

Kanhiya Lal Omar

Vs

R. K. Trivedi and Others

Writ Petition No. 11738 of 1985

(E. S. Venkataramiah, R. B. Misra JJ)

24.09.1985

JUDGMENT

VENKATARAMIAH, J. –

1. In this petition filed under Article 32 of the Constitution the petitioner challenges the constitutional validity of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as "the Symbols Order") which is issued by the Election Commission (hereinafter referred to as "the Commission"). The principal contention urged by the petitioner in support of his contention is that the Symbols Order which is legislative in character could not have been issued by the Commission because the Commission is not entrusted by law the power to issue such an order regarding the specification, reservation and allotment of symbols that may be chosen by the candidates at elections in parliamentary and Assembly constituencies. It is further urged that Article 324 of the Constitution which vests the power of superintendence, direction and control of all elections to Parliament and to the Legislature of a State in the Commission cannot be construed as conferring the power on the Commission to issue the Symbols Order.

2. It is necessary to set out the relevant provisions of law having a bearing on the above question at the outset for a proper appreciation of the contentions urged on behalf of the petitioner. Article 324(1) of the Constitution reads thus :

324(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

3. Articles 327 and 328 of the Constitution which vest the power of making provisions with respect to elections in Parliament and the Legislatures in the States read as follows :

327. Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

328. Subject to the provisions of this Constitution and insofar as provision in that

behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses.

4. Article 327 of the Constitution confers the power on Parliament to make by law provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses subject to the provisions of the Constitution. Article 328 of the Constitution confers similar power on the Legislature of a State to make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses subject to the provisions of the Constitution and insofar as provision in that behalf is not made by Parliament. In exercise of the power conferred by Article 327 of the Constitution Parliament has enacted the Representation of the People Act, 1951 (43 of 1951) (hereinafter referred to as "the Act") providing for the conduct of elections to the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections. Section 169 of the Act empowers the Central Government to promulgate rules, after consultation with the Commission, for carrying out the purposes of the Act. In exercise of the said power the Central Government has promulgated the Conduct or Elections Rules, 1961 (hereinafter referred to as "the Rules"). Rules 5 and 10 of the Rules which are material for the purposes of this case read thus :

5. Symbols for elections in parliamentary and Assembly constituencies. - (1) The Election Commission shall, by notification in the Gazette of India and in the Official Gazette of each State, specify the symbols that may be chosen by candidates at elections in parliamentary or Assembly constituencies and the restrictions to which their choice shall be subject.

(2) Subject to any general or special direction issued by the Election Commission either under sub-rule (4) or sub-rule (5) of Rule 10, where at any such election, more nomination papers than one are delivered by or on behalf of a candidate, 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 10 even if that nomination paper has been rejected.

10. Preparation of list of contesting candidates. - * * *

(4) At an election in a parliamentary or Assembly constituency, where a poll becomes necessary, the Returning Officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commission, -

(a) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice; and

(b) if more contesting candidates than one have indicated their preference for the same symbol, decide by lot to which of such candidates the symbol will be allotted.

(5) The allotment by the Returning Officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.

(6) Every candidate or his election agent shall forthwith be informed of the symbol allotted to the candidate and be supplied with a specimen thereof by the Returning Officer.

5. Sub-rule (1) of Rule 5 of the Rules empowers the Commission to specify by a notification in the Gazette of India and in the Official Gazette of each State, the symbols that may be chosen by candidates at elections in parliamentary or Assembly constituencies and the restrictions to which their choice shall be subject. Sub-rule (4) of Rule 10 of the Rules provides that at an election in a parliamentary or Assembly constituency, where a poll becomes necessary, the Returning Officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall subject to any general or special direction issued in this behalf by the Commission allot a different symbol to each contesting candidate to conformity, as far as practicable, with his choice and if more contesting candidates than one have indicated their preference for the same symbol, decide by lot to which of such candidates the symbol will be allotted. Sub-rule (5) of Rule 10 of the Rules provides that the allotment by Returning Officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Commission in this behalf in which case the Commission may revise the allotment in such manner as it thinks fit. Under sub-rule (6) or Rule 10 of the Rules every candidate or his election agent should be informed forthwith of the symbol allotted to the candidate and is entitled to be supplied with a specimen thereof. Purporting to exercise its power under Article 324 of the Constitution read with Rule 5 and Rule 10 of the Rules, the Commission issued the Symbols Order in the year 1968 which is impugned in this petition. The Preamble to the Symbols Order reads thus :

S.O. 2959, dated August 31, 1968. - Whereas the super-intendence, direction and control of all elections to Parliament and to the Legislature of every State are vested by the Constitution of India in the Election Commission of India;

And, whereas, it is necessary an expedient to provide in the interests of purity of election to the House of the People and the Legislative Assembly of every State and in the interests of the conduct of such elections in a fair and efficient manner, for the specification, reservation, choice and allotment of symbols, for the recognition of political parties in relation thereto and for matters connected therewith;

Now, therefore, in exercise of the powers conferred by Article 324 of the Constitution, read with Rule 5 and Rule 10 of the Conduct of Elections Rules, 1961, and all other powers enabling it in this behalf, the Election Commission of India hereby makes the following Order :

6. The expression "political party" is defined in paragraph 2(1)(h) of the Symbols Order thus :

2(1)(h) - "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.

7. Paragraph 3 of the Symbols Order provides that any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of the Symbols Order shall make an application to the Commission for its registration as a political party for the purposes of the Symbols Order. Sub-paragraphs (2), (3) and (4) of paragraph 3 of the Symbols Order provide for the manner in which such applications should be made by associations and bodies calling themselves as political parties for registration with the Commission. That paragraph empowers the Commission to consider all relevant particulars and to decide whether the association or body should be registered as a political party or not and its decision in that regard is stated to be final. Paragraph 4 of the Symbols Order provides that in every contested election a symbol shall be allotted to a contesting candidate in accordance with the provisions of the Symbols Order and different symbols shall be allotted to different contesting candidates at an election in the same constituency. The symbols specified by the Commission are classified into two categories by paragraph 5 of the Symbols Order. They are either reserved or free. A reserved symbol is a symbol which is reserved for a recognised political party for exclusive allotment to contesting candidates set up by the party. A free symbol is a symbol other than a reserved symbol. Paragraph 6 of the Symbols Order provides for the classification of the political parties into recognised political parties and unrecognised political parties. Amongst the recognised political parties according to the Symbols Order there are two categories, namely, national parties and the State parties. The Symbols Order further provides for the determination of the question whether a candidate has been set up by a political party or not. It deals with the power of the Commission to issue instructions to unrecognised political parties for their expeditious recognition on fulfillment of conditions specified in paragraph 6. The power of the Commission in relation to splinter groups or rival sections of a recognised political party and its power in case of amalgamation of two or more political parties are dealt with in paragraphs 15 and 16 of the Symbols Order. Under paragraph 17 of the Symbols Order the Commission is required to publish by one or more notifications in the Gazette of India lists specifying the national parties and the symbols respectively reserved for them, the State parties, the State or States in which they are State parties and the symbols respectively reserved for them in such State or States, the unrecognised political parties and the State or States in which they function and the free symbols for each State. Every such list is required to be kept up-to-date, as far as possible. Under paragraph 18 of the Symbols Order the Commission has reserved to itself the power to issue instructions and directions for the clarification of any of the provisions of the Symbols Order, for the removal of any difficulty which may arise in relation to the implementation of any such provisions and in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which the Symbols Order makes no provision or makes insufficient provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections.

8. The petitioner claims to be a convener of a social organisation named "SAPRYA" situated at 67/68, Daulat Ganj, Kanpur (U.P.) which is stated to have been established for the purposes of propagating "National truth" and for acquainting the people of India about the ideals cherished by it. The petitioner is aggrieved by the emergence of a large number of political parties at the national level and at the State level which according to him has prejudiced seriously the ideals of a democratic country. He has referred in the course of the petition to the various acts committed by the several political parties which according to him are highly detrimental to the interests of the country. He contends that the emergence of these political parties is due to the provisions contained

in the Symbols Order which provides for the registration of political parties, reservation and allotment of symbols in favour of various political parties. It is contended by the petitioner that the Symbols Order is liable to be struck down on the ground that the Commission is not empowered to issue it either under the Constitution or the Act and the Rules made thereunder. It is his contention that there is no provision, constitutional or legal, which justifies the recognition of political parties for purposes of elections.

9. The constitutional scheme with regard to the holding of the elections to Parliament and the State Legislatures is quite clear. First, the Constitution has provided for the establishment of a high power body to be in charge of the elections of Parliament and the State Legislatures and of elections to the offices of President and Vice-President. That body is the Commission. Article 324 of the Constitution contains detailed provisions regarding the constitution of the Commission and its general powers. The Commission consists of the Chief Election Commissioner who is appointed by the President and it may also consist such number of other Election Commissioners, if any, as the President may from time to time fix, who are also to be appointed by the President. When Election Commissioners are appointed, the Chief Election Commissioner becomes the Chairman of the Commission. There is provision for the appointment of Regional Commissioners to assist the Commission. In order to ensure the independence and impartiality of the Commission, it is provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court of India and that the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment. An Election Commissioner or a Regional Commissioner cannot be removed from office except on the recommendation of the Chief Election Commissioner. The superintendence, direction and control of the conduct of elections referred to in Article 324(1) of the Constitution are entrusted to the Commission. The words 'superintendence', 'direction' and 'control' are wide enough to include all powers necessary for the smooth conduct of elections. It is, however, seen that Parliament has been vested with the power to make law under Article 327 of the Constitution read with Entry 72 of List I of the Seventh Schedule to the Constitution with respect to all matters relating to the elections to either House of Parliament or to the House or either House of the Legislature of a State subject to the provisions of the Constitution. Subject to the provisions of the Constitution and any law made in that behalf by Parliament, the Legislature of a State may under Article 328 read with Entry 37 of List II of the Seventh Schedule to the Constitution make law relating to the elections to the House or Houses of Legislature of that State. The general powers of superintendence, direction and control of the elections vested in the Commission under Article 324(1) naturally are subject to any law made either under Article 327 or under Article 328 of the Constitution. The word 'election' in Article 324 is used in a wide sense so as to include the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the result of the process. India is a country which consists of millions of voters. Although they are quite conscious of their duties politically, unfortunately, a large percentage of them are still illiterate. Hence there is need for using symbols to denote the candidates who contest elections so that the illiterate voter may cast his vote in secrecy in favour of the candidate of his choice by identifying him with the help of the symbol printed on the ballot paper against his name.

10. It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be it a donkey or an elephant, does give rise to a unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The

political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organized on party basis - in other words, "on systematized differences and unresolved conflicts". That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-second Amendment) Act, 1985 there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.

11. Paragraph 15 of the Symbols Order which dealt with the power of the Commission in relation to splinter groups or rival sections of a recognised political party came up for consideration before this Court in *sadiq Ali V. Election Commission of India* ((1972) 2 SCR 318 : (1972) 4 SCC 664 : 47 ELR 349).

12. The Court observed in that case at pages 341-343 thus : (SCC pp. 681-2, paras 40-41)

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 Elections 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 insofar 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 individuals, the method for the settlement of that dispute is provided by paragraph 13 of the Symbols Order. If on the other hand, a dispute arises 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 15 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 of 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.

There is also no substance in the contention that as power to make provisions in respect to elections has been 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 Elections Rules, 1961 in exercise of its powers under Section 169 of the Representation of the People Act, 1951, it did so as required by that section after consultation with the Commission.

13. The above decision upholds the power of the Commission to recognise political parties and decide disputes arising amongst them or between splinter groups within a political party. It also upholds the power of the Commission to issue the Symbols Order. The Court has further observed that it could not be said that when the Commission issued the Symbols Order it was not doing so on its own behalf but as the delegate of some other authority. The power to issue the Symbols Order was held to be comprehended in the power of superintendence, direction and control of elections vested in the Commission.

14. Overruling the objection raised as to the validity of the Symbols Order on the ground that it was legislative in character and the Commission had no power to issue it in the absence of entrustment of the power to make a law in relation to elections, this Court observed in *All Party Hill Leaders' Conference, Shillong v. Captain M. A. Sangma* ((1978) 1 SCR 393 : (1977) 4 SCC 161 : AIR 1977 SC 2155) at page 408 thus :

It is not necessary in this appeal to deal with the question whether the Symbols Order made by the Commission is a piece of legislative activity. It is enough to hold, which we do, that the Commission is empowered in its own right under Article 324 of the Constitution and also under Rules 5 and 10 of the Rules to make directions in general in widest terms necessary and also in specific cases in order to facility a free and fair election with promptitude. It is, therefore, legitimate on the part of the Commission to make general provisions even in anticipation or in the light of experience in respect of matters relating to symbols. That would also inevitably require it to regulate its own procedure in dealing with disputes regarding choice of symbols when raised before it. Further that would also sometimes inevitably lead to

adjudication of disputes with regard to recognition of parties or rival claims to a particular symbol. The Symbols Order is, therefore, a compendium of direction in the shape of general provisions to meet various kinds of situations appertaining of elections with particular reference to symbols. The power to make these directions, whether it is a legislative activity or not, flows from Article 324 as well as from Rules 5 and 10. It was held in *Sadiq Ali* ((1972) 2 SCR 318 : (1972) 4 SCC 664 : 47 ELR 349) that "if the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbol 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". It has been held in *Sadiq Ali* ((1972) 2 SCR 318 : (1972) 4 SCC 664 : 47 ELR 349) that the Commission has been clothed with plenary powers by Rule 5 and sub-rules (4) and (5) of Rule 10 of the Rules in the matter of allotment of symbols.

15. In *Roop Lal Sathi v. Nachhattar Singh* ((1983) 1 SCR 702 : (1982) 3 SCC 487) the same view is reiterated. The Court observed in this case at page 719 as follows : (SCC p. 499, para 18)

The Symbols Order made by the Election Commission in exercise of its power under Article 324 of the Constitution read with Rules 5 and 10 of the Conduct of Elections Rules and all other powers enabling it in that behalf, are in the nature of general directions issued by the Election Commission to regulate the mode of allotment of symbols to the contesting candidates. It is a matter of common knowledge that elections in our country are fought on the basis of symbols. It must but logically follow as a necessary corollary that the Symbols Order is an order made under the Act. Any other view would be destructive of the very fabric of our system of holding parliamentary and Assembly constituency elections in the country on the basis of adult suffrage.

16. Even if for any reason, it is held that any of the provisions contained in the Symbols Order are not traceable to the Act or the Rules, the power of the Commission under Article 324(1) of the Constitution which is plenary in character can encompass all such provisions. Article 324 of the Constitution 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. (See *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* ((1978) 2 SCR 272 : (1978) 1 SCC 405 : AIR 1978 SC 851) and *A. C. Jose v. Sivan Pillai* ((1984) 3 SCR 74 : (1984) 2 SCC 656))

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 make 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. There are some authorities or persons in certain grey areas who may be sources of rules of conduct and who at the same time cannot be equated to authorities or persons who can make law, in the strict sense in which it is understood in jurisprudence. A direction may mean an order issued to a particular individual or a precept which many may have to follow. It may be a specific or a general order. 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 constructed 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.

18. We are not satisfied with the submission that the several evils, malpractices etc. which are alleged to be existing amongst the political parties today are due to the Symbols Order which recognises political parties and provides for their registration etc. The reasons for the existence of such evils, malpractices etc. are to be found elsewhere. The surer remedy for getting rid of those evils, malpractices etc. is to appeal to the conscience of the nation. We cannot, however, set aside the Symbols Order on the grounds alleged in the petition.

19. We dismiss the petition accordingly.

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