

A EDAPADDI K. PALANISWAMI

v.

T.T.V. DHINAKARAN & ORS.

(M.A. No. 31)

B in

(Special Leave Petition (Civil) No. 7258 of 2018)

FEBRUARY 07, 2019

[A. M. KHANWILKAR AND AJAY RASTOGI, JJ.]

- C *Election Laws – Use of name/symbol of political party, when each faction of registered recognised State political party claimed to be real party and such a dispute is sub judice before the High Court – In the instant case, Election Commission of India (ECI) had accepted the claim of respondent Nos.4 to 6 and the SLP petitioner-EKP that the group led by respondent No.4-EM was entitled to use the name of the original registered and recognized state political party and rejected the claim of respondent No.1 and respondent No.3-VKS that the group led by VKS was the real group and was entitled to use name and symbol of the party AIADMK – Writ petition filed by respondent No.1 before the High Court to assail the decision of the ECI – The said writ petition is still pending – Meanwhile, as elections in the State of Tamil Nadu were announced, respondent No.1 and the group of which he was a member moved an interim application before the High Court in the pending writ petition for permission to use a suitable name for carrying out its political activities – High Court allowed the same by order dated 9th March, 2018 – Aggrieved by the said decision, the SLP petitioner-EKP espousing the cause of the group led by EM, filed SLP – When the SLP, along with connected cases, was taken up for hearing on 28th March, 2018, amongst others, it was pointed out to the Court that the impending elections to the local bodies were countermaned and as a result, the basis for instituting the interim application by respondent No.1 did not exist – In that view of the matter, the interim order passed by the High Court was kept in abeyance with the directions that the ECI shall not pronounce its order and granted liberty to the parties to approach this court in case of any notification*
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for an election – Accordingly the SLP was disposed of – Respondent No.1 filed the instant Application asserting that the bye-election was notified by the ECI on 31st December, 2018 and the date of polling was fixed for 28th January, 2019 – SLP petitioner and respondent Nos.4 to 6, as well as respondent No.2, raised a preliminary objection about the maintainability of this application – Held: Respondent No.1 had no other option but to present the instant application because of the publication of the election schedule by the ECI, in light of the liberty given by this Court by order dated 28th March, 2018 – As liberty was given to the parties even though the SLPs were ostensibly disposed of, not entertaining this application, only because the order dated 28th March, 2018 records that SLPs are disposed of, would be completely trivializing the spirit of the liberty given to the parties by this Court in the peculiar fact situation – Respondent No.1 cannot be directed to go back to the High Court for the relief claimed in this application because similar relief was already considered by the Single Judge of the High Court on 9th March, 2018 in favour of the group represented by the applicant – The directions given by the Single Judge in the said order had not been independently challenged by the ECI by filing SLP before this Court – Besides, it may not be appropriate for the Division Bench to re-visit the matters in issue dealt with in the judgment and interim order passed by the Single Judge dated 9th March, 2018, which was kept in abeyance by this Court – No merit in the preliminary objection raised by the SLP petitioner, respondent Nos.4 to 6 and respondent No.2.

Election Laws – Whether a faction represented by respondent no.1-TTVD and VKS which claims to be the real party having support of majority of the members at the time of initiation of the dispute before the ECI and that claim was still pending consideration before the High Court ought to be compelled to first register itself as a political party and after following the process of obtaining recognition could only then set up its claim for allotment of a reserved symbol and use of name – Held: During the pendency of the writ petition, as elections in the State of Tamil Nadu were announced and respondent No.1 and the group of which he was a member, wanted to contest the elections, they moved an interim application before the High Court in the pending writ petition – High Court

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- A *deemed it appropriate to issue directions to allot common symbol to the faction represented by respondent no.1 in different constituencies where they would nominate candidates to contest in ensuing elections – High Court was conscious of the fact that ordinarily common symbol can be allotted only to registered recognized political party and if the ECI could do so in exercise of its plenary powers when the dispute is pending before it, there could be no impediment for the writ court to pass appropriate directions especially when no real prejudice would be caused to any other party and the claim regarding which faction is the real party has still not attained finality and that would ensure a level playing field in the political sphere*
- B *for the concerned factions – High Court was right in holding that if ECI considers itself competent to pass interim directions for ensuring level playing field to both the factions during the adjudication of the dispute pending before it, there is no reason why, on the same logic the High Court, being a court of equity, is not competent to do so when the final decision of the ECI was still pending challenge before it – Representation of the People Act, 1951 – s.29A – Constitution of India – Art.226.*

Election Laws – Powers of Election Commission (ECI) – ECI has plenary powers and could exercise the same to ensure free and fair elections – Clause 18 of the Symbols Order predicates the facet of such plenary power to be exercised by the ECI – Symbols Order, 1968.

- F *Election Laws – Allocation of common symbols to two faction when the dispute under the Symbol Order is still pending before the Election Commission (ECI) – Interim directions regarding allocation by the ECI – Permissibility – Held: Once the dispute had been finally decided by the ECI, the question of invoking powers under paragraph 18 by it (ECI) would not arise – However, if the dispute is pending enquiry before ECI or the final decision of the ECI is sub judice in the proceedings before the constitutional court, providing for an equitable arrangement in the interests of free and fair elections and to provide equal level playing field to all concerned, would be a just and fair arrangement.*
- G *Election Laws – Whether there was any impediment for the writ court (High Court) to pass appropriate interim direction while the validity of the decision of the Election Commission (ECI) is sub*

judice before it – Held: High Court was right in holding that for doing justice and protecting the interests of all concerned and to uphold the democratic principles, including for ensuring free and fair elections, it would be just and proper to continue the interim arrangement as was directed by the ECI regarding allotment of a common symbol to the political group represented by respondent no.1 especially when such relief would not cause any prejudice to any other person or party nor impinge upon the powers of the ECI – Symbols Order, 1968.

Representation of the People Act, 1951 – s.29A – Allotment of a common symbol – If the political group is not registered under s.29A of the 1951 Act and is not recognized as per the provisions of Symbols Order, 1968, it may not be entitled to claim allotment of a common symbol which is reserved for a registered and recognized State/National political party – Paragraphs 9 to 11 would apply to such registered and recognized political party which provide for an option of a reserved symbol – For any other candidate or candidate belonging to unregistered or unrecognized party, his claim would be dealt with under paragraph 12 of the Symbol Order, 1968 – The closest provision is paragraph 15 of the Symbol Order, which deals with the powers of the ECI in relation to splinter groups or rival factions of the political party – But once that dispute is answered by the ECI and that decision attains finality, the splinter group will have no other option but to register itself as a political party and only after fulfillment of the requirements specified in paragraphs 6A to 6C of the Symbols Order, 1968, as applicable, may be given recognition as a National or State political party – In the instant case, the decision of the ECI is sub judice before the High Court and the claim of the group or faction of being the original registered recognized State political party represented by respondent No.1, is subject to the outcome thereof – Until such time, there is no just reason as to why the interim arrangement such as ordered by the ECI in terms of the interim order dated 22nd March, 2017, as applicable to the group represented by respondent No.1, ought not to continue – The direction issued in terms of order dated 28th March, 2018, to keep the interim order of the High Court dated 9th March, 2018, in abeyance and consequently to restrain the ECI from pronouncing its order on the application preferred by the political

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- A *group represented by respondent No.1 needs to be vacated – However, considering the fact that the hearing on the writ petition before the Division Bench of the High Court has almost reached at the final stage, it is deemed appropriate to mould the reliefs in the following terms: (a) If the writ petition is not finally disposed of by the Division Bench of the High Court within four weeks from today, the ECI shall process the application of the group represented by respondent No.1 in terms of the directions given by the High Court by interim order dated 9th March, 2018 and issue appropriate directions within two weeks therefrom (i.e. four weeks plus two weeks, from today) – (b) In the event, before the expiry of the stated period, the ECI intends to issue any Press Note or Notification for announcing the bye-elections in respect of the vacant Assembly Constituencies in the State of Tamil Nadu or Parliamentary Elections for 2019, as the case may be, it shall pass appropriate directions in compliance with the interim order of the High Court dated 9th March, 2018, within one week from the date of release of such Press Note or Notification and in any case, before the date notified for filing of the nominations, whichever is earlier – Symbols Order, 1968.*

Jyoti Basu and Ors. v. Debi Ghosal and Ors. (1982) 1 SCC 691 : [1982] 3 SCR 318; Shri Sadiq Ali and Anr.

- E *v. The Election Commission of India, New Delhi and Ors. (1972) 4 SCC 664 : [1972] 2 SCR 318; Kanhiya Lal Omar v. R.K. Trivedi and Ors. (1985) 4 SCC 628: [1985] 3 Suppl. SCR 1 – relied on.*

Desiya Murpokku Dravida Kazhagam and Anr. v. Election Commission of India (2011) 4 SCC 224 : [2011] 3 SCR 920 – distinguished.

- F *Madeva Upendra Sinai and Ors. v. Union of India and Ors. (1975) 3 SCC 765 : [1975] 2 SCR 640; Desiya Murpokku Dravida Kazhagam and Anr. v. Election Commission of India (2012) 7 SCC 340 : [2012] 3 SCR 1084 – referred to.*

Case Law Reference

	[2011] 3 SCR 920	distinguished	Para 17
H	[1982] 3 SCR 318	relied on	Para 20

[1975] 2 SCR 640	referred to	Para 25	A
[2012] 3 SCR 1084	referred to	Para 29	
[1972] 2 SCR 318	relied on	Para 35	
[1985] 3 Suppl. SCR 1	relied on	Para 36	

CIVIL APPELLATE JURISDICTION: M. A. No. 31 of 2019 in B
Special Leave Petition (Civil) No. 7258 of 2018.

From the Judgment and Order dated 09.03.2018 of the High Court of Delhi at New Delhi in C.M. No. 2994 of 2018 in W.P. (C) No. 10728 of 2017.

Kapil Sibal, Ashok Desai, Dr. Abhishek Manu Singhvi, Mrs. Meenakshi Arora, C. S. Vaidyanathan, K.V. Vishwanathan, Guru Krishna Kumar, Sr. Advs., Gowtham Kumar, Ms. Palak Mahajan, Ms. Diksha Rai, Amit Anand Tiwari, Vivek Singh, N. Raja Senthoor Pandian, Amit Bhandari, Swastik Dalai, Harshal Gupta, Ms. Anusha Natrajan, Ms. Devyani Gupta, Mrs. Mary Mitzy, Sreenivasan, Praveen Samadhanam, Mohit Paul, Shashwat Singh, Anirudh Bakhrus, Balaji Srinivasan, Siddhant Kohli, Ms. Pallavi Sengupta, Ms. Garima Jain, Ms. Lakshmi Rao, Ram Shankar, Harish Shankar Vaidyanathan, Babu Murugavel, Prakash Kumar Gandhi, Amit Sharma, Dipesh Sinha, Ms. Pallavi Barua, Ms. Ayala Imti, Advs. for the appearing parties.

The Order of the Court was delivered by

A. M. KHANWILKAR, J. 1. This application for directions has been filed by respondent No.1 – T.T.V. Dhinakaran (for short, “TTVD”), in the disposed of special leave petition in view of the liberty granted by this Court in terms of the order dated 28th March, 2018.

2. The captioned special leave petition was filed against the judgment and order dated 9th March, 2018 passed by the Single Judge of the High Court of Delhi at New Delhi in C.M. No.2994/2018 in Writ Petition (Civil) No.10728 of 2017. That writ petition has been filed by respondent No.1 - TTVD to assail the decision of the Election Commission of India (for short, “ECI”) dated 23rd November, 2017 - whereby ECI had accepted the claim of respondent Nos.4 to 6 (namely, E. Madhusudhanan, O. Pannerselvam and Thiru. Semmalai) and the SLP petitioner -Edapaddi K. Palaniswami (for short, “EKP”) that the group led by respondent No.4 - E. Madhusudhanan (for short, “EM”)

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- A was entitled to use the name of the original registered and recognized state political party in the State of Tamil Nadu and Puducherry, namely, “All India Anna Dravida Munnetra Kazhagam” (for short “AIADMK”) and its reserved symbol “Two Leaves”; and rejected the claim of respondent No.1 – TTVD and respondent No.3 – V.K. Sasikala (for short, “VKS”) that the group led by VKS was the real group and was entitled to the use of name and symbol of the party AIADMK. The writ petition challenging the said decision of ECI on diverse grounds is still pending before the Delhi High Court.
- B 3. During the pendency of the writ petition, as elections in the State of Tamil Nadu were announced and respondent No.1 and the group of which he was a member, wanted to contest the elections, they moved an interim application before the High Court, being C.M. No.2994/2018 in the pending writ petition and prayed for the following reliefs:

“PRAYER

- D In view of the aforesaid it is most respectfully prayed that this Hon’ble Court may kindly be pleased to:
- E a. Issue a direction to the respondents to permit the group led by the petitioner and the Respondent No.6 to use a suitable name for carrying out its political activities, during the pendency of the present Writ Petition;
- F b. Issue a direction to the respondents, permitting/allocating the group led by the Petitioner herein and the Respondent No.6 to use the symbol of “Pressure Cooker” for the purpose of Local Bodies Elections likely to be held in April 2018 or any other election, during the pendency of the present Writ Petitions.
- G c. Pass such further order(s) as it may deem fit and facts and circumstances of the case.”

- G 4. The said application was contested by the SLP petitioner, respondent Nos.4 to 6 and respondent No.2 in particular. The learned Single Judge who heard the said application was pleased to allow the same by a detailed judgment and order dated 9th March, 2018. The operative part of the said judgment reads thus:

“56. For all the aforementioned reasons, I find considerable merit in the prayer made by the Petitioner and the Application deserves

to be allowed. However, keeping in view the nature of the relief sought in the Application, while upholding the Petitioner's right to seek the use of a common name and symbol by way of an interim arrangement during the pendency of the Writ Petition, I deem it appropriate to direct the Respondent No.1/ECI, which has the necessary expertise to deal with allotment of symbols, to pass an appropriate order permitting the Petitioner and his group of persons to use a common symbol (preferably "Pressure Cooker" as used by the Petitioner during the last election for the R.K. Nagar constituency) and also permit them to use the name of their choice, after giving them an appropriate hearing.

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57. The needful shall be done within three weeks. Needless to say the aforesaid directions are being passed without prejudice to the rights and contentions of the parties in the main petition.

58. The Application is allowed in the above terms, with no order as to costs."

5. Aggrieved by the said decision, the SLP petitioner EKP (respondent No.5 in the writ petition) espousing the cause of the group led by EM, filed a special leave petition in this Court, being SLP(C) No.7258 of 2018. When the said special leave petition, along with connected cases, was taken up for hearing on 28th March, 2018, amongst others, it was pointed out to the Court that the impending elections to the local bodies were countermanded and as a result, the basis for instituting the interim application by respondent No.1 before the High Court did not exist. In that view of the matter, this Court proceeded to pass the following order:

"O R D E R"

Heard Mr. Mukul Rohatgi, Mr. C.S. Vaidyanathan, Mr. K.V. Vishwanathan and Mr. Guru Krishna Kumar, learned senior counsel appearing for the petitioners and Mr. Ashok Desai, Ms. Meenakshi Arora and Mr. Amarendra Sharan, learned senior counsel for the respondents.

Having heard learned counsel for the parties, we are inclined to pass the following directions:-

(i) The counter affidavit filed by the present petitioners before the High Court shall be taken on record and as accepted by

- A learned counsel for the petitioners, no further opportunity shall be granted for filing a counter affidavit.
 (ii) Rejoinder affidavit, if any, be filed by the respondents within two weeks hence.
- B (iii) The learned Acting Chief Justice of the High Court is requested to constitute an appropriate Division Bench, so that they can decide the lis in question.
- C (iv) The Division Bench so constituted is requested to dispose of the main matter by the end of April, 2018, as this matter requires immediate attention.
- C (v) **The interim order passed by the learned Single Judge on 9.3.2018 shall remain in abeyance.**
- C (vi) **As we have kept the order in abeyance, the Election Commission shall not pronounce its order.**
- D (vii) **In case there is any notification for an election, liberty is granted to the parties to approach this Court.**

The special leave petitions are accordingly disposed of. Pending interlocutory applications, if any, shall also stand disposed of.”

(emphasis supplied)

- E 6. As aforesaid, taking cue from the liberty granted to the parties to approach this Court in the event of issuance of any new notification for election, respondent No.1 has filed the present Miscellaneous Application on 2nd January, 2019, asserting that the bye-election to fill up the vacant Assembly Constituency of 168-Thiruvarur has been notified by the ECI on 31st December, 2018 and the date of polling has been fixed for 28th January, 2019. The relief claimed in the present application reads thus:

“PRAYER

- G It is, therefore, most respectfully prayed that in view of the above submissions and the facts and circumstances of the case, this Hon’ble Court may be pleased to –
 - a. Direct the Election Commission of India (Respondent No.2) to pass an appropriate order permitting the Applicant and his group to use a common symbol (preferably “Pressure Cooker” as
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was allotted to the Applicant during the last bye-election for the R.K. Nagar constituency) and also permit them to use the name of their choice in the any upcoming elections during the pendency of the Writ Petition (c) No.10728/2017 before the High Court of Delhi at New Delhi.

b. Pass such other and further order or orders as may be deemed just and proper by this Hon'ble Court on the facts and in the circumstances of the case and in the interest of justice.”

7. The SLP petitioner and respondent Nos.4 to 6, as well as respondent No.2, have raised a preliminary objection about the maintainability of this application. According to them, the special leave petition having been disposed of, this Court has become *functus officio* and ought not to pass any positive direction, much less as sought by respondent No.1 in the present application. It is also pointed out that the notification issued by the ECI has now been rescinded on 6th January, 2019 and there is no imminent election. It was then contended that respondent No.1, if so advised, may approach the High Court for appropriate directions.

8. We must first answer this preliminary objection. On a plain reading of the order passed by this Court on 28th March, 2018, to which one of us (A.M. Khanwilkar, J) was a party, it is crystal clear that this Court did not examine the merit of the judgment under appeal at all. It merely issued directions whilst keeping the interim order passed by the Single Judge of the High Court in abeyance and relegated the parties before the High Court for an expeditious hearing of the writ petition by the Division Bench, with a sanguine hope that the same would be disposed of before any fresh notification is issued by the Election Commission for conduct of election or bye-election to the vacant Assembly Constituency/ local bodies in the State. Indeed, the Division Bench of the High Court proceeded with the hearing of the writ petition in right earnest from 20th April, 2018, but it is common ground that the arguments of the parties are still incomplete despite the matter having been posted and heard on different dates. We do not wish to dissect the explanation offered by the counsel on both sides regarding the reasons for pendency of the writ petition. The fact remains that the writ petition is still pending before the Division Bench of the High Court for its final decision and we assume it to be so due to unavoidable circumstances. Resultantly, the applicant (respondent No.1) has had no other option but to rush to this Court by

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- A presenting the instant application because of the publication of the election schedule by the Election Commission, in light of the liberty given by this Court vide order dated 28th March, 2018.

9. Notably, this Court has neither adverted to the merits of the impugned interim order of the Single Judge of the High Court nor has it set aside or upheld the same. This Court, instead, merely issued directions to facilitate early disposal of the main writ petition before any fresh election programme is announced by the ECI. With that hope, this Court had kept the interim order of the High Court in abeyance and directed the Election Commission not to pronounce any order or proceed in furtherance of the same. It was so directed because there was no immediate urgency for passing any order as the election process, which was earlier announced, stood countermanded. The effect of the order of this Court, therefore, is to allow the parties to once again approach this Court in reference to the disposed of SLPs, if the situation so warrants. As this liberty has been given to the parties even though the SLPs have been ostensibly disposed of, not entertaining this application, only because the order dated 28th March, 2018 records that the special leave petitions are disposed of, would be completely trivializing the spirit of the liberty given to the parties by this Court in the peculiar fact situation.

10. The fact that the writ petition is still pending before the Division Bench of the Delhi High Court would certainly be no impediment for the parties to approach this Court in light of the liberty granted to them in terms of our order dated 28th March, 2018. In the peculiar fact situation of this case, we cannot direct respondent No.1 - applicant to go back to the High Court for the relief claimed in this application because similar relief was already considered by the Single Judge of the High Court vide judgment and order dated 9th March, 2018 in favour of the group represented by the applicant. Notably, the directions given by the learned Single Judge in the said order had not been independently challenged by the Election Commission by filing SLP before this Court. Besides, it may not be appropriate for the Division Bench to re-visit the matters in issue dealt with in the judgment and interim order passed by the learned Single Judge dated 9th March, 2018, which has been kept in abeyance by this Court. Even if the Division Bench was to consider the relief as claimed in the instant application, it could do so only within the parameters of review jurisdiction or modification of the order already passed by the Single Judge of the same High Court. For, the writ petition has been

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transferred to the Division Bench for hearing due to the directions given by this Court vide order dated 28th March, 2018. The Division Bench, thus, cannot sit in appeal over the impugned judgment merely because the transferred writ petition is now being heard by a two-Judge Bench. Suffice it to observe that we do not find merit in the preliminary objection raised by the SLP petitioner, respondent Nos.4 to 6 and respondent No.2.

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11. It was then pointed out that the bye-election to fill the vacant Assembly Constituency of 168-Thiruvarur has been rescinded vide Notification dated 6th January, 2019. Further, the ECI was not likely to issue any new notification in the immediate future. Even so, we deem it appropriate to examine the relief claimed in the present application because we have spent invaluable judicial time in hearing both sides and moreso because we find force in the submission of respondent No.1 - applicant that even though the earlier press note has been rescinded by the ECI, however, in view of the statutory requirements and in discharge of the constitutional obligation and the statement made before the Madras High Court in some other proceedings, it will have to notify the bye-election(s) to the vacant Assembly Constituencies in the State of Tamil Nadu, which would be more than one and besides that, Parliamentary elections are very much in the offing. Therefore, we proceed to answer the issues on merit canvassed before us and we must do so in view of the liberty given to the parties in terms of the order dated 28th March, 2018.

12. It was also urged that respondent No.1 has not made out any *prima facie* case warranting interference with the final order passed by the ECI dated 23rd November, 2017. This submission, in our opinion, deserves to be stated only to be rejected. It is not in dispute that the writ petition has been admitted by the High Court which obviously means that *prima facie* case was made out by respondent No.1 (writ petitioner). Additionally, the hearing of the writ petition has progressed on several dates since 20th April, 2018 before the Division Bench, which itself presupposes that formidable issues have been raised by the writ petitioner, requiring serious consideration by the High Court.

13. Before we advert to the rival submissions on the merits of the issue arising from the judgment of the High Court dated 9th March, 2018, it would be apposite to highlight the basis on which the learned Single Judge of the High Court gave relief to the writ petitioner (respondent No.1 - applicant). The judgment of the learned Single Judge of the High

- A Court is very exhaustive and adverts to all the relevant provisions and the reported and un-reported decisions relied upon by both sides. Having considered the same, the High Court proceeded to opine that none of the decisions cited at the Bar actually dealt with the question that arises for consideration in the present case. The question in the present case is not whether an unregistered and unrecognized group can seek allotment of a reserved symbol under the Election Symbols (Reservation and Allotment) Order, 1968. However, the real question is whether a faction, represented by respondent No.1 – TTVD and VKS which claims to be the real party having support of majority of the members at the time of initiation of the dispute before the Election Commission, and that claim was still pending consideration before the High Court, ought to be compelled to first register itself as a political party and after following the process of obtaining recognition could only then set up its claim for allotment of a reserved symbol and use of name.

- 14. The High Court, taking cue from the interim order dated 22nd March, 2017, passed by the Election Commission during the pendency of the subject dispute before it, observed that if such arrangement could be directed by the Election Commission when the dispute was still pending before it, there should be no impediment for the writ Court, which is also a court of equity, to issue similar or appropriate order during the pendency of the writ petition before it, considering the fact that the decision of the Election Commission was still subject matter of challenge. The High Court also drew analogy from the decision of the Election Commission vide order dated 19th December, 1997 in Rashtriya Janata Dal's application for its recognition as a National Party and decision dated 27th March, 2009 of this Court in Desiya Murpokku Dravida Kazhagam and Anr. Vs. Election Commission of India, bearing WP(C) No.532/2008 and order dated 27th April, 2009 in Viduthalai Chiruthaigal Katchi Vs. Election Commission of India, bearing WP(C) No.177/2009, wherein direction was issued to the Election Commission of India to allot common symbols to the registered unrecognized political parties as an interim measure for the ensuing elections. The High Court also noticed that although at the time of institution of the dispute before the Election Commission, the support received by the rival factions from the legislative wing of AIADMK was that - 12 out of 134 MLAs of the AIADMK supported the faction led by respondent No.5 – OP while 122 MLAs and 37 out of 50 MPs of AIADMK supported the faction represented
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by respondent No.1 – TTVD. But by the time the dispute was decided by the ECI, admittedly, respondent No.1's faction still enjoyed the support of 6 MPs and 20 MLAs and other party members as noticed by the Election Commission. The High Court further noted that ECI in exercise of its plenary powers had granted relief during the pendency of the dispute to the faction represented by respondent No.1 – TTVD in the interest of free and fair elections and healthy growth of democracy and keeping in mind past instances, such as the case of Rashtriya Janata Dal. On that basis, the High Court deemed it appropriate to issue directions to allot common symbol to the faction represented by respondent No.1 – TTVD in different constituencies where they would nominate candidates to contest in the ensuing elections. Notably, the High Court was conscious of the fact that ordinarily, common symbol can be allotted only to registered recognized political party. The Court finally observed that if the Election Commission of India could do so in exercise of its plenary powers when the dispute is pending before it, there could be no impediment for the writ court to pass appropriate directions, especially when no real prejudice would be caused to any other party and the claim regarding which faction is the real party has still not attained finality. That would ensure a level playing field in the political sphere for the concerned factions.

15. According to the SLP petitioner, respondent Nos.4-6 and respondent No.2, there is no provision in the Symbols Order to allot a common symbol to a group that is not even registered as a political party. The power of the Election Commission to issue instructions and directions in terms of paragraph 18 cannot be invoked in the fact situation of the present case and moreso because the Commission has already decided the dispute between the two factions vide order dated 23rd November, 2017. As the dispute has been finally decided by the Commission, the question of passing equitable order which would be in the teeth of the Symbols Order cannot be countenanced. It is urged that the benefits of being a registered political party and/or registered recognized political party are well defined and upon registration and recognition, the parties have to follow certain norms and discipline. The political outfit such as represented by respondent No.1 would enjoy all the benefits of a registered recognized party without discharging corresponding obligations and liabilities in that regard. Further, granting any relief to respondent No.1 would result in more such outfits insisting for similar relief of allotment of a common symbol without complying

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- A with the statutory requirements and would set a bad precedent, besides entailing in rendering the provisions of the Symbols Order redundant. Further, the proceedings before the High Court not being a statutory appeal, cannot be treated as continuation of the proceedings of the Election Commission so as to continue the interim arrangement directed by the Election Commission vide order dated 22nd March, 2017. Moreover, respondent No.1 cannot insist for a particular name or symbol and if that request is acceded to, it would create enormous confusion amongst the voters, impinging upon the conduct of free and fair elections.

16. Thus, the principal argument of the SLP petitioner(s), respondent Nos.4-6 and respondent No.2, is that issuing direction as sought by respondent No.1, would result in directing the ECI to do something contrary to the provisions contained in the Election Symbols (Reservation and Allotment) Order, 1968. This argument, in our opinion, has been rightly negatived by the High Court on the logic that if ECI considers itself competent to pass interim directions for ensuring level playing field to both the factions during the adjudication of the dispute pending before it, there is no reason why, on the same logic the High Court, being a court of equity, is not competent to do so when the final decision of the ECI was still pending challenge before it. We also agree with the High Court that the reported and unreported decisions pressed into service by the SLP petitioner and the contesting respondents, dealt with cases where the political party was already registered but not recognized. Similarly, the policy propounded by the Election Commission in Rashtriya Janata Dal, decided on 19th December, 1997, would govern cases in which a final decision is already taken by the Election Commission on the application of the concerned political group for recognition as a National/ State Party, which was formed as a result of a split in the recognized National or State party. In such cases, it has been decided that the ECI would not straightaway recognize the split faction merely on the ground that it is a break-away or a splinter group of such registered recognized party and such group enjoyed the support of the MPs or MLAs. Whereas, the new party must get itself registered under Section 29A of the Representation of the People Act, 1951, (for short “**1951 Act**”) contest general election on its own manifesto, policies and programmes and obtain a mandate from its electorate for its recognition in terms of paragraphs 6 and 7 of the Symbols Order. Indeed, that dispensation may have to be followed by respondent No.1, if his challenge to the decision of the Election
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Commission is finally rejected and/or answered against the group represented by him. Until such time, respondent No.1 – writ petitioner could legitimately pursue his claim before the High Court/Supreme Court that his group represents the real political party (AIADMK) which was earlier registered and recognized.

17. Reliance was placed on the decision of *Desiya Murpokku Dravida Kazhagam and Anr. Vs. Election Commission of India*¹ to contend that even though initially this Court granted interim relief to the writ petitioner, it eventually realized that granting such interim relief had resulted in avoidable confusion and made it unworkable for the ECI for the smooth conduct of the elections. In paragraphs 27 to 29 of the judgment this Court observed thus:

“27. When the interim arrangements were made on 27-3-2009, the registered unrecognised political parties before the Court were only three in number, whereas presently many others have joined the bandwagon. What we are required to consider at this stage is whether despite the above, any prejudice would be caused to any of the stakeholders in the election process, if such prayer was allowed. It would certainly be to the advantage of the registered unrecognised political parties if they were able to put up candidates on a common symbol. On the other hand, if all registered unrecognised political parties were to be provided with a common symbol, *prima facie*, it would render the provisions of the Election Symbols Order, 1968, completely unworkable and destroy the very object it seeks to achieve.

28. Having regard to the aforesaid two possibilities, we are not inclined to make any interim arrangement similar to that made on an earlier occasion. The earlier interim arrangement was possible on account of the lesser number of parties, but in the present circumstances, the same will not be workable in view of the number of candidates who are likely to contest the elections and are required to be provided with free symbols in each constituency.

29. However, while we are not inclined to make any interim arrangement regarding the allotment of election symbols for the forthcoming General Assembly Elections, we make it clear that this is only a tentative view, which shall not, in any way, affect the final outcome of the pending writ petitions and special leave

¹ (2011) 4 SCC 224

- A petitions. We also make it clear that this order will not prevent the Election Commission from considering any representation that may be made by the political parties and from accommodating their prayer for a common symbol, to the extent practically possible.”
- B 18. Notably, this was a case where the registered unrecognized political party had sought relief regarding allotment of a common symbol for the candidates to be nominated by the party during the ensuing elections. Suffice it to observe that it was not a case where each faction of the registered recognized State political party claimed to be the real party and such a dispute was *sub judice* before the High Court, as is the fact situation in the present case. The fact that the writ petition cannot be *stricto sensu* considered as continuation of proceedings of the Election Commission, nevertheless it is open to the High Court to set aside the final decision of the Election Commission and including to pass appropriate interim directions during the pendency of writ petition before it.
- C D 19. Be that as it may, in the present case, when the matter was pending before the Election Commission, it had passed interim order to ensure level playing field to both the factions of AIADMK. The relevant extract of the order dated 22nd March, 2017 reads thus:
- E “10. The Commission, at the outset of the hearing itself, had told all the parties that it would not go into the question of the appointment of respondent No. 1 as General Secretary of the party, and that the present hearing would be confined only to the question of allotment of the reserved symbol of the party to its candidate at the current bye-election from 11-Dr. Radhakrishnan Nagar Assembly Constituency, for which the nominations would close by 03.00 pm tomorrow (23rd March, 2017). Thus, for the time being, the Commission is concerned only with the limited aspect of use of the said symbol ‘Two Leaves’ reserved for the party in the said bye-election from 11-Dr. Radhakrishnan Nagar assembly constituency.
- F G 11. From the foregoing, it would be apparent that the examination and analysis of voluminous documents and huge number of affidavits filed by both the groups in support of their respective claims would require considerable time as both the groups have pointed out several discrepancies and legal infirmities in those individual affidavits. A deeper examination and more closer look
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would also be required to the various provisions of the party constitution on which both the groups relied to buttress their submissions on factual and legal basis. No one would grudge the fact that it is almost humanly impossible to study all the aforesaid records running into more than 20,000 pages and to analyze the oral submissions made by the learned counsels for more than six hours continuously, and then come to a definite finding or conclusion on the disputed questions of facts and law. After the close of the hearing at about 05.00 p.m. today, any hasty decision in a matter of a few hours before the commencement of the nominations process at 11.00 a.m. tomorrow (23rd March, 2017) may lend to an erroneous conclusion or finding prejudicially affecting the rights and interests of either or both the groups. Furthermore, the learned counsel for the petitioners have also orally submitted that they have collected and are in the process of collecting more individual affidavits from the members of the party at various organizational layers and wings of the party for the submission whereof they require some more time. It would not be fair in the interest of equity, justice and fair play – in action to deny them the opportunity of doing the needful in the matter, as prayed for.

12. Having regard to the above facts and circumstances and the practical difficulties in evaluating and adjudicating upon the huge evidence running into more than 20,000 pages adduced by both the parties – that too filed late in the evening yesterday (21st March, 2017) – and the oral submissions made by their learned senior counsels, the Commission is not in a position to give any final decision at the present juncture in the short time available mentioned above. **Consequently, the Commission is left with no other option in these compelling circumstances but to make an interim order which may be fair to both the contending groups in order to place both the rival groups on even keel to protect their rights and interests and going by the past precedents in such cases, the Commission hereby makes the following interim order, purely for the purposes of the current bye-election from 11-Dr. Radhakrishnan Nagar assembly constituency in Tamil Nadu, pending the final determination of the dispute raised by the petitioners in their petition dated 16th March, 2017 in terms of para 15 of the Symbols Order:-**

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- A (a) Neither of the two groups led by the petitioners 9Shri E. Madhusudhanan, Shri O Panneerselvam and Shri S. Semmalai) and the respondents (Smt. V.K. Sasikala and Shri TTV Dhinakaran) shall be permitted to use the name of the party ‘All India Amma Dravidn Munnetra Kazhagam’ simplicitor;
- B (b) Neither of the aforesaid two groups shall also be permitted to use the symbol ‘Two Leaves’, reserved for ‘All India Anna Dravida Munnetra Kazhagam’;
- C (c) Both the groups shall be known by such names as they may choose for their respective groups, showing, if they so desire, linkage with their parent party ‘All India Anna Dravida Munnetra Kazhagam’, and
- D (d) Both the groups shall also be allotted such different symbols as they may choose from the list of free symbols notified by the Election Commission for the purposes of the current bye-election from 11-Dr. Radhakrishnan Nagar assembly constituency in Tamil Nadu.

Accordingly, both the groups are hereby directed to furnish latest by 10.00 a.m. tomorrow (23rd March, 2017):

- E (i) the names of their groups by which they may be recognized by Commission; and
- (ii) the symbols which may be allotted to the candidates set up, if any, by the respective groups. They may indicate the names of three free symbols in the order of their preference, anyone of which may be allotted to their candidates by the Commission.

- G 13. Further, the both the above referred groups are allowed a further and the final opportunity of adducing all such documents and affidavits on which they propose to rely on their respective claims, latest by 17th April, 2017 (Monday). They may also take notice that the matter will be further heard by the Commission on a date to be intimated later.

ORDERED ACCORDINGLY”

(emphasis supplied)

20. Indeed, allotment of an election symbol cannot be claimed as a fundamental right as much as contesting election is not, as observed in *Jyoti Basu and Ors. Vs. Debi Ghosal and Ors.*². It is a statutory right. It is also well settled that the Election Commission has plenary powers and could exercise the same to ensure free and fair elections. Clause 18 of the Symbols Order predicates the facet of such plenary power to be exercised by the Election Commission. Clause 18 reads thus:

“18. Power of Commission to issue instructions and directions.
The Commission, may issue instructions and directions-

- (a) for the clarification of any of the provisions of this Order.
- (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and
- (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or makes insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections.”

21. The Election Commission in the past has exercised plenary powers under paragraph 18 for issuing interim directions regarding allocation of common symbols to the two factions, when the dispute under the Symbols Order was still pending before it. It was argued that the Election Commission cannot do so once it had finally decided the dispute. There is no difficulty in agreeing with the proposition that once the dispute had been finally decided by the ECI, the question of invoking powers under paragraph 18 by it (ECI) would not arise. However, if the dispute is pending enquiry before ECI or the final decision of the ECI is *sub judice* in the proceedings before the constitutional court, providing for an equitable arrangement in the interests of free and fair elections and to provide equal level playing field to all concerned, would be a just and fair arrangement.

22. Assuming that the provisions of the Symbols Order do not predicate the nature of directions that may have to be issued by the ECI, nothing prevents the ECI to exercise its expansive and plenitude of plenary powers under Article 324 of the Constitution of India to deal with the situation such as the present one for ensuring conduct of free

² 1982 (1) SCC 691

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- A and fair elections. That would be moreso when the dispute between the two factions is still *sub judice*. Indubitably, exercise of power by the ECI pursuant to the interim directions of the writ court would be its constitutional obligation.

23. We find force in the argument of respondent No.1 (applicant)
- B that in the event the group to which he belongs gets itself registered as a political party, that step will be fraught with several difficulties. First, recognition does not follow registration. For that, the political party will have to fulfill all the requirements specified in the Symbols Order. That will be a long drawn process. Second, without recognition the registered political party cannot get a common election symbol. Third, it may not be just and fair to ask the splinter group to give up its claim of a real political party until the dispute is finally settled by the court of competent jurisdiction, which would be the consequence of seeking registration. Fourth, the elected representatives who are members of the group, may have to face the risk of incurring disqualification because of giving certain declarations whilst applying for registration of a new political party. Resultantly, an interim arrangement which would be just and fair and not cause any prejudice, whatsoever, to the other group which has been presently recognized by the ECI as the real political party, namely, AIADMK, is imperative.

- E 24. To buttress the argument that the ECI has wide powers to provide for an equitable arrangement for ensuring free and fair elections, reliance is placed on the interim order passed by the Election Commission dated 17th January, 2000, in the case of ***Janata Dal (United)***, permitting the two groups of the National Party to use separate names and symbols, which reads thus:

F **“Interim Order of the Election Commission of India dated 17th January, 2000**

- G The Commission has also considered the second prayer of the Janata Dal (United) to permit it to use the name of Janata Dal (United) at the ensuing General Election to the Bihar Legislative Assembly. The Commission has already announced, on 8th January, 2000, the programme for General Election to the Bihar Legislative Assembly, alongwith the General Elections to the legislative Assemblies of Haryana, Orissa and Manipur and several Bye-elections to the House of the People and Legislative Assemblies of certain other States. According to the time table for these

General Elections, the first set of notifications in relation to elections from 108 Assembly Constituencies in Bihar and 28 Assembly Constituencies in Manipur are scheduled to issue by the Governors of the States concerned on 17th January, 2000. With the issue of these notifications, the process of nomination of candidates by all parties will commence on that very day and will end on 24th January, 2000. On 24th January itself, the second phase of elections in Bihar from another 108 Assembly Constituencies as well as elections from 70 Assembly Constituencies in Orissa and bye-elections from two Parliamentary and 30 Assembly Constituencies in various States will also commence. If the Commission takes any decision finally in the present matter after taking into consideration the written submissions which may be filed by the parties on 18th January, 2000, that decision may be rendered too close to the last date for making nominations for the first phase of elections in Bihar and Manipur and the commencement of the second phase of elections in that State as well as the elections in other States commencing on 24th January, 2000. This will not only put the parties concerned but also the election authorities down the line in all the concerned States in a state of confusion and chaos. **In the circumstances, the Commission is of the considered view that, in the interest of free and fair elections and equity and fair-play in action, the interim arrangement which was made by the interim order dated 7th August, 1999 in the present case should continue till its final disposal.** Therefore, the second prayer of the Janta Dal (United) to allow to use its name Janata Dal (United) for the purposes of the ensuing General Elections is also hereby granted.

8. Accordingly, it is hereby directed that, until further orders-

(i) The groups of the Janta Dal led by Shri H.D. Deve Gowda shall continue to be recognized as a National party, and the symbol “Kisan Driving Tractor” shall continue to be reserved for it;

(ii) The group of the Janta Dal led by Shri Sharad Yadav shall continue to be recognized as a National Party, and the symbol “Arrow” shall continue to be reserved for it.”

(emphasis supplied) H

- A 25. The contesting respondents, however, have placed reliance on the decision of this Court in *Madeva Upendra Sinai and Ors. Vs. Union of India and Ors.*³, which had dealt with the purport of regulation in the Taxation Law (exceeding to Union Territories) Order, 1970. Drawing analogy therefrom, it is urged that the powers of the Election Commission under paragraph 18 cannot be exercised in a manner that
- B would do violence to the primary statutory scheme in relation to allotment of symbols. The moot question is: when the Election Commission is competent to pass appropriate directions by invoking paragraph 18 of the Symbols Order and/or Article 324 of the Constitution during the pendency of dispute before it, can there be any impediment for the writ
- C court to pass appropriate interim directions while the validity of the decision of the Election Commission is *sub judice* before it. Indubitably, the High Court has ample jurisdiction to not only stay the operation of the decision of the Election Commission but in a given situation also continue the arrangement provided in terms of the interim order passed by the ECI, which ECI itself had directed during the pendency of the dispute before it.
- D 26. Be that as it may, in this case the respondent No.1 – writ petitioner is not praying for the larger relief of stay of the operation of the final decision of the ECI which would directly affect the group represented by SLP petitioners, but is content with a direction to the
- E Election Commission to continue the interim relief given to his group in terms of its order dated 22nd March, 2017. We have no hesitation in agreeing with the High Court that for doing justice and protecting the interests of all concerned and to uphold the democratic principles, including for ensuring free and fair elections, it would be just and proper
- F to continue the interim arrangement as was directed by the ECI regarding allotment of a common symbol to the political group represented by respondent No.1, especially when such relief would not cause any prejudice to any other person or party nor impinge upon the powers of the Election Commission.
- G 27. Notably, in the case of *Kerala Congress (Anti-merger Group)*, the Election Commission had permitted the anti-merger group to use the names and reserved symbols vide communication dated 25th March, 2011, File No.56/04/2010, which reads thus:

**“SECRETARIAT OF THE
ELECTION COMMISSION OF INDIA**
Nirvachan Sadan, Ashoka Road, New Delhi-110001.

File No.56/04/2010

Dated: 25th March, 2011

To

The Chief Electoral Officer,
Kerala,
Thiruvananthapuram.

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Subject: Allotment of Common Symbol for the General Election to the Legislative Assembly of Kerala, 2011-regarding.

Madam.

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I am directed to refer to the letter dated 25.03.2011 on the subject cited received from the Chairman of Kerala Congress (Anti-merger Group) and to state that the Commission has decided in terms of it's Order dated 24.03.2011, to allot symbol 'Ceiling Fan' to 'Kerala Congress (Anti-merger Group)' as a reserved symbol for the on going General Election to the Legislative Assembly of Kerala, 2011.

2. All the Returning Officers may be directed to allot the above symbol exclusively to the candidates set up by Kerala Congress (Anti-merger Group) on fulfillment of the provisions of para 13 of the Election Symbols (Reservation & Allotment) Order, 1968 relating to setting up of candidates by the party and also ensure that the said symbol is not allotted to any other candidates.

Yours faithfully,

Sd/-

Pramod Kumar Sharma
(Under Secretary)"

28. Even in the case of ***Uttarakhand Kranti Dal***, separate names and symbols came to be allotted by the Election Commission to two groups vide communication No.56/17/2011/PPS-II/Vol.IV, dated 31st December, 2011 which reads thus:

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“ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

56/17/2011/PPS-II/Vol.IV

Dated: 31st December, 2011

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- A To
The Chief Electoral Officer,
Uttarakhand,
Dehradun.
- B Subject: Allotment of names of the two groups of Uttarakhand Kranti Dal and allotment of symbols to them for the General Election to the Legislative assembly of Uttarakhand - regarding.
Sir,
- C In pursuance of the Commission's Order dated 27.12.2011, the two groups of Uttarakhand Kranti Dal led by Sh. Trivendra Singh Pawar and Sh. Diwakar Bhatt have submitted applications regarding the name and symbol for their respective Parties. The Commission has approved "Uttarakhand Kranti Dal(P)" as the name of the party led by Sh. Trivendra Singh Pawar and has allotted the symbol 'Cup and Saucer' as the reserved symbol for the said party for the current General Election to the Legislative Assembly of Uttarakhand, 2012.
- D 2. Further, the Commission has also approved "Jantantrik Uttarakhand Kranti Dal" as the name of the party led by Sh. Diwakar Bhatt and has allotted the symbol 'Kite' as its reserved symbol for the current General Election to the Legislative Assembly of Uttarakhand, 2012.
- E 3. This may be communicated to all election officials in the State. All the Returning Officers may be directed to allot the symbol referred to above exclusively to the candidates set up by the above said parties on fulfillment of the provisions of para 13 of the Election Symbol (Reservation & Allotment) Order, 1968 relating to setting up of candidates by the party and also ensure that the said symbol is not allowed to any other candidates.
- F 4. The lists of office bearers submitted by Uttarakhand Kranti Dal(P) and Jantantrik Uttarakhand Kranti Dal are enclosed.
- G 5. Copy of this letter may be delivered to the two Parties immediately.

Yours faithfully,
(PRAMOD KUMAR SHARMA)
UNDER SECRETARY"

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29. In the case of **Desiya Murpokku Dravida Kazhagam and Anr. Vs. Election Commission of India**, in Writ Petition (Civil) No. 532 of 2008, dated 27th March, 2009, by way of interim arrangement this Court had initially issued directions to the Election Commission of India which read thus:

“ORDER

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W.P.(C) No.532/2008,W.P.No(C) No.132/2009 and SLP(C)
Nos.7379-80/2009

W.P.(C) No.532/2008 is filed by a registered unrecognized political party mainly situated in Tamil Nadu and W.P. No (C) No.132/2009 is filed by another registered unrecognized political party situated mainly in Andhra Pradesh whereas special leave petitions are filed against the order passed by the division bench of the High Court of Andhra Pradesh. In all these matters the petitioners in writ petitions and respondents in the special leave petitions made an interim prayer. In the State of Andhra Pradesh and the State of Tamil Nadu General Elections have already been notified and in the State of Andhra Pradesh there are elections for Lok Sabha as well as assembly constituencies and in the State of Tamil Nadu there are General Elections only for Lok Sabha. By the impugned order, it has been directed that all registered unrecognized parties shall be allotted a free symbols for the ensuing elections.

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The “Political Party” has been defined in the Election Symbols (Reservation and Allotment) Order, 1968, para 2 (h) as an association or body of individual citizens with the Commission as a political party under Section 29A of the Representation of the People Act, 1951. There are national parties, state parties and registered unrecognized parties and the symbols are allotted under the Election Symbols (Reservation and Allotment) Order, 1968. The national parties as well as state parties have their own common symbols, whereas the registered unrecognized parties are given free symbols. Choice of symbols by other candidates and allotment are governed as per para 12 of the Election Symbols (Reservation and Allotment) Order, 1968.

The three political parties who have appeared before us through their senior counsel are Desiya Murpokku Dravida Kazhagam (DMKD) party, Praja Rajyam Party and Lok Satta Party and

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- A they contended that they would fill candidates in all the 292 assembly constituencies and 42 constituencies of Lok Sabha seats in Andhra Pradesh and 39 constituencies for Lok Sabha seats in Tamil Nadu and one Lok Sabha seat in Pondicherry. It is brought to our notice that these three political parties be given a common symbol each. While DMDK preferred the symbol of 'Nagara' which is at Sl.no.41 in the list of free symbols, whereas Praja Rajyam Party preferred the symbol of 'Railway Engine' which is at Sl.no.43 in the list of free symbols and the Lok Satta Party preferred the symbol of 'Whistle' which is at Sl.no.59 in the list of free symbols.
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- C The order passed by the High Court of Andhra Pradesh dated 25.3.2009 is stayed to the extent that the Election Commission has been directed to give a common symbol to all the candidates to be filled up by all registered unrecognized parties. Further the Election Commission may give a common symbol, as indicated earlier, to DMDK, Praja Rajyam Party and Lok Satta Party subject to the general conditions given in paragraph 12 of the Order, 1968, especially –
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- E '12(b) if, of those several candidates, no one is set up by any recognized political party and all are 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.'
- F
- G The candidates to be filled up by these political parties shall submit prescribed form duly authorised by a particular party. It is made clear that these three political parties are not entitled to get any preferential treatment in respect of this symbol and no equity will be given in future when allotment of regular symbol arise for consideration before the Election Commission. This is only an interim arrangement.
- H This order is confined to only these three parties."
- As aforesaid, this interim relief was not continued by the subsequent order (extracted in paragraph 17 above). Further, the said writ petitions

and the SLPs were then heard together and finally dismissed on 18th April, 2012,⁴ upholding the amendments effected by the Election Commission to the Election Symbols (Reservation and Allotment) Order, 1968, by its Notification dated 1st December, 2000, substituting paragraph 6 thereof with paragraph 6A(i) and (ii) and paragraph 6B.

30. Similarly, in the case of *Viduthalai Chiruthaigal Katchi Vs. Election Commission of India*, in Writ Petition (Civil) No.177 of 2009 vide order dated 27th April, 2009, this Court had issued directions to the Election Commission for allotting symbol which read thus:

“ORDER

The petition has been filed by Viduthalai Chiruthaigal Katchi, a registered unrecognized political party in the State of Tamil Nadu. It is sponsoring its candidates for Chidambaram and Villupuram Parliamentary constituencies and the candidates have also submitted their nomination papers for the same. The petitioner prays that the party may be given a common election symbol of 'Star' in these two Parliamentary Constituencies. The prayer is opposed by learned counsel appearing for the Election Commission and it is submitted that the symbol 'Star' is a reserved symbol of Mizo National Front, which is a political party in the State of Mizoram. The petitioner's counsel states that the Mizo National Front is not contesting in the Tamil Nadu elections and it is not sponsoring any candidates in the State of Tamil Nadu.

In view of the ensuing elections, the petitioner Viduthalai Chiruthaigal Katchi may be given the symbol 'Star' for its candidates at Chidambaram and Villupuram constituencies. It is made clear that this allotment of symbol will not give any additional rights or equities in favour of the petitioner- political party when the question of allotment of symbol arises. This is purely for the purpose of the ensuing parliamentary election only. However, if any other political party or persons seek the symbol 'Star', the Election Commission may allot such symbol to any political party/ candidate.

The petitioner would be at liberty to communicate this order telegraphically.

The writ petition is disposed of accordingly.”

⁴ (2012) 7 SCC 340

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- A 31. In the case of ***Indian National Congress***⁵, after deciding the dispute between the rival groups in proceeding ascribable to paragraph 15 of the Symbols Order, the splinter group was recognized by the ECI as a National party and consequently, directions were issued in exercise of powers under paragraph 18 of the Symbols Order. The same reads thus:
- B “Accordingly, I hold and decide under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968, that for the purposes of that Order, the group led by Shri jagjivan Ram is the Indian National Congress for which the symbol “Two Buyllocks with Yoke On” has been reserved.
- C As the group led by Shri Nijalingappa has sufficient number of members in the House of the People and in the various State Legislative Assemblies and as that group satisfies and fulfils the conditions precedent to the recognitioin of a party as National Party, in exercise of the powers conferred upon the Election Commission by paragraph 18 of the Election Symbols (Reservation and Allotment) Order, 1968, and all other powers enabling it in that behalf, I hold and decide that the group led by Shri Nijalingappa should also be recognized as a National party throughout the whole of India and, necessary instructions and directions will be issued
- D to all the concerned election officers in the States and Union territories of India and a notification will be issued under paragraph 17 of the Election Symbols (Reservation and Allotment) Order, 1968, as soon as that group approaches the Commission for the reservation of a symbol for it as a National party with a name which should be at least in some way different from the name “India National Congress.”
- E 32. In the case of ***Shri N. Chandra Babu Naidu Vs. Smt. Lakshmi Parvati***, the Election Commission of India vide order dated 12th March, 1996, however, while considering Issue No.2 answered the same in the following words:
- G “ISSUE 2: IF ANY ONE OF THE GROUPS IS RECOGNISED AS THE REAL TELUGU DESAM PARTY’, WHAT IS THE POSITION OF THE OTHER GROUP? IS IT ENTITLED TO ANY RELEF?

H ⁵ Election Law Reports, Vol. 47 (1974)

Now that in accordance with the tests laid down by Supreme Court in adjudicating disputes between rival groups of political parties, and therefore taking into account the majority of members of the legislative wing and organisational wing, this Commission has held the group led by Shri N. Chandrababu Naidu, as the real Telugu Desam Party, if, as a consequence of this order, the respondent group led by Mrs. Lakshmi Parvati decides to form a separate party and seeks its registration under section 29A of the Representation of the People Act, 1951, the Commission would be prepared to grant it not only registration under the said Act but also recognition as a State Party in the State of Andhra Pradesh. Such a relief would be subject to the group completing the formalities of applying to the Commission for Registration as a political party under section 29-A of the Representation of the People Act, 1951. They should also furnish positive evidence of their strength to the Commission, and also documents in relation to the votes polled by its members in the last General Election to the State Assembly held in 1994 to claim allotment of a reserved symbol. According such a relief is not only in conformity with the principles of fair play, justice and equity, but also in line with the past practice and precedents of the Commission in such cases.

ORDERED ACCORDINGLY”

Needless to observe that this was the final decision of the Election Commission of India and not a case where the order of the Election Commission was challenged before the High Court and that challenge was still pending.

33. Indeed, if the political group is not registered under Section 29A of the 1951 Act and is not recognized as per the provisions of Symbols Order, 1968, it may not be entitled to claim allotment of a common symbol which is reserved for a registered and recognized State/National political party. That is the quintessence. Paragraphs 9 to 11 would apply to such registered and recognized political party which provide for an option of a reserved symbol. For any other candidate or candidate belonging to unregistered or unrecognized party, his claim would be dealt with under paragraph 12 of the Symbol Order, 1968. The closest provision is paragraph 15 of the Symbol Order, which deals with the powers of the Election Commission in relation to splinter groups or rival factions of the political party. But once that dispute is answered by the Election

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- A Commission and that decision attains finality, the splinter group will have no other option but to register itself as a political party and only after fulfillment of the requirements specified in paragraphs 6A to 6C of the Symbols Order, 1968, as applicable, may be given recognition as a National or State political party.
- B 34. In the present case, the decision of the Election Commission is *sub judice* before the High Court and the claim of the group or faction of being the original registered recognized State political party represented by respondent No.1 (writ petitioner), will be subject to the outcome thereof. Until such time, there is no just reason as to why the interim arrangement such as ordered by the Election Commission in terms of the interim order dated 22nd March, 2017, as applicable to the group represented by respondent No.1, ought not to continue.
- C 35. We say so because the efficacy of having a common symbol for a political group has been underscored in *Shri Sadiq Ali and Anr. Vs. The Election Commission of India, New Delhi and Ors.*⁶ In paragraph 21 of the said judgment, this Court observed thus:

“21. xxx xxx xxx **It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of illiteracy, it might not be possible for the illiterate voters to cast their votes in favour 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.** xxx xxx xxx **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. xxx xxx”**

(emphasis supplied)

H ⁶ (1972) 4 SCC 664

And again in paragraphs 40 & 41 it is observed thus:

“40. xxx xxx xxx It would, therefore, follow that Commission has been clothed with plenary powers by the abovementioned Rules in the matter of allotment of symbols. xxx xxx

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. xxx xxx 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. xxx xxx 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. xxx xxx xxx Article 324 as mentioned above provides that superintendence, direction and control of elections shall be vested in Election Commission. xxx “

(emphasis supplied)

36. This decision has been followed in *Kanhiya Lal Omar Vs. R.K. Trivedi and Ors.*⁷ and in paragraph 10 thereof, the Court observed thus:

⁷(1985) 4 SCC 628

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- A “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 systematized differences and unresolved conflicts”. That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-second Amendment) Act, 1985 there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.”
- G (emphasis supplied)
- H 37. After having examined all aspects of the matter, we are of the considered opinion that the direction issued in terms of order dated 28th March, 2018, to keep the interim order of the learned Single Judge of the High Court dated 9th March, 2018, in abeyance and consequently to

restrain the Election Commission from pronouncing its order on the application preferred by the political group represented by respondent No.1 (writ petitioner), needs to be vacated. In other words, the Election Commission shall process the application preferred by the political group represented by respondent No.1 - TTVD (writ petitioner) and respondent No.3 – VKS in terms of the interim order of the High Court dated 9th March, 2018 and take it to its logical conclusion expeditiously.

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38. However, considering the fact that the hearing on the writ petition before the Division Bench of the High Court has almost reached at the final stage, we deem it appropriate to mould the reliefs in the following terms:

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(a) If the writ petition is not finally disposed of by the Division Bench of the High Court within four weeks from today, the Election Commission of India shall process the application of the group represented by respondent No.1 (writ petitioner) in terms of the directions given by the High Court vide interim order dated 9th March, 2018 and issue appropriate directions within two weeks therefrom (i.e. four weeks plus two weeks, from today).

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(b) In the event, before the expiry of the stated period, the Election Commission intends to issue any Press Note or Notification for announcing the bye-elections in respect of the vacant Assembly Constituencies in the State of Tamil Nadu or Parliamentary Elections for 2019, as the case may be, it shall pass appropriate directions in compliance with the interim order of the High Court dated 9th March, 2018, within one week from the date of release of such Press Note or Notification and in any case, before the date notified for filing of the nominations, whichever is earlier.

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38. Miscellaneous Application is disposed of in the above terms.
No costs.