

“REPORTABLE”

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5803 OF 2008
(Arising out of SLP (Civil) No.3010 of 2008)

Subramanian Swamy

....Appellant

Versus

**Election Commission of India
Through its Secretary**

....Respondent

J U D G M E N T

V.S. SIRPURKAR, J.

1. Leave granted.
2. Dr.Subramanian Swamy comes up before us challenging the judgment of the High Court of Delhi whereby his Writ Petition was dismissed. The Writ Petition was filed by Dr. Swamy in his personal capacity, though he claimed therein a mandamus for Janata Party of which he is the President. In the Writ Petition following prayers were made:

“(a) A writ of mandamus or a writ, order or direction in the nature of mandamus to strike down paragraph 10A of the Symbols Order as violative of Article 14 of the Constitution of India;

- (b) A writ of mandamus or a writ order or direction in the nature of mandamus to direct the respondent to bring the Symbols Order, notably paragraph 10A, in line with the requirement of Article 14 as set out hereinabove;
- (c) A Declaration that paragraph 10A must be read down as set out hereinabove, in order to meet the requirements of Article 14;
- (d) pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

It seems that the original petition came to be amended incorporating three new paragraphs. Two paragraphs are reproduced here (other amendments are only formal):

- "9A. It is to be noted that under the prevailing political situation in India, Coalition Governments are the order of the day both at the Centre (for the last more than 16 years) and in most States. This has resulted in elections being increasingly fought by alliances of parties, so that in such electoral alliance, each party agrees to fight a lesser number of seats than what it would choose to fight on its own. Thus it becomes increasingly difficult for each such party to individually meet the recognition criteria laid down by the Election Commission in the (Amended) Symbols Order, wherein, in any event (by the introduction of paras 6A, 6B and 6C) the criteria for recognition have been enhanced. Even very big parties ruling are presently threatened with loss of their symbol. Such a result is not in consonance with the idea that elections must reflect the will of the people in all its variety.
- 9B. Even as of today with still a limited right to its symbol, the petitioner has been prejudiced by other political parties having been allotted its reserved symbol, whereby, it is the admitted position of the Election Commission, that its use by such other party is liable to cause confusion in the minds of the public while voting at elections (See

Annexure P-6), which is the downloaded “Compendium of Instructions from the Election Commission of India to the State Election Commissions.”):

(a) In the 2002 elections to local bodies in Andhra Pradesh, the Janata Party’s reserved symbol was actually allotted and utilized by another party the Telegu Rashtra Samiti, which has nothing to do with and does not share the ideals and principles of the Janata Party. The Janata Party’s objections were rejected by the order dt. 20.06.2003 of the Andhra Pradesh Election Commissioner, (appended hereto as Annexure P-7) which actually held:

“The Symbol “Halder Within Wheel” has now become popular among the people as the symbol of TRS because of its participation in the elections” (emphasis supplied)”

(b) Again in the 2003 elections to local bodies in Kerala, the Janata Party’s symbol was put on the List of Free Symbols (Annexure A-8 hereto); and was allotted to independent candidates.

If this is the position, even when the Janata Party can avail of the concession of Paragraph 10A the situation is bound to deteriorate when the concession is no longer available.”

3. The petitioner contended in this writ petition that Janata Party was a recognized national political party and thus had a reserved symbol of Chakra Haldar. The said Janta Party lost its status as a national party because of its poor performance in General Elections in 1996 and by an order dated 27.9.2000 of the Election Commission, it ceased to be a recognized political party. It is not disputed that the order dated 27.9.2000 has become final and has been upheld right upto this Court. Being a

recognized political party of a national and/or State stature it had a reserved symbol being Chakra Haldar, i.e. a farmer carrying Plough within a wheel. As a result of its de-recognition as a recognized political party it lost its right to have exclusive symbol, more particularly due to the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as "the Symbols Order"). The said Symbols Order owes its existence to a Standing Order No.2959 dated 31st August, 1968 and is passed in exercise of powers conferred by Article 324 of the Constitution of India read with Section 29A of the Representation of People Act, 1951 (43 of 1951) and Rules 5 and 10 of the Conduct of Elections Rules, 1961. It deals with the symbols of the political parties.

4. Before this writ petition was filed, on losing the reserved symbol, as a result of its de-recognition as a recognized political party, the appellant had approached the Election Commission insisting upon the continuance of the reservation of the aforementioned symbol of Janata Party. As has already been pointed out, after the derecognition of Janata Party as a recognized party, a Special Leave Petition being SLP (C) No.20807 of 2000 was filed in this Court. In this SLP the only challenge was to the de-recognition order dated 27.9.2000. However, during the pendency of this SLP, on 1.12.2000, by notification No.56/2000/Jud.III the Election Commission amended the Symbols Order and among other amendments inserted Clause 10A therein. This Court dismissed the aforementioned

SLP on 15.1.2001 in limine. The decision of de-recognition of Janata Party has, therefore, become fait-accompli.

5. The appellant thereafter approached to the Election Commission complaining mainly against clause 10A in 2001 (the date of this complaint is not known) as due to that provision the symbol of Janata Party could have a limited life of six years only while the appellant wanted to retain that symbol permanently for this party. The appellant was invited by the Election Commission to submit his proposals in respect of the symbol problem of de-recognised party which had earlier enjoyed the privilege of an exclusive symbol. There was then an unexplicable lull for about 4 years. The appellant claims that on 26.2.2005 he suggested that the Symbols Order should be amended so as to enable the once recognized political parties of national or State level to retain their reserved symbols permanently. On 14.7.2005 this proposal was refused by the Election Commission relying on the judgment of this Court in **Janata Dal Samajwadi v. Election Commission [AIR 1996 SC 577]**. This prompted the appellant to file a writ petition in the High Court which writ petition came to be dismissed necessitating the present SLP.

6. The whole attack of the petitioner was thus directed against clause 10A which was added by amendment of Election Symbols (Reservation and Allotment) Order, 1968 as back as on 1.12.2000 in the writ petition as also during the argument before the High Court. The basis of the argument before the High Court was the vice of arbitrariness of that

provision inasmuch as it allowed a period of 6 years (only) as a grace period to retain its symbol which was earlier rightfully reserved for it, even after the said party lost its status, as a recognized party due to its dismal performance, in national or State election. The same stance is now taken before us by Dr.Swamy having failed to convince the High Court on that issue. In addition Dr. Swamy urges that a direction should issue from this Court to amend the said clause 10A suitably.

7. To appreciate the contentions raised during an elaborate debate before us it would be better to consider some relevant provision of the Symbols Order, as it stands now, along with the provisions of Representation of Peoples Act and Rules thereunder and other allied provisions.

8. Under Article 324 of the Constitution, the Election Commission is empowered to frame its Regulations. Rules 5(1) and 10(4) of the Representation of Peoples Act, 1950 provide that every candidate at an election shall be allotted a different symbol subject to such restriction as the Election Commission may specify. In exercise of its plenary power of superintendence, regulation and control of elections to Parliament and State legislatures under that Article the Election Commission has promulgated the said Symbol Order as early as in 1968. History tells us that though the first election was held in 1951 immediately after the constitution, there was no such regulation on the anvil. Perhaps the multiplicity of the political parties in the after years necessitated

promulgating the Symbols Order. The Preamble of the Order should open a window for us ushering in some light for the proper interpretation thereof.

“AN ORDER

to provide for specification, reservation, choice and allotment of symbols at elections in Parliamentary and Assembly Constituencies, for the recognition of political parties in relation thereto and for matters connected therewith.

S.O. 2959, dated the 31st August, 1968 – WHEREAS, the superintendence, direction and control of all elections to Parliament and to the Legislature of every State are vested by the Constitution of India in the Election Commission of India;

AND WHEREAS, it is necessary and expedient to provide, in the interest of purity of elections to the House of the People and the Legislative Assembly of every State and in the interest of the conduct of such elections in a fair and efficient manner, for the specification, reservation, choice and allotment of symbols, for the recognition of political parties in relation thereto and for matters connected therewith.

NOW, THEREFORE, in exercise of powers conferred by Article 324 of the Constitution [read with section 29A of the Representation of the People Act, 1951 (43 of 1951) and rules 5 and 10 of Conduct of Elections Rules, 1961 and all other powers enabling it in this behalf, the Election Commission of India hereby makes the following Order.”

Seeing following provisions would be apposite:

“2(h) “political party” means an association or body of individual citizens of India registered with the Commission as a political party under Section 29A of the Representation of the People Act, 1951;

2(2) The General Clauses Act, 1897 shall, as far as may be, apply in relation to the interpretation of this Order as it applies in relation to the interpretation of a Central Act.”

5. **Classification of Symbols** (1) For the purpose of this Order Symbols are either reserved or free.

(2) Save as otherwise provided in this Order, a reserved symbol is a symbol which is reserved for a recognized political party for exclusive allotment to contesting candidates set up by that party.

(3) A free symbol is a symbol other than a reserved symbol.

6. **Classification of Political Parties** – (1) For the purposes of this order and for such other purposes as the Commission may specify as and when necessity therefore arise, political parties are either recognized political parties or unrecognized political parties.

(2) A recognized political party shall either be a National Party or a State party.

- 6A. **Conditions for recognition as a National party** – A political party shall be treated as a recognized National Party, if, and only if, -

either (A)(i) the candidates set up it, in any four or more States, at the last general election to the House of People, or to the Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in their respective States at that general election; and (ii) in addition, it has returned at least four members to the House of the People at the aforesaid last general election from any State or States;

or (B)(i) its candidates have been elected to the House of the People, at the last general election to that House, from at least two percent of the total number of parliamentary constituencies in India, any fraction exceeding one-half being counted as one; and (ii) the said candidates have been elected to that House from not less than three States.

- 6B. **Conditions for recognition as a State party** – A political party, other than a National party, shall be treated as a recognized State Party in a State or States, if, and only, if –

either (A)(i) the candidates set up by it, at the last general election to the House of the People, or to the

Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in that State at that general election; and (ii) in addition, it has returned at least two members to the Legislative Assembly of the State at the last general election to that Assembly;

or (B) it wins at least three percent of the total number of seats in the Legislative Assembly of the State, (any fraction exceeding one-half being counted as one), or at least three seats in the Assembly, whichever is more, at the aforesaid general election.

- 6C. **Conditions for continued recognition as a National or State Party** – If a political party is recognized as a National party under paragraph 6A, or as a State party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the Legislative Assembly of the State concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the result of that general election.

7. **Savings and Interpretation** (1) Notwithstanding anything contained in paragraphs 6A, 6B or 6C, if any political party stands recognized, immediately before the commencement of the Election Symbols (Reservation and Allotment) Amendment Order, 2000, either as a National party or as a State Party in some State or States, the said party shall continue to have and enjoy the status of such National or State party for the purposes of the next general elections, to be held after the commencement of the said Order, to the House of the People or, as the case may be, to the Legislative Assembly of the State concerned, and its continued recognition as such National or State party shall thereafter be dependent upon the fulfillment by it of the conditions specified in paragraph 6A or, as the case may be, paragraph 6B.

(2) xx xx xx xx

8. **Choice of Symbols by candidates of National and State Parties and allotment thereof** –

(1) A candidate set up by a National Party at any election in any constituency in India shall choose, and shall be allotted, the symbols reserved for that party and no other symbol.

(2) A candidates set up by a State Party at an election in any constituency in a State in which such party is a State Party, shall choose, and shall be allotted the symbols reserved for that party in that State and no other symbol.

(3) A reserved symbol shall not be chosen by, or allotted to, any candidate in any constituency other than a candidate set up by a National Party for whom such symbol has been reserved or a candidate set up by a State Party for whom such symbol has been reserved in the State in which it is a State party even if no candidate has been set up by such National or State Party in that constituency.

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

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

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

the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

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

Provided that nothing contained in this paragraph shall apply to a candidate set up by the said party at an election in any constituency in a State or Union Territory where the same symbol is already reserved for some other National or State party in that State or Union Territory.”

9. In support of his plea Dr. Swamy firstly pointed out that Janata Party which came in existence in the year 1977 was once upon a time a ruling party in the Parliament and was also a recognized State Party in number of States. He impressed upon us that thereafter also it continued to be a recognized party and had retained its symbol throughout for fairly long period of over 20 years without any interruption and it was only in the year 2000 when it lost its recognition, it faced the threat of losing the reserved symbol of Chakra and Haldar. According to Dr. Swamy, the said symbol had gone into the psyche of the public for a long period of over two decades and as such there was no justification in firstly depriving the Janata Party of that symbol and secondly allowing only six years as a concession period. This, according to Dr. Swamy, was an arbitrary exercise and the said provision of clause 10A suffered from arbitrariness and, therefore, did not pass the acid test of Article 14 of the Constitution of

India. Dr.Swamy also adds that to deprive a political party of its symbol would amount to an undemocratic act.

10. Dr.Swamy also very earnestly urged that the symbol was conceived after a considerable intellectual exercise and thus became an intellectual property which could not be taken away by a legislation and at any rate a provision like the impugned provision and providing only six years time for its retention with the Janata party would not be justifiable. In short Dr.Swamy contends that “once a symbol always a symbol”.

11. As against this Ms.Meenakshi Arora, learned counsel appearing on behalf of the Commission firstly supported the High Court judgment and pointed out that the petition suffered from basic defects which were of vital nature. Learned counsel also took us through the historical background of Symbols Order and pointed out that the symbol was integrally and inextricably connected with the concept of recognition of the party and since the appellant had never challenged and indeed could not so challenge the de-recognition of Janata Party as a recognized political party, there was no question of it being allowed to insist on a reserved symbol which was the prerogative only of the recognized political party. She further took us through the aforementioned provisions and pointed out that the Symbols Order recognize only two kinds of symbols, they being, the reserved symbols and free symbols and, therefore, once the party had lost its reserved symbol, it could be only treated as a free symbol available to one and all without any exclusivity attached to it. She further points out

that in effect the appellant or as the case may be, his party, took benefit of the provisions of clause 10A for more than six years and it was only when it came on the brink of losing the reserved symbol that the appellant approached the court and thereby the appellant was not only guilty of laches but of impropriety also. Learned counsel took us through a few decisions of this Court which we shall consider in the latter part of this judgment.

12. On this backdrop we have to decide this ticklish question of the right of Janata Party to permanently retain its symbol. There can be no doubt that a symbol particularly in case of an established political party is not only having a political implication but has also an emotional angle attached to it. This is apart from the fact that in India large population of which is rural, uneducated or at time illiterate, the such electorate would naturally have a tendency to identify a party or its candidates by its symbols. It is perhaps for this reason that the political parties zealously guard their symbol. But the basic question is whether a political party can be deprived of its symbol under such scenario and would such deprivation amount to an undemocratic step as urged by appellant. In our opinion though the matter of symbol is extremely sensitive one for a political party, it should be or remain to be firstly a political party.

13. A “political party” is defined in Section 2(h) as an association or body of individual citizens of India registered with the Commission as a political party under Section 29A of the Representation of People Act, 1951

(hereinafter referred to as “RP Act, 1951”). That Section mandates that an application has to be made to the Election Commission for registration of any party who wants to avail of the provisions of Part IVA. This application must contain the information as provided under Sections 4(a) to (g) which information includes, amongst others, the numerical strength of its members of various categories as also its representatives in House of Parliament or any State Legislature. Such application must accompany the Rules and Regulations for its internal functioning. Sub-section (7) empowers the Election Commission a discretion to register such political party or to refuse the registration. One very important aspect is that vide Section 29B every political party may accept voluntary contribution, donations or subscriptions etc. So also Section 29C provides that the political party must prepare a report in respect of the contributions received by it and such report shall be submitted to the Election Commission. Tax relief is also provided under that Section. There is no doubt that Janata Party is such a registered political party under Section 29A. The Section clearly shows that a political party must, therefore, have followings. One cannot imagine a political party without any substantial following.

14. As has been pointed out by Ms.Arora for good long 17 years there was no concept of a recognized political party as till then there was no Symbols Order. It came on the anvil only on 31st August, 1968. The purpose of bringing in existence this Symbols Order was to maintain the purity of elections so that elections should be conducted in a fair and

efficient manner as also for specification, reservation, choice and allotment of symbols as also for the recognition of political parties in relation to the symbols. The Preamble suggests, among other things, that there was a need to recognise the political parties for the purposes of specification, reservation, choice and allotment of symbols. This has probably become necessary on account of firstly increase in the number of parties on political stage of India as also because of the emergence of the State parties. It must be immediately remembered that till then the Symbols were being granted in keeping with the tradition of a particularly party having a particular symbol but there was a complete absence of any Rules on such a sensitive aspect like symbols. This emergence of large number of political parties on the national and local levels and their interest in the elections necessitated bringing of the Symbols Order. A new concept of a recognized political party came on the anvil via this Symbols Order. Clause 5 of the Symbols Order is extremely significant and recognized only two kinds of symbols, they being reserved symbols and free symbols. The reserved symbols are necessarily reserved for the exclusive allotment to the candidates of a recognized political party whereas all other symbols are free symbols. Clause 6 is extremely important inasmuch as it introduces for the first time, a classification of political parties as recognized political parties and unrecognized political parties. It must be remembered that there are only two classifications provided by Clause 6. Clause 6A, 6B and 6C provide for the condition of recognition of a political party on the national and/or State level. We need not, at this stage, go into

the intricacies of clauses 6A, 6B and 6C but suffice it to say that in order to have that status, the said political party must be an effective political party in the sense that it must share a particular percentage of votes in the national or the State level elections or it must have certain number of elected representatives in Lok Sabha or the State Legislatures. It is this concept which introduces that in order to be a recognised political party, it must perform well in the elections and thereby pass the acid test of “following”. Therefore, unless there is a following of the nature provided in Clauses 6A, 6B and 6C, the political party does not remain a recognized political party. Once this position is clear, the other extremely important position which has to be considered is that a reserved symbol is available only for the recognized parties. Thus, there is a bond created between recognized political party and its symbol.

15. Learned counsel for the respondent is undoubtedly correct in arguing that concept of recognition is inextricably connected with the concept of symbol of that party. It is but natural that a party must have a following and it is only a political party having substantial following in terms of Clauses 6A, 6B and 6C would have a right for a reserved symbol. Thus, in our opinion, it is perfectly in consonance with the democratic principles. A party which remains only in the records can never be equated and given the status of a recognized political party in the democratic set up. We have, therefore, no hesitation in rejecting the argument of Dr.Swamy that in

providing the symbols and reserving them for the recognized political parties alone amounted to an undemocratic act.

16. This takes us to the next leg of arguments that Clause 10A suffers from arbitrariness in providing only six years of additional period to retain its symbol even after a particular political party loses its status as a recognized political party. Dr. Swamy very fairly conceded that he has no quarrel, atleast at this stage, against the derecognition of Janata Party as recognized political party and indeed he could not have any grudge since this Court has repelled the challenge to the decision taken by the Election Commission for such a derecognition. We are, therefore, left with a limited challenge to the constitutionality of Clause 10A.

17. According to Dr. Swamy there was no rationale in providing only six years under clause 10A and he wondered as to why the period should be limited only to six years. We do not see any irrationality or arbitrariness in providing six years time as an additional period for retaining the exclusive symbol for the simple reason that within that period there is bound to be one or more general elections on the national level. So also, if any political party has lost its status in the State Elections, apart from the fact that upto the next general elections, it will not lose the said symbol, there is bound to be another opportunity by way of fresh elections within six years. It is on this rationale that the period of six years is provided. This is apart from the fact that in case of Janata Party it continued to have and enjoyed the status of said national or State party for the purposes of next general

elections due to the saving clause vide clause 7. Under such circumstances providing of six years period in clause 10A appears to be perfectly reasonable and cannot be said to suffer from the vice of arbitrariness. In the earlier paragraphs we have already indicated that the theory of continuance and permanent reservation of a particular symbol for a particular political party cannot stand on the ground that after passing of the Symbols Order, the concept of recognition of a political party and the concept of a reserved symbol for that party must be treated to have amalgamated. A plain reading of the provisions would bring out only that result.

18. The appellant then urged that we should read down the provisions of clause 10A so as to avoid the mention of six years in clause 10A. In our considered opinion such an exercise is not possible where the language of the provision is clear, admits of no doubt and no situation warrants such reading down. Such reading down and thereby ignoring the limit of six years as provided in the clause would render other provisions nugatory. Apart from that such reading down would lead to absurdity in the wake of other provisions. At this juncture we must point out that in this writ petition there is no challenge to clause 5(2) which specifically provides that a reserved symbol is a symbol which is reserved for a recognized political party for exclusive allotment to the contesting candidate set up by that party. Clause 6 classifies, for the first time, the “political party” in recognized political party or unrecognized political party. Reading these

clauses together it becomes very clear that firstly the reserved symbol is meant only for recognized political party for its exclusive user. Again the second inference which comes out of such conjoint reading of two provisions is that if a particular symbol is not a reserved symbol, meaning thereby that it is not meant for a recognized political party, such symbol automatically become a free symbol. There is no challenge to this concept nor is there any challenge to the constitutional validity of clauses 5 and 6. In the absence of any challenge to the constitutional validity of clauses 5 and 6, the challenge to clause 10A must necessarily fail. It is for this reason that we have quoted the relief clauses in the writ petition at the beginning of the judgment in para 2 above, the reading of which clearly suggests that barring clause 10A, the petitioner has not chosen to challenge any other clause of this Symbols Order. It is perhaps because of this absence of challenge that Dr.Swamy wants us to read down the impugned provisions of clause 10A.

19. It is trite law that a statute must be read as a whole in its context. We must, therefore, read the provisions of clause 10A in the light of other provisions, namely, clauses 5, 6, 6A, 6B and 6C. If we read down the provisions ignoring the limit of six years, an absurdity would creep in vis-à-vis clauses 5 and 6. In that case a political party which is not any more a political party, would still continue to have a reserved symbol in total derogation to the language of clauses 5 and 6. Such a course is not permissible. We would have to interpret clause 10A in the light of other

connected provisions. This Court in **Philips India Ltd. v. Labour Court, Madras and others [(1985) 3 SCC 103]** observed in para 15 as under:

“No canon of statutory construction is more firmly established than that the statute must be read as a whole. This is a general rule of construction applicable to all statutes alike which is spoken of as construction *ex visceribus actus*. This rule of statutory construction is so firmly established that it is variously styled as ‘elementary rule’ [See Attorney General v. Bastow (1957) 1 All ER 497] and as a ‘settled rule’ [see Poppatlal Shah v. State of Madras 1953 SCR 667]. The only recognized exception to this well laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: “it is most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers” [Quoted with approval in Punjab Beverages Pvt. Ltd. v. Suresh Chand (1978) 3 SCR 370].”

Clause 10A, therefore, cannot be interpreted in isolation as prayed for by the appellant. It has to be read in terms of other connected provisions like clauses 5, 6, 6A, 6B and 6C and also the objects on the Preamble which also has been quoted by us above. The conjoint reading of all this would clearly bring out a position that clause 10A would have to be read and interpreted so that it does not harm the other provisions of statute.

20. Again this Court in **Union of India v. Elphinstone Spinning and Weaving Co. Ltd. & Others [(2001) 4 SCC 139]**, the Constitution Bench of this Court in paragraph 21 has made the following observations:

“....though it is no doubt true that the court would be justified to some extent in examining the materials for finding out the

true legislative intent engrafted in a statute, but the same would be done only when the statute itself is ambiguous or a particular meaning given to a particular provision of the statute would make the statute unworkable or the very purpose of enacting the statute would get frustrated. By no stretch of imagination, would it be open for a court to expand even the language used in the Preamble to extract the meaning of the statute or to find out the latent intention of the legislature in enacting the statute. As has been stated earlier.....”

These observations would succinctly bring out a position that since the language of clause 10A is extremely clear and its plain meaning does not, in any manner, bring out any absurd results, we would have to rely upon the plain meaning which is the only meaning emerging out of the plain language of the provision. It is for this reason that we were not in a position to read down the provision so as to ignore the words “six years” in clause 10A.

21. Another argument which was pressed into service was that Clause 8 should recognize a third category, i.e., a party which was once a recognized party but has lost its status as such so that it retains its old symbol for ever and can rightfully claim it. That clause makes it mandatory that a candidate set up by a national party shall chose the symbol reserved for that party and no other symbol. So also a candidate set up by the State party shall chose and shall be allotted only the symbol allotted to that party and no other symbol. Clause 8(3) provides that a reserved symbol shall not be chosen by or allotted to any candidate other than a candidate set up

by the national party or a State party for whom such symbol has been reserved. The provision is extremely clear. Dr. Swamy, however, wanted us to create a third category as has been stated earlier. That is not possible. If the arguments were to be accepted, then we would have to read something which is not there in the provisions and this includes Clauses 5, 6 and 8 as also the impugned clause 10A. Such an exercise would amount to this Court treading dangerous path of legislature. We do not think that such a course is possible. We are, therefore, not inclined to accept that argument.

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

23. It may be that a recognized political party would have a right of exclusive use of the symbol but the Symbols Order makes it very clear that such right to use the symbol can be lost with the dismal performance of the party. In a reported decision in **Shri Sadiq Ali & Anr. V. The Election Commission of India, New Delhi & Ors. [(1972) 4 SCC 664]** this Court was considering the controversy regarding the symbols “of two bullock with yoke on” which was claimed by two splitted groups of the Congress Party. The Court observed that:

“The answer to this contention is that the result of differences and dissensions, a political party may be split into two or more groups but the symbol cannot be split. It

is only one of the rival sections or groups, as is held to be that political party under paragraph 15, which would be entitled to the use of the symbol in the elections while the other section or group would have to do without that symbol. It is not permissible in a controversy like the present to dissect the symbol and give one out of the two bullocks represented in the symbol of the Congress to one group and the other bullock to the other group. The symbol is not property to be divided between co-owners. The allotment of a symbol to the candidates set up by the political party is a legal right and in case of split, the Commission has been authorized to determine which of the rival groups or sections in the party which was entitled to the symbol.”

The observations are more clear than necessary to repel the contention raised by Dr.Swamy. A symbol is not a tangible thing nor does it generate any wealth, it is only the insignia which is associated with the particular political party so as to help the millions of illiterate voters to properly exercise their right to franchise in favour of the candidate of their choice belonging to a particular party. In the election process it is not merely the individual candidate's personality or his identity that weighs with the voters. It is undoubtedly a very relevant factor but along with it the voter also can and does vote in favour of the party. It is under such circumstances that the symbol becomes relevant and important. However, all that it provides is the essential association that it has with a particular party. The concerned party would have a legal right to exclusively use the same but that is not, in our considered opinion, a property of the party and, therefore, the Election Commission which is required to ensure free, fair and clean elections have every right to deprive a particular party with a dismal

performance of that symbol. The Election Commission puts a clamp on the right of such a political party to use the symbol rightfully. We are, therefore, not in a position to accept the argument that symbol is a property of a party and, therefore, such property cannot be taken away from that political party. The symbol may be an outcome of intellectual exercise but it does not become an “intellectual property” which concept has monetary implications. In case of a political party as contemplated in Symbols Order, monetary angle is conspicuously absent.

24. This takes us to the other argument by Dr. Swamy. He contends that even if Janata Party because of its dismal performance has lost the right to use the exclusive symbol which right it enjoyed for more than 20 years, yet its symbol does not automatically become a free symbol unless it is specifically included in the list of free symbols by the Election Commission. Under the Election Rules there is a list of free symbols from which the candidates selected by a particular party or independent candidates can choose the symbol. Dr. Swamy urges that in case of the split in Congress Party the symbol of the National Congress Party of “two bullocks and the yoke on” and even the subsequent symbol of one of the groups of the Congress Party, i.e., “a cow with calf” have not been included in the list of free symbols and are frozen. He further points out that even after the derecognition of Janata Party such symbol of Chakra and Haldar was allotted from amongst the free symbols. He argues that there is always a glorious uncertainty on the political horizons and the possibility of Janata

Party performing well again in future cannot be ruled out which would depend on the political scenario then in existence and in that case Janata Party would suffer grave prejudice and, therefore, the Election Commission should freeze this symbol and this symbol should not be given as a free symbol. We would have ordinarily considered this argument which is attractive, however, it is not the prayer in the Writ Petition nor was it even argued before the High Court. Therefore, instead of expressing anything on this subject, we would leave it open to the appellant to raise this question before the Election Commission. In fact we have not come across any particular provision in the Symbols Order to freeze a particular symbol. However, it will be for the Election Commission in case the petitioner chooses to go before the same to take a decision in that behalf. We leave it at that.

25. Since we have considered the questions broadly which are undoubtedly important questions in the Indian scenario, we do not want to go into the hypertechnical question as to whether the appellant could have raised the grievance on behalf of the Janata Party in the absence of any formal Resolution empowering him to do so. We choose not to go into that question in view of the importance of the question otherwise.

26. Considering the overall situation we confirm the judgment of the High Court and hold that the petition as it was presented was liable to be dismissed and was rightly dismissed. This would be ofcourse subject to

the liberty we have given to the appellant to raise the additional question about the freezing of the symbol.

27. Under the circumstances there shall be no costs.

.....J.
(Ashok Bhan)

.....J.
(V.S. Sirpurkar)

New Delhi;
September 23, 2008

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Case No. : SLP(C) 3010 of 2008

Date of Decision : 23.9.2008

Cause Title : Subramanian Swamy
Vs.
Election Commission of India through its Secretary

Coram : Hon'ble Mr. Justice Ashok Bhan
Hon'ble Mr. Justice V.S. Sirpurkar

Judgment delivered by : Hon'ble Mr. Justice V.S. Sirpurkar

Nature of Judgment: Reportable