

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

+ **W.P.(C) 2409/2017**

Reserved on: 24.03.2017

Date of decision: 29.03.2017

IN THE MATTER OF:
SWARAJ INDIA

..... Petitioner

Through: Mr. Shanti Bhushan, Senior Advocate
with Mr. Prashant Bhushan, Mr. P.S. Sharda,
Mr. Shakti Bardhan and Ms. Amiy Shukla,
Advocates

versus

STATE ELECTION COMMISSION AND ANR Respondents

Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal, Advocate
and Mr. O.P. Arora (Consultant) for R-1/SEC.
Mr. Sanjoy Ghose, ASC for R-2/GNCTD.

CORAM
HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The petitioner herein, Swaraj India, a registered unrecognized political party, had originally filed the present petition praying *inter alia* for issuing directions to the respondent No.1/State Election Commission, NCT of Delhi, (in short 'SEC') and the respondent No.2/Govt. of NCT of Delhi

(in short 'GNCTD') to modify/quash Para 4(d) of the Municipal Corporation of Delhi Election Symbols (Reservation and Allotment) Order, 2016 and the orders dated 21.02.2017 and 07.03.2017 passed by the respondent No.1/SEC, rejecting its request for granting a common symbol in the forthcoming MCD Elections, 2017 to candidates nominated by it. The second relief is for directions to the respondent No.1/SEC to allot a common symbol to all the candidates nominated by the petitioner for the MCD Elections, 2017. Lastly, a restraint order has been prayed for against the respondents, restraining them from notifying the schedule for the MCD Elections, 2017.

2. When the petition was listed for admission on 15.3.2017, Mr. Pushkarna, learned Standing Counsel for the respondent No.1/SEC had appeared and stated that he had not been furnished an advance copy of the paper book. An advance copy of the petition was served only in the office of the Standing Counsel (Civil), Govt. of NCT of Delhi. Counsel for the petitioner was directed to furnish a copy of the paper book to the counsel for the respondent No.1/SEC in the course of the day and the matter was adjourned to 20.03.2017. On 20.03.2017, learned counsel for the respondent No.1/SEC had stated that by the date the present petition was listed for admission on 15.3.2017, SEC had already notified the new Symbols Order, 2017 on 14.03.2017, which has not been assailed by the petitioner. In view of the aforesaid development, counsel for the petitioner had sought time to file an application to amend the writ petition.

3. Vide order dated 21.03.2017, the amendment application filed by the petitioner was allowed and the amended writ petition was taken on record. In the amended petition, prayer (1) was modified to assail Para 4(d) of the Municipal Corporation of Delhi Election Symbols (Reservation and Allotment) Order 2017 (hereinafter referred to as “Delhi Symbols Order, 2017”). Rest of the reliefs were as before. Due to the urgent nature of the relief prayed for in the petition, learned counsels for the respondent No.1/SEC and the respondent No.2/GNCTD were directed to obtain necessary and complete instructions for addressing final arguments on the petition. Thereafter, extensive arguments were advanced by learned counsels over 22.3.2017, 23.3.2017 and 24.3.2017.

4. The relevant facts germane for deciding the present petition are as follows. The petitioner was formed as a political party on 02.10.2016. On 10.10.2016, the petitioner applied to the Election Commission of India (ECI) for registration. On 14.02.2017, the petitioner made a representation to the respondent No.1/SEC that it proposed to contest in the MCD Elections, 2017 and nominate candidates in all the 272 seats, for which a common symbol may be granted to the party, from out of the free symbols available with it. The said representation was turned down by the respondent No.1/SEC vide order dated 21.02.2017. On 27.02.2017, the ECI registered the petitioner as a registered unrecognized political party. On the very next day, i.e., on 28.2.2017, the petitioner submitted a review application before the respondent No.1/SEC, seeking review of its earlier

order dated 21.02.2017, which was once again declined vide order dated 07.03.2017.

5. On 06.03.2017, MCD Elections, 2017 were notified by the respondent No.1/SEC. On 14.3.2017, a press note was issued by the respondent No.1/SEC announcing the elections. The present petition came to be filed by the petitioner on 10.3.2017 and it was listed in court for admission on 15.3.2017. Subsequently, a Notification dated 22.03.2017 was issued by the respondent No.1/SEC, declaring the schedule for conducting the elections in all the three wards of the Municipal Corporations of Delhi, namely, North Delhi Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation, to elect councillors. The said Notification lays down the following schedule for conducting the elections:-

<i>“(a) Issue of notification of election</i>	<i>27.03.2017 (Monday)</i>
<i>(b) Last date of filing nominations</i>	<i>03.04.2017 (Monday)</i>
<i>(c) Date for scrutiny of nominations</i>	<i>05.04.2017 (Wednesday)</i>
<i>(d) Last date for withdrawal of candidatures</i>	<i>08.04.2017 (Saturday)</i>
<i>(e) Date of poll, if necessary</i>	<i>23.04.2017 (Sunday)</i>
<i>(f) Counting of votes for the elections</i>	<i>26.04.2017 (Wednesday)</i>
<i>(g) Completion of election by</i>	<i>05.05.2017 (Friday)”</i>

6. The *leitmotif* of the arguments advanced by Mr. Shanti Bhushan, learned Senior Advocate appearing for the petitioner is that non-allotment of a common symbol to the petitioner, which is a registered unrecognized political party, is in violation of Article 14 of the Constitution of India and the Delhi Symbols Order, 2017 is arbitrary and discriminatory because it

denies a level playing field to registered unrecognized political parties vis-à-vis registered recognized political parties and therefore, Para 4(d) of the said Order is liable to be quashed/modified being ultra vires the Statute viz, Section 7 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as “DMC Act”) and the Rules made therein viz, Rule 15 of the Delhi Municipal Corporation (Election of Councillors) Rules, 2012 (hereinafter referred to as “DMC Rules”). He submitted that as it stands, Rule 15 is silent on the issue of granting a common symbol to a registered unrecognized party and since it leaves the field open, it is for the respondent No.1/SEC to fill up the vacuum to avoid any discrimination between the two categories of parties, namely, registered recognized political parties and registered unrecognized political parties. He contended that having a common symbol would afford the same opportunity to a registered unrecognized political party as is available to a registered recognized political party for a “*unified and coordinated publicity and campaign across all wards, lower cost of campaign etc.*”.

7. To fortify the above submission, reference was made to a Press Note dated 17.10.2011 issued by the ECI wherein taking note of the fact that registered unrecognized political parties were aggrieved by non-allotment of common symbols to their candidates and they had approached the Supreme Court raising such a grievance, ECI had on its own decided to modify the Election Symbols (Reservation and Allotment) Order, 1968 (in short “Symbols Order, 1968”) and had made certain additional provisions vide Notification dated 16.09.2011, to provide for a one time concession of

allotment of common symbols to candidates sponsored by registered unrecognized political parties during a general election, subject to certain stipulations contained therein.

8. Learned counsel pointed out that based on the above decision, vide letter dated 30.07.2013, the ECI had granted a concession to the then newly registered unrecognized political parties, Aam Aadmi Party and Rashtriya Bahujan Hitay Party to use common symbols under the Symbols Order, 1968 and taking a cue from ECI, some other State Election Commissions including the State Election Commissions of Kerala, West Bengal, Haryana, Tripura and Gujarat have also allowed registered unrecognized political parties to select one of the free symbols available, as a common symbol for all the candidates nominated by such a party. To substantiate the said submission, reference was made to the Kerala Symbol Order notified on 24.06.2015, the West Bengal Symbol Order notified on 11.04.2012, the Haryana Symbol Order notified on 12.03.2014, the Tripura Symbol Order notified on 23.01.2016 and the Gujarat Symbol Order notified on 08.02.2012.

9. The attention of the Court was also drawn to an order dated 6.11.2015 passed by a Division Bench of the Gujarat High Court, in the case of Jagte Raho Party vs. Gujarat State Election Commission and Ors. (Spl. Civil Application No.18840/2015), where the petitioner therein, a registered unrecognized political party had proposed to field its candidates in the local body elections in the State of Gujarat and had sought allotment

of a common symbol to all its candidates across the State. Relying on an earlier decision on identical circumstances, the Gujarat High Court had allowed the captioned petition, by referring to Para 10 of the Gujarat Election Symbol Order, 2012 that lays down a detailed procedure for allocating symbols to registered recognized parties, registered unrecognized political parties and independent candidates and gives preferential rights to candidates of a registered unrecognized political party over independent candidates for purposes of allocating symbols out of the unreserved symbols.

10. *Per contra*, Mr. Pushkarna, learned counsel for the respondent No.1/SEC opposed the present petition and referred to the scheme of the Statute relating to election laws in India. He alluded to Article 243ZA of the Constitution of India that vests in the State Election Commission, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections to the Municipalities and more particularly Article 243ZA(2), that stipulates that the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities. He submitted that for the State of Delhi, it is Section 7 of the DMC Act that deals with elections to a Corporation and vests all powers of superintendence, direction and control of preparation of electoral rolls etc. in the respondent No.1/SEC. Section 31 of the DMC Act empowers the Central Government to make rules to regulate elections of councillors and all connected matters relating to preparation, correction, publication of electoral rolls, appointment of

Returning Officers, nomination/withdrawal of candidates, procedure in contested and uncontested elections, the date, time and place for the poll and other related matters. Reposed in Sub-section (1)(k) of Section 31 are the residuary powers in respect of any other matter relating to electoral rolls or elections or election disputes in respect whereof the Act does not make any provision or makes insufficient provision and empowers the Central Government to make such rules.

11. It was contended on behalf of the respondent No.1 that unlike the Election Commission of India, which by virtue of the plenary powers conferred on it under Article 324 of the Constitution of India read with Rules 5 and 10 of the Conduct of Election Rules, 1961, has notified the Symbols Order, 1968 that is amended from time to time, respondent No.1/SEC is governed by Section 31 of the DMC Act and Rule 15 of the DMC Rules. The said provisions contemplate that for the purpose of conducting elections to the Municipal Corporation of Delhi, respondent No.1/SEC shall recognize National Parties and State Parties for the NCT of Delhi, as recognized by the ECI, under Section 29A of the Representation of the People Act, 1951 and the rules and procedure made therein, and they would be permitted to adopt symbols that are reserved for them by the ECI.

12. It was argued that the privilege of reserving a particular election symbol is only extended to those National and State parties for NCT of Delhi that are recognized by the ECI, subject to their fulfilling certain conditions stipulated in Rule 15 of the DMC Rules. However,

unrecognized registered political parties like the petitioner herein and independent candidates cannot seek parity with the former category of parties for grant of a common symbol to them as neither the DMC Act, nor do the DMC Rules contemplate recognition or derecognition of political parties and the said power is vested in and exercised only by the ECI and not the respondent No.1/SEC. Therefore, candidates nominated by registered unrecognized political parties are treated as independent candidates by the respondent No.1/SEC for all practical purposes including allotment of free symbols and they are not given any preference over independent candidates.

13. Learned counsel for the respondent No.1/SEC canvassed that even if one proceeds on an assumption that Article 243ZA of the Constitution of India is evocative of the plenary powers vested in the State Election Commission and it is empowered to amend the Delhi Symbols Order, 2017, Article 243ZA(2) reposes the power of making provisions with respect to all matters relating to or in connection with elections to the Municipalities, in the State Legislature and the said provision does not permit respondent No.1/SEC to exercise any such power. It was next contended that even if it is assumed that the respondent No.1/SEC is empowered to amend the Delhi Symbols Order, 2017, it does not intend to do so because presently, it is satisfied with the conditions stipulated by the ECI in the Symbols Order, 1968, which classifies political parties, lays down the conditions for recognition of National and State level parties and

sets out the criteria for allocating symbols to contesting candidates and political parties.

14. Adverting to the one time concession given by the ECI that has agreed to allot a common symbol to candidates nominated by registered unrecognized political parties, learned counsel for the respondent No.1/SCE contended that the said decision cannot be foisted on the State Election Commission, which is an independent constitutional body enjoying the same powers in terms of Article 243K and Article 23ZA(1) of the Constitution of India, as are vested in the Election Commission of India under Article 324 of the Constitution of India. He pointed out that as against five State Election Commissions referred to by the petitioner, who have issued orders for giving preference of granting a common symbol to registered unrecognized political parties under the local statute, there are several other State Election Commissions in the country that have elected not to do so. Even in the exceptions shown by the petitioner, several enactments that have been mentioned in the Notifications issued by the concerned State Election Commissions of the five States, that empower them to extend the preference of granting a common symbol to registered unrecognized political parties. However, in the case of the respondent No.1/SEC, Rule 15 of the DMC Rules does not postulate allotment of a common symbol to registered unrecognized political parties and there are no other statutory provisions that can be exercised by the respondent No.1/SEC to extend them the said privilege.

15. Learned counsel argued that even if the petitioner suggests that modification of Para 4(d) of the Delhi Symbols Orders, 2017 is an administrative action, there are several steps that are required to be taken by the SEC in advance for undertaking any such modification, which includes calling upon all National and State level political parties that are registered and recognized by the ECI for consultation, apart from 27 parties (registered and unregistered) that had approached the respondent No.1/SEC recently with a request for grant of a common symbol which was turned down just as the petitioner herein was. It was submitted that on the website of the Election Commission of India, there is a list of 1866 registered unrecognized parties and all the above are stakeholders who would have to be involved in the consultative process and only thereafter, can the respondent No.1/SEC arrive at any conclusion. Further, the ramifications of Article 239AA of the Constitution of India that lays down special provisions in respect of the National Capital Territory of Delhi, would also have to be analyzed by the respondent No.1/SEC and the concurrence of the State Government obtained before considering modification of the Delhi Symbols Order, 2017 and laying down the quantum of concession that can be extended to registered unrecognized political parties, for grant of a common symbol.

16. It has further been stated on behalf of the respondent No.1/SEC that given the fact that the MCD Elections, 2017 are imminent, it is too late in the day for it to amend the Delhi Symbols Order, 2017 and consider granting any concession to the petitioner herein when identical relief

sought by 27 other applicants has already been rejected on the same ground.

17. Disclosing the seriatim of events leading to the declaration of the MCD Elections, 2017, learned counsel for the respondent submitted that on 18.9.2015, the Lt. Governor, GNCTD had delegated the power of delimitation of wards in NCT of Delhi, to the respondent No.1/SEC; vide Notification dated 1.10.2015, the powers of the respondent No.1/SEC, its functions and procedures prescribed for Delimitation of wards in NCT of Delhi, were defined; on 5.4.2016, the Delhi Symbols Order, 2016 was notified by the respondent No.1/SEC; on 2.10.2016, the petitioner was formed as a party and it had applied to the ECI on 10.10.2016, for registration. On 13.1.2017, respondent No.1/SEC notified the Delimitation Order, defining the boundaries and extent alongwith serial numbers of each ward in the NCT of Delhi. On 06.2.2017, respondent No.1/SEC notified the Reservation Order, defining the wards reserved for Scheduled Caste candidates, women candidates etc. It was emphasized that in all this duration, the petitioner did not take any steps to approach the court to challenge the Delhi Symbols Order, 2017. The first representation submitted by the petitioner for grant of a common symbol was on 14.2.2017 and the same was rejected by the respondent No.1/SEC on 21.2.2017. Instead of challenging the said decision before the Court, the petitioner sought a review of the order dated 21.2.2017, by submitting yet another representation on 1.3.2017, which was also declined on 7.3.2017. Only thereafter was the present petition filed. Arguing that the Court

should not intervene when the elections are imminent, learned counsel cited the decision of the Supreme Court in the case of Anurag Narain Singh & Anr. vs. State of U.P. & Anr., reported at **1996 (6) SCC 303**.

18. In rebuttal, Mr. Shanti Bhushan, learned Senior Advocate appearing for the petitioner had reiterated his submission that if the Rules are silent, then the respondent No.1/SEC is well empowered to fill up the vacuum by issuing an administrative order thereby modifying Para 4 (d) the Delhi Symbols Order, 2017 and ensuring that the petitioner is provided a level playing field in contesting the MCD Elections, 2017, particularly when Rule 15 of the DMC Rules leaves the field open when it comes to registered unrecognized political parties like the petitioner herein. He clarified that not for a moment is the petitioner claiming that the respondent No.1/SEC is empowered to amend the DMC Rules but an administrative order can always be issued to fill up the vacuum in Rule 15 of the DMC Rules.

19. On 23.03.2017, in the course of arguments, learned counsel for the petitioner had handed across the table, a letter dated 04.03.2015 addressed by the respondent No.1/SEC to the Principal Secretary, UT Govt. of NCT of Delhi, proposing *inter alia* amendments to the DMC Rules, 2012 and enclosing with the said letter the proposed amendments sought to be incorporated in the relevant rules. The said letter states that vide MHA Notification No.5-O-3159 dated 09.10.1966, powers to make rules/amend rules were delegated by the Central Government to the Lieutenant

Governor, Govt. of NCT of Delhi, in accordance with Section 31 of the DMC Act, 1957 as amended in 2011. The said letter further states that some local parties have been pressing for allotment of common symbols but there are no procedures available in the Statute in Delhi, though the said provision exists in some other States and this aspect also needed a relook.

20. On a copy of the aforesaid letter being furnished to the counsel for the respondent No.1/SEC, he had objected to the manner in which the said document was introduced, particularly when it was not made a part of the writ petition and was being handed over without any supporting affidavit and without clarifying the source from where the said document had been procured. In any event, learned counsel had sought and was given time to obtain instructions from the SEC. He had reverted back on 24.03.2017 and had clarified that though the letter dated 04.03.2015 was addressed by the respondent No.1/SEC to the Lieutenant Governor, Govt. of NCT of Delhi, later on, the SEC had decided to re-examine the amendments proposed to Rule 15. He submitted that to obtain a clearer picture, the SEC had informed the Lieutenant Governor, Govt. of NCT of Delhi, that the issue of amendment to Rule 15 of the DMC Rules was being deferred for it to undertake an extensive exercise of gathering relevant information from other State Election Commissions and various stakeholders and analyzing the interest of the electorate before making any change in the scheme of granting common symbols to unrecognized registered political parties and notifying a new Symbols Order. Learned counsel had also produced the

relevant noting file of the Department, for the perusal of the court which was duly examined and returned.

21. This Court has perused the records, heard the arguments advanced by learned counsels for the parties and carefully examined the decisions relied upon by learned counsel for the respondent No.1/SEC, who took great pains to give an overview of the entire scheme of the Statute relating to election laws in India, in particular, the Symbols Order.

22. At the outset, the court must remain mindful of the fact that a right to elect though fundamental to a democracy, is in reality, neither a fundamental right nor a common law right. In the landmark case of Jyoti Basu and Ors. vs. Debi Ghosal and Ors. reported as **(1982) 1 SCC 691**, wherein the nature of the right to elect, right to be elected and the right to dispute an election and the overall scheme of the constitutional and statutory provisions in relation to the said rules explained in earlier decisions was examined by the Supreme Court, speaking for the court, Chinnappa Reddy, J. had summarized the view taken in the following manner:-

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity

apply but only those rules which the statute makes and applies. **It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statutory creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a straight-jacket.** Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State legislature except as provided by the Representation of the People Act 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute.....” (emphasis added)

23. On traversing through the history of elections in India, it transpires that when the first election was conducted in the year 1951, immediately after the country had given unto itself the Constitution of India, no Symbols Order had been promulgated by the ECI. It was only in the year 1968 that the Symbols Order was introduced by the ECI with a view to provide specification, reservation and choice of allotment of symbols to several political parties that had mushroomed by then.

24. The concept of recognizing election symbols and the background in which the scheme of the Symbols Order, 1968 was framed, came up for consideration before the Supreme Court in the case of Sadiq Ali and Anr. vs. The Election Commission of India and Ors., reported as (1972) 4 SCC 664, wherein challenge to the *vires* of the Symbols Order, 1968 was repealed. Speaking for the Court, Khanna, J. had observed as below:-

“18. It is well known that overwhelming majority of the electorate are illiterate. It was realised 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 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.”
(emphasis added)

25. In the case of Roop Lal Sethi vs. Nachhattar Singh Gill reported as (1982) 3 SCC 487, the Supreme Court expounded that the Symbols Order, 1968 was issued by the ECI under Article 324 of the Constitution of India in exercise of its powers of superintendence, direction and control of the conduct of all elections to the Parliament and the Legislature of every State and the said powers are relatable to Rules 5 and 10 of the Conduct Rules

framed by the Central Government in exercise of their powers under Section 169 of the RP Act. Observing that the Symbols Orders made by the ECI are in the nature of general directions meant to regulate the mode of allotment of symbols to the contesting candidates, it was acknowledged that elections in our country are fought on the basis of symbols and therefore, it is a logical corollary that the Symbols Order is an order made under the Act and that any other view would be destructive of the very fabric of holding Parliamentary and Assembly Constituency elections in the country on the basis of adult suffrage.

26. In the case of Kanhiya Lal Omar vs. R.K.Trivedi and Ors. reported as (1985) 4 SCC 628, the petitioner therein had laid a challenge to the constitutional validity of the Symbols Order, 1968 by contending that the same was legislative in nature and could not have been issued by the ECI as it is not entrusted by law, the powers to issue such an order regarding specification, reservation and allotment of symbols that may be chosen by the candidates in the Parliamentary and Assembly elections and further, that Article 324 of the Constitution cannot be construed as conferring such a power on the ECI. Relying on the decision in the case of Sadiq Ali (supra), where the powers of the ECI to recognize political parties and decide disputes amongst them or between the splinter groups of political parties, was upheld and so was the powers of the ECI to issue the Symbols Order and referring to the case of Roop Lal Sethi (supra), wherein it was held that the Symbols Order is an order made under the Act, the Supreme Court declared that the powers of the ECI under Article 324(1) of the

Constitution being plenary in character, can encompass all such provisions contained in the Symbols Order, which may not be traceable to the Act or the Rules, as it operates in areas left unoccupied by legislation and the words, “*superintendence, direction and control*” as well as “*conduct of all elections*” are the broadest terms, which would include the power to make all such provisions. The view expressed by the Supreme Court in para 17 as below, instructive:-

“17. We do not also find any substance in the contention that the Central Government which had been delegated the power to make rules under section 169 of the Act could not further delegate the power to make any subordinate legislation in the form of the Symbols Order to the Commission, without itself being empowered by the Act to such further delegation. **Any part of the Symbols Order which cannot be traced to Rules 5 and 10 of the Rules can easily be traced in this case to the reservoir of power under Article 324(1) which empowers the Commission to issue all directions necessary for the purpose of conducting smooth, free and fair elections.** Our attention is not drawn by the learned counsel for the petitioner to any specific provision in the Symbols Order which cannot be brought within the scope of either rule 5 or rule 10 of the Rules or Article 324(1) of the Constitution and which is hit by the principle *delegatus non potest delegare*, i.e. a delegate cannot delegate, the Commission itself in this case being a donee of plenary powers under Article 324 (1) of the Constitution in connection with the conduct of elections referred to therein subject of course to any legislation made under Article 327 and Article 328 of the Constitution read with Entry 72 in List I or Entry 37 in List II of the Seventh Schedule to the Constitution and the rules made thereunder. **While construing the expression 'superintendence', 'direction and control' in Article 324(1), one has to remember that every norm which lays down a rule of conduct cannot possibly be**

elevated to the position of legislation or delegated legislation. One has also to remember that the source of power in this case is the Constitution, the highest law of the land, which is the repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which the power is granted is effectively achieved. Viewed from this angle it cannot be said that any of the provisions of the Symbols Order suffers from want of authority on the part of the Commission, which has issued it.” (emphasis added)

27. The significance of a symbol when elections are held, was highlighted by the Supreme Court in the case of Subramanian Swamy vs. Election Commission of India reported as (2008) 14 SCC 318. Paras 17 to 22 of the said judgment are apposite and are reproduced below:-

“17. In this backdrop we have to decide this ticklish question of the right of Janata Party to permanently retain its symbol. **There can be no doubt that a symbol particularly in case of an established political party is not only having a political implication but has also an emotional angle attached to it. This is apart from the fact that in India, large population of which is rural, uneducated or at time illiterate, such electorate would naturally have a tendency to identify a party or its candidates by its symbols. It is perhaps for this reason that the political parties zealously guard their symbol.** But the basic question is whether a political party can be deprived of its symbol under such scenario and would such deprivation amount to an undemocratic step as urged by the appellant. In our opinion though the matter of symbol is extremely sensitive one for a political party, it should be or remain to be firstly a political party.

XXX XXX XXX

19. As has been pointed out by Ms. Arora for good long 17 years there was no concept of a recognized political party as till then there was no Symbols Order. It came on the anvil only on 31.08.1968. **The purpose of bringing in existence this Symbols Order was to maintain the purity of elections so that elections should be conducted in a fair and efficient manner as also for specification, reservation, choice and allotment of symbols as also for the recognition of political parties in relation to the symbols.** The Preamble suggests, among other things, that there was a need to recognise the political parties for the purposes of specification, reservation, choice and allotment of symbols. This has probably become necessary on account of firstly, increase in the number of parties on political stage of India as also because of the emergence of the State parties. It must be immediately remembered that till then the Symbols were being granted in keeping with the tradition of a particular party having a particular symbol but there was a complete absence of any rules on such a sensitive aspect like symbols. **Thus emergence of large number of political parties on the national and local levels and their interest in the elections necessitated bringing of the Symbols Order. A new concept of a recognized political party came on the anvil via this Symbols Order.**

20. **Para 5 of the Symbols Order is extremely significant and recognized only two kinds of symbols, they being reserved symbols and free symbols. The reserved symbols are necessarily reserved for the exclusive allotment to the candidates of a recognized political party whereas all other symbols are free symbols. Para 6 is extremely important inasmuch as it introduces for the first time, a classification of political parties as recognized political parties and unrecognized political parties. It must be remembered that there are only two classifications provided by Para 6.**

21. Paras 6-A, 6-B and 6-C provide for the condition of recognition of a political party on the national and/or State level. We need not, at this stage, go into the intricacies of Paras 6-A, 6-B and 6-C but suffice it to say that in order to have that status, the said political party must be an effective political party in the sense that it must share a particular percentage of votes in the national or the State-level elections or it must have certain number of elected representatives in Lok Sabha or the State Legislatures. It is this concept which introduces that in order to be a recognised political party, it must perform well in the elections and thereby pass the acid test of “following”. **Therefore, unless there is a following of the nature provided in Paras 6-A, 6-B and 6-C, the political party does not remain a recognized political party. Once this position is clear, the other extremely important position which has to be considered is that a reserved symbol is available only for the recognized parties. Thus, there is a bond created between recognized political party and its symbol.**

22. **Learned counsel for the respondent is undoubtedly correct in arguing that concept of recognition is inextricably connected with the concept of symbol of that party. It is but natural that a party must have a following and it is only a political party having substantial following in terms of Paras 6-A, 6-B and 6-C would have a right for a reserved symbol. Thus, in our opinion, it is perfectly in consonance with the democratic principles. A party which remains only in the records can never be equated and given the status of a recognized political party in the democratic set up. We have, therefore, no hesitation in rejecting the argument of Dr. Swamy that in providing the symbols and reserving them for the recognized political parties alone amounted to an undemocratic act.”** (emphasis added)

28. In Kanhiya Lal Omar (supra), the Supreme Court had categorically rejected the argument advanced that a symbol amounts to a property and therefore, a political party cannot be deprived of its property. It was held that a symbol is not a tangible property and nor does it generate any wealth. It is only the insignia which is associated with the particular political party so as to help millions of illiterate voters to properly exercise their right to franchise in favour of the candidate of their choice belonging to a particular party and all that it provides for is the essential association with a party. A view was expressed that a symbol does not become an “intellectual property” inasmuch as such a concept has monetary implications, which are conspicuously absent in the case of political parties, as contemplated in the Symbols Order. Therefore, it was concluded that the right of the ECI to put a clamp on the use of a symbol by a political party, is unquestionable.

29. In a recent decision of the Supreme Court in the case of Desiya Murpokku Dravida Kazhagam (DMDK) and Anr. vs. Election Commission of India reported as **(2012) 7 SCC 340**, where the petitioners therein had challenged the constitutional validity of the amendment to the Symbols Order, 1968, whereby Para 6 was substituted by Paras 6-A(i) and (ii) para 6-B, which mandates that in order to be recognized as a State Party in the State, it would have to secure not less than 6% of the total valid votes polled in the State and should also have returned at least 2 members to the Legislative Assembly of the State, the majority view was expressed by Altamas Kabir, J, who analyzed the background in which the Symbols Order, 1968 came to be framed and after considering the entire scheme of

the Election Symbols Order in the light of the earlier judicial pronouncements, held that evolution of the law relating to the criteria for a political party to be recognized as a State Party clearly indicates that the ECI, in its wisdom, was of the view that in order to be recognized as a political party, such a party should have achieved a certain benchmark in State politics, which was not unreasonable and that the right of a voter to know the antecedents of a candidate has to be balanced with the ground realities of conducting a State-wide poll. Consequently, the decision of the ECI to amend the Symbols Order and set a benchmark to be achieved by a political party in order to be recognized as a State Party and become eligible to be given a common election symbol, was upheld.

30. Given the historical backdrop in which the Symbols Order, 1968 was introduced and on a conspectus of the judicial pronouncements documenting the entire scheme and purpose of the Election Symbols Order, 1968, there is no manner of doubt that ECI is vested with the plenary powers of superintendence, direction and control of all elections to the Parliament and to the Legislature of every State and the Symbols Order, 1968 is issued by the ECI in exercise of the powers conferred on it by Article 324 of the Constitution of India read with Section 29A of the RP Act, Rules 5 and 10 of the Conduct of Election Rules, 1961 (hereinafter referred to as “Conduct Rules”) and all other enabling provisions.

31. Vide Notification dated 01.12.2000, Para 12 of the Symbols Order, 1968 that deals with choice of symbols by other candidates and allotment thereof, was substituted. By a subsequent Notification issued on

16.09.2011, sub-para (c) was incorporated in Para 12 and as a result thereof, apart from the candidates set up by a National Party or by a State Party, the candidates mentioned in Para 10, 10A and 10B were also afforded the option of choice of symbols. In terms of Para 10B, the candidates set up by a registered unrecognized political party at the general election to the Legislative Assembly of a State or to the House of the People, were given a concession of allotment of a common symbol from the list of free symbols, subject to certain pre-conditions stipulated therein.

32. Para 12(3) of the Symbols Order, 1968 directs that where the same free symbol has been chosen by several candidates at an election in any State or Union Territory, then if amongst those candidates, only one is a candidate set up by an unrecognized political party and all the rest are independent candidates, the Returning Officer shall allot that free symbol to the candidates set up by the unrecognized political party and to none else. It is the aforesaid relaxation given by the ECI to candidates of unrecognized political parties that the petitioner seeks to invoke for pressing the relief of grant of a common symbol by the respondent No.1/SEC to candidates nominated by it for contesting in the MCD Elections, 2017.

33. In the aforesaid context, it is apposite to examine the source of the powers bestowed in the respondent No.1/SEC. Article 243K which falls in Part IX of the Constitution of India that provides for Panchayats, vests the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats, in a State Election

Commission consisting of a State Election Commissioner to be appointed by the Governor of the concerned State. Article 243ZA that falls in Part IXA of the Constitution that provides for Municipalities, reads as below:-

“243ZA. Elections to the Municipalities – (1) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the State Election Commission referred to in article 243K.

(2) Subject to provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.”

34. In the case of Kishansing Tomar vs. Municipal Corporation of the City of Ahmedabad and Ors. reported as **(2006) 8 SCC 352**, the Supreme Court had declared in so many words that the words used in the provisions governing the State Election Commission are in pari materia with the provisions relating to the Election Commission of India and that the words, “*superintendence, direction and control*” as well as “*conduct of elections*” used in Article 324 of the Constitution have been held to be in the “broadest of terms” by the Supreme Court in several earlier decisions including in Special Reference No.1 of 2002, In Re. reported as **(1985) 4 SCC 689** and Mohinder Singh Gill vs. Chief Election Commissioner reported as **(1978) 1 SCC 405**. They observed that the State Election Commission, constituted under Articles 243K and empowered under Article 243ZA, is a constitutional body and all State Governments are required to abide by the directions issued by the State Election Commission

in the same manner in which they follow the directions of the Election Commission of India during the elections for the Parliament and the State Legislature. It was held that in the domain of elections to the Panchayats and the Municipal Bodies under Part IX and IX-A for the conduct of elections to these bodies, the SEC's enjoy the same status as is enjoyed by the ECI. The said view was expressed in the following words:-

“24. The words, “superintendence, direction and control” as well as “conduct of elections” have been held in the “broadest of terms” by this Court in several decisions including **Special Reference No.1 of 2002, In re and Mohinder Singh Gill case** and the question is whether this is equally relevant in respect of the powers of the State Election Commission as well.

25. From a reading of the said provisions it is clear that the powers of the State Election Commission in respect of conduct of elections is no less than that of the Election Commission of India in their respective domains. These powers are, of course, subject to the law made by Parliament or by the State Legislatures, provided the same do not encroach upon the plenary powers of the said Election Commissions.

26. The State Election Commissions are to function independent of the State Governments concerned in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the panchayats and municipalities.” (emphasis added)

35. The only difference between Article 324 of the Constitution that vests the superintendence, direction and control of elections to the Parliament and the Legislature of every State in the ECI and Article 243ZA that vests the superintendence, direction and control of elections to Panchayats and Municipal Bodies in the SEC's is the additional provision incorporated in Article 243ZA(2) that empowers the Legislature of a State to make provisions by law, with respect to all matters, relating to the elections to the Municipalities, subject of course to the provisions of the Constitution of India.

36. It is in this backdrop that one must examine the Delhi Symbols Order, 2017, which is notified by the respondent No.1/SEC in exercise of the powers conferred on it under Sections 7 and 31 of the DMC Act read with Rule 15 of the DMC Rules. Section 7 of the DMC Act reads as below:-

*“7. **Elections to a Corporation** – (1) The superintendence, direction and control of the preparation of election rolls for, and the conduct of, all elections to a Corporation shall be vested in the Election Commission of the National Capital Territory of Delhi consisting of an Election Commissioner to be appointed by the Administrator.*

(2) Subject to the provisions of any law made by the Legislative Assembly of the National Capital Territory of Delhi, the conditions of service and tenure of office of the Election Commissioner shall be such as the Administrator may by rules determine:

Provided that the Election Commissioner shall not be removed from office except in a like manner and on the like grounds as a

Judge of a High Court and the conditions of service of the Election Commissioner shall not be varied to his disadvantage after his appointment.

(3) The Administrator shall, when so requested by the Election Commission make available to that Commission such staff which the Administrator considers necessary for discharge of the functions conferred on the Election Commission by sub-section(1).”

37. Section 31 of the DMC Act empowers the Central Government to make rules to provide for or regulate matters relating to preparation, revision and maintenance of electoral rolls of wards and for holding elections of councillors and it is the said provision that has been invoked by the respondent No.1/SEC for notifying the DMC Rules. The residuary powers for conduct of elections finds place in Section 31(1)(k), which reads as below:-

“31. Power to Make rules regulating the election of councillors - (1) The Central Government may make rules to provide for or regulate all or any of the following matters for the purpose of preparation, revision and maintenance of electoral rolls of wards and holding elections of councillors under this Act, namely:-

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(k) Any other matter relating to electoral rolls or elections or election disputes in respect of which the Central Government deems it necessary to make rules under this section or in respect of which this Act makes no provision or makes insufficient provision and provision is, in the opinion of the Central Government necessary.”

38. The Preamble of the DMC Rules declares that the said Rules have been made in exercise of the powers conferred under Section 31 of the DMC Act. Following is the relevant extract of the preamble and Rule 15 of the DMC Rules:-

“NOTIFICATION

No.F.13(76)/UD/MB/2011 - In exercise of the powers conferred by section 31 of the Delhi Municipal Corporation Act, 1957 (66 of 1957 read with Ministry of Home Affairs Notification No.S.O. 3159 dated the 9th October, 1966 and in supersession of The Delhi Municipal Corporation (Election of Councillors) Rules, 1970, the Lt. Governor of the National Capital territory of Delhi is pleased to make the Rules for regulating the Elections of the Councillors as following, namely:-

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*15. **Symbols:-** (1) For the purpose of election to a Municipal Corporation of Delhi, the National Parties and State Parties for the National Capital Territory of Delhi, as are recognized for the time being by the Election Commission of India in the National Capital Territory of Delhi, under section 29A of the Representation of the People Act, 1951 and the rules and procedure made thereunder, shall be recognized as such by the Commission. The Commission shall recognize the parties and adopt symbols subject to the following conditions, namely:-*

(a) The National Parties and the State Parties recognized by the Election Commission of India shall be recognized under the

very same name by the Commission.

(b) The National Parties and the State Parties recognized by the Election Commission of India shall use only those very symbols which are reserved for them by the Election Commission of India and not any other symbol, and

(c) The facsimiles of the symbols thus allowed shall not be different from the facsimiles prescribed and recognized by the Election Commission of India.

(2) A candidate shall be deemed to have been set up by a political party only if the candidate has made a declaration to that effect in the nomination paper first filed by him and duly supported by all authorized to such effect by the party concerned.

(3) The Commission shall also adopt free symbols as have been notified by the Election Commission of India for the time being in respect of elections to Lok Sabha and Legislative Assembly for the National Capital Territory of Delhi.

(4) The Commission shall specify by notification in the official Gazette, the symbols that may be chosen by candidates and the restrictions to which their choice shall be subject.

(5) Where at any such election, more nomination papers than one are delivered by or on behalf of a candidates, the declaration as to symbols, made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under rule 24 even if that nomination paper has been rejected.

(6) A failure to complete, or a defect in completing the declaration as to symbols in a nomination paper shall not be deemed to be a defect of a substantial character within the

meaning of sub-rule (4) of rule 22.”

39. It is next deemed appropriate to refer to the Preamble of the Delhi Symbols Order, 2017, called the “Municipal Corporation of Delhi Elections Symbols (Reservation and Allotment) Order, 2017 that was notified by the respondent No.1/SEC on 14.03.2017. The same is reproduced hereinbelow for ready reference:-

“ORDER

No.F.4(216)/OSDI/legal/SEC/2017/7887 Whereas the superintendence, direction and control of elections of three Municipal Corporations of Delhi viz. North Delhi, South Delhi and East Delhi are vested in the State Election Commission of NCT of Delhi vide Section 7 of the Delhi Municipal Corporation Act, 1957 as amended by the Delhi Municipal Corporation (Amendment) Act, 2011;

And whereas it is necessary to provide for the choice and allotment of symbols to the contesting candidates sponsored by political parties (National and State) and to the independent candidates for election to three Municipal Corporations in the National Capital Territory of Delhi viz. North Delhi, South Delhi and East Delhi;

Now, therefore in exercise of the powers conferred on him under Section 7 of the Delhi Municipal Corporation Act, 1957 (hereinafter referred to as the ‘ACT’ read with Rule 15 of the Delhi Municipal Corporation (Election of Councillors) Rules 2012 (hereinafter referred to as ‘Rules’) and all other provisions enabling it in this behalf and in supersession of all its earlier Notifications, the State Election Commissioner of the National Capital Territory of Delhi hereby makes the following order:-

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40. The relevant extracts of Paras 3 and 4 of the Delhi Symbols Order, 2017 are as below:-

“3. Recognition of National State parties:

(a) The National Parties for National Capital Territory of Delhi as recognized for the time being by the Election Commission of India in respect of election to Lok Sabha/Legislative Assembly in the National Capital Territory of Delhi, under section 29-A of the Representation of the People Act, 1951 and as per Symbol Orders of Election Commission of India vide Notification No.56/2016/PPS-III dated the 13.12.2016 and amended by the E.C.I. notification No.56/2017/PPS-III dated 11.1.2017 are hereby recognized as such by this Commission for purposes of elections to the above said three Municipal Corporations of the National Capital Territory of Delhi to be held hereafter.

(b) The Commission hereby adopts for the National Parties those very symbols which are reserved for these parties by the Election Commission of India and not any other symbol.

(c) The facsimiles of the symbols reserved for the National Parties for National Capital Territory of Delhi (in size and shape) as prescribed for elections to Lok Sabha/Assembly in the National Capital Territory of Delhi by the Election Commission of India as well as those prescribed for other candidates (independents) are adopted and prescribed as such by this Commission for purposes of the elections to the three Municipal Corporations of Delhi, to be held hereafter. The names of such National Parties and symbols prescribed for them are mentioned in Table-I of Schedule-I annexed.

(d) *“Aam Aadmi Party” is recognized for N.C.T. of Delhi by the Election Commission of India as ‘Delhi State Party’ and Symbol allotted to this party is “Broom”.*

(e) *A list of ‘free symbols’ to be chosen by other candidates (independents) is contained in Table-III in the Schedule-I.*

4. Choice of Symbol by candidates of National and State Parties and allotment thereof:

(a) *For every contested election of a Municipal Corporation of Delhi, a symbol shall be allotted to each contesting candidate in accordance with the provisions of the said Rules, this Order and the instructions issued by the Commission from time to time in this regard.*

(b) *A candidate set up by a National Party and Delhi State Party at an election to a ward of Municipal Corporation of Delhi shall choose, and shall be allotted, the symbol reserved for that party by Election Commission of India and no other symbol.*

(c) *If a candidate set up by a State Party other than Delhi State Party (N.C.T. of Delhi) to contest election to a ward of a Municipal Corporation of Delhi which party is not recognized in the National Capital Territory of Delhi under the Representation of People Act, 1951 by Election Commission of India, intends to choose or chooses a symbol reserved for it in the State or States in which it is a recognized as ‘State Party’ (see schedule I table-II) other than Delhi State Party then such candidate shall be allotted that symbol to the exclusion of any other candidate and no other symbol on fulfillment of each of the following conditions, namely:*

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(d) The candidates belonging to unrecognized parties registered by Election Commission of India shall be treated as independent candidates for all purposes including number of proposers required i.e. 10 proposers of the ward to which the nomination is filed and for allotment of symbols. They shall not be given any preference over other independent candidates in allotment of free symbols or allotment of only one free symbol to all its candidates in any of a Municipal Corporation of Delhi.

(e) Any candidate at an election to a ward of a Municipal Corporation of Delhi other than a candidate set up by a National Party, Delhi State Party or State party (other than "Delhi State Party") i.e. independent Candidate shall choose and shall be allotted in accordance with the provisions hereafter set out in this paragraph, one of the symbols specified as 'free symbols' as per this Order."

41. It can be seen on a conjoint reading of all the above provisions that the SEC has been clothed with plenary powers under the Constitution read with the enabling provisions in matters relating to allotment of symbols and for issuing directions in connection therewith. The Delhi Symbols Order, 2017 makes detailed provisions for the reservation, choice and allotment of symbols and the recognition of political parties in connection therewith. It is obligatory for the respondent No.1/SEC to specify symbols for elections to the Municipal Corporation of Delhi under Rule 15 of the DMC Rules framed under Section 31 of the DMC Act. For allotment of symbols to each contesting candidate, in exercise of powers conferred on it under Section 7 of the DMC Act read with Rule 15 of the DMC Rules, the respondent No.1/SEC has notified the Delhi Symbols Order, 2017.

42. The object sought to be achieved by the respondent No.1/SEC by notifying the Delhi Symbols Order, 2017 is to ensure that there is no confusion in the minds of the voters and the contestants during the polls. The Statute and the relevant rules under which the Delhi Symbols Order, 2017 has been promulgated, clearly brings out the fact that on its own, the respondent No.1/SEC does not exercise any powers to recognize National Parties and State Parties in the NCT of Delhi. Instead, it recognizes only those parties that have been granted recognition by the ECI under Section 29-A of the RP Act and the related rules and procedures. As against the Symbols Order, 1968 promulgated by the ECI, which applies in relation to elections conducted in all Parliamentary and Assembly constituencies other than Assembly constituencies in the State of Jammu and Kashmir, the Delhi Symbols Order, 2017 extends to and applies to elections in all the wards of the three Municipal Corporations of Delhi, namely, North Delhi, South Delhi and East Delhi in the NCT of Delhi.

43. Therefore, it is well within the domain of the respondent No.1/SEC to promulgate the Delhi Symbols Order, 2017 but as far as recognition of parties and adoption of symbols is concerned, the respondent No.1/SEC has elected to recognize only those National Parties and State Parties that are recognized by the ECI and they alone are permitted to use symbols that are reserved for them by the ECI. Rule 15 of the DMC Rules does not postulate any such relaxation to registered unrecognized political parties. The respondent No.1/SEC also adopts free symbols that have been notified by the ECI in respect of elections to the Lok Sabha and the Legislative

Assembly of the NCT of Delhi. No preference is given by the respondent No.1/SEC to unrecognized political parties registered with the ECI, who are treated at par with independent candidates for the purpose of allotment of symbols, amongst others.

44. Having examined the extant Rules including the MCD Act and the MCD Rules, it is manifest that the entire powers of superintendence, direction and control in relation to elections to the Municipal Corporation of Delhi are vested in absolute terms in the SEC, subject of course to the provisions of the Act and Rules. Rule 15 of the DMC Rules recognizes only those National and State parties for the purposes of elections to the Corporation that are recognized by the ECI and the said provision confines itself to such of the symbols that are reserved for them by the ECI. Further, only those symbols that have been notified by the ECI as free for the time being, in respect of elections to Lok Sabha and Legislative Assembly for the NCT of Delhi, are adopted by the respondent No.1/SEC and notified.

45. There is nothing in the Constitution, the RP Act, the DMC Act, DMC Rules or any other Statute, which prohibits unrecognized political parties from setting up candidates at an election or curtails the right of independent candidates to contest the election. Simply because the SEC may refuse recognition to a political party cannot prevent such a party from nominating candidates to contest the municipal elections. The benefits that registration provides to a political party, have been spelt out in the RP Act. One of the said benefits of recognition to a registered political party is that a common symbol can be allotted to all the candidates nominated by it.

Therefore, a newly formed political party is not entitled as a matter of right to claim exclusive allotment of a common election symbol for the benefit of the candidates nominated by it at the Municipal elections. Instead, its candidates are required to choose from one of the free symbols notified by the respondent No.1/SEC.

46. It has already been admitted on behalf of the petitioner that it does not lay a challenge to the provisions of law, nor is it the stand of the petitioner that the respondent No.1/SEC is empowered to amend the DMC Rules. The seemingly innocuous plea taken by the petitioner is that because there is a vacuum in Rule 15 of the DMC Rules, the same can be filled up by the respondent No.1/SEC by issuing an administrative order and by modifying Para 4(d) of the Delhi Symbols Order, 2017. The ground for seeking modification of Para 4(d) of the Delhi Symbols Order, 2017 is that the petitioner would then have the benefit of a unified and coordinated publicity and campaign across all wards, which will lower the cost of campaigning. However, the petitioner seems to forget that it does not have any statutory backing for claiming the said relief. The plea of the petitioner for grant of a common symbol to its candidates is premised on the alleged violation of Article 14 of the Constitution. However, the prayer made by the petitioner is evidently de hors the provisions of the Delhi Symbols Order, 2017 and the DMC Act and Rules. Having observed above that the right to elect and be elected is a statutory right and not a fundamental or common law right, the petitioner cannot be heard to state that non-grant of a common symbol is in violation of its fundamental rights. The right to

elect and the right to contest in an election being statutory rights, they live and breath by virtue of the life infused in them by the Statute, no more, no less.

47. In view of the legal position and the judicial precedents cited above, the petitioner cannot raise a grievance that it is being discriminated against or being placed at a disadvantageous position vis-à-vis recognized registered political parties. Merely because the ECI has elected to relax the norms by granting a common symbol to unrecognized registered political parties or because five other State Commissions in the country have done so, cannot be a ground to find fault with the decision of the respondent No.1/SEC which has declined to carve out any such classification for unrecognized registered political parties for the purpose of contesting the impending MCD Elections, 2017.

48. In any event, on a perusal of the letter dated 04.03.2015 addressed by the respondent No.1/SEC to the Government of NCT of Delhi, proposing *inter alia* several amendments to the DMC Rules, it emerges that the respondent No.1/SEC is also mulling over amending Rule 15 of the DMC Rules. The noting file of the respondent No.1/SEC reveals that the Commission proposes to undertake a wider consultation with all the concerned stakeholders and examine the ramifications of taking such a decision before making any change in the scheme of granting common symbols to unrecognized registered political parties. The said approach of caution and care adopted by the respondent No.1/SEC for stipulating the quantum of concession, if any that can be given to registered unrecognized

political parties for grant of a common symbol, cannot be faulted.

49. Once it is held that in the absence of a statutory right, there is no fundamental right or a common law right that can be invoked by the petitioner to claim a common symbol, its plea that directions be issued to the respondent No.1/SEC to reserve a common symbol for candidates nominated by it to contest in the MCD Elections, 2017, falls to the ground. It is not as if the petitioner has been placed on a different footing vis-à-vis other unrecognized registered political parties. Counsel for the respondent No.1/SEC had handed over a list of 27 parties out of which, a large number are duly registered, whose request on similar lines has been turned down very recently. As the position stands today, it cannot be stated that there has been any discrimination against the petitioner on account of declining reservation of a common symbol for its exclusive use on the ground that it is not a recognized political party. This time, the petitioner shall have to enter the fray by participating in the MCD Elections as an unrecognized registered political party and making a place for itself under the sun. Only after proving its mettle, can it seek recognition as a registered political party and as a corollary thereto, claim entitlement to a common symbol for its candidates.

50. Even otherwise, this Court is of the view that it is too late in the day to grant any such relief. Article 243-ZG of the Constitution imposes a clear bar on interference in electoral matters by courts including by way of entertaining petitions under Article 226. In the case of Sanjoy Sachdev vs. Chief Election Commission and Ors. reported as **ILR (2003) Delhi 529**,

where the President of a unrecognized registered political State Party in Delhi, had sought allotment of a symbol to candidates nominated by it in the election to the Legislative Assembly of Delhi in the year 2003 and counsel for the respondents had raised an objection with regard to the bar on courts to interfere in electoral matters, it was held that the expression “*election*” used in Article 329(b) does not relate to the poll itself, but is used in its widest term. The provisions of Article 329 that are applicable to either House of Parliament or either House of Legislature of a State, are in pari material to the provisions of Article 243-ZG that imposes a bar on interference by courts in electoral matters relating to any Municipality.

51. In the case of Election Commission of India vs. Ashok Kumar and Ors. reported as **2000 (8) SCC 216**, the Supreme Court had observed that the courts must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar under Article 329(b), but brought to it during the pendency of the election proceedings. The aforesaid words of caution were considered necessary to guard against any attempt to retard, interrupt, protract or stall the election proceedings. In the said decision, it was held that the term “election” includes all steps and the entire proceedings commencing from the date of notification of the election, till the date of declaration of the result, would be covered under the expression, “election”. There are a catena of decisions where the Supreme Court has held that the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India, would not normally interfere in the conduct of elections. [M.P. Ponnuswami vs. Returning Officer,

Namakkal; **AIR 1952 SC 64**, Mohinder Singh Gill and Anr. vs. The Chief Election Commissioner, New Delhi; **(1978) 1 SCC 405**, S.T. Muthusami vs. K. Natarajan and Ors.; **(1988) 1 SCC 572**, Rajalakshmi vs. Election Commission of India; **1998 (2) KLT 414**, Umesh Shivappa Ambi and Ors. vs. Angadi Shekara Basappa and Ors.; **(1998) 4 SCC 529**, Election Commission of India vs. Ashok Kumar and Ors.; **(2000) 8 SCC 216**, Manda Jaganath vs. K.S. Rathnam and Ors.; **(2004) 7 SCC 492**, Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Anr. vs. State of Maharashtra and Ors.; **(2001) 8 SCC 509**, Avtar Singh Hit vs. Delhi Sikh Gurdwara Management Committee and Ors.; **(2006) 8 SCC 487** and Subramaniam Swami vs. Election Commission of India; **(2008) 14 SCC 216**]. In the case of Lakshmi Charan Sen vs. A.K.M. Hassan Uzzaman reported as **(1985) 4 SCC 689**, the Supreme Court had gone to the extent of stating that courts should not interfere even when elections are imminent.

52. This Court finds force in the submission made on behalf of the respondent No.1/SEC that that the members of the petitioner were well aware of the fact that the term of the House was to expire on 30.4.2017 and that the election process had to be set into motion by the SEC at least one month prior thereto. Such is the unique and unparalleled beauty of the clockwork mechanism fine tuned by the ECI at the National and State levels and by the SECs at the Panchayat and Municipal levels that over the years they have not failed to live upto the aspirations of the citizen for conducting smooth, free and fair elections on time. The ECI and SECs have

established themselves as non-partisan and robust Institutions, that provide a strong bulwark of checks and balances for maintaining the purity of the election process. Therefore all concerned including the petitioner herein were *au courant* of the fact that the election process was imminent. Despite the same, the petitioner did not approach the court at the earliest. Knowing that each day's delay can be fatal in a case like the present one, the petitioner waited till 10.3.2017 to file a petition, which came to be listed before this Court only on 15.3.2017. By the said date, the respondent No.1/SEC had set the wheels of the election process into motion and had issued a press note dated 14.3.2017, announcing the elections.

53. As of now, the election process has commenced. By the date the petitioner had filed the present petition, several preparatory steps for conducting the election had already been undertaken by the respondent No.1/SEC and vide order dated 22.03.2017, the respondent No.1/SEC has already notified the schedule for conducting the election in all the three wards of the Municipal Corporation of Delhi. By the time, the judgment in the present petition shall be pronounced, the notification of the election would have been issued by the respondent No.1/SEC on 27.03.2017. In such circumstances, learned counsel for the respondent No.1/SEC is justified in submitting that every day's delay is significant when it comes to approaching the Court with a grievance relating to conduct of elections and that it is very late in the day for this Court to interfere in the election process, which is no longer imminent, but well under way.

54. In their quest for perfecting the franchise system in the country and discharging the onerous duty cast on them by the Constitution and the enabling provisions, the ECI and the SECs have been inventing and reinventing themselves and coming up with new measures to make the process as transparent as is possible. It is in furtherance to discharging the said duty that the respondent No.1/SEC has for the first time decided that photographs of candidates shall appear on the ballot papers and Electronic Voting Machines in the ensuing MCD Elections, 2017. This shall be of great assistance to voters who can easily identify the candidate in whose favour they propose to cast the vote. Thus, the petitioner cannot claim that it is being put to a disadvantage vis-à-vis candidates nominated by registered recognized political parties as even without a common symbol, their candidates can still be identified from their photographs featuring on the ballot papers/EVMs. Some practical difficulties were expressed on behalf of the respondent No.1/SEC relating to providing adequate number of EVMs at every Polling Booth and other logistics etc., which would have arisen only if the petition would have been allowed. That not being the position, the Court declines to delve into the above aspect.

55. In view of the aforesaid facts and circumstances, this Court rejects the challenge laid by the petitioner to Para 4(d) of the Municipal Corporation of Delhi Election Symbols (Reservation and Allotment) Order 2017. The orders dated 21.02.2017 and 07.03.2017 passed by the respondent No.1/SEC, turning down its request for grant of a common

symbol to the candidates nominated by it for the forthcoming MCD Elections, 2017, are sustained.

56. Accordingly, the present petition is dismissed. Before parting with the case, the Court places on record its appreciation for the able assistance rendered by Mr. Pushkarna, learned counsel for the respondent No.1/SEC, at a short notice. Parties are left to bear their own expenses.

(HIMA KOHLI)
JUDGE

MARCH 29, 2017
rkb/sk/ap