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

% *Date of Decision : 17.01.2025*

+ **W.P.(C) 633/2025**

JANTA PARTY THROUGH ITS PRESIDENTPetitioner
Through: Mr R.K. Bali with Ms Meghna Bali
and Ms Taniya Bali, Advocates.

versus

ELECTION COMMISSION OF INDIARespondent
Through: Mr Sidhant Kumar with Mr Om Batra
and Ms Eksha Kashyap, Advocates.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

VIBHU BAKHRU, ACJ. (ORAL)

1. The petitioner has filed the present petition, *inter alia*, impugning the constitutional validity of the Election Symbol (Reservation & Allotment) Order, 1968 [hereafter *the ES (R&A) Order*] which confines the provision for reservation of symbols to a registered political party.
2. Mr.R.K. Bali, the learned counsel appearing for the petitioner contends that the petitioner was a recognised party but is no longer recognised. He submits that notwithstanding it is not a recognised state or national political party, the petitioner holds rights in respect of the symbol that was used for contesting the elections in earlier years. He submits that the symbol is a property, which intrinsically vests with a political party irrespective of whether it is recognised or it is de-recognised. He also



submits that a political party is de-recognised if it is not performing well in elections and fails to secure 6% of the votes polled, however, this is self-perpetuating because disability to use symbols further reduces its ability to perform well in elections.

3. Mr Sidhant Kumar, the learned counsel appearing for the Election Commission of India (ECI) submits that the issues sought to be raised are squarely covered against the petitioner by several decisions. He referred to the decision of the Supreme Court in *Subramanian Swamy v. Election Commission of India: (2008) 14 SCC 318* as well as the decision of Division Bench of this court in *Samata Party v. Election Commission of India and Ors.: 2022 SCC OnLine Del 3983* in support of his contention.

4. We find merit in Mr Kumar's contention that the issue sought to be raised is no longer *res integra* and is concluded by the authoritative decision of the Supreme Court in *Subramanian Swamy v. Election Commission of India (supra)*. We consider it apposite to set out the following extracts of the said decision:

“5. The said Janata Party lost its status as a national party because of its poor performance in general elections in 1996 and by an order dated 27-9-2000 of the Election Commission, it ceased to be a recognised political party. It is not disputed that the order dated 27-9-2000 has become final and has been upheld right up to this Court. Being a recognised political party of a national and/or State stature it had a reserved symbol being chakra haldar i.e. a farmer carrying plough within a wheel. As a result of its derecognition as a recognised political party it lost its right to have exclusive symbol, more particularly due to the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as “the Symbols Order”). The said Symbols Order owes its existence to Standing Order No. 2959 dated 31-8-1968 and is passed in exercise of powers



conferred by Article 324 of the Constitution of India read with Section 29-A of the Representation of the People Act, 1951 (43 of 1951) and Rules 5 and 10 of the Conduct of Elections Rules, 1961. It deals with the symbols of the political parties.

6. Before this writ petition was filed, on losing the reserved symbol, as a result of its derecognition as a recognised political party, the appellant had approached the Election Commission insisting upon the continuance of the reservation of the aforementioned symbol of Janata Party. As has already been pointed out, after the derecognition of Janata Party as a recognised party, a special leave petition being SLP (C) No. 20807 of 2000 was filed in this Court. In this SLP the only challenge was to the derecognition order dated 27-9-2000. However, during the pendency of this SLP, on 1-12-2000, by Notification No. 56/2000/Jud.III the Election Commission amended the Symbols Order and among other amendments inserted Para 10-A therein. This Court dismissed the aforementioned SLP on 15-1-2001 in limine. The decision of derecognition of Janata Party has, therefore, become fait accompli.

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

21. Paras 6-A, 6-B and 6-C provide for the condition of recognition of a political party on the national and/or State level. We need not, at this stage, go into the intricacies of Paras 6-A, 6-B and 6-C but suffice it to say that in order to have that status, the said political party must be an effective political party in the sense that it must share a particular percentage of votes in the national or the State-level elections or it must have certain number of elected representatives in Lok Sabha or the State



Legislatures. It is this concept which introduces that in order to be a recognised political party, it must perform well in the elections and thereby pass the acid test of “following”. Therefore, unless there is a following of the nature provided in Paras 6-A, 6-B and 6-C, the political party does not remain a recognised political party. Once this position is clear, the other extremely important position which has to be considered is that a reserved symbol is available only for the recognised parties. Thus, there is a bond created between recognised political party and its symbol.

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

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30. Another argument which was pressed into service was that Para 8 should recognise a third category i.e. a party which was once a recognised party but has lost its status as such so that it retains its old symbol for ever and can rightfully claim it. That para makes it mandatory that a candidate set up by a national party shall chose the symbol reserved for that party and no other symbol. So also a candidate set up by the State party shall chose and shall be allotted only the symbol allotted to that party and no other symbol. Para 8(3) provides that a reserved symbol shall not be chosen by or allotted to any candidate other than a candidate set up by the national party or a State party for whom such symbol has been reserved. The provision is extremely clear. **Dr. Swamy, however, wanted us to create a third category as has been stated earlier. That is not possible. If the arguments were to be accepted, then we would have to read something which is**



not there in the provisions and this includes Paras 5, 6 and 8 as also the impugned Para 10-A. Such an exercise would amount to this Court treading dangerous path of legislature. We do not think that such a course is possible. We are, therefore, not inclined to accept that argument.

31. That leaves us with the last argument that the symbol amounts to a property and, therefore, a political party cannot be deprived of its property. The argument must be rejected at the outset as the symbol can never have even the traces of the concept of a property.

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33. In *Sadiq Ali v. Election Commission of India* [(1972) 4 SCC 664] this Court was considering the controversy regarding the symbol “of two bullocks with a yoke on” which was claimed by two split groups of the Congress Party. The Court observed that: (SCC p. 680, para 35)

“35. ... 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 sections or groups, as is held to be that political party under Para 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 the 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 observations are more clear than necessary to repel the contention raised by Dr. Swamy.

34. A symbol is not a tangible thing nor does it generate any wealth, it is only the insignia which is associated with the particular political party so as to help the millions of illiterate voters to properly exercise their right to franchise in favour of the candidate of their choice belonging to a particular party. In the election process it is not merely the individual candidate's



personality or his identity that weighs with the voters. It is undoubtedly a very relevant factor but along with it the voter also can and does vote in favour of the party. It is under such circumstances that the symbol becomes relevant and important. However, all that it provides for is the essential association that it has with a particular party. The party concerned would have a legal right to exclusively use the same but that is not, in our considered opinion, a property of the party and, therefore, the Election Commission which is required to ensure free, fair and clean elections have every right to deprive a particular party with a dismal performance of that symbol. The Election Commission puts a clamp on the right of such a political party to use the symbol rightfully. **We are, therefore, not in a position to accept the argument that symbol is a property of a party and, therefore, such property cannot be taken away from that political party. The symbol may be an outcome of intellectual exercise but it does not become an “intellectual property” which concept has monetary implications. In case of a political party as contemplated in the Symbols Order, monetary angle is conspicuously absent.”**

[Emphasis added]

5. In *Samata Party v. Election Commission of India and Ors.* (*supra*) this court had referred to the decision in the case of *Subramanian Swamy v. Election Commission of India* (*supra*) and had reiterated the principle that the parties cannot consider a symbol as its exclusive property. The ES(R&A) Order makes it amply clear that the right to use the symbol can be lost with the dismal performance of the party. The relevant extracts of the said decision are set out below:

“14. A reading of the above paragraphs demonstrates that a reserved symbol is a symbol which is reserved for a recognized political party for exclusive allotment to contesting candidates fielded by that party. The Appellant herein was de-recognized as a State Party in the year 2004.



The contention of the Appellant is that since the candidates of the Party contested elections in the year 2014 under the symbol of 'flaming torch', the said symbol cannot be allotted to any other party. This argument has already been rejected by the Supreme Court in *Subramanian Swamy vs. Election Commission of India*, [(2008) 14 SCC 318]. The relevant portion of the said Judgment reads as under:

"30. Another argument which was pressed into service was that Para 8 should recognise a third category i.e. a party which was once a recognised party but has lost its status as such so that it retains its old symbol for ever and can rightfully claim it. That para makes it mandatory that a candidate set up by a national party shall chose the symbol reserved for that party and no other symbol. So also a candidate set up by the State party shall chose and shall be allotted only the symbol allotted to that party and no other symbol. Para 8(3) provides that a reserved symbol shall not be chosen by or allotted to any candidate other than a candidate set up by the national party or a State party for whom such symbol has been reserved. The provision is extremely clear. Dr. Swamy, however, wanted us to create a third category as has been stated earlier. That is not possible. If the arguments were to be accepted, then we would have to read something which is not there in the provisions and this includes Paras 5, 6 and 8 as also the impugned Para 10-A. Such an exercise would amount to this Court treading dangerous path of legislature. We do not think that such a course is possible. We are, therefore, not inclined to accept that argument.

31. That leaves us with the last argument that the symbol amounts to a property and, therefore, a political party cannot be deprived of its property. The argument must be rejected at the outset as the symbol can never have even the traces of the concept of a property."

15. The above judgment further states that a symbol is not a tangible thing nor does it generate any wealth. It is only the insignia which is associated with the particular political party so as to help the millions of illiterate voters to properly



exercise their right to franchise in favour of the candidate of their choice belonging to a particular party. The parties concerned cannot consider the symbol as its exclusive property. **The Election Symbols (Reservation And Allotment) Order, 1968 makes it very clear that the right to use the symbol can be lost with the dismal performance of the party.”**

[Emphasis added]

6. In view of the above, the petitioner’s challenge to the provisions of the ES(R&A) Order is rejected.
7. Mr Kumar has also raised a preliminary objection regarding the locus of the petitioner to file the present petition. However, we do not consider it apposite to enter the said controversy. The challenge raised by the petitioner is squarely covered by the earlier decisions as noted above.
8. The petition is accordingly dismissed.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 17, 2025/tr