

Janata Dal (Samajwadi)

Vs

Election Commission Of India

Civil Appeal No. 1629 (NCE) of 1993

(N. P. Singh, J. S. Verma JJ)

23.11.1995

JUDGMENT

N. P. SINGH, J.

1. The validity of an Order dated 21-2-1992 passed by the Chief Election Commissioner of India withdrawing the recognition of Janata Dal (Samajwadi) as a national party, in exercise of the power vested in the Election Commission under paragraphs 6 and 7 of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the "Symbols Order") is being questioned in this appeal.

2. The appellant was recognised as a national political party on 16-4-1991. The general elections to the Lok Sabha and to the Legislative Assemblies of the State of Assam, Haryana, Kerala, Tamil Nadu, Uttar Pradesh, West Bengal and the Union Territory of Pondicherry were held in the months of April-June 1991. A statement showing the number of votes polled by the appellant at the aforesaid general elections held in the months of April-June 1991 showing the performance of the appellant at the poll was prepared by the Election Commission and thereafter a show-cause notice dated 4-12-1991 was issued to the appellant by the Election Commission as to why the recognition of the appellant as a national party should not be withdrawn under the provisions of the Symbols Order. The General Secretary of the appellant responded to the aforesaid notice by his letter dated 15-1-1992 seeking three months' time to submit the reply on behalf of the appellant, as the party was collecting information from its State units. The time for filing the reply to show-cause notice was extended. It was filed on 5-2-1992. A stand was taken on behalf of the appellant that once recognition has been given to the party as a national party as a national party there was no provision in the Symbols Order for withdrawal of he said recognition. It was also asserted that the performance of a party for the purpose of recognition or derecognition has to be judged when the elections are held in all the States within Union of India and not only on basis of elections held in only some of the States. It was pointed out that no elections have been held in respect of State Assemblies of several States like Andhra Pradesh, Bihar, Goa, Orissa etc. However, the impugned order was passed by the Election Commission withdrawing the recognition of the appellant as a national party and forfeiting the right of the party for the exclusive use of the symbol "Woman carrying pot on here head," which had earlier been reserved for the appellant. The Election Commission held in the impugned order that a party once recognised cannot claim the recognition in perpetuity and it has to shown a minimum electoral support for continued recognition in terms of paragraphs 6 and 7 of the Symbols Order.

3. Paragraph 2(h) of the Symbols Order defines "political party" to mean an association or body of individual citizens of India registered with the Commission as a political party under Section 29-A

of the Representation of the People Act, 1951. Paragraph 3 requires every association or body of individual citizens of India to make an application to the Commission for its registration as a political party under Section 29-A of the aforesaid Act. Symbol is to be allotted to a contesting candidate in accordance with the provisions of the said Order. Paragraphs 6 and 7 which are relevant for the present dispute are reproduced below :

"6. Classification political parties. - (1) For the purposes of this Order and for such other purposes as the Commission may specify as and when necessity therefor arises, political parties are either recognised political parties or unrecognised political parties.

(2) A political party shall be treated as recognised political party in a State, if and only if either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party and not otherwise, that is to say -

(A) that such party -

(a) has been engaged in political activity for a continuous period of five years; and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned -

either

(i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

or

(ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits.)

(3) For the removal of doubts it is hereby declared that the condition in clause (A) or (B) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House, or, as the case may be, that Assembly.

7. Two categories of recognised political parties. - (1) If a political party is treated as a recognised

political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a 'national party' throughout the whole of India; and if a political party is treated as a recognised political party in accordance with that paragraph in less than four State, it shall be known as, and shall have and enjoy the Status of, a 'State party' in the State or States in which it is a recognised political party.

(2) Notwithstanding anything contained in sub-paragraph (1), every political party which immediately before the commencement of this Order is a multi-State party shall, on such commencement, be a national party and shall continue to be so until it ceases to be a national party on the result of any general election held after such commencement.

(3) Notwithstanding anything contained in sub-paragraph (1), every political party which immediately before the commencement of this Order is in a State a recognised political party, other than a multi-State party as aforesaid shall, on such commencement, be a State party in that State and shall continue to be so until it ceases to be a State party in that State on the result of any general election held after such commencement."

4. In view of paragraph 6(2) a political party shall be treated as a recognised political party in a State, if and only if either the condition specified in clause (A) or the condition specified in clause (B) is fulfilled by the party. Clause (A) requires such party to have been engaged in political activity for a continuous period of five years and has at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned at least one member to the House of the People for every twenty five members of that House or any fraction of that number elected from that State or at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number. The alternative condition as specified in clause (B) is regarding the total number of valid votes specified in the said clause (B) polled at the General Election in the State to the House of the People or to the Legislative Assembly for the time being in existence and functioning. The conditions for being recognised as a "national party" or "State party" have been specified in paragraph 7(1), saying that if a political party is treated as a recognised political party in accordance with paragraph 6 aforesaid in four or more States, it shall be known as, and enjoy the status of a "national party" throughout the whole of India; on the other hand if a political party is treated as a recognised political party in accordance with paragraph 6 aforesaid in less than four States, it shall be know as, and shall have and enjoy the status of a "State party" in the State or State or States in which it is a recognised political party.

5. There is no dispute that when the appellant was recognised as a national party on 16-4-1991 it fulfilled the conditions prescribed in paragraphs 6(2) and 7(1) of the Symbols Order. It is also an admitted position that when the show-cause notice was given by the Election Commission to the appellant as to why it should not be derecognised as a national party on the basis of the election results of the Legislative Assemblies in the State mentioned above in the months of April-June 1991, the appellant did not fulfil the conditions prescribed in paragraphs 6(2) and 7(1) for being recognised as a national party. As such the question which is to be answered is as to whether once a political party is recognised as a national party having fulfilled conditions prescribed for the same in the Symbols Order can it be derecognised as a national party under the provisions of the same Symbols Order?

6. It is true that there is no specific provision under Symbols Order vesting power in the Election Commission after having recognised a political party as a national party to declare that such political party has ceased to be a national party, not being entitled to the exclusive use of the symbol allotted to it. But at the same time, it cannot be conceived that a political party having been recognised as a national party or a State party, as the case may be, on having fulfilled the conditions prescribed in paragraph 6(2) shall continue as such in perpetuity although it has forfeited the right to be recognised as a national party or a State party. In paragraph 2(2) of the said Symbols Order it has been specifically provided that the General Clauses Act, 1897 shall as far as may be applicable in relation to the interpretation of the said order as it applies in relation to the interpretation of a Central Act. Section 21 of the General Clauses Act provides that where by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction, and conditions if any to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. As paragraph 2(2) of the Order in clear and unambiguous term makes provision of the General Clauses Act applicable to the Symbols Order, it need not be impressed that provisions of Section 21 of the General Clauses Act also become applicable vesting power in the Election Commission which had issue the aforesaid order dated 16-4-1991 recognising the appellant as a national party to rescind the said order as the appellant in the elections to the Legislative Assemblies of the States mentioned above ceased to fulfil the conditions prescribed in paragraph 6(2) of the Order read with paragraph 7(1) thereof.

7. The learned counsel, appearing on behalf of the appellant, submitted that even if it is assumed that Election Commission can exercise the power of derecognising a national party after it has ceased to fulfil the conditions prescribed in paragraph 6(2) that power can be exercised only after the general election which means when elections are held in all the States within the Union of India and not only in some of the States, as was the situation in the months of April-June 1991. This argument appears to be attractive specifically in view of the expression "General Election" as defined in paragraph 2(f) and used in paragraph 6(2), but on proper analysis and scrutiny, according to us, it cannot be accepted. The General Elections in all the States, at one time in India has now become a matter of history. For one reason or other the elections are being held in group of States under different situations prevailing from time to time. Apart from that as the condition prescribed in paragraph 7(1) for recognising a political party as a national party is that it should be treated as a recognised political party in accordance with paragraph 6, in four or more States; then for purpose of withdrawing such recognition also it has to be examined as to whether after elections the said political party can be treated as a recognised political party in accordance with paragraph 6 in four or more States. If for purpose of recognising a political party as a national party the performance of such party in four or more States has to be examined in accordance with paragraphs 6 and 7 then it cannot be urged that for withdrawing such recognition it must await till elections are held in all the States within Union of India. If this stand is accepted then even for recognising a political party as a national party, such recognition should await till elections are held in all the States in India. Can recognition of a political party as a national party be not given, no sooner it fulfils the conditions specified in paragraph 6(2), in four or more States in view of paragraph 7(1) of the Symbols Order? If for purpose of recognition of a political party as a national party the conditions of paragraph 6(2) have to be fulfilled only in four or more States, then on the same principle even for withdrawing the said recognition the question has to be examined in the light of paragraph 6(2) on the basis of the results in four or more States. Once the Election Commission is satisfied that a political party recognised as a national party has ceased to fulfil the conditions prescribed in paragraph 6(2) of the Symbols Order not even in four States as a result of any election, it can derecognise such a political

party as a national party. After any election such party must continue to be a recognised political party at least in four States, otherwise the Election Commission has to derecognise it as a national party. There is no dispute that in the months of April-June 1991 elections were held in more than four States and on the basis of the results in those elections, the appellant could not be held to be a recognised political party in terms of Paragraph 6(2) and of the Symbols Order in at least four States. The Election Commission was justified in passing the impugned order in the light of Paragraph 6(2) and 7(1).

8. This Court has examined the nature of the provisions of the Symbols Order in the case of *Kanhiya Lal Omar v. R. K. Trivedi*. It was said that the Election Commission was empowered to recognise political parties and to decide disputes arising amongst them or between splinter groups within a political party. It was further said that the Election Commission was empowered to issue the aforesaid Symbols Order because the said power was comprehended in the power of superintendence, direction and control of elections vested by Article 324 of the Constitution in the Commission in the Commission. In that connection it was observed : (SCC pp. 639-40, para 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 Commr. and A. C. Jose v. Sivan Pillai*.)"

9. The Election Commission on the materials produced before it rightly came to the conclusion that the appellant had ceased to be a national party or a State party and as such shall not be entitled to the exclusive use of the symbol "Woman carrying pot on her head" earlier reserved for the appellant. We find no reason to take a different view. Accordingly, the appeal fails and it is dismissed. In the facts and circumstances of the case, there shall be no orders as to cost.