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

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W.P.(C) 4830/2024

LOKESH KUMAR

..... Petitioner

Through: Mr. Hargyan Singh Gahlot and Mr.
Manoj Kumar Badriwal, Advocates

versus

GOVT OF NCT OF DELHI AND ORS

..... Respondent

Through: Mr. Aman Singh and Ms. Harshita
Nathrani, Advocates for Mr. Sameer
Vashisht, ASC (Civil), GNCTD
Mr. Neeraj, SPC, Mr. Vedansh
Anand, Government Pleader, Mr.
Rudra Paliwal, Mr. Mahesh Kumar
Rathore and Mr. Sanjay Pal,
Advocates for UOI

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Date of Decision: 03rd April, 2024

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J: (ORAL)

1. Present petition has been filed under Article 226 of the Constitution of India, seeking the direction of this Court to declare Rule 15 and Rule 24 (Impugned Rules) of the Delhi Municipal Corporation (Election of Councillors) Rules, 2012 ('Rules of 2012') as ultra vires the Constitution and consequently strike off Part-I of the Nomination Paper contained in Form No.2 of the Rules of 2012.



2. The Petitioner also seeks a direction to the State Election Commission of Delhi ('SEC') i.e., Respondent No.3 to stop putting the reserved symbols of political parties on the list of contesting candidates.

3. Petitioner seeks a further direction to the SEC to conduct election of Municipal Corporation of Delhi ('MCD') without the reserved symbols, which allegedly violates Fundamental Rights of the Petitioner enshrined under Article 14 of the Constitution of India.

4. As per record, the Petitioner herein contested the General Election to MCD-2022 from Ward No. 150, Green Park as an independent candidate and lost the said election.

Arguments of Petitioner

5. Learned counsel for the Petitioner states that the impugned Rules impinge upon conduct of the free and fair municipal elections. He states that the impugned Rules violate Articles 243-ZA and 243-K of the Constitution.

5.1. He states that the impugned Rules aim to create a class of candidates which is not defined or recognized under Part IX or IX-A of the Constitution. He states that the presence of reserved symbols of political party on the list of contesting candidates is arbitrary as the same takes away the level playing field for all the candidates, and thus is violative of Article 14 of the Constitution.

5.2. He states that reserved symbols are not used for the Gram Panchayat elections, which are governed by Part-IX of the Constitution as they are meant for grass-root level democracy and similarly, reserved symbols should not be used for municipal elections held under Part-IX A of the Constitution.

5.3. He states that the right available to political parties to contest general elections of the country is recognized by virtue of Section 29A of The



Representation of People Act, 1951 ('Act of 1951'). He states that there is no such corresponding provision in the Delhi Municipal Corporation Act, 1957 ('DMC Act'). He states that in the absence of a corresponding provision in DMC Act akin to Section 29A of Act of 1951, the Rules of 2012 cannot grant recognition to use of the name and reserved symbols of National parties as well as State parties in the elections of MCD.

Analysis and Findings

6. We have heard the learned counsel for the Petitioner and perused the record.

Recognition of Political Party

7. Existence and functioning of a political party in India was recognized in the Constitution only in 1985, in the form of 10th Schedule inserted by the Constitution (Fifty-second Amendment) Act, 1985, which made political defections a ground for disqualification for membership of Parliament and State Legislatures.

8. The Election Commission of India has recognised the existence of political parties since the First General Elections in India. Though, there was no provision either in the Act of 1951 or the Rules thereunder for recognition of political parties, the orders granting recognition to Political parties either as National or State Party were issued by the Election Commission in exercise of its powers under Article 324 of the Constitution¹.

8.1 Subsequently, in 1968, a provision for recognition of political parties was made in the Elections Symbols (Reservation and Allotment) Order 1968 ('Symbol Order 1968'). Para 2(1)(h) of the said Symbol Order defined a

¹ VS Rama Devi and SK Mendiratta, How India Votes, Election Laws, Practice and Procedure, Second Edn., page 553.



political party and stipulated a detailed provision in Para 3 of the said Order for registration of a political party. This Symbol Order, 1968 continued to regulate the registration of political parties upto 1989.

8.2 The constitutional validity of the Symbol Order 1968 was challenged before the Supreme Court in *Kanhiya Lal Omar v. RK Trivedi & Ors*² and a specific challenge was raised therein, to the recognition and registration of political parties by the Election Commission of India under Para 3 of the Symbol Order. The said challenge was repelled and with respect to the constitutional validity of the Symbol Order, Supreme Court held as under:

“10. It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be it a donkey or an elephant, does give rise to a unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis — in other words, “on systematized differences and unresolved conflicts”. That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-second Amendment) Act, 1985 there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition,

² AIR 1986 SC 111.



registration etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.

(Emphasis supplied)

9. The legislature thereafter felt a need to further regularise the political parties under a statutory framework and consequently, the Act of 1951 was amended by the Parliament and in pursuance, thereof, a new Part-IVA was inserted in Act of 1951, which was brought into force with effect from 15th June, 1989. In this Part-IVA, Section 29A was enacted containing provisions for registration of a political party. Thus, the registration of political parties between 31st August, 1968 and 15th June, 1989 was done by the Election Commission of India under the Symbol Order, 1968, and, from 15th June, 1989 onwards, all political parties are presently registered by the Election Commission under Section 29A of the Act of 1951³.

10. The aforementioned facts show that the right of the political parties to participate and contest the elections has been recognized by the Election Commission of India, independent of Section 29A of the Act of 1951 and even prior to its incorporation in the Act of 1951.

Recognition of Political Parties in State Election

11. The power of superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, elections of MCD are vested in the SEC under Article 243ZA of the Constitution. This Constitutional power of the SEC is also statutorily recognized under Section 7 of the DMC Act.

12. The Rules of 2012 have been enacted by Lieutenant Governor (LG) of National Capital Territory of Delhi in exercise of its powers conferred under

³ VS Rama Devi and SK Mendiratta, How India Votes, Election Laws, Practice and Procedure, Second Edn., pages 558 and 559.



Section 31 of the DMC Act and read with Ministry of Home Affairs Notification No. S.O. 3159 dated the 09th October, 1966. Section 31 of the DMC Act enables the Central Government to make rules for the purpose of holding elections of councilors. The impugned Rules 15 and 24 have been framed in exercise of the said power under Section 31 of the DMC Act.

13. The SEC exercising its power under Section 7 of the DMC Act read with Rule 15 of the Rules of 2012, has issued Municipal Corporation of Delhi Election Symbols (Reservation and Allotment) Order, 2022 (Symbol Order 2022) for the elections held in the year 2022 and granted recognition at Para 3 therein to the National and State Parties already recognised by the Election Commission of India.

14. Even in the absence of the impugned Rule 15, the power of SEC to grant recognition to political parties, like Election Commission of India can be traced to its powers under Article 243ZA of the Constitution and Section 7 of the DMC Act.

15. In light of the law laid down by Supreme Court in *Kanhiya Lal (supra)* the recognition granted by SEC to the political parties to contest municipal elections is within its jurisdiction and not ultra vires. There is no bar under Article 243ZA or 243R on political parties from contesting municipal elections.

Relevance of Election Symbol

16. The backbone of the Indian democracy is the people itself, who go on to choose their representative by way of direct election. At the time when first General Election of India was held, a vast majority of electors consisted of people who were illiterate and could not even read the name of the contesting candidates; therefore, after deliberations and after weighing



different options, a system of use of ‘election symbols’ for the contesting candidates was put in place to help the electors to exercise their franchise in favour of the candidate of their choice⁴. The Supreme Court while testing the constitutional *vires* of Para 15 of the Symbols Order, 1968, deliberated upon the genesis of introduction of symbols system in the elections of India in the judgment of *Sadiq Ali & Anr. v. Election Commission of India*⁵. The relevant paragraph of the said judgment reads as under:

“21. Before discussing the scope and ambit of para 15, it may be pertinent to find out the reasons which led to the introduction of symbols. It is well known that overwhelming majority of the electorate are illiterate. It was realized that in view of the handicap of illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of the election law of India. In some countries, details in the form of letters of alphabet or numbers are added against the name of each candidate while in others, resort is made to symbols or emblems. The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice. Although the purpose which accounts for the origin of symbols was of a limited character, the symbol of each political party with the passage of time acquired a great value because the bulk of the electorate associated the political party at the time of elections with its symbol. ...”

(Emphasis supplied)

17. Therefore, the adoption of the Symbols by the SEC in the Municipal Elections is reasonable and not arbitrary.

18. The substratum of challenge in the present writ petition is to the presence of reserved symbols of political parties on the list of contesting

⁴ VS Rama Devi and SK Mendiratta, How India Votes, Election Laws, Practice and Procedure, Second Edn., pages 548 and 549.



candidates, in the election of the MCD. The National and State Parties as well as their reserved symbols have been recognised under the impugned Rules. The Petitioner has challenged the *vires* of the impugned Rules on the ground that the presence of the reserved symbol of political parties upsets the level playing field for the independent candidate, such as the Petitioner herein.

19. In this regard, we may note that this issue of disruption of level playing field in MCD elections was raised before a Coordinate Bench in the case of *Alka Ghalot v. GNCTD & Ors.*⁶. The said petition was filed for seeking a direction to the State Election Commission (SEC) to remove the election symbols from the ballot paper, including the Electronic Voting Machine (EVM), for the election to the MCD. The petitioner therein similarly contended that the presence of reserved symbols of recognized political parties on the ballot paper/EVM, undermines the object of the local self-governance. It was further contended that display of election symbols gives an unfair advantage to the candidates of a political party as against the independent candidates, who are allotted a new election symbol just fifteen days prior to the poll. The Division Bench dismissed the said petition observing that it is not shown from the extant law and Rules that any different process of allotment of symbols is followed in the National or the State Election, which would prove the violation of Article 14 of the Constitution. The relevant paragraph of the said order reads as under:

“9. *Though undoubtedly the Municipality is an institute of self-governance, however, we have not been shown any prohibition on the National or the States parties contesting Municipal elections. Article 243R*

⁵ AIR 1972 SC 187.

⁶ WP(C) 1189/2021.



of the Constitution of India does not also provide for any such restriction, nor can any restriction be read in it.

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11. In *Subramanian Swamy (supra)*, the Supreme Court again reiterated the relevance and importance of an Election Symbol, in the following words:- “34. A symbol is not a tangible thing nor does it generate any wealth, it is only the insignia which is associated with the particular political party so as to help the millions of illiterate voters to properly exercise their right to franchise in favour of the candidate of their choice belonging to a particular party. In the election process it is not merely the individual candidate’s personality or his identity that weighs with the voters. It is undoubtedly a very relevant factor but along with it the voter also can and does vote in favour of the party. **It is under such circumstances that the symbol becomes relevant and important.**”

12. Though the level of literacy has increased in the State of Delhi, and the presence of a photographs of the candidates on the EVM may also aid in empowering the illiterate to properly exercise their right of franchise in favour of the candidate of their choice, in our view, the election symbols still play an important part in the election process in the country. **In our view, in the absence of a clear prohibition, it is not for this Court to guide the policy or frame a law in this regard.**

13. **Article 243ZA vests the power and duty to conduct elections to the Municipalities on the State Election Commission. State Legislature has been empowered to make provisions with respect to all matters relating to, or in connection with, elections to the Municipalities. Therefore, it is for these institutions to decide, subject to the provisions of the Constitution, the Rules for conduct of a free and fair election to the Municipality, including use of election symbols.**

(Emphasis supplied)

20. In view of the said judgment, the plea of violation of Article 14 of Constitution does not survive for consideration.

21. The SEC in the Symbol Order 2022 has granted recognition to the National and State Parties already recognized by the Election Commission of India and provided for allotment of Symbols to contesting candidates. We are of the considered opinion that the Symbol Order 2022 issued by the SEC



in exercise of its powers under Article 243ZA of the Constitution, Section 7 of the DMC Act and Rule 15 of the Rules of 2012 is not ultra vires.

22. We accordingly, do not find any merit in the present petition and the same is dismissed.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

APRIL 3, 2024/hp/sk