

Lok Bharati Vs. Election Commission of India and anr.

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Court : Mumbai

Decided On : Sep-24-2009

Reported in : 2010(1)BomCR433

Judge : Mhase S.B. and; Savant R.M., JJ.

Acts : [Constitution of India](#) - Articles 32 and 226; Election Symbols (Reservation and Allotment) Order, 1968

Appeal No. : Writ Petition No. 8248 of 2009

Appellant : Lok Bharati

Respondent : Election Commission of India and anr.

Advocate for Def. : Pradip Rajgopal, Adv. for Respondent No. 1 and; Vinay Masurkar, Govt. P. for Respondent No. 2-State

Advocate for Pet/Ap. : A.A. Kumbhakoni, Adv., a/w., Sachin Punde, Adv.

Judgement :

1. Heard the learned Counsel for the parties.

2. The petitioner is a unrecognized registered political party. It desires to have a common symbol to be allotted to the candidates sponsored by it in the ensuing Assembly Elections. The symbol claimed is cup and saucer from the symbol list.

3. Similar Writ Petition No. 7208 of 2009 was filed by the Maharashtra Navnirman Sena (MNS for short) before this Court. But this Court having noticed the interim orders passed by the Apex Court in Writ Petition No. 132 of 2009 and Special Leave Petition (C) No. 7379-80 of 2009 and having found that the issue was before the Apex Court had not entertained the said writ petition and directed the petitioner therein to approach the Apex Court. It appears from the orders which are produced before this Court in Special Leave to appeal (Civil) No (s). 21965 of 2009 and Special Leave Petition (C) No. 21965 of 2009 that the MNS has approached the Apex Court and the Apex Court has passed an interim order on 14th September, 2009. We asked Mr. A.A. Kumbhakoni, the learned Counsel for the petitioner that why the same course of action as the MNS was not followed by the petitioner. The learned Counsel for the petitioner submitted that the petitioner had approached the Apex Court directly by filing Writ Petition (C) No. 441 of 2009 invoking Article 32 of the [Constitution of India](#). He further submitted that the order passed by this Court in Writ Petition No. 7208 of 2009 in the matter of Maharashtra Navnirman Sena was also pointed out to the Apex Court. He submitted that thereafter, leave to approach this Court under Article 226 of the [Constitution of India](#) was granted by the Apex Court which is reflected in the order dated 18th September, 2009.

4. Under these circumstances, we have entertained the above writ petition.

5. Rule.

6. Since the main question involved in this writ petition is pending before the Apex Court in various writ petitions which are referred to above, office is directed to list all these matters only after the writ petition pending before the Apex Court are disposed of by the Apex Court. Parties are at liberty to move for final hearing after disposal of the writ petitions which are pending before the Apex Court.

7. Insofar as interim relief is concerned, our attention has been drawn to the interim orders passed by the Apex Court in the matter of Maharashtra Navniram Sena and also other similarly situated unrecognized registered political parties, in Special Leave Petition (C) No. 21965 of 2009, Writ Petition (C) No. 422 of 2009, Special Leave Petition (C) No. 23494 of 2009 and Writ Petition (C) No. 426 of

2009.

8. We, therefore, pass the following order in terms of the orders passed by the Apex Court

(i) The petitioner, who is a political party (Lok Bharati) proposes to contest in the ensuing Assembly Election of the State of Maharashtra and the constituency intends to contest on 100 constituencies out of 288 constituencies. It prays that a candidate sponsored by this unrecognized registered political party may be given symbol of cup and saucer mentioned at Sr. No. 21 of the list of free symbols to be allotted to all the candidates. This is subject to a condition that, if any, candidate has won the last Assembly election on this symbol, he shall take preference subject to general conditions mentioned in paragraph 12(2) of the Election Symbols (Reservation and Allotment) Order, 1968.

(ii) We make it clear that this is only an interim order specially passed for the ensuing Assembly elections.

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