

Shri Sadiq Ali and Another

Vs

The Election Commission of India, New Delhi and Others

P. Kakkan and Another

Vs

The Chief Electoral Officer, Madras and Others

Civil Appeal Nos. 70 of 1971

(K.S. Hegde, A.N. Grover, H.R. Khanna JJ)

11.11.1971

JUDGMENT

KHANNA, J. -

1. Civil Appeal 70 of 1971 has been filed by special leave by Shri Sadiq Ali and another against the order of the Election Commission of India (hereinafter referred to as the Commission) under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the 'symbols order'), whereby the Commission held that for the purpose of allotment of symbol in elections the political party presided over by Shri Jagjivan Ram was the Indian National Congress and was entitled to the Symbol of "Two Bullocks with Yoke on", reserved for the said Congress.

2. Indian National Congress (hereinafter referred to as the 'Congress' is a recognised national Party under the Symbols Order. The symbol of the "Two Bullocks with Yoke on" was exclusively reserved for the Congress for the purpose of elections to the houses of Parliament and the Legislative Assemblies of the State and Union Territories. The Congress is a voluntary association; it is neither a statutory body nor a registered society under the Societies Registration Act. It has framed its own constitution and rules. Shri S. Nijalingappa was elected President of the Congress with effect from January 1, 1968 for a period of two years.

3. Dr. Zakir Hussain, President of India, died in 1969. Split then took place in the Congress Party following differences over the choice of Congress nominee for the office of the President of India. Each group claimed to represent the Congress Party. One of the groups elected Shri C. Subramaniam as the President of the congress. Subsequently, Shri Jagjivan Ram was elected President by this group in place of Shri Subramaniam. For sake of convenience this group would hereafter be referred to as Congress 'J'. Shri Nijalingappa continued to be the President of the party represented by the other group which would hereafter be referred to as Congress 'O'.

4. On December 21, 1969, Shri Subramaniam claiming to be the president of the Congress, addressed a letter to the Chief Election Commissioner stating that there had been a change in the office bearers of the Congress. Enclosed with the letter was the list of office-bearers of Congress 'J'

Party and it was stated that they were the office-bearers of the Congress. There was then some exchange of correspondence between the Commission and Congress 'J' Party. On January 3, 1970, a communication was addressed to the Election Commission on behalf of the Congress 'J' that Shri Jagjivan Ram had been duly elected as President of the Congress and had taken charge on December 25, 1969, during the plenary session held at Bombay.

5. On January 8, 1970, a letter was sent on behalf of the Commission to the Secretary of Congress 'O'. Enclosed with that letter was a copy of the letter of Shri Subramaniam dated December 21, 1969. The Congress 'O' was asked to make its comments so as to enable the Commission to take decision in the matter after hearing both parties. On January 14, 1970, a reply was sent on behalf of Congress 'O' by its General Secretary, Shri Sadiq Ali. In that reply it was stated that Shri Subramaniam who had styled himself as the President of the Congress was, in fact, not its President and that the duly elected President of the Congress was Shri Nijalingappa. It was also stated that the office-bearers mentioned by Shri Subramaniam including Shri Subramaniam himself, were persons expelled from the Congress and had otherwise ceased to be the members of the Congress. Further, according to the letter of Shri Sadiq Ali, the Commission should not have entertained any communication from a group of people who had formed a new party and were masquerading themselves in the name and style of the Congress. This association of persons, added Shri Sadiq Ali, was neither a splinter group nor a rival section of the Congress. The competence of the Commission to enquire into the matter was also questioned.

6. On January 15, 1970, a communication was addressed by the Commission to the Secretary of Congress 'J' as well as that the Congress 'O' stating that, "a dispute appears to have arisen as to which of the two groups is the recognised political party known as the Indian National Congress for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968, and the Commission is required to take a decision in the matter in terms of paragraph 15, read with Paragraph 18, of the said Order. The Commission proposes to afford reasonable opportunities to each group to present its case before it so that the Commission may take into account all the available facts and circumstances for deciding the case."

7. On January 22, 1970, a statement was filed on behalf of Congress 'J' before the Election Commission. According to that statement Shri Nijalingappa was elected President of the Congress with effect from January 1, 1968 for a period of two years under Article 5 of the Old Constitution which came into force on June 25, 1967. The election of the members of the All India Congress Committee was held by the delegates. In accordance with the old Constitution, the members of the Pradesh Congress Committees were delegates to the Indian National Congress. The term of the members of the All India Congress Committee, the Pradesh Congress Committees and the Committees subordinate thereto and of the office-bearers thereof was to expire on December 31, 1969, under Article 5 of the Old Constitution. On April 28, 1969, the Working Committee of the Congress passed a resolution at Faridabad for extending the term of all Committees of the Congress and of the office-bearers including that of the President, Shri Nijalingappa, for a further period of one year. The said resolution, according to Congress 'J' was not legal as there was no emergency or special situation warranting the extension of the normal term of two years. The resolution was also stated to be invalid as it was not submitted under the old Constitution to the All India Congress Committee for ratification as early as possible.

8. Under the new Constitution which came into force on July 11, 1969, the above resolution was required, according to the statement on behalf of Congress 'J', to be submitted to the All India Congress Committee for ratification in any case within 6 months. The resolution was not ratified at

the meeting of all India Congress Committee held in Bangalore in July, 1969. The period of 6 months prescribed for the ratification of the resolution expired on October 28, 1969 and as the resolution was not ratified, the same according to the statement became void. Further, as the term of Shri Nijalingappa as President was going to expire on December 31, 1969, it became necessary for the All Indian Congress Committee to make arrangements for the election of the President before the said date. A requisition, it is stated, signed by more than 400 members of the All India Congress Committee, out of a total of 707, was sent for calling a meeting of the All India Congress Committee. Shri Nijalingappa then called a meeting of the congress Working Committee on November 1, 1969. Before that, on the night of October 31, 1969, Shri Nijalingappa declared that Shri Subramaniam, a member of the Congress Working Committee had ceased to be a member of that Committee. Shri Nijalingappa also on that night removed Shri Fakhruddin Ali Ahmed from the membership of the Working Committee. The above act of Shri Nijalingappa according to the statement, was mala fide, illegal and against the principles of natural justice.

9. According further to the statement submitted on behalf of Congress `J' the requisition sent by more than 400 members of All Indian Congress Committee was received by Shri Nijalingappa on the night of October 31, 1969 and was turned down by the Working Committee. 17 members of the All India Congress Committee who were also signatories to the above-mentioned in the requisition, issued a notice on November 5, 1969 calling a meeting of the All India Congress Committee to consider the subjects mentioned in the requisition. Copies of the said notice were sent to Shri Subramaniam that Nijalingappa and a public statement was issued by Shri Subramaniam that Shri Nijalingappa would be presiding over the meeting if he attended the same. The requisitioned meeting of the All India Congress Committee was held at Delhi on November 22 and 23, 1969 and was, according to the statement, attended by 435 members of the All India Congress Committee out of a total of 707. Shri Nijalingappa and his followers did not attend the requisitioned meeting. Six members having voting rights also communicated their support in writing for the requisitioned meeting. One of the resolutions passed at the requisitioned meeting related to the removal of Shri Nijalingappa from the office of President. By another resolution Shri Subramaniam was appointed President and he was asked to function as such until a new President was elected by the delegates. In accordance with the resolution passed in the above requisitioned meeting, a plenary session of the Congress was held in Bombay in December 28 and 29, 1969. Shri Jagjivan Ram was elected President before the said plenary session. An over-whelming majority of delegates are stated to have attended the plenary session held at Bombay under the Presidentship of Shri Jagjivan Ram. The resolution passed in the requisitioned meeting of November 22 and 23, 1969 were ratified at the plenary session in Bombay. 423 out of 707 members of the All India Congress Committee attended the Bombay Session.

10. According further to the statement submitted on behalf of Congress `J' 229 out of 284 Congress Members of Lok Sabha and 106 out of 147 Congress Members of Rajya Sabha declared their allegiance to the Congress Government led by Shrimati Indira Gandhi as Prime Minister and to the Congress led by Shri Jagjivan Ram as President. As against that, Congress `O' claimed the allegiance of 65 Members of Lok Sabha and 40 Members of Rajya Sabha. The Congress Legislature Parties of Maharashtra, Madhya Pradesh, Andhra Pradesh, Rajasthan, Assam, Haryana, Jammu and Kashmir, Himachal Pradesh and Tripura declared their support to the Congress Governments in those State and to Congress `J'. The Speaker of Lok Sabha and the Chairman of Rajya Sabha recognised Congress `J' in Parliament as the party which was in power and which ran the Central Government. The Statement added that the Election Commission was the only authority to decide disputes about the allotment of symbol. Prayer was accordingly made that the symbol reserved for Congress for the purposes of general elections and bye -elections should be allotted to candidate

who would be nominated and declared their allegiance to Congress 'J'.

11. A counter-statement was submitted on behalf of Congress 'O' by its General Secretary, Shri Sadiq Ali on February 16, 1970. The various allegations made in the statement submitted on behalf of Congress 'J' were controverted and it was stated that the Election Commission had no jurisdiction to hold the enquiry. According to the counter-statement, the Congress Parliamentary Board in its meeting held in July, 1969 decided by majority to put up Shri N. Sanjiva Reddy as candidate for the office of the President of India. The decision of the majority upset Indira Gandhi. Smt. Indira Gandhi, Shri Jagjivan Ram and Shri Fakhruddin Ali Ahmed, at the initial stages of the Presidential elections, supported the candidature of Shri Sanjiva Reddy but subsequently they started a campaign for the defeat of the Congress candidate and for the success of Shri V. V. Giri. The explanations of Shrimati Indira Gandhi, Shri Jagjivan Ram and Shri Farkhuddin Ali Ahmed were called by the Congress President on August 18, 1969. On October 31, 1969, Shri Nijalingappa wrote a letter to Shri Subramaniam that he had ceased to be a member of the Working Committee. The reason for that was that Shri Subramaniam who was a member of the All India Congress Committee by virtue of being the President of the Tamil Nadu Congress Committee, had resigned the Presidentship thereof and had thus ceased to be a member of the All India Congress Committee. Shri Fakhruddin Ali Ahmed was removed from the membership of Working Committee because according to the counter-statement, he had lost the confidence of the President. The requisition sent for calling a meeting of the India Committee was rejected in a meeting of the Congress Working Committee on November 1, 1969. When the members of the Congress Working Committee learnt from newspaper reports that some members of the Working Committee had taken a decision to convene a meeting of the All India Congress Committee on November 22 and 23, 1969, the Working Committee took the view that it was bound to result in discipline. Shri Nijalingappa then addressed a letter to Shrimati Indira Gandhi Charging her with indiscipline and asking her to explain her position.

12. As regards the validity of the resolution postponing the elections, the case set up in the counter-statement is that the said resolution was valid in law and its validity had not been questioned by any one. Regarding the notice sent by 17 members of All India Congress Committee for convening the requisitioned meeting of the All India Congress Committee, the case of the Congress 'O' is that the said notice was invalid and the persons who attended the meeting on November 22 and 23, 1969 did so in their personal capacity. The decisions taken in that meeting are stated to have no effect on the Working Committee. Smt. Indira Gandhi, who presided over the meeting, according to the counter-statement, had been expelled from the primary membership of Congress on November 12, 1969. The resolutions passed in the meeting held on November 22 and 23, 1969 being void ab initio could not be subsequently ratified by any authority. As regards the Members of Parliament and State Legislatures who declared their allegiance to Congress 'J', the stand taken in the counter-statement is that their position was that of defectors.

13. A rejoinder and some other applications were thereafter filed. The Commission on March 7, 1970 framed and settled the following four points for discussion :-

1. Has the Election Commission jurisdiction within the meaning of Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, to decide whether any one or none of the rival sections or groups of the Indian National Congress, a national party, is the said Indian National Congress ?
2. Has the Election Commission, for the purpose of undertaking the inquiry to come to decision as

aforesaid, been satisfied on information in its possession that there are two rival sections or groups of the said Indian National Congress each claiming to be that Congress ?

3. What is the nature of an election symbol under the Election Symbols (Reservation and Allotment) Order, 1968, and whether an election symbol, whether reserved or free, is property ?

4. Whether, on the facts and circumstances available to the Election Commission, any of the alleged rival sections of the said Indian National Congress is that Congress for the purposes of the Election Symbols (Reservation and Allotment) Order 1968; if so, which is that rival section, or, whether on the facts and circumstances referred to above, none of the rival sections of the said Indian National Congress is that Congress ?

14. In an order covering 437 pages which, considering the nature of controversy, appears to be abnormally prolix, the Commission held on the first point that it had jurisdiction to decide the matter. The contention that the Working Committee or the President of Congress 'O' were the only authorities to give a binding decision in the dispute was repelled in the following word :-

"If, therefore, there are facts in the present case which show a total and entire cleavage in the Indian National Congress from top to bottom and that the rivalry between the two groups has almost assumed the form of enmity, then relying upon a few provisions of the Constitution and the rules of the party it cannot, in my view, be validly contended that the Election Commission has no jurisdiction because the Working Committee or the President of one group whose existence and authority are totally repudiated by the other group, are the only authorities to give final and binding decisions in the present dispute. The very existence of such a conflict is enough to create jurisdiction to find out and decide whether the conflict is genuine and whether the claims and allegations of the applicants are valid or the contentions and objections of the opposite parties. But that question will have to be determined on the facts and circumstances established in the case."

On Point 2, the Commission observed that it was satisfied on the information available in its possession that there were two rival sections of the Indian National Congress, each claiming to be that Congress. Regarding point 3, the finding of the Commission was that the Election Symbol was not property. As regards point No. 4, the Commission observed that the majority test was a valuable and relevant test in a democratic organisation. The test based upon the provisions of the Constitution of the Congress canvassed on behalf of the Congress 'O' was held to be hardly of any assistance in view of the removals from membership and expulsions from the Committees of the Congress of the members belonging to the opposite group. Reference was also made in this context to the rejection of the requisition sent by some members of Congress 'J' for convening a meeting of the All India Congress Committee. The Commission then considered another test, namely, that based upon the aims and objects as incorporated in the Constitution of the Congress. It was observed that none of the two groups had challenged in any manner or openly repudiated those aims and objects. The test based upon the aims and objects was consequently held to be ineffective and neutral. Applying the test of majority, the Commission observed that Congress 'J' had the majority out of the total number of members returned on Congress tickets to the Houses of Parliament as well as the majority out of the sum total of the members of all the Legislatures returned on Congress tickets although in some States, like Gujarat and Mysore, Congress 'O' had majority in the Legislatures. As regards the organisational wing of the Congress, the Commission came to the conclusion that

Congress `J' enjoyed majority in the All India Congress Committee as well as amongst the delegates of the undivided Congress. Decision was accordingly given that for the purpose of Paragraph 15 of the Symbol Order, Congress `J' was the Congress for which the symbol "The Bullocks with Yoke On" had been reserved.

15. Before dealing with the contentions advanced in appeal, it may be apposite to refer to the relevant provisions. Article 324 of the Constitution provides inter alia that the superintendence, direction and control of the preparation of electoral rolls for the and the conduct of all elections to Parliament and Legislative Assemblies of the States and all elections to the offices of President and Vice-President held under the Constitution shall be vested in the Commission. According to Section 169 of the Representation of the People Act, 1951; (Act 43 of 1951), the Central Government may, after consulting the Election Commission by notification in the official gazette, make rules for carrying out the purposes of the Act. Without prejudice to the generality of the foregoing power, sub-section (2) enumerates some of the matters for which provision may be made in the rules. Sub-section (3) requires that the rules framed should be laid before each House of Parliament. Conduct of Election Rules, 1961 were thereafter framed by the Central Government. Rule 5 of those Rules requires the Commission to specify the symbols that may be chosen by candidates at elections in Parliamentary and Assembly elections and the restrictions to which that choice shall be subject. Rule 10 makes provision for allotment of symbols to the contesting candidates by the Returning Officer subject to general or special directions issued by the Commission.

16. The Symbols Order has been issued by the Commission in exercise of the powers conferred by Article 324 of the Constitution read with Rules 5 and 10 of the Conduct of Election Rules. Paragraph 2 of the Symbols Order contains the various definitions. According to clause (h) of that paragraph, political party means an association or body of individual citizens of India registered with the Commission as a political party under Paragraph 3 and includes a political party deemed to be registered with the Commission under the proviso to sub-paragraph (2) of that paragraph. Paragraph 3 deals with registration with the Commission of associations and bodies as political party for the purpose of the order. According to that paragraph, any association or body of individuals, citizens of India calling itself a political party and intending to avail itself of the provision of the order shall make an application to the commission for its registration as a political party for the purpose of that order. Sub-paragraph (2) provides the period within which an application has to be made. Exemption from making the application in certain contingency with which we are not concerned is also granted. Sub-paragraphs (3) and (4) specify the formalities and the particulars required for the application. The particulars include the names of the President, Secretary and other office-bearers of the political party, the numerical strength of its members as well as the political principles on which it was based and the policies, aims and objects it pursued or sought to pursue. Power is given to the Commission under sub-paragraph (5) to call for further particulars. The Commission thereafter decides whether to register the association or body as political party or not. The decision of the Commission in this respect has been made final by sub-paragraph (7). Provisions further made by sub-paragraph (8) that after the association or body has been registered as a political party, any change in its name, head-office, office-bearers, address and political principles, aims and objects and any change in any other material matter, shall be communicated to the Commission without delay. Paragraph 4 provides for allotment of symbols. Paragraph 5 deals with the qualification of symbols. According to this paragraph, a reserved symbol is a symbol reserved for a political party for exclusive use by that party. A symbol other than the reserved symbol has been described by the said paragraph to be a free symbol. Political parties have been classified as recognised political parties or an-recognised political parties by Paragraph 6. The recognised political parties have been divided into two categories. If a political party is treated as a

recognised political party in four or more States in accordance with Paragraph 6, it shall have the status of a national party throughout the whole of India. If on the contrary a political party is treated as a recognised political party in less than four States, it shall enjoy the status of a State party in the State or States in which it is recognised political party. We need not dilate upon this aspect because it is common case of parties that the Congress is a national party. Paragraph 8 deals with choice of symbols by candidates of national and State parties and allotment thereof. Paragraphs 9, 10, 11 and 12 deal with certain restriction on the allotment of symbols, concessions to certain candidates as well as the choice of symbols by some categories of candidates with which we are not concerned. Paragraph 13 specifies as to when a candidate shall be deemed to set up as a candidate by a political party and reads as under :

"13. When a candidate shall be deemed to be set up by a political party -

For the purposes of this Order a candidate shall be deemed to be set up by a political party if, and only if -

(a) the candidate has made a declaration to that effect in his nomination paper;

(b) a notice in writing to that effect has not later than 3 p.m. on the last day of withdrawal of candidatures, been delivered to the returning officer of the constituency; and

(c) the said notice is signed by the President, the secretary or any other office-bearer of the party and the president, secretary or such other office-bearer is authorised by the party to send such notice and the name and specimen signature of the president, the secretary or such other office-bearer are communicated in advance to the returning officer of the constituency and to the Chief Electoral Officer of the State"

17. Paragraph 14 given power to the Commission to issue certain instructions to un-recognised political parties. Paragraph 15 with which we are directly concerned in this case reads as under :

"15. Power of Commission in relation to splinter groups or rival sections of a recognised political party -

When the Commission is satisfied on information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party, the Commission may after taking into account all the available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard, decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival sections or groups."

18. The powers of the Commission in case of amalgamation of two or more political parties is contained in Paragraph 16 and it reads :

"16. Power of Commission in case of amalgamation of two or more political parties -

(1) when two or more political parties, one or some or all of whom is a recognised political party or are recognised political parties, join together to form a new political party, the Commission may, after taking into account all the facts and circumstances

of the case, hearing such representatives of the newly formed party and other persons as desire to be heard and having regard to the provisions of this Order, decide -

(a) whether such newly formed party should be a National party; and

(b) the symbol to be allotted to it.

(2) The decision of the Commission under sub-paragraph (1) shall be binding on the newly formed political party and all the component units thereof."

19. A notification containing the list of political parties and symbols has to be issued by the Commission under Paragraph 17 while Paragraph 18 gives certain additional powers to the Commission for issuing instructions and directions. The requisite notification was accordingly issued by the Commission under Paragraph 17. According to that notification, Indian National Congress was a National Party and its reserved symbol was "Two Bullocks with Yoke On."

20. Perusal of the different paragraphs of the Symbols Order makes it manifest that they provide, as is made clear by its preamble, for specification, reservation, choice and allotment of symbols at elections in parliamentary and assembly constituencies as well as for the recognition of political parties in relation thereto and for matters connected therewith. One such matter is the decision of a dispute when two rival sections or groups of a recognised political party claim to be that party for the purpose of the Symbol Order. Paragraph 15 provides for the machinery as well as the manner of resolving such a dispute.

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

22. Let us now go back to Paragraph 15. The occasion for making an order under this paragraph arises when the Commission is satisfied on information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party. The Commission in such an event decides the matter after taking into account all available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard. The Commission may decide that one such rival section or group is that recognised political party or that none or such rival sections or groups is that party. The aforesaid decision has been binding on all the rival sections or groups who claim to be the political party in question.

23. In the present case, we find that a claim was made on behalf of Congress 'J' that its office-bearers were the office-bearers of the Congress. The said claim was repudiated by CONGRESS 'O' and according to it, was the genuine Congress Party and its President was Shri Nijlingappa. According further to the stand taken on behalf of Congress 'O', the members of Congress 'J' were masquerading themselves in the name and style of the Congress 'J' were masquerading themselves in the name and style of the Congress. The Commission in the circumstances, had to decide the matter under Paragraph 15 and we find nothing objectionable in the communication dated January 15, 1970 sent to the two rival parties on its behalf wherein it was stated that "a dispute appears to have arisen as to which of the two groups is the recognised political party known as the India National Congress for the purposes of the Symbols Order."

24. Controversy between the parties has ranged on the question whether the Commission has taken into account all 'the available facts and circumstances of the case'. The Commission in this context considered the various criteria for determining which of two groups, Congress 'J' or Congress 'O' was the Congress and came to the conclusion that the criteria other than that of the numerical strength or majority could not provide a satisfactory solution. So far as the test of majority is concerned, the Commission found that the relative strength of the two groups in the two Houses of Parliament and the State Legislature was as under :-

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expulsions was open to question.

26. The figures found by the Commission of the members of the two Houses of Parliament and of the State Legislatures as well as those of AICC members and delegates who supported Congress 'J' have not been shown to us to be incorrect. In view of those figures, it can hardly be disputed that substantial majority of the members of the Congress in both its legislative wing as well as the organisational wing supported Congress 'J'. As Congress is a democratic organisation, the test of majority and numerical strength, in our opinion, was a very valuable and relevant test. Whatever might be the position in another system of government or organisation, number have a relevance and importance in democratic system of government or political set up and it is neither possible nor permissible to lose sight of them. Indeed it is the view of the majority which in the final analysis proves decisive in a democratic set up.

27. It may be mentioned that according to Paragraph 6 of the Symbols Order, one of the factors which may be taken into account in treating a political party as a recognised political party is the number of seats secured by that party in the House of People or the State Legislative Assembly or the number of votes polled by the contesting candidates set up by such party. If the number of seats secured by a political party or the number of votes cast in favour of the candidates of a candidates of a political party can be a relevant consideration for the recognition of a political party, one is at a loss to understand as to how the number of seats in the Parliament and State Legislatures held by the supporters of group of the political party can be considered to be irrelevant. We are consequently discover no error in the approach of the Commission in applying the rule of majority and numerical strength for determining as to which of the two groups, Congress 'J' and Congress 'O' was the Congress party for the purpose of Paragraph 15 of Symbols Order.

28. It is no doubt true that the mass of Congress members are its primary members. There were obvious difficulties in ascertaining who were the primary members because there would in that event have been allegations of fictitious and bogus members and it would have been difficult for the Commission to go into those allegations and find the truth within a short span of time. The Commission in deciding that matter under Paragraph 15 has to act with a certain measure of promptitude and it has to see that the inquiry does not get bogged down in a quagmire. This apart, there was practical difficulty in ascertaining the wishes of those members. The Commission for this purpose could obviously be not expected to take referendum in all the towns and villages in the country in which there were the primary members of the Congress. It can, in our opinion, be legitimately considered that the members of AICC and the delegates reflected by and large the views of the primary members.

29. It is urged by Mr. Shanti Bhushan on behalf of the appellants that 11 members of the Congress Working Committee were with Congress 'O' while 10 members were with Congress 'J' The matter, according to the learned counsel, should have been decided in accordance with the majority in the Working Committee. So far as this aspect is concerned, we find that as it is not always convenient to convene general session of the Congress or a meeting of the AICC, the Congress has its Working Committee which represents the Congress for administrative purposes and for taking decision on political and other matters. Some of the members of the Working Committee are elected by the AICC while others are nominated by the President. The Working Committee has not been shown to possess any power of vetoing the decision of the AICC. On the contrary, major decisions taken by the Working Committee at the time of AICC meetings are placed before the AICC for ratification. In view of the fact that the wishes of the majority of the members of AICC as well as the delegates have been ascertained, we find it difficult to accede to the contention that the majority enjoyed by

Congress 'O' against Congress 'J' in the Working Committee should carry so much weight as to outweigh the majority support obtained by Congress 'J' among delegates and the members of AICC. In any case, we find that as against the slender majority enjoyed by Congress 'O' in the Working Committee, Congress 'J' had substantial majority among the members of AICC and the delegates as well as the Congress members of two House of Parliament as also the sum total of members of the State Legislatures.

30. The observations of late Pandit Jawaharlal Nehru in the course of his speech on Kamraj Plan in the meeting of AICC held in August 1963, to which a reference has been made on behalf of the appellants, is hardly of any assistance to the appellants for the purpose of this case. Pandit Nehru in that speech emphasized the importance of the organisational wing of the Congress and said that if the AICC or the Working Committee did not desire that he should remain in office, he was not going to have general elections to secure the support of the people against the said Committees. It is obvious that the stress in that speech was on the need of the Prime Minister securing the support of the organisational wing. The speech did not deal with a contingency as arises in the present case of resolving a dispute wherein one group has the support of the majority of the legislative wing as well as the organisational wing and the other than the Working Committee. The present is not a case wherein a conflict has arisen because of one group having a majority in the legislative wing of the party.

31. Argument has been advanced on behalf of the appellants that the matter should have been decided in accordance with the provisions of the Congress constitution. The Commission in this context has found that there were removals and expulsions of the supporters of Congress 'J' from the various Committees of the Congress by the members of Congress 'O' and the president, Nijalingappa. The Commission has come to the conclusion that the validity of the action of Shri Nijalingappa and other members of Congress 'O' in removing and expelling members of the other group was doubtful and open to question. The Commission has also questioned the propriety of the action of the Working Committee in rejecting the requisition sent by the members of AICC for convening meeting of the AICC. It is, in our opinion, if not necessary for this court to express any opinion for the purpose of this appeal about the validity of the above mentioned removals and expulsions nor is it necessary to express any view about the propriety of the rejection of the requisition. Likewise it is not essential to say anything as to whether one or both the groups were in the wrong and if so, to what extent in the controversy relating to the split in the Congress. All that this Court is concerned with is whether the test of majority or numerical strength which has been taken into account by the Commission is in the circumstances of the case a relevant and germane test. On that point, we have no hesitation in holding that in the context of the facts and circumstances of the case, the test of majority and numerical strength was not only germane and relevant but a very valuable text.

32. Reference has been made on behalf of the appellants to Paragraph 13 of the Symbols Order which has been reproduced earlier in this judgment. The said paragraph mentions as to when a candidate shall be deemed to be set up by a political party. The three requisites for that are; that the candidate has made a declaration to that effect in his nomination paper; that a notice is delivered to the Returning Officer before the specified time and the said notice is signed by such office-bearer of the party who has been authorised to send the notice. It also requires that the name and specimen signature of such office-bearer should be communicated in advance to the Returning Officer and the Chief Electoral Officer of the State. Reading of Paragraph 13 makes it plain that it deals with the case of individual candidates and provides a safeguard against the contingency of a claim being made by two rival candidates of being the nominee of the same party. Paragraph 13 has nothing to

do with the question of resolving a dispute wherein two rival sections or groups of a recognised political party claim to be that party. For the resolving of such a dispute, we have only to look to Paragraph 15.

33. Question during the course of hearing of the appeal has also arisen whether the persons who were heard during the course of proceedings under Paragraph 15 become parties to those proceedings so as to be entitled to be heard in appeal. In this connection, we are of the opinion that although the Commission may hear during the course of proceedings under Paragraph 15 'such representatives of the section or groups or other persons as desire to be heard', the parties to the dispute necessarily remain rival section or groups of the recognised political party. Other persons as desire to be heard and who are heard by the Commission do not become parties to the dispute so as to have a right of addressing this Court in appeal. We have consequently not allowed arguments to be addressed in appeal on their behalf.

34. Question then arises as to what is the binding nature of the decision given by the Commission under Paragraph 15. In this respect it has to be borne in mind that the Commission only decides the question as to whether any of the rival sections or groups of a recognised political party, each of whom claims to be that party, is that party. The claim made in this respect is only for the purpose of symbols in connection with the election to the Parliament and State Legislatures and the Decision of the Commission pertains to this limited matter. The Commission while deciding the matter under Paragraph 15 does not decide dispute about property. The proper forum for adjudication of disputes about property are the civil courts. The decision of the commission under Paragraph 15 constitutes a direction to the Returning Officer for the purpose of Rule 10 of the Conduct of Elections Rules, 1961. The said direction shall be binding upon the Returning Officer in accordance with sub-rules (4) and (5) of the above mentioned Rule. Whether the decision of the Commission can be called into question in appropriate proceedings in a Court of law is a matter which does not arise in this case and we need not express any opinion thereon.

35. Contention has also been advanced on behalf of the appellants that Congress 'O' although adhering to Congress aims and objects is deprived of the use of symbol of "Two Bullocks with Yoke on" which had been allotted to the Congress for the purpose of elections. The answer to this contention is that as a result of differences and dissensions, a political party may be split into two or more groups but the symbol cannot be split. It is only one of the rival section or groups, as is held to be that political party under Paragraph 15, which would be entitled to the use of the symbol in the elections while the other section or group would have to do without that symbol. It is not permissible in a controversy like the present to dissect the symbol and give one out of two bullocks represented in the symbol of the Congress to one group and the other bullock to the other group. The symbol is not property to be divided between co-owners. The allotment of a symbol to the candidates set up by a political party is a legal right and in case of split, the Commission has been authorised to determine which of the rival groups or sections is the party which was entitled to the symbol. The Commission in resolving this dispute does not decide as to which group represents the party but which group is that party. If it were a question of representation, even a small group according to the Constitution of the organisation may be entitled to represent the party. Where, however, the question arises as to which of the rival groups in the party, the question assumes a different complexion and the numerical strength of each group becomes an important and relevant factor. It cannot be gainsaid that in deciding which group is the party, the Commission has to decide as to which group substantially constitutes the party.

36. Attempt has also been made during the course of arguments to show that the supporters of

Congress `J' were defaulters in payment of subscription. No such case was admittedly set up before the commission. We have consequently not allowed the appellants to raise this matter which hinges upon facts in appeal.

37. Reference has been made on behalf of the appellants to a house of Lords decision in the case of General Assembly of Free Church of Scotland v. Lord Overtoun. The said case related to the denomination of Christians which called itself the free church of Scotland and had been founded in 1843. It consisted of ministers and laity who seceded from the Established Church of Scotland, but who professed to carry with them the doctrine and system of the Established Church, only freeing themselves by secession from what they regarded as interference by the State in matters spiritual. For many years, efforts had been made to bring about a union between the Free Church and the United Presbyterian Church, also seceders from the Established Church. In 1900 Acts of Assembly were passed by the majority of the Free Church and unanimously by the United Presbyterian Church for union under the name of the United Free Church and the Free Church property was conveyed to the new trustees for behalf of the new Church. The United Presbyterian Church was opposed to the Establishment principle, and did not maintain the Westminster Confession of Faith in its entirety. The respondents contended that the Free Church had full power to change its doctrines so long as the identity was preserved. The appellants, a very small minority of the Free Church, objected to the union maintaining that the Free Church had no power to change its original doctrines or to unite with a body which did not confess those doctrines. The appellants accordingly complained of breach of trust. It was held that the Establishment principle and the Westminster Confession were distinctive tenets of the Free Church and the Free Church had no power, where property was concerned, to alter the doctrine of the Church; that there was no true union, as the United Free Church had not preserved its identity with the Free Church not having the same distinctive tenets and that the appellants were entitled to hold for behalf of the Free Church the property held by the Free church before the union in 1900. The above case can hardly be of any assistance to the appellants. It is clearly distinguishable on two grounds. The first ground relates to change of tenets on the part of a religious group. As against that the present case relates to a political party wherein none of the rival groups professes to renounce the aims and objects of the party. The other ground is that the dispute in the cited case related to property while that in the present case relates to a legal right and not to property.

38. The case of Samyukta Socialist Party v. Election Commission of India has also no bearing on the present case. The cited case related to merger of two political parties into one as a result of which the election symbol of one of the merger parties was allotted to the new party. The parties separated again and the question which arose for determination was whether the symbol can be taken back from the new party and given to the party to which it originally belonged. It is plain that the nature of controversy in the said case was entirely different.

39. Civil Appeals 2122-2124 of 1970 have been filed by Shri P. Kakkan and another against the judgment of the Madras High Court on a certificate granted by that Court. It is not necessary to give the facts giving rise to these appeals because according to Shri Natesen, learned counsel for the appellants in these appeals, the only additional point to be agitated is about the vires of Paragraph 15 of the Symbols Order. The Madras High court repelled the contention advanced on behalf of the appellants that Paragraph 15 was ultra vires and invalid in so far as it conferred power on the Commission to decide the dispute between two groups of a political party.

40. It would follow from what has been discussed earlier in this judgment that the Symbols Order makes detailed provisions for the reservation, choice and allotment of symbols and the recognition

of political parties in connection therewith. That the Commission should specify symbols for elections in parliamentary and assembly constituencies has also been made obligatory by Rule 5 of Conduct of Election Rules. Sub-rule (4) of Rule 10 gives a power to the Commission to issue general or special directions to the Returning Officers in respect of the allotment of symbols. The allotment of symbols by the Returning Officers has to be in accordance with those directions. Sub-rule (5) of Rule 10 gives a power to the Commission to revise the allotment of a symbol by the Returning Officers in so far as the said allotment is inconsistent with the directions issued by the Commission. It would, therefore, follow that Commission has been clothed with plenary powers by the above mentioned Rules in the matter of allotment of symbols. The validity of the said Rules has not been challenged before us. If the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbols and for issuing directions in connection therewith, it is plainly essential that the commission should have the power to settle a dispute in case claim for the allotment of the symbol of a political party is made by two rival claimants. In case, it is a dispute between two individual's the method for the settlement of that dispute is provided by Paragraph 13 of the Symbols Order. If on the other hand, a dispute between two rival groups for allotment of a symbol of a political party on the ground that each group professes to be that party, the machinery and the manner of resolving such a dispute is given in Paragraph 15. Paragraph is intended to effectuate and subserve the main purposes and objects of the Symbols Order. The paragraph is designed to ensure that because of a dispute having arisen in a political party between two or more groups, the entire scheme of the Symbols Order relating to the allotment of a symbol reserved for the political party is not set at naught. The fact that the power for the settlement of such a dispute has been vested in the Commission would not constitute a valid ground for assailing the vires of and striking down Paragraph 15. The Commission is an authority created by the Constitution and according to Article 324, the superintendence, direction and control of the electoral rolls for and the conduct of elections to Parliament and to the Legislature of every State and of elections to the office of President and Vice-president shall be vested in the Commission. The fact that the power of resolving a dispute between two rival groups for allotment of symbol of a political party has been vested in such a high authority would raise a presumption, though rebuttable, and provide a guarantee, though not absolute but to a considerable extent, that the power would not be misused but would be exercised in a fair and reasonable manner.

41. There is also no substance in the contention that as power to make provisions in respect to election has given to the Parliament by Article 327 of the Constitution, the power cannot be further delegated to the Commission. The opening words of Article 327 are "subject to the provisions of this Constitution." The above words indicate that any law made by the Parliament in exercise of the powers conferred by Article 327 would be subject to the other provisions of the Constitution including Article 324. Article 324 as mentioned above provides that superintendence, direction and control of elections shall be vested in Election Commission. It, therefore, cannot be said that when the Commission issues direction, it does so not on its own behalf but as the delegate of some other authority. It may also be mentioned in this context that when the Central Government issued Conduct of Election Rules, 1961 in exercise of its powers under Section 169 of the Representation of people Act 1951, it did so as required by that section after consultation with the Commission.

42. We, therefore, find no substance in the contention that Paragraph 15 of the Symbols Order is ultra vires the powers of the Commission.

43. The result is that all the four appeals fail and are dismissed but in the circumstance without costs.

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