Union Territory Of Ladakh vs Jammu And Kashmir National Conference on 6 September, 2023

Author: Vikram Nath

Bench: Vikram Nath

REPORTABLE

2023INSC804

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 5707 OF 2023
(@ SPECIAL LEAVE PETITION (CIVIL) NO.18727 OF 2023)

UNION TERRITORY OF LADAKH & ORS. … APPELLANTS

VERSUS

JAMMU AND KASHMIR NATIONAL CONFERENCE & ANR. … RESPONDENTS

A1: Union Territory of Ladakh through its Chief Secretary
A2: Chief Election Officer, UT of Ladakh
A3: District Election Officer (Kargil)
A4: Administrative Secretary, Election Department, UT of Ladakh

R1: Jammu and Kashmir National Conference, through its General Secretary
R2: Election Commission of India

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Heard learned counsel for the parties.

2. Leave granted.

3. The present appeal is directed against the Judgment and Order dated 14.08.2023 (hereinafter referred to as the “Impugned Judgment”) rendered by a learned Division Bench of the High Court of Jammu & Kashmir and Ladakh at Srinagar (hereinafter referred to as the “High Court”) dismissing Letters Patent Appeal No.151 of 2023 filed by the Appellants and upholding the interim order of a learned Single Judge dated 09.08.2023 in Writ Petition (Civil) No.1933 of 2023. BRIEF FACTS:

4. The controversy involved in this lis is the non-

allocation of the Plough symbol to the writ petitioner, the Jammu and Kashmir National Conference/Respondent No.1 herein (hereinafter referred to as "R1") for its candidates to contest the then-upcoming General Elections of the Ladakh Autonomous Hill Development Council, Kargil (hereinafter referred to as the "LAHDC"). In view of the urgency in the matter, the learned Single Judge passed an interim order on 09.08.2023, the operative portion whereof at Paragraph 11 reads as under:

> "11. Keeping in view that the upcoming General Election of Ladakh Autonomous Hill Development Council (LAHDC) stands announced, the petitioner-party is directed to approach the office of the respondents 1 to 3 & 5, for notifying the reserved symbol (plough) already allotted to it and respondents 1 to 3 & 5 shall notify the symbol allotted to petitioner-party in terms of Paragraphs 10 and 10(A) of Election Symbols (Reservation and Allotment) Order, 1968, and allow the candidates set up by the petitioner-party to contest on the reserved election symbol (plough) already allotted to the party."
>
> 5. Aggrieved, the Appellants moved the learned Division Bench of the High Court by preferring an appeal, which after hearing was dismissed vide Impugned Judgment on 14.08.2023.

SUBMISSION BY THE APPELLANTS:

> 6. Mr. K. M. Nataraj, learned Additional Solicitor General (hereinafter referred to as the "ASG") for the Appellants submitted that the learned Single Judge and the learned Division Bench of the High Court have issued directions contrary to law. It was submitted that both orders have been passed on an erroneous assumption that the provisions of Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the "1968 Order"), would be applicable in elections to the LAHDC. Learned ASG canvassed that this is not the correct legal position as the LAHDC election is being conducted by the Election Authority of the Union Territory of Ladakh constituted under Rule 5 of The Ladakh Autonomous Hill Development Councils (Election) Rules, 1995 (hereinafter referred to as the "1995 Rules"). It was contended that the Election Commission of India (hereinafter referred to as the "ECI") is empowered to hold elections to the Parliamentary and State Assembly constituencies and for the present LAHDC elections, the ECI does not exercise any authority. Thus, the learned ASG submitted that any reference to the provisions of the 1968 Order is misplaced.
>
> 7. Learned ASG, further, contended that Paragraphs No. 9, 10 and 10(A) of the 1968 Order speak of restrictions on the allotment of symbols reserved for State Parties in States where such parties are not recognized; concession to candidates set up by a State Party at elections in other States or Union Territories, and; concession to

candidates set up by an un-recognized party which was earlier recognized as a National or State Party, respectively. Thus, it was his categoric stand that such concession can be only for the purposes of Parliamentary and State Assembly elections, and not for the election in question.

8. Learned ASG submitted that the reference by the ECI in its communication dated 18.07.2023 to R1, that it can avail the concession under Paragraph 10 of the 1968 Order can neither confer any right on R1, nor compel the Election Authority of the Union Territory of Ladakh to allow the prayer of R1, as made in the Writ Petition before the High Court. With regard to the opinion of the Law Department of the Appellant No.1, as quoted in the communication of the District Election Officer (District Magistrate), Kargil in his communication dated 12.07.2023 to the Chief Electoral Officer, Union Territory of Ladakh, the same at best was only advisory but not binding as it is for the Election Authority of the Union Territory of Ladakh to independently consider such request.

9. He submitted that none of the candidates, who have filled up and submitted their nomination forms, have either sought the Plough symbol or indicated in the relevant column that they were candidates of R1 and on this score alone, at this stage, R1 was not entitled to any indulgence by this Court.

10. He summed up his arguments by stating that, as of now1, the process of elections had already been set in motion. Learned ASG pointed out that filing of the nomination forms had begun from 16.08.2023 and reached the penultimate stage since the last date of withdrawal of nominations (26.08.2023) had already elapsed. It was stated that now only polling remained to be held on 10.09.2023 and in this view of the matter, this Court may set aside the Impugned Order.

This Court's order dated 01.09.2023 is quoted for ready reference:

'Application for impleadment is rejected. Heard learned counsel for the parties. Judgment reserved.

List the matter for pronouncement on 06.09.2023.' SUBMISSIONS BY RESPONDENT NO.1:

11. Learned counsel for R1 submitted that the orders of the learned Single Judge dated 09.08.2023 and the learned Division Bench dated 14.08.2023 are self-

speaking and have dealt in detail with the contentions of the Appellants and the same have been negated on cogent legal and factual grounds. It was submitted that there should not have been, in the first place, any issue with the Appellants in granting the Plough symbol for the reason that R1 is the incumbent ruling party in the LAHDC, and was entitled to the Plough symbol, since the same was neither part of the list of free symbols nor allotted to any other National or State Party, so

recognized, either by the ECI or by the Election Authority for the Union Territory of Ladakh. It was submitted that a completely partisan and arbitrary approach had been adopted by the Appellants in denying their preferred symbol (Plough) for oblique reasons to deny a level-playing field between candidates. It was further submitted that the Plough symbol was well-known to the electorate since decades as being exclusively associated with R1, the denial of the same is clearly intended to cause unjustified prejudice. It was stated that undue advantage would accrue to the remaining candidates/parties contesting the LAHDC elections.

12. He urged the Court to take note of the fact that despite the learned Single Judge having passed directions well before the commencement of even the filing of nominations, upheld by the learned Division Bench, which again, was before the starting of the nomination process, and despite there being a contempt case pending before the learned Single Judge, which was adjourned on prayer made by the Appellants, citing the pendency of the present appeal, the Appellants had not complied with the orders of the High Court. In this backdrop, submitted learned counsel, to take a stand before this Court that now due to efflux of time, no relief can be granted to R1, was clear dishonest conduct. It was submitted that this Court would not let a just cause be defeated only because of delay occasioned by the other side and the Appellants cannot take the advantage of such delay caused by them to the detriment of R1's bonafide, legitimate and genuine claim.

13. Learned counsel submitted that allotment of symbols by the Appellants to the National Parties and free symbols shown in the Notification for the present elections clearly shows that the same are in conformity with the 1968 Order. Thus, he submitted, the Appellants are precluded from blowing hot and cold that they cannot and should not be permitted to selectively, as per their whims and fancies, decide as to which provisions under the 1968 Order would be applicable and which provisions would not. It was submitted that a harmonious reading of Paragraphs 9, 10, 10(A) as also 12 of the 1968 Order would indicate beyond doubt that in the absence of anything to the contrary, the Appellants were required to be guided by the 1968 Order in toto, which was also the indication in the letter written by the ECI to R1 and the same view was taken by the Law Department in its Legal Opinion to the Appellants.

ANALYSIS, REASONING AND CONCLUSION:

14. The relevant Paragraphs of the 1968 Order, attention to which was drawn by the learned ASG and the learned counsel for R1, are set out below:

"9. Restriction on the allotment of Symbols reserved for State parties in States where such parties are not recognised.— A symbol reserved for a State party in any State—

(a) shall not be included in the list of free symbols for any other State or Union territory, and

(b) shall not be reserved for any other party which subsequently becomes eligible, on fulfilment of the conditions specified in paragraph 6, for recognition as a State party in any other State:

Provided that nothing contained in clause

(b) shall apply in relation to a political party, for which the Commission has, immediately before the commencement of the Election Symbols (Reservation and Allotment) (Amendment) Order, 1997, already reserved the same symbol which it has also reserved for some other State party or parties in any other State or States.

10. Concessions to candidates set up by a State party at elections in other States or Union territories.— If a political party, which is recognised as a State party in some State or States, sets up a candidate at an election in a constituency in any other State in which it is not a recognised State party, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved for that party in the State or States in which it is a recognised State Party, notwithstanding that such symbol is not specified in the list of free symbols for such other State or Union territory, on the fulfilment of each of the following conditions, namely:—

(a) that an application is made to the Commission by the said party for exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment: Provided that nothing contained in this paragraph shall apply to a candidate set up by a State party at an election in any constituency in a State in which that party is not a State Party and where the same symbol is already reserved for some other State Party in that State.

10A. Concession to candidates set up by an unrecognized party which was earlier recognized as a National or State party.– If a political party, which is unrecognized at present but was a recognized National or State party in any State or Union territory not earlier than six years from the date of notification of the election, sets up a candidate at an election in a constituency in any State or Union territory, whether such party was earlier recognized in that State or Union territory or not, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved earlier for that party when it was a recognized National or State party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union territory, on the fulfillment of each of the following conditions, namely:––

(a) that an application is made to the Commission by the said party for the exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c),

(d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment:

> Provided that nothing contained in this paragraph shall apply to a candidate set up by the said party at an election in any constituency in a State or Union territory where the same symbol is already reserved for some other National or State party in that State or Union Territory.
>
> xxx
>
> 12. Choice of symbols by other candidates and allotment thereof.—(1) Any candidate at an election in a constituency in any State or Union territory, other than—
>
> (a) a candidate set up by a National Party;

or

(b) a candidate set up by a political party which is a State Party in that State; or

(c) a candidate referred to in paragraph 10 or paragraph 10A;

shall choose, and shall be allotted, in accordance with the provisions hereafter set out in this paragraph, one of the symbols specified as free symbols for that State or Union territory by notification under paragraph 17.

(2) Where any free symbol has been chosen by only one candidate at such election, the returning officer shall allot that symbol to that candidate and to no one else.

(3) Where the same free symbol has been chosen by several candidates at such election, then—

(a) if of those several candidates, only one is a candidate set up by an unrecognised political party and all the rest are independent candidates, the returning officer shall allot that free symbol to the candidate set up by the unrecognised political party, and to no one else; and, if, those several candidates, two or more are set up by different unrecognised political parties and the rest are independent candidates, the returning officer shall decide by lot to which of the two or more candidates set up by the different unrecognised political parties that free symbol shall be allotted, and allot that free symbol to the candidate on whom the lot falls, and to no one else:

> Provided that where of the two or more such candidates set up by such different unrecognized political parties, only one is, or was, immediately before such election, a sitting member of the House of the People, or, as the case may be, of the Legislative Assembly (irrespective of the fact as to whether he was allotted that free symbol or

any other symbol at the previous election when he was chosen as such member), the returning officer shall allot that free symbol to that candidate, and to no one else;

(b) if, of those several candidates, no one is set up by any unrecognised political party and all the independent candidates, but one of the independent candidates is, or was, immediately before such election a sitting member of the House of the People, or, as the case may be, of the legislative Assembly, and was allotted that free symbol at the previous election when he was chosen as such member, the Returning Officer shall allot that free symbol to that candidate, and to no one else; and

(c) if, of those several candidates, being all independent candidates, no one is, or was, a sitting member as aforesaid, the returning officer shall decide by lot to which of those independent candidates that free symbol shall be allotted, and allot that free symbol to the candidates on whom the lot falls, and to no one else."

15. Sections 12 and 13 of the Ladakh Autonomous Hill Development Councils Act, 19972 (hereinafter referred to as the "1997 Act") read as under:

"12. Disputes regarding elections. – (1) No election shall be called in question except by an election petition presented in such This repealed The Ladakh Autonomous Hill Development Councils Act, 1995 (President's Act No.1 of 1995).

manner as may be prescribed and before such authority as may be appointed by Government, from time to time, by notification in the Government Gazette:

Provided that no person below the rank of a District Judge shall be appointed for the purpose of this section.

(2) No election shall be called in question except on any one or more of the following grounds, namely: –

(a) that on the date of his election the returned candidate was not qualified or was disqualified, to be chosen to fill the seat in the Council;

(b) that a corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent.

Explanation: — For the purposes of this section "corrupt practice" shall mean any of the corrupt practices specified in section 132 of the Jammu and Kashmir Representation of the People Act, 1957;

(c) that any nomination has been improperly rejected;

(d) that the result of the election in so far as it concerns the returned candidate has been materially affected–

(i) by any improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote; or

(iv) by the reception of any vote which is void; or

(v) by any non-compliance with provisions of this Act or of any rules or orders made thereunder.

(3) At the conclusion of the trial of an election petition the authority appointed under sub-section (1) shall make an order–

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidates to have been duly elected.

(4) If a petitioner in addition to calling in question the election of a returned candidate makes a declaration that he himself or any other candidate has been duly elected and the authority under sub-section (1) is of opinion that–

(a) in fact the petitioner or such other candidate has received the majority of valid votes; or

(b) but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have obtained the majority of the valid votes, the authority as aforesaid shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

13. Procedure for election disputes. – The procedure provided in the Code of Civil Procedure, Samvat 1977 in regard to suits shall be followed by the authority appointed under section 12 as far as it can be made applicable in the trial and disposal of an election petition under this Act."

16. It requires no reiteration that the powers of this Court and the High Courts vested under the Constitution cannot be abridged, excluded or taken away, being part of the Basic Structure of our Constitution. Reference need only be made to decisions in His Holiness Kesavananda Bharati Sripadagalvaru v State of Kerala, (1973) 4 SCC 225; Indira Nehru Gandhi v Raj Narain, 1975 Supp SCC 1; Minerva Mills Ltd. v Union of India, (1980) 3 SCC 625; L Chandra Kumar v Union of India,

(1997) 3 SCC 261 and more recently, to Kalpana Mehta v Union of India, (2018) 7 SCC 1 and Rojer Mathew v South Indian Bank Limited, (2020) 6 SCC 1, all of which were rendered by a Bench of 5 or more learned Judges. Section 12 of the 1997 Act need not detain us. Insofar as Section 13 of the 1997 Act is concerned, it is by now too well-settled that the availability of alternative efficacious remedy is no bar to the exercise of high prerogative writ jurisdiction, in the light of various decisions, including but not limited to, State of Uttar Pradesh v Mohammad Nooh, 1958 SCR 595; Madhya Pradesh State Agro Industries Development Corporation Ltd. v Jahan Khan, (2007) 10 SCC 88; Maharashtra Chess Association v Union of India, (2020) 13 SCC 285. Even on the anvil of Radha Krishan Industries v State of Himachal Pradesh, (2021) 6 SCC 771, Section 13 of the 1997 Act does not, and cannot, impede a Constitutional Court from proceeding further. We do not wish to multiply established authorities on the point but would add the very recent Godrej Sara Lee Ltd. v Excise and Taxation Officer-cum-Assessing Authority, 2023 SCC OnLine SC 95 to the list enumerated above.

17. At the threshold, it is noted that the ECI deals with the conduct of elections to the Parliament, the State Legislative Assemblies and the State Legislative Councils. The Union Territory of Ladakh does not currently have a Legislative Assembly. The last election to the Parliamentary constituency was held in the year 2019. That said, first things first. The Legal Opinion by the Law Department remains internal advice, and advice alone, and as such, the learned ASG was correct in contending that the same would not create/confer any right in favour of R1. In Mahadeo v Sovan Devi, 2022 SCC OnLine SC 1118 (where one of us, Vikram Nath, J. was part of the coram), the Court, after considering various case-laws, held that "It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. ..."

18. In Kalpana Mehta (supra), Hon. Dipak Misra, C.J.I., with whom 4 learned Judges concurred, stated:

> "40. While focussing on the exercise of the power of judicial review, it has to be borne in mind that the source of authority is the Constitution of India. The Court has the adjudicating authority to scrutinise the limits of the power and transgression of such limits. The nature and scope of judicial review has been succinctly stated in Union of India v. Raghubir Singh [Union of India v. Raghubir Singh, (1989) 2 SCC 754] by R.S. Pathak, C.J. thus : (SCC p. 766, para 7) "7. ... The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. ... With this impressive expanse of judicial power, it is only right that the superior courts in India should be conscious of the enormous responsibility which rest on them. This is specially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India." And again: (SCC p. 767, para 11) "11. Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or

> competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters." The aforesaid two passages lay immense responsibility on the Court pertaining to the exercise of the power keeping in view the accepted values of the present. An organic instrument requires the Court to draw strength from the spirit of the Constitution.

The propelling element of the Constitution commands the realisation of the values. The aspiring dynamism of the interpretative process also expects the same.

41.This Court has the constitutional power and the authority to interpret the constitutional provisions as well as the statutory provisions. The conferment of the power of judicial review has a great sanctity as the constitutional court has the power to declare any law as unconstitutional if there is lack of competence of the legislature keeping in view the field of legislation as provided in the Constitution or if a provision contravenes or runs counter to any of the fundamental rights or any constitutional provision or if a provision is manifestly arbitrary.

42. When we speak about judicial review, it is also necessary to be alive to the concept of judicial restraint. The duty of judicial review which the Constitution has bestowed upon the judiciary is not unfettered; it comes within the conception of judicial restraint. The principle of judicial restraint requires that Judges ought to decide cases while being within their defined limits of power. Judges are expected to interpret any law or any provision of the Constitution as per the limits laid down by the Constitution.

43.In S.C. Chandra v. State of Jharkhand [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897] , it has been ruled that the judiciary should exercise restraint and ordinarily should not encroach into the legislative domain. In this regard, a reference to a three-Judge Bench decision in Suresh Seth v. Indore Municipal Corpn. [Suresh Seth v. Indore Municipal Corpn., (2005) 13 SCC 287] is quite instructive. In the said case, a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956. Repelling the submission, the Court held that it is purely a matter of policy which is for the elected representatives of the people to decide and no directions can be issued by the Court in this regard. The Court further observed that this Court cannot issue directions to the legislature to make any particular kind of enactment. In this context, the Court held that under our constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact law and no outside power or authority can issue a direction to enact a particular kind of legislation. While so holding, the Court referred to the decision in Supreme Court Employees' Welfare Assn. v. Union of India [Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187 : 1989 SCC (L&S) 569] wherein it was held that no court can direct a legislature to enact a particular law and similarly when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated authority.

44.Recently, in Census Commr. v. R. Krishnamurthy [Census Commr. v. R. Krishnamurthy, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589] , the Court, after referring to Premium Granites v. State of T.N. [Premium Granites v. State of T.N., (1994) 2 SCC 691] , M.P. Oil Extraction v. State of M.P. [M.P. Oil Extraction v. State of M.P., (1997) 7 SCC 592] , State of M.P. v. Narmada Bachao Andolan [State of M.P. v. Narmada Bachao Andolan, (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875] and State of Punjab v. Ram Lubhaya Bagga [State of Punjab v. Ram Lubhaya Bagga, (1998) 4 SCC 117 : 1998 SCC (L&S) 1021] , held : (R. Krishnamurthy case [Census Commr. v. R. Krishnamurthy, (2015) 2 SCC 796 :

(2015) 1 SCC (L&S) 589] , SCC p. 809, para

33) "33. From the aforesaid pronouncement of law, it is clear as noonday that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

45. At this juncture, we think it apt to clearly state that the judicial restraint cannot and should not be such that it amounts to judicial abdication and judicial passivism. The Judiciary cannot abdicate the solemn duty which the Constitution has placed on its shoulders i.e. to protect the fundamental rights of the citizens guaranteed under Part III of the Constitution. The constitutional courts cannot sit in oblivion when fundamental rights of individuals are at stake. Our Constitution has conceived the constitutional courts to act as defenders against illegal intrusion of the fundamental rights of individuals. The Constitution, under its aegis, has armed the constitutional courts with wide powers which the courts should exercise, without an iota of hesitation or apprehension, when the fundamental rights of individuals are in jeopardy. Elucidating on the said aspect, this Court inVirendra Singh v. State of U.P. [Virendra Singhv. State of U.P., AIR 1954 SC 447] has observed : (AIR p. 454, para 34) "34. ... We have upon us the whole armour of the Constitution and walk from henceforth in its enlightened ways, wearing the breastplate of its protecting provisions and flashing the flaming sword of its inspiration."

46. While interpreting fundamental rights, the constitutional courts should remember that whenever an occasion arises, the courts have to adopt a liberal approach with the object to infuse lively spirit and vigour so that the fundamental rights do not suffer.

When we say so, it may not be understood that while interpreting fundamental rights, the constitutional courts should altogether depart from the doctrine of precedents but it is the obligation of the constitutional courts to act as sentinel on the qui vive to ardently guard the fundamental rights of individuals bestowed upon by the Constitution. The duty of this Court, in this

context, has been aptly described in K.S. Srinivasan v. Union of India [K.S. Srinivasan v. Union of India, AIR 1958 SC 419] wherein it was stated : (AIR p. 433, para 50) "50. ... All I can see is a man who has been wronged and I can see a plain way out. I would take it."

47. Such an approach applies with more zeal in case of Article 32 of the Constitution which has been described by Dr B.R. Ambedkar as "the very soul of the Constitution — the very heart of it — the most important Article". Article 32 enjoys special status and, therefore, it is incumbent upon this Court, in matters under Article 32, to adopt a progressive attitude. This would be in consonance with the duty of this Court under the Constitution, that is, to secure the inalienable fundamental rights of individuals." (emphasis supplied)

19. The observations afore-referred are in perfect sync with what is expected of Constitutional Courts. They are not restricted only to Articles 32 or 226 of the Constitution but lay down a talisman of sorts.

20. The learned ASG also submitted that the Appellants were entitled to take an independent decision. This goes against their stand before the learned Division Bench. If we were to agree with this, the obvious import, then, would be that the Appellants were required to take a decision independently. As noted in Paragraphs 5 and 11 of the Impugned Judgment, the Appellants contended that the ECI was the competent authority to allot symbols and not the Election Authority. What then was the reason for the Appellants to shift stands? When read in conjunction with the finding at Paragraph 13 of the Impugned Judgment the Appellants' acts leave no shred of doubt in our minds, that circumstances forcing this Court to intercede have arisen. Let us for a moment, however, consider that the Appellants, as now sought to be projected, were entitled to arrive at an independent decision. Yet, such decision could not be whimsical, arbitrary or capricious. It would necessarily have to be: (a) in accordance with lawful discretion; (b) reasonable, and;

(c) equitable and just. The Court would indicate that a genuine request, in the attendant facts, could not have been turned down only on the ground that there was no provision for the same, when such request could be acceded to (i) without any violation of law, and; (ii) is within the jurisdictional domain and capacity of the authority concerned, and; (iii) does not prejudice any other stakeholder, and; (iv) does not militate against public interest.

21. The High Court, being a Constitutional Court, is not, by any stretch of imagination, precluded from issuing a direction of the nature issued by it in the instant case, under Article 226 of the Constitution of India, more so when such direction does not violate any statutory provision. In High Court of Tripura v Tirtha Sarathi Mukherjee, (2019) 16 SCC 663, this Court had answered, in the affirmative, as to the power of the High Courts under Article 226 to direct for actions, in a rare and exceptional situation, which do not find mention in the provisions concerned. Noticing and relying upon High Court of Tripura (supra), in Aish Mohammad v State of Haryana, 2023 SCC OnLine SC 736, we held:

> "24. Moreover, the learned Civil Judge (Junior Division) found no ground to interfere with the adverse remarks yet granted liberty to the appellant to move for expunction

> thereof. The learned Civil Court erred in assuming that it had the power to do so, in the absence of any such provision in the Punjab Police Rules, 1934. There may be cases where a High Court under Articles 226 or 227 of the Constitution of India or this Court in exercise of its constitutional powers may specifically direct for fresh consideration of a representation, even in the absence of specific provisions. In High Court of Tripura v. Tirtha Sarathi Mukherjee, (2019) 16 SCC 663, the question that arose was whether, in the absence of a statutory provision, a writ petitioner could seek re-

evaluation of examination answer scripts? Answering, this Court held:

> "20. The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. The wide power under Article 226 may continue to be available even though there is no provision for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.
>
> 21. Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional." (emphasis supplied)" (emphasis supplied by us via bolding)
>
> 22. Elections to any office/body are required to be free, fair and transparent. Elections lie at the core of democracy. The authority entrusted by law to hold/conduct such elections is to be completely independent of any extraneous influence/consideration.

It is surprising that the Union Territory of Ladakh not only denied R1 the Plough symbol, but even upon timely intervention by the learned Single Judge, has left no stone unturned not only to resist but also frustrate a cause simply by efflux of time.

23. A detailed dive into the sequence of events is apposite. R1 was before the concerned authorities, by way of representation, well in time, and much before even the Notification dated 02/05.08.2023 was published, by impugning the Notification dated 26.07.2023 which denied it the Plough symbol. R1 had moved the ECI, which opined, by way of communication dated 18.07.2023 that the ECI does not allocate any symbol for local body elections as the same falls within the domain of the State Election Commission concerned. The ECI stated that as there is no Legislative Assembly in the Union Territory of Ladakh and the 1968 Order does not provide for recognition to parties in a Union Territory without a Legislative Assembly, R1 could not be recognised in the Union Territory of Ladakh. However, it was further noted that as R1 is a recognized State Party in the Union Territory of Jammu and Kashmir with its reserved symbol being the Plough, it could avail concession under Paragraph 103 of the 1968 Order.

24. On 15.05.2023, the ECI updated its Notification dated 23.09.2021 specifying the names of recognised National and State Parties and the list of free symbols where R1 was again recognised as a State Party, though for the Union Territory of Jammu and Kashmir only. On 31.05.2023, R1 made a representation to the Appellant No.2 seeking recognition as a State Party and for the allotment of the Plough symbol to it for all elections in the Union Territory of Ladakh. Appellant No.2 forwarded the said representation to Appellant No.3 for comments. On 07.06.2023, Appellant No.3 advised Appellant No.2 to approach the ECI. On 08.06.2023, R1 sought recognition as a State Party in the Union Territory of Ladakh and allotment of the Plough symbol.

Already extracted supra.

25. On 07.07.2023, R1 represented to Appellant No.2 seeking recognition as a State Party in the Union Territory of Ladakh with the Plough symbol. Appellant No.2 forwarded the said representation to Appellant No.3 on 11.07.2023 and sought comments thereon. On 12.07.2023, Appellant No.3 wrote to Appellant No.2, incorporating the opinion of the Law Department, which was in favour of R1. Appellant No.3 indicated that R1 can be recognised and provided reserved symbol for LAHDC elections by the Administration of Union Territory of Ladakh under the relevant rules.

26. No action was taken and no order was passed pursuant to Appellant No.3's communication dated 12.07.2023 to Appellant No.2. Then, the Election Department of the Union Territory of Ladakh issued a Notification on 26.07.2023 notifying the list of reserved and free symbols, in terms of the ECI's Notification dated 15.05.2023. R1 approached the High Court on 29.07.2023 challenging the notification dated 26.07.2023 and seeking a mandamus to notify the Plough symbol as its reserved symbol for elections to LAHDC. The Writ Petition being pending, on 05.08.2023, the Election Department of the Union Territory of Ladakh notified the schedule of elections to constitute the 5 th LAHDC, Kargil. In such background, an interim order came to be passed by the learned Single Judge and affirmed by the learned Division Bench.

27. This Court notes, with concern, that the Appellants, while sitting on the representation of R1, went ahead and notified the elections on 02/05.08.2023. We are unable to appreciate such conduct. This recalcitrance to decide in time speaks volumes. Instances like these raise serious questions.

28. Having considered the matter in extenso, the Court does not find any merit in the present appeal. The request for allotment of the Plough symbol by R1 was bonafide, legitimate and just, for the plain reason that in the erstwhile State of Jammu and Kashmir (which included the present Union Territory of Ladakh), it was a recognized State Party having been allotted the Plough symbol. Upon bifurcation of the erstwhile State of Jammu and Kashmir and the creation of two new Union Territories, namely the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh, though the ECI had not notified R1 as a State Party for the Union Territory of Ladakh, it cannot be simpliciter that R1 was not entitled for the allotment of plough symbol to it, in the factual background. What is also clear is that the Appellants are attempting to approbate and reprobate, which this Court will not countenance.

29. In the present case, there is no conflict with any other stakeholder for the reason that the Plough symbol is neither a symbol exclusively allotted to any National or State Party nor one of the symbols shown in the list of free symbols. Thus, there was and is no impediment in such symbol being granted to R1. This is also fortified in the factual setting of the Plough symbol being the reserved symbol for R1 in the erstwhile State of Jammu and Kashmir and even for the Union Territory of Jammu and Kashmir, as it now exists, where the same symbol stands allotted to it.

30. The contention of the learned ASG for the Appellants that the Plough symbol cannot be allotted, neither has been supported by any reason nor any legal impediment to such grant has been shown. In the absence of anything contrary in any rule framed for conduct of the elections in question, relating to allotment of symbols, the provisions of the 1968 Order can safely be relied upon, at the very least, as a guideline to exercise of executive power of like nature. Thus, a harmonious reading of Paragraphs 9, 10, 10(A) and 12 would clearly indicate that under the terms of the 1968 Order, the request of R1 is not bereft of justification. At the cost of repetition, the Court would indicate that nothing substantive has been shown to this Court to indicate that allotment of the Plough symbol would in any way be an infraction or go against the public interest.

31. Another major issue canvassed by the learned ASG on behalf of the Appellants, to the effect that no relief be granted to R1 due to the election process having reached the penultimate stage, unfortunately, has also to be noted to be rejected. Having chosen, with eyes open, to not comply with successive orders of the learned Single Judge and the learned Division Bench, both of which were passed well in time, such as not to stall/delay the notified election schedule, the Appellants cannot be permitted to plead that interference by us at this late juncture should not be forthcoming.

32. The Court would categorically emphasize that no litigant should have even an iota of doubt or an impression (rather, a misimpression) that just because of systemic delay or the matter not being taken up by the Courts resulting in efflux of time the cause would be defeated, and the Court would be rendered helpless to ensure justice to the party concerned. It would not be out of place to mention that this Court can even turn the clock back, if the situation warrants such dire measures. The powers of this Court, if need be, to even restore status quo ante are not in the realm of any doubt. The relief(s) granted in the lead opinion by Hon. Khehar, J. (as the learned Chief Justice then was), concurred with by the other 4 learned Judges, in Nabam Rebia and Bamang Felix v Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1 is enough on this aspect. We

know full well that a 5- Judge Bench in Subhash Desai v Principal Secretary, Governor of Maharashtra, 2023 SCC OnLine SC 607 has referred Nabam Rebia (supra) to a Larger Bench. However, the questions referred to the Larger Bench do not detract from the power to bring back status quo ante. That apart, it is settled that mere reference to a larger Bench does not unsettle declared law. In Harbhajan Singh v State of Punjab, (2009) 13 SCC 608, a 2-Judge Bench said:

> "15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in Mohd. Shafi [(2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : (2007) 4 SCR 1023 : (2007) 5 Scale 611] has been doubted by another Bench, the same would not mean that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention." (emphasis supplied)

33. In Ashok Sadarangani v Union of India, (2012) 11 SCC 321, another 2-Judge Bench indicated:

> "29. As was indicated in Harbhajan Singh case [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608: (2010) 1 SCC (Cri) 1135], the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case [(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field." (emphasis supplied)

34. On the other hand, when it was thought proper that other Benches of this Court, the High Courts and the Courts/Tribunals below stay their hands, the same was indicated in as many words, as was the case in State of Haryana v G D Goenka Tourism Corporation Limited, (2018) 3 SCC 5854:

> The reference was eventually answered in Indore Development Authority v Manoharlal, (2020) 8 SCC 129.
>
> "9. Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with.

10. Insofar as the cases pending in this Court are concerned, we request the Benches concerned dealing with similar matters to defer the hearing until a decision is rendered one way or the other on the issue whether the matter should be referred to a larger Bench or not. Apart from anything else, deferring the consideration would avoid inconvenience to the litigating parties, whether it is the State or individuals." (emphasis supplied)

35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

36. We are conscious that, by way of certain pronouncements, some of which are alluded to in this judgment, the Court extended principles relating to elections to Parliament, State Assemblies and See Paragraphs 27 and 28 in the report on this point. Municipalities to other arenas as well. Indicatively, the interpretation of judgments is always to be made with due regard to the facts and circumstances of the peculiar case concerned6. We have looked at Articles 243-O, 243ZG and 329 of the Constitution, and conclude that no bar hit the High Court, even on principle. Apart from the judgments expressly considered and dealt with, hereinbefore and hereinafter, we have perused, out of our own volition, the decisions, inter alia, of varying Bench-strength of this Court in N P Ponnuswami v Returning Officer, Namakkal Constituency, 1952 SCR 2187; Durga Shankar Mehta v Thakur Raghuraj Singh, (1955) 1 SCR 267; Hari Vishnu Kamath v Syed Ahmad Ishaque, (1955) 1 SCR 1104; Narayan Bhaskar Khare (Dr) v Election Commission of India, 1957 SCR 1081; Mohinder Singh Gill v Chief Election Commissioner, (1978) 1 SCC 405; Lakshmi Charan Sen v A K M Hassan Uzzaman, (1985) 4 SCC 689; Indrajit Barua v Election Commission of India, (1985) 4 SCC 722; Election Commission of India v Shivaji, (1988) 1 SCC 277; Digvijay Mote v Union of Sanjay Dubey v State of Madhya Pradesh, 2023 INSC 519 @ Paragraph 18. Where the Court held that "The discussion in this passage makes it clear that the word "election" can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.", with respect to Article 329(b) of the Constitution. India, (1993) 4 SCC 1758; Boddula Krishnaiah v State Election Commissioner, Andhra Pradesh, (1996) 3 SCC 416; Anugrah Narain Singh v State of Uttar Pradesh, (1996) 6 SCC 303; Election Commission of India v Ashok Kumar, (2000) 8 SCC 216; Kishansing Tomar v Municipal Corporation, Ahmedabad, (2006) 8 SCC 352; West Bengal State Election Commission v Communist Party of India (Marxist), (2018) 18 SCC 141; Dravida Munnetra Kazhagam v State of Tamil Nadu, (2020) 6 SCC 548; Laxmibai v Collector, (2020) 12 SCC 186, and

last but not the least, State of Goa v Fouziya Imtiaz Shaikh, (2021) 8 SCC 4019. On scrutiny, in combination with the timelines and facts of the matter herein, we are sure that the High Court did not falter.

37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions supra, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to Where, apropos Article 324 powers of the ECI, this Court held "However, it has to be stated this power is not unbridled. Judicial review will still be permissible, over the statutory body exercising its functions affecting public law rights." Where the learned 3-Judge Bench has considered a catena of the precedents relevant to the issue(s) before it. interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time10, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power per se of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order.

B S Hari Commandant v Union of India, 2023 SCC OnLine SC 413 @ Paragraph 50.

38. The reasoning of the learned Single Judge, further expounded by the learned Division Bench, leaves no doubt that the relief sought by R1 was required to be granted and, accordingly, the same was granted by the High Court. The stark factor which stares us in the face is that well before and well in time, by way of the writ petition, R1 had approached the Court of first instance (the learned Single Judge), for the reliefs, which have been found due to them ultimately, and upheld by the Appellate Court (the learned Division Bench). It is the Appellants, who by virtue of sheer non-compliance of the High Court's orders, be it noted, without any stay, can alone be labelled responsible for the present imbroglio. These stark facts cannot be broadly equated with other hypothetical scenarios, wherein the facts may warrant a completely hands-off approach.

39. This case constrains the Court to take note of the broader aspect of the lurking danger of authorities concerned using their powers relating to elections arbitrarily and thereafter, being complacent, rather over-confident, that the Courts would not interfere. The misconceived notion being that in the ultimate eventuate, after elections are over, when such decisions/actions are challenged, by sheer passage of time, irreversible consequences would have occurred, and no substantive relief could be fashioned is just that – misconceived. However, conduct by authorities as exhibited herein may seriously compel the Court to have a comprehensive re-think, as to whether the self- imposed restrictions may need a more liberal interpretation, to ensure that justice is not

only done but also seen to be done, and done in time to nip in the bud any attempted misadventure. We refrain from further comment on the Appellants, noting the pendency of the contempt proceeding.

40. As made clear by us in the foregoing paragraphs, the situation emanating herein is, in a manner of speaking, unprecedented. With a sense of anguish, it would not be wrong to say that the instant judgment has been invited upon themselves by the Appellants. The orders of the High Court, in our considered opinion, were in aid of the electoral process, and no fault can be found therewith.

41. The learned ASG's submission that nobody representing R1 had filed his/her nomination form, by the last date notified, is inapposite, inasmuch as in the position existing, no candidate/representative affiliated with R1 could have filled up the form as the Plough symbol was neither a reserved symbol nor a free symbol, and thus, could not have been opted for by any candidate when filing the nomination form. The serious consequence was that R1's identity as a political party was eclipsed, right before the election to the LAHDC, where it was the incumbent party in power.

42. This Court has previously bestowed consideration on the importance of the symbol in an electoral system, especially one allotted to a political party. Taking note of the 3-Judge Bench decision in Shri Sadiq Ali v Election Commission of India, New Delhi, (1972) 4 SCC 664, another Bench of 3 learned Judges in All Party Hill Leaders' Conference, Shillong v Captain W A Sangma, (1977) 4 SCC 161 put it thus:

> "29. For the purpose of holding elections, allotment of symbol will find a prime place in a country where illiteracy is still very high. It has been found from experience that symbol as a device for casting votes in favour of a candidate of one's choice has proved an invaluable aid. Apart from this, just as people develop a sense of honour, glory and patriotic pride for a flag of one's country, similarly great fervour and emotions are generated for a symbol representing a political party. This is particularly so in a parliamentary democracy which is conducted on party lines. People after a time identify themselves with the symbol and the flag. These are great unifying insignia which cannot all of a sudden, be effacced.11" (emphasis supplied)

43. Placing reliance on Shri Sadiq Ali (supra), a 2- Judge Bench summed up as under, in Edapaddi K Palaniswami v TTV Dhinakaran, (2019) 18 SCC 219:

> "39. We say so because the efficacy of having a common symbol for a political group has been underscored in Sadiq Ali v. Election Commissionof India [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] . In para 21 of the said judgment, this Court observed thus : (SCC pp. 674-75) "21. ... It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of Maintained as appearing in the SCC version available on SCC OnLine; should be read as 'effaced'.

> illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of the election law of India. ... 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. ..." (emphasis supplied) And again in paras 40 and 41 it is observed thus : (Sadiq Ali case [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] , p.
>
> 682) "40. ... It would, therefore, follow that Commission has been clothed with plenary powers by the abovementioned Rules in the matter of allotment of symbols. ... 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. ... Para 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 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. ... Article 324 as mentioned above provides that superintendence, direction and control of elections shall be vested in Election Commission. ..." (emphasis supplied)

40. This decision in Sadiq Ali [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] has been followed in Kanhiya Lal Omar v. R.K. Trivedi [Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628] and in para 10 thereof, the Court observed thus : (SCC pp. 635-36) "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 a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis — in other words, "on systematised 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." (emphasis supplied)" (emphasis supplied by us via bolding)

44. For reasons aforesaid, the entire election process, initiated pursuant to Notification dated 02.08.2023 issued by the Administration of Union Territory of Ladakh, Election Department, UT Secretariat, Ladakh, under S.O.53 published vide No.Secy/Election/2023/290-301 dated 05.08.2023 stands set aside. A fresh Notification shall be issued within seven days from today for elections to constitute the 5th Ladakh Autonomous Hill Development Council, Kargil. R1 is declared entitled to the exclusive allotment of the Plough symbol for candidates proposed to be put up by it.

45. Accordingly, this appeal stands dismissed with costs of Rs.1,00,000/- (Rupees One Lakh) to be deposited in the Supreme Court Advocates on Record Welfare Fund. The same be done within two weeks, and receipt evincing proof thereof be filed with the Registry of this Court within a week thereafter. IAs 170883/2023, 170885/2023 and 174512/2023 be treated as formally allowed.

46. Two further consequences flow:

(a) Writ Petition (Civil) No.1933 of 2023 pending at the High Court at Srinagar is also disposed of in the above terms.

(b) CCP(S) No.340 of 2023, statedly listed next on 08.09.2023 before the learned Single Judge, survives. The same be proceeded with expeditiously, in accordance with law, considering the present judgment.

.....J. [VIKRAM NATH] .....J. [AHSANUDDIN AMANULLAH] NEW DELHI 06th SEPTEMBER, 2023