common symbol



for the 2019 elections. It is submitted that since the petitioner had applied only once for the State of Andhra Pradesh, the petitioner is entitled to be allotted the “POT” symbol for the upcoming General Elections in Andhra Pradesh without fail.

9. In respect of Tamil Nadu, it is submitted that although the petitioner’s application under para 10B (B) stood rejected, the issue has become moot inasmuch as the returning officer on 30.03.2024 has allotted the “POT” symbol under para 12 of the Election Symbols (Reservation and Allotment) Order, 1968.

10. *Per contra*, learned counsel for the respondent/Election Commission of India has submitted that the present petition is replete with concealment of the material facts/misrepresentation. It is submitted that the present petition does not disclose that the petitioner’s request for allotment of a “ring” symbol in 2014 Election to the House of People stood rejected by the respondent on 05.04.2014. Further, it is contended that the petitioner has concealed that the petitioner was allotted a common symbol under para 10B of the Election Symbols (Reservation and Allotment) Order, 1968 for 2016 State Election of Tamil Nadu and Puducherry. Further, it is submitted that although the petitioner was allotted a “POT” symbol for 2000 Elections for the House of People in the State of Tamil Nadu and Puducherry, the petitioner failed to set up two candidates and contested only from one seat *i.e.*, Chidambaram constituency, and the requirement of the setting up two candidates under sub-clause (i) of para 10B (B) of the Election Symbols (Reservation and Allotment) Order, 1968 was not fulfilled. Further, it has been submitted that the petitioner has concealed that it was allotted a common symbol “stool” in the year 2019 to the House of People in the State



of Andhra Pradesh and for the purpose of 2019 Elections to the State Legislature of Andhra Pradesh.

11. It is contended that the petitioner has also concealed that it had applied for a common symbol for contesting 2021 elections of the State Legislature of Tamil Nadu which came to be rejected on 11.03.2021 on the very same ground on which the present request of the petitioner has been rejected.

12. On the interpretation of the Election Symbols (Reservation and Allotment) Order, 1968, it is submitted that explanation (i) to para 10B (B) clearly contemplates that the concession shall be available to a party at any two elections. It is submitted that the petitioner having availed the concession two times, shall be eligible for availing the concession on third/subsequent occasion only if it fulfils the conditions mentioned in explanation (ii) *i.e.*, it has secured 1% of the total valid votes polled in the State on the earlier occasion when the party sought concession.

13. It is contended that the petitioner received only 0.77% of valid votes polled in 2016 Tamil Nadu State Legislative Assembly. In the 2019 Tamil Nadu and Andhra Pradesh Lok Sabha Elections, the petitioner is stated to have failed to set up the minimum two candidates. Further, the petitioner is stated to have received only 0.01% of the total valid votes polled in 2019 Andhra Pradesh State Legislative Assembly elections.

14. Hence, it is contended that the petitioner having already availed the concession two times and having failed to fulfil the criteria for availing the concession for the third time, the concession has been rightly denied to the petitioner. Further, it is contended that the application of the petitioner is defective inasmuch as the petitioner in its application has himself stated that



the petitioner intends to set up only 1 candidate in 2024 Lok Sabha elections for Kerala and therefore, the requirement of condition mentioned in sub-clause (i) of paragraph 10B has not been fulfilled. Furthermore, as per sub-clause (vii) of paragraph 10B (B), it is incumbent upon the petitioner to specify the serial numbers and the names of the constituencies where the party is setting up candidates, which the petitioner has failed to do. The petitioner is stated to have simply mentioned the numerical number of constituencies it intends to contest in, without complying with the mandatory provisions of the Symbol Order.

15. Finally, with respect to the maintainability, it is stated that there is a constitutional bar prescribed under Article 329(b) of the Constitution of India, wherein it is stated that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

16. I have considered the submissions of the respective counsel for the parties. I am not in agreement with the interpretation sought to be accorded by the petitioner to para 10B (B) of the Election Symbols (Reservation and Allotment) Order, 1968. The reasons are enumerated as under:-

(i) Explanation (i) to 10B (B) of the Election Symbols (Reservation and Allotment) Order, 1968 expressly clarifies as under:-

“(i)The concession of allotment of common symbol to the candidates of a registered unrecognized party under this paragraph shall be available to a party at any two general elections to the House of People, or any two general elections to a State Legislative Assembly or at one general election to the House of the People and the other at a general election to a State Legislative Assembly, as the party may choose.”



Thus, the concession is available to a political party at:

- any two General Elections to the House of People;
- any two General Elections to a State Legislative Assembly;
- any one General Elections to the House of People and the other at a General Election to State Legislative Elections as the party may choose.

In the case of the petitioner, it has admittedly availed the aforesaid concession in 2016 for the purpose of Tamil Nadu and Puducherry State Legislative Assembly Elections and then again for the purpose of 2019 Lok Sabha Elections where the petitioner sought to set up candidate/s in Tamil Nadu and also in Andhra Pradesh 2019 State Legislative Assembly Elections (which are stated to have been held simultaneously with the Lok Sabha Election in that year). Thus, the petitioner has clearly availed the concession on two previous occasions. Therefore, for the purpose of availing the concession for another occasion, it must comply with the requirement of Explanation (ii) of para 10B (B) of the Election Symbols (Reservation and Allotment) Order, 1968. The petitioner does not seriously dispute that it does not fulfil the said requirement.

(ii) The contention of the learned senior counsel for the petitioner that the dispensation/concession under para 10B (B) of the Election Symbols (Reservation and Allotment) Order, 1968, operates state-wise is belied by Explanation (i). Even otherwise, it would be incongruous to accept the interpretation put forth by the petitioner. According to the petitioner, the concession can be availed on every occasion when the petitioner decides to put up candidates in States where it has not hitherto contested, regardless of whether it has availed the concession in the previous Lok Sabha/Legislative



Assembly Elections in different States. This interpretation is inconsistent with the opening words of para 10B, which, *inter-alia*, contemplates grant of concession for the purpose of election to the “House of People”; it does not create any State wise dispensation for the purpose of election to the “House of People”.

(iii) There is merit in the contention of the learned counsel for the respondent that the dispensation created under para 10B (B) is to enable the petitioner or other unrecognised political parties to avail the same in any two successive elections, and for any subsequent (third) occasion, the petitioner can avail the concession only after it fulfils the eligibility condition mentioned in Explanation (ii).

It is true that for the purpose of seeking fulfilment of conditions referred to in explanation (ii), the performance of the concerned party is seen in the State where it has set up a candidate. However, the same does not imply that it is open for any party such as the petitioner to avail the concession multiple times on repeated occasions, even though it has been unable to comply with the requirements set out in explanation (ii), in the guise of putting up candidates in States where it has previously not contested, when it has already availed the concession on two previous occasions.

(iv) Importantly, while dealing with the request made by the petitioner seeking concession of common symbol for the purpose of contesting 2021 Elections to the State Legislature of Tamil Nadu, the Election Commission of India, *vide* order dated 11.03.2021, rejected the application of the petitioner *inter alia* on the following ground:

“As per the provisions of Para 10B of the Symbol Order, 1968, a



political party can avail the facility of allotment of common symbol on a maximum of two occasions. Your party has already availed this facility in General Election(s) to the Legislative Assemblies of Tamil Nadu and Puducherry, 2016 and General Election(s) to the House of the People, 2019, General Election(s) to the Legislative Assembly of Andhra Pradesh, 2019”

The aforesaid reasoning was not assailed by the petitioner and the same acquired finality. The same reasoning will also squarely apply to the petitioner’s identical request for the purpose of upcoming 2024 General Elections. It would be unwarranted to take a different view in the matter in derogation of the aforesaid decision dated 11.03.2021.

(v) There is merit in the contention of the learned counsel for the respondent that the petitioner in its application has himself stated that the petitioner intends to set up only 1 candidate in 2024 Lok Sabha elections for Kerala and therefore, the requirement of condition mentioned in sub-clause (i) of paragraph 10B (B) has not been fulfilled. Furthermore, as per sub clause (vii) of paragraph 10B (B), it is incumbent upon the petitioner to specify the serial numbers and the names of the constituencies where the party is setting up candidates, which the petitioner has failed to do. The petitioner has simply mentioned the numerical number of constituencies it intends to contest without complying with the mandatory provisions of the Symbol Order.

17. It is also rightly contended by learned counsel for the Respondent that since the election process for the upcoming election for the year 2024 has already been set in motion, it is too late in the day to interfere with the same and the remedy of the petitioner lies under Section 100 of the Representation of the People Act, 1951.

18. For all the above reasons, I find no merit in the present petition and



the same is, accordingly, dismissed. Pending application/s also stand dismissed.

SACHIN DATTA, J

APRIL 1, 2024/AT