

REPORTABLE

IN THE SUPREME COURT OF INDIA

EXTRAORDINARY ORIGINAL JURISDICTION

WRIT PETITION (C) No.532 OF 2008

DESIYA MURPOKKU DRAVIDA
KAZHAGAM & ANR.

... PETITIONERS

Vs.

THE ELECTION COMMISSION OF INDIA ...

RESPONDENT

WITH

W.P. (C) NOS.132, 315, 422, 426, 444, 447, 454 & 463
OF 2009, S.L.P. (C) NOS.23494 & 7379-80 OF 2009 AND
W.P. (C) NOS.111 & 117 OF 2011.

O R D E R

ALTAMAS KABIR, J.

1. The common challenge in these eleven Writ Petitions and three Special Leave Petitions is to the provisions of Paragraph 6A(i) & (ii), Paragraph 6B(A) (ii), Paragraph 9(a) and (b), Paragraphs 10A, 11, 12(1)(c) and Paragraph 12(3)(a) of the Election Symbols (Reservation and Allotment) Order, 1968, as amended from time to time. However, on account of paucity of time in the light of the election process being set into motion in the State of Tamil Nadu, we decided to focus our attention to the possibility of making a temporary arrangement till the Writ Petitions and the Special Leave Petitions could be decided finally.

2. Article 324 of the Constitution of India vests the superintendence, direction and control of the preparation of the electoral rolls for and the conduct of elections in the Election Commission.

Since we shall be referring to the said provision hereinafter, the same is extracted hereinbelow :

"324. Superintendence, direction and control of elections to be vested in an Election Commission

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice President held under this Constitution shall be vested in a Commission"

3. Section 29A of the Representation of the People Act, 1951, which comes under Part IVA thereof, provides for the registration of associations and bodies as political parties with the Election Commission. Since the same will also have an impact on what is indicated hereinbelow, the provisions of Section 29A(1) are extracted below :

"29A. Registration with the Election Commission of associations and bodies as political parties. – (1) Any association or body of individual citizens of India

calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act."

4. Since the facts in all these matters are more or less similar, we are treating W.P.(C)No.532 of 2008, filed by Desiya Murpokku Dravida Kazhagam, as the lead case in this group of matters. Incidentally, it may be indicated that SLP(C) Nos.7379-80 of 2009 have been filed by the Election Commission of India for quashing of the order of the High Court of Andhra Pradesh directing the Election Commission to consider allotment of a common symbol to the Lok Satta Party and other similarly situated unrecognized registered political parties. Similarly, W.P.(C)No.463 of 2009 and SLP(C)No.23494 of 2009 have been filed by certain registered unrecognized political parties for a direction upon the Election Commission of India to allot common election symbols to their

candidates in the ensuing elections to the State Legislative Assembly. One of the States in question is the State of Tamil Nadu, in respect whereof Writ Petition (C) No.532 of 2008 has been filed by Desiya Murpokku Dravida Kazhagam, hereinafter referred to as "DMDK", & Anr. We have been informed that the date for notifying the election programme in the State of Tamil Nadu has been fixed as 16th April, 2011 and the filing of nomination papers for the election is said to be scheduled between 19th and 26th April, 2011. All other subsequent steps are to be taken thereafter.

5. Appearing in support of the Writ Petition, Mr. K.K. Venugopal, learned Senior Advocate, submitted that the Petitioner No.1 is a registered unrecognized political party and the Petitioner No.2 is a registered voter in the State of Tamil Nadu. It was submitted that the DMDK contested 232 out of 234 constituencies in the 2006 Assembly

Elections in the State of Tamil Nadu, which were the first elections which the party had contested within 8 months of its formation, and, although, it was an unrecognized political party, all its candidates were allotted the "Nagara" symbol in 224 out of 232 constituencies. In respect of the remaining 8 constituencies, the party candidates were allotted the "Bell" symbol in 6 constituencies and the "Ring" symbol in the remaining 2 constituencies. Mr. Venugopal submitted that the party had secured approximately 8.33% of the total valid votes polled in the State of Tamil Nadu, and it ultimately emerged as the third largest party in the State in terms of votes secured, without any electoral alliance with any other party or formation. Mr. Venugopal also submitted that the President of the Petitioner Party, Shri Vijaya Kant, contested the election from the Virudhachalam Assembly under the "Nagara" symbol and won the seat by a margin of 13,797 votes. Learned counsel

submitted that despite the large number of votes that had been cast in its favour during the Assembly Elections, the DMDK Party was able to win only one seat in the Assembly Elections and that is the Virudhachalam Assembly Constituency mentioned hereinabove.

6. Mr. Venugopal also submitted that it was the grievance of the Petitioner Party that inspite of its reasonable performance in the State Assembly elections, its prayer for recognition as a State Party had been denied by the Election Commission of India in view of Paragraph 6B of the Election Symbols (Reservation and Allotment) Order, 1968, hereinafter referred to as the "Election Symbols Order, 1968".

7. In order to appreciate the submissions advanced by Mr. Venugopal, it is necessary to refer to some of the relevant provisions of the Election Symbols Order, 1968. The said Order was made by the

Election Commission of India in exercise of the powers conferred on it by Article 324 of the Constitution read with Section 29A of the Representation of the People Act, 1951, hereinafter referred to as the "1951 Act", and Rules 5 and 10 of the Conduct of Election Rules, 1961, hereinafter referred to as the "1961 Rules". The said Order was promulgated in order to provide for specification, reservation, choice and allotment of symbols at elections in Parliamentary and Assembly constituencies, for the recognition of political parties in relation thereto and for matters connected therewith. Paragraph 4 of the Order provides for allotment of symbols and stipulates that in every contested election a symbol has to be allotted to a contesting candidate in accordance with the provisions of the Order and different symbols are to be allotted to different contesting candidates at an election in the same constituency.

8. Paragraph 5 of the aforesaid Order provides for the classification of symbols and divides symbols into two categories, namely, "reserved" and "free". It indicates that a reserved symbol is a symbol which is reserved for a recognized political party for exclusive allotment to contesting candidates set up by that party, whereas a free symbol is a symbol other than a reserved symbol. At this point, it may also be indicated that the Election Symbols Order, 1968, underwent certain changes in 2000 and 2005. Prior to its amendment, Paragraph 6, as it stood when the Order was promulgated in 1968, *inter alia*, provides that for the classification of symbols, political parties were to be categorized either as "recognized" political parties or "unrecognized" political parties and that a political party would be listed as a recognized political party in a State, **if and only if** either of the conditions specified in Clause (A) or the conditions in Clause (B) were fulfilled by

that party and not otherwise. Clause (A) makes it imperative that such a political party would have had to be engaged in political activity for a continuous period of five years; and had at the General Election in that State to the House of the People or to the Legislative Assembly, for the time being in existence and functioning, returned at least one member to the House of the People for every 25 members of that House or any fraction of that number of that State; or at least one member to the Legislative Assembly of that State for every 30 members of that Assembly or any fraction of that number. Paragraph 6 was subsequently expanded into Paragraphs 6, 6A, 6B and 6C by Notification No.56 dated 1st December, 2000. Paragraph 6A was again revised on 14th May, 2005, and set down certain conditions for recognition of a political party as a State Party. Paragraph 6A, as amended in 2005, provides as follows :

"6A. Conditions for recognition as a State Party - A political party shall be eligible for recognition as a State party in a State, if, and only if, any of the following conditions is fulfilled:

(i) At the last general election to the Legislative Assembly of the State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least two members to the Legislative Assembly of that State at such general election; or

(ii) At the last general election to the House of the People from that State, the candidates set up by the party have secured not less than six percent of the total valid votes polled in the State; and, in addition, the party has returned at least one member to the House of the People from that State at such general election; or

(iii) At the last general election to the Legislative Assembly of the State, the party has won at least three percent of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least three seats in the Assembly, whichever is more; or

(iv) At the last general election to the House of the People from the State, the party has returned at least one member to the House of the People for every 25

members or any fraction thereof allotted to that State."

As has been indicated hereinabove, the major challenge in these Special Leave Petitions and Writ Petitions is to the validity of this provision.

19. Paragraphs 6A and 6B set out conditions for the recognition of a registered unrecognized party as a National Party and a State Party and Paragraph 6C deals with conditions for continued recognition as a National or State Party. The outcome of the Election Symbols Order, 1968, is that certain norms have been laid down in order to minimize the number of parties contesting an election since many persons forming themselves into a political party tend to take advantage of the other liberal provisions of the Order.

20. Mr. Venugopal urged that even prior to the Notification of 1st December, 2000, certain other amendments had been effected to the Election

Symbols Order, 1968, in 1997 and 1999, whereby Paragraphs 10 and 10A were substituted. For instance, certain concessions are provided that if a political party, which is recognized as a State Party in some State or States, sets up a candidate at an election in a constituency in any other State or Union Territory in which it is not a recognized party, then such candidate may, to the exclusion of other candidates of the constituency, be allotted the symbol reserved for that party in that State or States, in which it is recognized as a State Party, notwithstanding that such symbol is not specified in the list of "free" symbols for such other State or Union Territory, upon fulfillment of further conditions, namely,

"(a) that an application is made to the Commission by the said party for exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment.

Provided that nothing contained in this paragraph shall apply to a candidate set up by a State Party at an election in any constituency in a State in which that party is not a State Party and where the same symbol is already reserved for some other State Party in that State."

21. Paragraph 10A makes similar concessions in respect of candidates set up by an unrecognized party which was earlier recognized as a National or State Party. Mr. Venugopal submitted that Paragraph 6A, as amended, was highly arbitrary and negatively impacted upon the functioning and development of a multi-party democracy. Learned counsel submitted that the right to cast a vote allows a voter to make an intelligent choice, but

unfortunately he is often unable to identify the political party to which a candidate belongs in addition to identifying a candidate. According to Mr. Venugopal, it is the percentage of the votes obtained at the previous elections which alone should be the criteria for recognition of a State Political Party and not the number of seats such party wins. Mr. Venugopal showed us several instances where even with a lower percentage of votes than other parties, a political party has come to power and has formed the Government. Mr. Venugopal urged that rather than the number of seats won, the number of votes polled by a State Political Party should really be the yardstick for recognition of a State Political Party.

22. It was submitted that the interim arrangement which had been made by the order dated 27th March, 2009, could be continued for the present General Elections as well.

23. Adopting Mr. Venugopal's submissions, Mr. Mukul Rohtagi, learned Senior Advocate, appearing for the Writ Petitioner, Kongunadu Munnetra Kazhagam, in Writ Petition (C) No.315 of 2009, contended that in the 2009 Parliamentary Elections the party had contested 12 out of 39 Parliamentary seats and "Gas Cylinder" as a symbol was allotted to all twelve candidates. In fact, the identity of candidates set up by the party came to be equated with the "Gas Cylinder" symbol and not as a free symbol, so much so that candidates who were provided with "Gas Cylinder" as an election symbol in other constituencies where the party had not put up any candidate, benefitted and had polled a large number of votes which they had never expected to get.

24. All the other learned counsel appearing for the other Writ Petitioners and Special Leave Petitioners, while adopting Mr. Venugopal's submissions, in one voice urged that the candidates

to be put up by them as registered but unrecognised political parties may be provided with a common symbol in the constituencies in which they contest and such symbol may not be made available to other candidates as a free symbol. It was urged, as had been urged by Mr. Rohtagi, that after an election, voters come to associate the candidate of a party with the symbol under which he had fought the earlier election.

25. In reply, it was contended by Mr. Ashok Desai, learned Senior Advocate, appearing for the Election Commission that there were only a limited number of election symbols available as free symbols to the Election Commission and if all the registered unrecognized parties were to be accommodated by an interim arrangement in direct contrast to the Election Symbols Order, 1968, framed by the Election Commission, it would really amount to achieving something by an interim order which it

could not achieve under the existing laws. Mr. Desai submitted that in its wisdom, the Election Commission had made certain Orders which, in its view, would contain the vice of fragmentation of seats leading to ultimate uncertainty in the House. Mr. Desai contended that a great deal of thought and deliberation had gone into the making of the amendments in 2000 and 2005 in the Election Symbols Order, 1968, which ought not to be diluted for the purpose of making an interim arrangement as had been done earlier.

26. As we have indicated hereinbefore, the major challenge in these Writ Petitions and the Special Leave Petitions is to the validity of paragraph 6A of the Election Symbols Order, 1968, as it exists today. Keeping the same in mind, we have looked into the un-amended as well as the amended provisions of the Election Symbols Order, 1968. As on date, paragraph 6B as notified under

Notification No.56/2000/JUD-III dated 1st December, 2000, for the purpose of recognition of a State Party is in force and it provides that in order to be recognized as a State Party, a Political Party, other than a National Party, shall be treated as a recognized State Party in a State or States, **if and only if,** either the candidates set up by it at the last General Elections to the House of People or to the Legislative Assembly of the State concerned had secured not less than six per cent of the total valid votes polled in that State at the General Elections and in addition, it has returned at least two members to the Legislative Assembly at the State in the last General Elections to that Assembly. Of course, the said notification is the subject matter of challenge in the present proceedings and is in existence by way of delegated legislation. If interim arrangement made earlier is to be continued it would be directly in violation of the said provisions. Such an

arrangement cannot be made unless the operation of the impugned provision is stayed. At this stage we are not inclined to stay the impugned provision.

27. When the interim arrangements were made on 27th March, 2009, the registered unrecognized political parties before the Court were only three in number, whereas presently many others have joined the bandwagon. What we are required to consider at this stage is whether despite the above, any prejudice would be caused to any of the stakeholders in the election process, if such prayer was allowed. It would certainly be to the advantage of the registered unrecognized political parties if they were able to put up candidates on a common symbol. On the other hand, if all registered unrecognized political parties were to be provided with a common symbol, *prima facie*, it would render the provisions of the Election Symbols Order, 1968, completely

unworkable and destroy the very object it seeks to achieve.

28. Having regard to the aforesaid two possibilities, we are not inclined to make any interim arrangement similar to that made on an earlier occasion. The earlier interim arrangement was possible on account of the lesser number of parties, but in the present circumstances, the same will not be workable in view of the number of candidates who are likely to contest the elections and are required to be provided with free symbols in each constituency.

29. However, while we are not inclined to make any interim arrangement regarding the allotment of election symbols for the forthcoming General Assembly Elections, we make it clear that this is only a tentative view, which shall not, in any way, affect the final outcome of the pending Writ Petitions and Special Leave Petitions. We also

make it clear that this order will not prevent the Election Commission from considering any representation that may be made by the political parties and from accommodating their prayer for a common symbol, to the extent practically possible.

30. Let these eleven Writ Petitions and three Special Leave Petitions be listed for final disposal on 3rd May, 2011.

.....J.
(ALTAMAS KABIR)

.....J.
(CYRIAC JOSEPH)

New Delhi
Dated: 16.03.2011