

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 31ST DAY OF MARCH 2021/10TH CHAITHRA, 1943

WP(C) .No.8713 OF 2021(L)

PETITIONER/S:

ADV. NIYAZ BHARATI
AGED 45 YEARS
S/O SAINUDEEN, FIRDOUSE, NEAR NAVABHARATH
SCHOOL, S.L.PARK ROAD, VALIYAKUNNU, ATTINGAL-
695 104.

BY ADVS.
SHRI.R.SANJITH
SMT.C.S.SINDHU KRISHNAH

RESPONDENT/S:

1 ELECTION COMMISSION OF INDIA
REPRESENTED BY ITS SECRETARY GENERAL,
NIRVACHAN SADAN, ASHOKA ROAD,
NEW DELHI-110 028.

2 CHIEF ELECTORAL OFFICER,
ELECTION DEPARTMENT, KERALA LEGISLATIVE
COMPLEX, VIKAS BHAVAN P.O.
THIRUVANANTHAPURAM-695 033.

3 RETURNING OFFICER,
107-HARI PAD, LAC AND DEPUTY COLLECTOR(LA),
ALAPPUZHA-690 514.

BY ADV. DEEPU LAL MOHAN, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 31.03.2021, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

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Dated this the 31st day of March, 2021

The petitioner is the former State Vice President and Executive Member of Kerala Pradesh Youth Congress Committee. The petitioner filed nomination in Haripad Legislative Assembly Constituency as an independent candidate, for contesting in the Legislative Assembly Elections scheduled to be held on 06.04.2021.

2. By Ext.P1 proceedings dated 22.03.2021, the 3rd respondent allotted the symbol “KEY” to the petitioner. In Ext.P2 Form-7A list of contesting candidates also, the symbol allotted to the petitioner was shown as “KEY”. However, on 23.03.2021, the petitioner was issued a notice stating that the symbol “KEY” allotted to the petitioner is one allotted to 'Prajasattak Bharat Paksha' Political Party. Therefore, the petitioner was re-allotted with the symbol “GAS CYLINDER”.

3. The petitioner would submit that changing of symbol in the midst of his election campaign is highly illegal,

arbitrary and violative of Articles 14 and 324 of the Constitution of India. The petitioner was not heard before re-allocation of symbol. The 'Prajasattak Bharat Paksha' Party mentioned in Ext.P3 is not a State Party falling within the ambit of paragraph 9 of the Election Symbols (Reservations and Allotment) Order, 1968. The said Party is not contesting elections in Kerala. Therefore, there is nothing wrong in allocating the symbol "KEY" to the petitioner.

4. The petitioner further stated that he is in the midst of the campaign and has already extended ₹5 lakhs for preparing campaign posters, hoardings, cloth banners, etc. with the symbol originally allotted to him. The subsequent re-allocation of symbol would not only cause monetary loss to him but would also adversely affect his electoral prospects.

5. I have heard the learned counsel for the petitioner, learned Standing Counsel for the respondents.

6. The Hon'ble Apex Court has repeatedly held that the High Courts, in exercise of their jurisdiction under Article 226 of the Constitution of India, should not pass orders which will have the effect of obstructing free flow of the election

process. The High Court can intervene in such matters only to undo obstacles, if any, in the free flow of electoral process.

7. In the case of the petitioner, re-allocation of symbol has already been made. Postal Ballot Papers are already printed and postal voting process is also in the midway. In the Postal Ballots, the petitioner might have been allocated the symbol “GAS CYLINDER”. If any order in favour of the petitioner is passed by this Court now, the petitioner's symbol will be “KEY” in the electronic voting machines. This would indeed create unnecessary and undesirable confusion in the electoral process.

In the circumstances of the case, this Court do not deem it fit to interfere in the electoral process, which is already commenced. The writ petition is therefore dismissed.

Sd/-
N. NAGARESH, JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE PROCEEDINGS BEARING NO G2-107/2021 DATED 22.3.2021 ISSUED BY THE 3RD RESPONDENT

EXHIBIT P2 TRUE COPY OF THE FORM 7A DATED 22.3.2021 ISSUED BY THE 3RD RESPONDENT

EXHIBIT P3 TRUE COPY OF THE NOTICE DATED 23.3.2021 ISSUED BY THE 3RD RESPONDENT

EXHIBIT P4 TRUE COPY OF THE NOTIFICATION BEARING NO 56/2019(1110PPS-111 DATED 10.1.2020 ISSUED BY 1ST RESPONDENT

EXHIBIT P5 TRUE COPY OF THE LIST OF SYMBOLS PUBLISHED IN THE WEBSITE OF THE 1ST RESPONDENT

EXHIBIT P6 TRUE COPY OF THE TRANSPARENCY IN FUNDING AND EXPENDITURE OF UNRECOGNIZED PARTIES AS PUBLISHED BY THE CHIEF ELECTORAL OFFICER, MAHARASHTRA AND AS AVAILABLE IN ITS WEBSITE CEO.MAHARASHTRA.GOV.IN/EXPENDITURE/EXPSTATEMENT.PARTY.19.20.ASPX

EXHIBIT P7 TRUE COPY OF THE REPRESENTATION DATED 24.3.2021 SUBMITTED TO THE 3RD RESPONDENT

EXHIBIT P8 TRUE COPY OF THE REPRESENTATION DATED 26.3.2021 SUBMITTED TO THE 2ND RESPONDENT ALONG WITH ITS RECEIPT