

A

SAMYUKTA SOCIALIST PARTY

v.

ELECTION COMMISSION OF INDIA & ANR.

B

September 30, 1966

[K. SUBBA RAO, C. J. M. HIDAYATULLAH, S. M. SIKRI,
R. S. BACHAWAT AND RAGHUBAR DAYAL, JJ.]

C *Conduct of Election Rules, 1961, r. 5(1)—Powers of Election Commission—Merger of two political parties into one party—Election symbol of one of the merging parties allotted to the new party—Parties separating again—Symbol whether can be taken back from new party and given to the party to which it originally belonged.*

D In the 1962 general election the Praja Socialist Party had the 'Hut' as its election symbol. In 1964 the Praja Socialist Party and the Socialist Party combined to form the Samyukta Socialist Party, and the Election Commission allotted the 'Hut' symbol to the new party. The union was however short-lived and in early 1965 the Praja Socialist Party again severed itself from the Socialist Party which retained the new name even after the separation. The Election Commission on being moved by the Praja Socialist Party withdrew the 'Hut' as the symbol of the Samyukta Socialist Party and restored it to the Praja Socialist Party. This order of the Election Commission was challenged by the Samyukta Socialist Party in a writ petition before the High Court and the writ being refused an appeal by special leave was filed before this Court. A writ petition by one of the members of the Samyukta Socialist Party under Art. 32 of the Constitution was also filed before this Court. It was contended that unlike the earlier rule the new rule 5(1) of the Conduct of the Election Rules, 1961 only enables the Election Commission to place restrictions on the choice of the candidate or the party but the choice once made by the candidate or party is final, and that the power to amend the list of symbols which was conferred by the last eight words of the former rule was no longer there.

E **HELD :** (i) It is incorrect to say that by changing rule 5(1) and dropping the last eight words from that rule the Election Commission has denied to itself the power to amend the list of symbols. The restrictions which the Election Commission has framed for the use of the symbols permit the issuance of fresh notifications if symbols are required to be changed. The restrictions when analysed are these. Before a candidate can choose a symbol it must be free. Before a reserved symbol can be chosen, the candidate must be accredited to the party whose symbol it is and it must be shown by the Election Commission in its notification as the symbol of the party. Obviously therefore, if the circumstances change the notification must follow suit. Parties may come into existence and parties may go out of existence; parties may unite or parties may separate. This will require amendment of the notification. Just as the Election Commission allotted the 'Hut' as a symbol by a change of notification to the Samyukta Socialist Party, it can allot it to another party if circumstances made that course obligatory and just. The Election Commission is required to give effect to conditions of its own making but that does not restrict its own powers so long as what it does is in consonance

with facts and the action is dictated by them. It must not of course favour one party so as to harm others. It must only change the symbol when the circumstances justify such a charge. [649 C-F]

(ii) If the merger of Praja Socialist Party and the Socialist Party was unsuccessful and before any significant time had passed the Praja Socialist Party had decided to separate, and if all the leaders of the party and almost all its original members decided to quit the amalgamated party, the benefit of its symbol could not be left to the Socialist Party which in the events that have happened is bearing the name of the unified party. It is no longer the unified party it was when the name was assumed. The 'Hut' was the symbol of the Praja Socialist Party and the amalgamated party chose the 'Hut' rather than the 'tree' because of the greater success of the Praja Socialist Party at the polls. If disagreement led to a quick break up before the new party or its symbol could become properly grounded, the reversion to the original position was not only logical but also eminently just. It was clear therefore that the Election Commission proceeded along the right lines and reached the right conclusion both legally and in the light of the facts ascertained by it from impartial sources. [651 E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1653 of 1966.

Appeal by special leave from the judgment and order dated November 18, 1965 of the Punjab High Court (Circuit Bench) at Delhi in Civil Writ No. 701(1)-D of 1965.

AND

Writ petition No. 193 of 1966.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

H. R. Gokhale and J. P. Goyal, for the appellant and petitioner.

N. S. Bindra and R. H. Dhebar, for respondent No. 1. (in C. A. No. 1653 of 1966) and respondents Nos. 1 and 3 (in W. P. No. 193 of 1966).

Purshottam Tricundas, T. R. Bhasin, S. C. Malik, S. K. Mehta and K. L. Mehta, for respondent No. 2 (in C. A. No. 1653 of 1966 and W. P. No. 193 of 1966).

The Judgment of the Court was delivered by

Hidayatullah, J. This judgment will govern Civil Appeal No. 1653 of 1966 and Writ Petition No. 193 of 1966. The appeal has been filed, after obtaining special leave of this Court, by the Samyukta Socialist Party, through its General Secretary, against the judgment and order of the High Court of Punjab, November 18, 1965, dismissing summarily a petition under Art. 226 of the Constitution. The petition has been filed by Mr. Madhu Limaye, M.P., a member of the Samyukta Socialist Party. These

- ▲ two proceedings raise a common question and challenge the action of the Election Commission in allotting the "Hut" as the reserved election symbol to the Praja Socialist Party, which symbol was previously reserved for the Samyukta Socialist Party. The challenge is on the ground of want of jurisdiction and also on the basis of fact. The Rule and Notification whereunder the action purported to be taken are also challenged as unconstitutional in the petition. The controversy arises in the following circumstances :

- The Praja Socialist Party (popularly known as the P.S.P.) was formed by a merger of the Socialist Party and the Kisan Mazdoor Praja Party (known shortly as K.M.P.P.) and was recognised as a nationalist Party after the First General Election in 1952. The Socialist Party was recognised as a State Party in Uttar Pradesh and Rajasthan and the Union Territory of Manipur after the Second General Election in 1957. In the last General Election of 1962, the Praja Socialist Party was recognised in nine States and the Socialist Party in Uttar Pradesh, Rajasthan and Manipur. The Praja Socialist Party secured 12 seats in the Lok Sabha and 6 went to the Socialist Party. In the Legislative Assemblies the Praja Socialist Party secured 172 seats in 9 States and the Socialist Party 47 seats in 4 States.

- In June, 1964 there was a merger of the Praja Socialist Party and the Socialist Party and a new party, called the Samyukta Socialist Party, emerged. The Samyukta Socialist Party contested four bye-elections and the elections in Kerala but there was a deterioration in the total number of seats. The union, therefore, was short lived. On January 31, 1965, even at the inaugural meeting of the National Ad Hoc Committee held at Banaras the two Parties broke asunder. The Praja Socialist Party claims that this restored the position as it was before the merger while the Samyukta Socialist Party claims that the merger was final and the Samyukta Socialist Party as the united Party continues although some members have been guilty of defection.

- These happenings would have had no concern with the Election Commission or with the Courts but for the procedure for elections in our country. Owing to the inability of a vast majority of voters to read or mark a ballot, a system of allotment of symbols has to be employed. Every candidate is required to have a symbol to represent his particular ballot box and a voter exercises his choice by putting the ballot in the box of his candidate identified by the symbol. The allotment of symbols is done by the Election Commission under Rules framed by the Central Government. The symbols are of two kinds : free and reserved. A free symbol belongs to no one in particular and may be chosen (unless chosen already by some other candidate) by

any candidate. Where two or more candidates desire the same symbol, there is a drawing of lots to determine who should get it. A free symbol becomes a free symbol again after it has been used in an election by a candidate. Reserved symbols, on the other hand, are those which the Election Commission assigns to recognised Political Parties on the basis of their achievement, which means reaching a prescribed minimum share at the polls. Political Parties set great store by their reserved symbols probably because the symbol gets identified with the Party and helps it in maintaining election appeals and propaganda.

Before the merger, the Praja Socialist Party was allotted the 'Hut' as a reserved symbol and contested the First General Election. After 1957 the Socialist Party was recognised as a Political Party in Uttar Pradesh and Rajasthan and in the Union Territory of Manipur and was allotted the symbol 'Tree' which became its reserved symbol. The 1962 General Elections were fought with the Praja Socialist Party possessing the 'Hut' and the Socialist Party the 'Tree' respectively as their symbols. Then came the merger. The Samyukta Socialist Party claimed and was allotted the 'Hut' as its reserved symbol and the 'Tree' became a free symbol again. After the Party disrupted the Election Commission, on being moved by the Praja Socialist Party, took away the symbol 'Hut' from the Samyukta Socialist Party and allotted it to the Praja Socialist Party, allotting at the same time the symbol 'Tree' to the Samyukta Socialist Party. The order of the Election Commission was questioned by the Samyukta Socialist Party by a petition under Art. 226 of the Constitution, and, on the dismissal of the petition, is questioned in the appeal before us. The same order is also questioned directly as a breach of his fundamental rights by Mr. Madhu Limaye in the companion petition.

Two questions arise—the first is : What are the powers of the Election Commission in relation to the allotment of symbols, and the second is : Whether in the circumstances, its powers were legally exercised ? Under s. 169 of the Representation of People Act, 1951, the Central Government is empowered, after consulting the Election Commission, to make rules generally for the purposes of the Act and in particular to provide for "the manner in which votes are to be given both generally and in the case of illiterate voters or voters under physical or other disability". The Central Government has promulgated the Conduct of Elections Rules, 1961 and Rule 5 of these Rules makes provisions for symbols in Parliamentary and Assembly elections. The rule reads :

"5. Symbols for elections in parliamentary and assembly constituencies.—

(1) The Election Commission shall, by notification in the Gazette of India and in the Official Gazette of each

A State, specify the symbols that may be chosen by candidates at elections in parliamentary or assembly constituencies and the restrictions to which their choice shall be subject.

B (2) Where at any such election more nomination papers than one are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination paper first delivered, and no other declaration as to symbols, shall be taken into consideration under rule 10 even if that nomination paper has been rejected."

C As an argument was grounded on the change of language from the former rule, we may quote its relevant portion here for reference :

"5. Choice of symbols by candidates:—

D (1) The Election Commission shall, by notification in the Gazette of India and in the Official Gazette of each State, publish a list of symbols and may in like manner amend such list."

Under the power conferred under the existing Rule 5(1) the Election Commission has prepared a list of free and reserved symbols and has notified them from time to time together with the restrictions to which their use is subject. The reserved symbol is indicated in the various notifications either by putting it against the name of the particular Political Party or by showing the name of the Political Party in brackets opposite it. The first of these Notifications was S.O. 2316 dated September, 19 1961. This showed that the 'Hut' was a reserved symbol of the Praja Socialist Party in Andhra Pradesh, Assam, Bihar, Gujarat, Kerala, Uttar Pradesh, Madras, Maharashtra, Mysore, Orissa, Madhya Pradesh, West Bengal and the Union Territories of Delhi, Himachal Pradesh and Manipur. In the Punjab, Rajasthan and the Union Territory of Tripura, the Praja Socialist Party enjoyed the 'Hut' as an allotted free symbol. The Socialist Party had the 'Tree' as the reserved symbol in Andhra Pradesh, Bihar, Madhya Pradesh, Rajasthan, Uttar Pradesh and the Union Territory of Manipur and the same symbol as an allotted free symbol in the other States and in the other Union Territories except Himachal Pradesh and Tripura. This notification was replaced by S.O. 2939 of September 22, 1962 and this time the 'Hut' was shown as the reserved symbol of the Praja Socialist Party in Assam, Bihar, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Mysore, Orissa and Uttar Pradesh. The Socialist Party enjoyed the 'Tree' as the reserved symbol in Madhya Pradesh and the Union Territory of Manipur. On October 13, 1964, amendments were made in S.O. 2939 by Notifica-

tion S. O. 3666 by substituting the name Samyukta Socialist Party in all items where the Praja Socialist Party was formerly mentioned. Against Manipur the name of Samyukta Socialist Party with the reserved symbol 'Hut' was inserted in place of the Socialist Party and the symbol 'Tree'. The reference to the Socialist Party and the reserved symbol 'Tree' against Uttar Pradesh was omitted. This gave effect to the merger of the two Parties and was ordered in answer to the request for 'Hut' as the symbol for the combined Party. The final Notification and the one which is challenged before us—was issued on September 1, 1965. It supersedes Notification S. O. 2939. The restrictions on the choice of symbols by the candidates were restated and they may be reproduced here :—

“(1) Subject to the restrictions specified in paragraphs (2), (3) and (4), the choice of symbols to be made by candidates at any election in a parliamentary or assembly constituency is a State specified in column 1 of the table below shall be made :—

(a) from the reserved symbols specified against that state in column 3 of the tables, or

(b) from the following free symbols, namely :—

(i) bicycle (ii) boat, (iii) camel, (iv) pot, (v) railway engine (vi) scales, (vii) spade, (viii) sparrow and (ix) two leaves :

Provided that, in the case of an election in the State of Nagaland, such free symbols shall be....

(2) Any such candidate sponsored by a political party mentioned against the State in column 2 of the table shall choose, and shall be allotted, the symbol specified against that party in column 3 thereof, and no other symbol.

(3) Any other candidate shall choose, and shall be allotted, one of the free symbols specified in clause (b) of paragraph (1) and no other symbol.

(4) If two or more candidates have indicated their preference for the same free symbol, the Returning Officer shall decide by lot to which of them the symbol shall be allotted.

(5) For the purposes of these directions, a candidate shall be deemed to be sponsored by a political party if, and only if, a notice in writing to that effect has been delivered not later than 3 p.m. on the last date for the withdrawal of candidates to the returning officer of

- A the constituency by a person who is authorised by the said party to send such notices and whose name and specimen signature have been communicated in advance to the said returning officer and to the Chief Electoral Officer of the State."
- B The table which follows those conditions shows the 'Hut' as the reserved symbol of the Praja Socialist Party in Bihar, Gujarat, Madhya Pradesh, Maharashtra, Mysore and Orissa and the 'Tree' as the reserved symbol of the Samyukta Socialist Party in Bihar, Kerala and Manipur.
- C It is said that by changing rule 5(1) and dropping the last 8 words from that rule the Election Commission has denied to itself the power to amend the list of symbols. This is not correct. The restrictions which the Election Commission has framed for the use of the symbols are quite clear and permit the issuance of fresh notifications if symbols are required to be changed. The restrictions when analysed are those. Before a candidate can choose a symbol it must be free. Before a reserved symbol can be chosen the candidate must be accredited to the party whose symbol it is and it must be shown by the Election Commission in its notification as the symbol of that party. Obviously, therefore, if circumstances change the notification must follow suit. Parties may come into existence and parties may go out of existence; parties may unite or parties may separate. This will require amendment of the notification. Just as the Election Commission allotted the 'Hut' as a symbol by a change of notification to the Samyukta Socialist Party, it can allot it to another party if circumstances made that course obligatory and just. The Election Commission is required to give effect to restrictions of its own making but that does not restrict its own powers so long as what it does is in consonance with facts and the action is dictated by them. It must not of course, favour one party so as to harm another. It must only change a symbol when the circumstances justify such a change.
- G There is no doubt that for a time the Praja Socialist Party and the Socialist Party did genuinely unite to form the Samyukta Socialist Party and that the Secretaries of the two Parties wrote to the Election Commission that the symbol 'Hut' should be allotted to the united Party. The Election Commission recognised the new party and also accepted the request. It is equally clear that on January 31, 1963 the Samyukta Socialist Party broke-up at its very first meeting and the Praja Socialist Party, which reorganised itself claimed its original symbol. The Election Commission did not decide whether the merger was final or provisional. But after enquiry, found it established that the original leaders of the Praja Socialist Party together with the bulk of the members

of the Party had, in fact, left the united Party. The Election Commission ascertained the relative strengths of the Praja Socialist Party and the Samyukta Socialist Party before and after the break-up and came to the conclusion that the Parties had reverted to their original state. The Election Commission, therefore, restored the symbol of 'Hut' to the Praja Socialist Party as its original party symbol and the symbol of 'Tree' to the Samyukta Socialist Party as representing the old Socialist Party leaving it open to the Samyukta Socialist Party to choose any other free symbol if it liked.

The question is whether in doing so the Election Commission acted capriciously or without jurisdiction. We think the facts support the action of the Election Commission and also that it was within its jurisdiction. If the Praja Socialist Party, after the break-up, was a new party or had a new leadership then the symbol, which originally belonged to the defunct Praja Socialist Party, could not be claimed by the new Praja Socialist Party as a matter of right, but if it was the same party with the same leaders which contested the earlier elections with the symbol of 'Hut' there was complete justification in restoring the party to its original position so that the advantage of a symbol identified with a party should not be lost to it. Although we are clear that a change of symbol by the Election Commission arbitrarily would be outside its competency, because the Rules framed by the Central Government and supplemented by the Election Commission in its Notification do not contemplate a discretion to the Election Commission, there is some jurisdiction in the Election Commission to regulate or restrict the choice of symbols in circumstances such as this. Although no power is given to the Election Commission to impose its own wishes on parties or candidates, it can, in a suitable case, restore the lost advantage to a party before the symbol can be said to be finally assigned to another party. Can we, therefore, say, in this case, that the Election Commission imposed its will arbitrarily or capriciously on the Samyukta Socialist Party when it took away the symbol of 'Hut' from it ? On a careful consideration of the correspondence between the Election Commission on the one hand, and the Praja Socialist Party on the other, and taking into consideration all available facts, we are satisfied that the action of the Election Commission was within its jurisdiction when it recognised the choice of the symbol by the Praja Socialist Party and cannot be described as an interference with the choice of the Samyukta Socialist Party.

To begin with the action is *bona fide*, for no malice or any other improper motive has even been suggested. The Samyukta Socialist Party only contends that the Election Commission was not competent to cancel the symbol chosen by the Samyukta

- A** Socialist Party: It submits that unlike the earlier rule, the new rule 5(1) only enables the Election Commission to place restrictions on the choice of the candidate or the party but the choice once made by the candidate or the party is final and the Election Commission has no further say in the matter. It also submits that the facts do not justify the assumption of the Election
- B** Commission that the parties had once again reverted to the pre-merger state. These arguments require careful consideration because the importance of the symbols to our system of elections needs no exaggeration. Symbols are its very soul and without them the exercise of franchise by the majority of our citizens would be impossible. No doubt elections are fought on party lines
- C** but even if there is a plebiscite between parties, the symbols play a key role by identifying the parties. Slogans, placards, appeals all invoke the symbols and not the candidates. In fact, the voters are asked to vote for this symbol or that symbol. The Election Commission can allot symbols as desired by parties and candidates but, in a case such as this, it has to decide who is to have which symbol without, of course, putting a hurdle in the way of any party.

But what we have said has a double edge on it. If the merger of Praja Socialist Party and the Socialist Party was unsuccessful and before any significant time had passed the Praja Socialist Party had decided to separate, and if all the leaders of the party and almost all its original members decided to quit the amalgamated party, the benefit of its symbol could not be left to the Socialist Party which, in the events that have happened, is bearing the name of the unified party. It is no longer the unified party it was when the name was assumed. Parties have a sentimental attachment for their symbols. The 'Hut' was the symbol of the Praja Socialist Party and the amalgamated party chose the 'Hut' rather than the 'Tree' because of the greater success of the Praja Socialist Party at the polls. If disagreement led to a quick break up before the new party or its symbol could become properly grounded, the reversion to the original position was not only logical but also eminently just. It is clear, therefore, that the Election Commission proceeded along the right lines and reached the right conclusion both legally and in the light of the facts ascertained by it from impartial sources. We see no force in the appeal and it will be dismissed but we make no order as to costs.

H Writ Petition 193 of 1966 was heard alongwith Civil Appeal No. 1653 of 1966. As no separate contentions were raised in the petition we have passed a common judgment to cover the petition also. The constitutional point was not pressed at the hearing. The petition fails and is dismissed but there will be no order about costs.

G.C.

Appeal and writ petition dismissed.