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

+ **W.P.(C) 3162/2024 & CM APPL. 13000/2024**

NAAM TAMILAR KATCHI THROUGH ITS PRESIDENT

..... Petitioner

Through: Ms. Haripriya Padhmanabhan, Sr. Advocate with Ms. Priya R., Mr. Manoj Kumar, Mr. Shrutanjaya Bhardwaj and Mr. Omkar Hemanth, Advocates

versus

ELECTION COMMISSION OF INDIA & ANR. Respondents

Through: Mr. Ankit Agarwal, Standing Counsel for ECI with Mr. Ashish Shukla, Advocate for R-1/ECI

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Date of Decision: 1st March, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, ACJ: (ORAL)

CM APPL. 12998/2024, CM APPL. 12999/2024 (For exemption)

Allowed, subject to all just exceptions.

Accordingly, present applications stand disposed of.

W.P.(C) 3162/2024 & CM APPL. 13000/2024

1. Present writ petition has been filed under Article 226 of the Constitution of India seeking following prayers: -



- a. Pass a writ of Certiorari or any other writ/order/direction of like nature by striking down Explanation (iv) and Proviso 1 to Explanation (iv) of Order 10B (B) of the Election Symbols (Reservation and Allotment) Order, 1968 ('Election Symbols Order').
 - b. Pass a writ of Certiorari or any other writ/order/direction of like nature by striking down the allotment of "Ganna Kisan" election symbol to the Respondent No. 2 by Respondent No. 1.
 - c. Pass a writ of Certiorari or any other writ/order/direction of like nature by quashing the communication dated 20.02.2024 sent by the Respondent No. 1.
 - d. Pass a writ of Certiorari or any other writ/order/direction of like nature, directing the Respondent No. 1 to allot "Ganna Kisan" to the Petitioner party in the upcoming Lok Sabha Parliamentary election in the State of Tamil Nadu, based upon the representation dated 24.02.2024 given by the Petitioner Party to Respondent No. 1
2. The Petitioner Party herein, namely, 'Naam Tamilar Katchi', is an unrecognized political party in India, registered under Section 29A of the Representation of the People Act, 1951, on and with effect from 27th September, 2013. It is stated that in the year 2019, the Petitioner applied and was allotted "Ganna Kisan" as its common symbol from the list of free symbols published under Paragraph 10B (B) of the Election Symbol Order, for the general elections of the Lok Sabha for the year 2019.
- 2.1. The Petitioner has since contested six elections (two local body elections, two bye-elections, one House of the People election and one State Legislative Assembly election) with the "Ganna Kisan" symbol. It is stated



that the said symbol was also allotted to Petitioner Party by Tamil Nadu State Election Commission for the local bodies' elections for rural and urban, held during the years 2021 and 2022.

2.2. It is stated that Respondent No. 1 on 14th March, 2019 and 14th December, 2020 has extended the concession under Paragraph 10(B) B of the Election Symbols Order and allotted the free symbol of "Ganna Kisan" to the Petitioner Party. It is stated that in the aforesaid facts, the Petitioner Party on 9th February, 2024 requested the Election Commission of India ('ECI') i.e., Respondent No. 1 to allot the "Ganna Kisan" symbol to the Petitioner Party for the upcoming Lok Sabha elections in the year 2024.

2.3. It is stated that however, for the said Lok Sabha elections, the Respondent No. 1 vide its communication(s)/letter(s) dated 13th February, 2024 and 20th February, 2024 ('impugned letter') has directed the Returning Officers to allot free symbol - "Ganna Kisan" to the candidates set up by Respondent No. 2 in the State of Tamil Nadu and Puducherry. It is stated that Respondent No. 2 contested Karnataka General Assembly elections with the symbol of 'Gas Cylinder' in the year 2023.

3. It is stated that the Petitioner Party sent its representations on 19th February, 2024 and 24th February, 2024 to Respondent No. 1 seeking cancelation of the allotment of "Ganna Kisan" symbol to Respondent No. 2 and to allot the said symbol to the Petitioner Party for the Lok Sabha elections, 2024.

4. The learned senior counsel appearing for the Petitioner states the Petitioner Party is a registered (unrecognized) State party and is therefore, not entitled to a reserved election symbol. She states that consequently, the



Petitioner Party has to apply for allotment of a free symbol as per Election Symbols Order, whenever it intends to contest the general elections.

3.1. She states that “Ganna Kisan” symbol was allotted to the Petitioner Party by Respondent No. 1/ECI for the elections held during the years 2019 to 2023.

3.2. She states that the Petitioner Party has contested in the State Legislature Assembly Elections, 2021 for the State of Tamil Nadu and Puducherry, by setting up its candidates in all the 234 constituencies in Tamil Nadu and 28 constituencies in the Union Territory of Puducherry. She states the Petitioner Party has secured a voting share of 6.87% in State Elections, 2021 and recognized as the third largest registered political party in the State of Tamil Nadu; therefore, the people of Tamil Nadu associate the symbol of ‘Ganna Kisan’ with the Petitioner Party.

3.3. She states that as per the communication dated 17th May, 2023 published on the website of Respondent No. 1, an application seeking allotment of free symbol should be filed from 17th December, 2023. She states that as per applicable rules, the application for allotment of the free symbol can be made by the party till atleast three months before the date of expiry of the term of the House of the People.

3.4. She states that Petitioner Party has filed its application for allotment of “Ganna Kisan” symbol on 9th February, 2024, which was within the permissible time period for filing such an application. She states that as per the Proviso 2 to the Explanation (iv) of Paragraph 10B (B) of the Election Symbols Order, if two parties file their respective applications on the ‘same date’, giving preference for the same symbol, then the symbol will be



allotted to the applicant to whom the said symbol was allotted at the previous occasion as well.

3.5. She states that however, the Respondent No. 1 by its letters dated 13th February, 2024 and 20th February, 2024, has directed the Returning Officer to allot “Ganna Kisan” symbol to Respondent No. 2 only on the basis of the prior application filed by the Respondent No. 2, on 17th December, 2023, for the Lok Sabha elections in 2024, in several States including the State of Tamil Nadu.

3.6. She states that in the present writ petition, the Petitioner Party is challenging Explanation (iv) and Proviso 1 to the said Explanation of Paragraph 10B (B) of the Election Symbols Order. She states that the impugned explanation and proviso thereto are arbitrary and violates Article 14 of the Constitution of India. She states that the election symbol has critical relevance in the election process and the voters in the State of Tamil Nadu identify the said symbol with the Petitioner Party. She states that so long as the application for allotment is filed within the valid window period, it must be considered by Respondent No. 1 and accorded the preference contemplated in Proviso 2. She pleads that the phrase ‘**same date**’ appearing in the impugned Proviso to Explanation (iv) to Paragraph 10B (B) should be appropriately recast and re-phrased by this Court, so as to direct Respondent No. 1 to consider all valid applications received within the valid window period together for the purposes of allotment.

3.7. She states that the policy of ‘first-come-first-served’ which forms the basis of this impugned Proviso is unconstitutional in light of the law laid down by the Supreme Court of India in the case of *Anant Raj Limited. vs.*



State of Haryana and Others¹.

4. In reply, the learned standing counsel for the Respondent No. 1/ECI states that as per Explanation (iv) to Paragraph 10B (B), Election Symbols Order, the allotment of the free symbol by Respondent No. 1 has to be done on ‘first-come-first-served’ basis. He states the Petitioner Party filed its application on 9th February, 2024, whereas Respondent No. 2 filed its application on 17th December, 2023 and therefore, the “Ganna Kisan” symbol was duly allotted to Respondent No. 2 on 13th February on ‘first-come-first-served’ basis in accordance with the scheme. He contends that if the plea of quashing or re-casting the impugned proviso(s) is allowed by this Court, then it would destroy the underline fundamental basis of Paragraph 10B (B) of the Election Symbols Order. He states that the recasting would dilute the distinction between reserved symbols and free symbols. He further submits that an unrecognized political party is not entitled, as a matter of right, for exclusive allotment of a free symbol and Explanation (iv) of Paragraph 10B (B) read with Paragraph nos. 5 and 6 of the Election Symbols Order, clearly indicates the legislative intention, that the allotment of free symbol to an unrecognised party has to be done on ‘first-come-first-served’ basis. He states that the Petitioner Party itself has been a beneficiary of the said provisions when it earlier applied and was allotted “Ganna Kisan” as its common symbol on 14th March, 2019 and 14th December, 2020.

4.1. He states that there is no dispute that Respondent No. 2 applied first and has been allotted the free symbol in accordance with Paragraph 10B (B)

¹ (2022) 15 SCC 596 paras 32, 35 and 40



of the Election Symbols Order and therefore, there is no arbitrariness. He states that the present writ petition is not maintainable and relies upon the judgment of Gujarat High Court in '*Vyavastha Parivartan Party Through Convenor Vishnubha K Pandya v. Election Commission of India*'² to contend that in similar facts the writ was dismissed by the said High Court.

5. We have considered the submissions of the learned senior counsel for the Petitioner as well as learned standing counsel for the Respondent No. 1 and perused the record.

6. The Petitioner Party is aggrieved by the action of the Respondent No. 1/ECI, whereby the free symbol "Ganna Kisan" has been allotted to Respondent No. 2 for the Lok Sabha elections in the State of Tamil Nadu and Puducherry for 2024.

7. The Petitioner Party admits that Respondent No. 1 on 17th May, 2023 duly published on its website that application seeking concession for allotment of free symbol, to contest the upcoming elections to Lok Sabha should be filed from 17th December, 2023. Admittedly, the application for allotment of the free symbol - "Ganna Kisan", was filed by Respondent No. 2 on 17th December, 2023 at 10:01 A.M., whereas the Petitioner Party filed its application on 9th February, 2024. Therefore, in accordance with Explanation (iv) to Paragraph 10B (B) the Election Symbols Order, the said free symbol was allotted to Respondent No. 2.

8. The Petitioner Party fairly admits that allotment of the free symbol "Ganna Kisan" to Respondent No. 2 has been made in accordance with the procedure laid down in Paragraph 10B (B) of the Election Symbols Order.

² R/Special Civil Application No. 5356 of 2019, Order dated 27th March 2019



However, feeling aggrieved by the said allotment, it seeks to challenge the same by contending that the procedure laid down in Paragraph 10B (B) Explanation (iv) and Proviso(s) 1 and 2 to the said Explanation, which led to the allotment in favour of Respondent No. 2 are unconstitutional. The said Explanation (iv) and Provisos thereto reads as under: -

“[10B - Concession to candidates set up by registered (unrecognized) parties and to unrecognized parties which were earlier recognized parties more than 6 years back.

.....

(iv) Allotment of common symbol under this paragraph shall be done on ‘first-come-first-served’ basis:

Provided that if applications of two or more parties giving preference for the same symbol are received in the Commission on the same date, then the question of allotment of the symbol to one of such parties shall be decided by draw of lots in such manner as may be directed by the Commission:

Provided further that if out of the two or more such parties giving preference for the same symbol whose applications are received on the same date, one party is such that it had been allotted the said symbol at the previous occasion in the State concerned and the other was not allotted that symbol in the previous election, then the symbol shall be allotted to the former:

Provided also that if out of the two or more such parties giving preference for the same symbol whose applications are received on the same date, both or all such parties had been allotted the said symbol on the previous occasion in the State concerned, and one among the parties is such that it has Member(s) elected to the House of the People or the Legislative Assembly of the State concerned on the symbol for which preference has been given by the party, then the symbol shall be allotted to that party to the exclusion of the other parties;”

(Emphasis supplied)

9. A plain reading of the impugned Explanation along with its Proviso(s) clearly shows that the said provision is based on the principle of ‘first-come-first-served’ basis and to achieve this object, and the objective criteria of determination of the ‘first’ applicant has been fixed as the ‘date’ on which the application for allotment of the symbol is received by Respondent No. 1.



The criteria of ‘date’ appears consistently in each of the three provisos to Explanation (iv) and therefore, the method applies uniformly in its application.

10. The contention of the Petitioner Party that this Court should recast Proviso(s) 1 and 2 so as to replace the phrase ‘same date’ therein with appropriate words/phraseology, so as, to permit equal consideration to all valid applications received by Respondent No. 1, within the permissible window period, cannot be acceded to. Firstly, the submission of the Petitioner Party ignores the repetitive occurrence of the phrase ‘same date’ as it appears in each of the three Proviso(s) to the said Explanation (iv). Secondly, the consequence of alleged re-casting of the said Proviso(s) 1 and 2 as sought by the Petitioner Party would render otiose the Explanation (iv) itself, which provides that the allotment will be made on the principle of ‘first-come-first-served’ basis. The suggestion of the Petitioner, if accepted would do violence to Explanation (iv). Thirdly, it is well-settled principle of law that the Court cannot rewrite the statute. This principle has been expressly laid down by the Supreme Court in the landmark judgment of *Union of India and Another vs. Deoki Nandan Aggarwal*³, wherein paragraph 14 reads as under: -

*“14. We are at a loss to understand the reasoning of the learned Judges in reading down the provisions in paragraph 2 in force prior to November 1, 1986 as “more than five years” and as “more than four years” in the same paragraph for the period subsequent to November 1, 1986. **It is not the duty of the court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to***

³ (1992) Supp (1) SCC 323



legislate has not been conferred on the courts. The court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the court could not go to its aid to correct or make up the deficiency. Courts shall decide what the law is and not what it should be. **The court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities.**

..... Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme, will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power.”

(Emphasis supplied)

10.1. This principle was also reiterated by the Supreme Court of India in its judgment *V. Jagannadha Rao and Others v. State of A.P. and Others* ⁴.

10.2. The restraint on the powers of the Court in re-writing a statute has been emphasized by the Constitution Bench of the Supreme Court in India in the matter of *In Re: Expeditious Trial of Cases under Section 138 of NI Act 1881*⁵, wherein it was observed as under: -

“20. ...Conferring power on the court by reading certain words into provisions is impermissible. A Judge must not rewrite a statute, neither to enlarge nor to contract it. Whatever temptations the statesmanship of policy-making might wisely suggest, construction must eschew interpolation and evisceration. He must not read in by way of creation. The Judge's duty is to interpret and apply the law, not to change it to meet the Judge's idea of what justice requires. The court cannot add words to a statute or read words into it which are not there.”

(Emphasis supplied)

10.3. The scheme of Explanation (iv) and its Proviso(s) including the Proviso 1 are consistent, non-discriminatory and apply uniformly to all eligible applicants. The language of the impugned Explanation and Proviso

⁴ (2001) 10 SCC 401 at para 18

⁵ (2021) 16 SCC 116



1 is plain and unambiguous. There is no scope for reading into Proviso 1 the plea contended by the Petitioner by replacing the phrase ‘same date’ with ‘within permissible time period’. A reasonable preference for political parties to whom the symbol has been allotted in the previous election and political parties who have elected representatives is also duly recognized in Proviso 2 and Proviso 3, respectively. The Petitioner has therefore been unable to show that the said impugned Explanation and Proviso 1 is unconstitutional.

10.4. During the course of the arguments, the Petitioner has also sought to challenge the *vires* of the phrase ‘same date’ as it appears in Proviso 2 to Explanation (iv). Though, there is no challenge to Proviso 2 either in the writ petition or in the prayer, however, for the same reasons as recorded hereinabove, the challenge to Proviso 2 is also not maintainable.

10.5. This Court is of the view that if the plea of the Petitioner Party is accepted, the same will operate against the essence of ‘free symbols’, as it will take away the rights and benefits granted to the unrecognised political parties to contest the elections with a free and common symbol. The Petitioner by the proposed re-phrasing is seeking to retain an advantage for the registered unrecognized political parties to get continued access to a particular free symbol and therefore indirectly converting a free symbol into a reserved symbol.

11. The Petitioner fairly concedes that the information with respect to the ‘first date’ for receiving applications on 17th December, 2023, was published by Respondent No 1 on 17th May, 2023, several months in advance and the Petitioner had due notice of the same. The Petitioner Party, who had earlier



applied and availed of the allotment of the free symbol on 14th March, 2019 and 14th December, 2020 was well aware of the methodology of ‘first-come-first-served’ basis at Paragraph 10B (B), Explanation (iv) of the Election Symbol Order. In these facts, the reliance placed by the Petitioner on the judgment of *Anant Raj Ltd. (Supra)* is wholly inapplicable as in the facts of that case, the Court came to the conclusion, that there was no sufficient public notice of the policy to the applicants and had led to preferential allotments, which were held to be against public interest and violative of Article 14 of the Constitution. Needless to add that in the said case, the Court concluded that the principle of ‘first-come-first-served’ was being misused in the alienation of the public property, as the policy introduced by the State Government with regards to grant of license of its own land for construction for the development of group housing society was unfair and against the public policy. It would be relevant to refer to the paragraph relied upon by the Petitioner which read as under: -

“32. When we call the term “established practice”, it always refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority and being the State functionary, its character is supposed to be based on the requirement of higher degree of fairness in administrative action to be tested on the anvil of Article 14 of the Constitution.

*35. That apart, there is a fundamental flaw in the policy of the State of first-come-first-serve basis as it involves an element of pure chance or accident and it indeed has inherent in-built implications and this factor cannot be ruled out as **we have gone through the record, any person who has an access to the power corridors will be made available with an information from the Government records and before there could be a public notice accessible to the people at large, the interested person may submit his application, as happened in the instant case, and become entitled to stand first included in queue to have a better claim, at the same time it is the solemn duty of the State to ensure that a non-discriminatory method is adopted, whether it is for distribution or allotment of licence on his own***



land, or alienation of property and it is imperative and of paramount consideration that every action of the State should always be in public interest.

*40. In our considered view, the principle of first-come-first-serve basis which has been adopted by the respondent State **in the facts of the instant case** is neither held to be rational nor in public interest and is in violation of Article 14 of the Constitution of India.”*

(Emphasis supplied)

11.1. However, in the facts of this case, the Petitioner as noted above, was fully aware of the ‘first’ acceptance date for application as 17th December, 2023 and its significance in the scheme of Paragraph 10B (B) of the Election Symbols Order and had made use of the same to its advantage in the past. We are therefore, of the considered opinion that the allotment of the free symbol “Ganna kisan” by Respondent No. 1 in favour of Respondent No. 2 by the impugned letters is neither arbitrary nor unconstitutional.

12. We accordingly, find no merit in the present petition and the same is dismissed along with pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

MARCH 1, 2024/rhc/MG