

While O.A.No.786 of 2011 In

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Court : Chennai

Decided On : Mar-12-2012

Judge : K.B.K.Vasuki, J.

Appeal No. : A.No.365 of 2012 and OA.No.786 of 2011

Appellant : While O.A.No.786 of 2011 In

Advocate for Def. : Mr.A. Ramesh, Adv.

Judgement :

ORDER

1. While O.A.No.786 of 2011 in CS.No.631 of 2011 is filed by the plaintiff for granting ad interim injunction restraining the defendants 1 and 2 from in anyway or in any form adopting, using, misusing or abusing the plaintiff's flag or the colour of the flag as registered and recognised by the Election Commission of India in its proceedings dated 10.12.1991, A.No.365 of 2012 is filed by the 2nd defendant to vacate the interim injunction already granted by this Court in O.A.No.786 of 2011.

2.The parties are referred to herein as per their rank in the main suit.

3.Few facts, which are relevant for consideration herein are as follows:

The plaintiff by name Tamil Nadu Peasants & Workers Party and the defendants 1 and 2 by name (i) Kongu Naadu Munnettra Peravi and (ii) Kongu

Naadu Munnettra Kazhagam respectively are the registered, but unrecognised political parties registered under Section 29-A of the Representation of Peoples Act (hereinafter shortly referred to as 'RP Act'). While the plaintiff is registered by the election commission's proceedings dated 10.12.1991, the defendants 1 and 2 are registered by the proceedings of the election commission on 13.2.2009 and 28.5.2001 respectively. Both the plaintiff and the second defendant party have their own office bearers periodically elected with specimen flag and both the political parties have been through out participating, in alliance with other parties in elections and election campaigns and have been raising their voices against very many issues concerning the society in general and agriculturists in particular and both the plaintiff and the defendant had during State Assembly Election 2007 and 2011 and Lok Sabha Election 2009 had alliance with Dravida Munnetra Kazhagam and had been campaigning for the candidates contested under such alliance and the candidates belonging to the 2nd defendant political party had also contested in the elections.

4. While so, the plaintiff has come forward with the present suit after 2011 State Assembly election, for the relief of permanent injunction restraining the defendants 1 and 2 from in anyway or in any form adopting, using, misusing or abusing plaintiff flag or the colour of the flag as registered and recognised by the Election Commission of India in its proceedings vide Letter No.56/R/255/89/2207 dated 10.12.1991 at any place for any purpose. The basis for the relief sought for in this suit is that the plaintiff political party along with its specimen flag is registered by the election commission and the election commission has by such registration, recognised and approved the plaintiff party along with specimen symbol and flag as a political party and the 2nd defendant has been, by using the impugned flag with same colour pattern in the publicity campaigns and the conduct of the defendants 1 and 2 in using the same flag of the plaintiff with same colour pattern as its own flag and also by using the same colour pattern on the Dhotis and mundus of its followers encroaching upon the plaintiff's right and such act of trespass or encroachment is equivalent to infringement of trade mark or equivalent to an act of passing off. It is the further contention of the plaintiff that the third defendant election commission is statutorily bound to protect the interest of the registered political parties by preventing such misuse or abuse by other party. The

plaintiff party also on earlier occasion filed W.P.No.28154/2010 seeking issuance of writ of mandamus to the statutory authority in this regard and the same is withdrawn reserving its right to take appropriate action. The suit is filed along with O.A.No.786 of 2011 for interim injunction in the same line on the same factual basis. In short, the plaintiff has sought for the reliefs of permanent injunction as well as ad interim injunction mainly on the ground that the plaintiff party along with its flag is registered, recognised and approved by the election commission and such registration, recognition and approval of the election commission gives exclusive right to the plaintiff to use the specimen flag against any other political party registered or unregistered under Section 29-A of RP Act or recognised or unrecongised.

5.The relief sought for herein is seriously opposed by the defendants 1 and 2 by denying any active existence of the plaintiff party and by denying such claim for exclusive use of the flag in question. It is contended on behalf of the respondents/defendants that the plaintiff party is only a letter head party and the registration under 29-A is only for the political party and it is not for either flag or symbol and even otherwise, flag or symbol being used by both the parties is different and distinct and can be easily distinguished by general public and its followers and no right is vested upon any political party to claim exclusive right to use specimen flag and when no such legal right is available, the question of granting permanent or interim injunction to protect the same under civil law does not arise.

6.Heard the rival submissions made on both sides.

7.As already referred to, both the plaintiff and the defendants 1 and 2 political parties are registered with the election commission as required under Section 29A of RP Act, but are yet to be recognised by the election commission. For the purpose of going into the question as to whether the registration under Section 29-A is compulsory or not and whether registration is for political party or for political party with flag, symbol or slogan if any, the relevant provision of law is to be looked into.

8. The reading of the relevant provision of law i.e. Section 29-A, would reveal that any association or body of individual citizens of India calling itself a political party and intending to avail the benefit of provisions of Part IV-A of RP Act, which relates to registration of political parties, is entitled to make an application to the Election Commission for its registration as a political party for the purpose of the RP Act within 30 days from the date of its formation and the application shall contain the following particulars: (a) the name of the association or body;

(b) the state in which its head office is situated;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office bearers;

(e) the numerical strength of its members and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members. The documents required to be accompanied with such application are copy of the memorandum or rules and regulations of the association or body with relevant particulars as laid down under the Act. Thereafter the election commission after calling for other relevant particulars shall decide either to register the same as political party or not and shall communicate its decision and the decision of the election commission shall be final. It would thus reveal that the registration under Section 29-A of RP Act is only optional and for the purpose of availing the benefits of provision of Part IV-A of RP Act and that the registration as provided under the Act is only for registration of name of the political party and there is no specific provision for registration of flag, symbol or slogan or design of the flag in the RP Act. The particulars regarding flag, symbol or slogan are not relevant factors to be furnished by the political party for registration of the same by the election commission. Neither of the parties are able to point out any other

enactment as of now relating to registration of flag, symbol or slogan or relating to the right of use of any specimen flag by any particular political party. The only benefit conferred upon any political party registered under Section 29-A of the RP Act, in addition to benefit under the Act as referred to above is under Election Symbols (Reservation and Allotment) Order i.e. preferential consideration in respect of a free symbol over independent candidates. That is how, it is decided by the Division Bench of Andhra Pradesh High Court in *Ajeya Bharat Party rep. by its National President, Ambati Krishna Murthy v. The Chief Election Commissioner, Election Commission of India, New Delhi and 2 others* reported in Indian Kanoon-<http://indiankanoon.org/doc/1334449/>.

9. As a matter of fact, the proceedings of the Election Commission dated 10.12.1991 and the communications issued by the plaintiff party to the Chief Election Commissioner dated 15.4.1994 and 11.12.2003 and the reply issued by the Election Commission to the plaintiff party on 28.9.2004 enclosed at pages 3 to 36 of the typed set of papers filed by the plaintiff would amply demonstrate that the registration sought for is only with regard to the name of the political party and the specimen flag, which is the subject matter of the present suit, is treated as new flag of the plaintiff party only in the general body meeting held on 13.4.2003 and the intimation given regarding the specimen of the party flag and the newly elected office bearers dated 11.12.2003 is received by the Election Commission and is kept on record without any specific order for recognition of the Election Commission. The Election Commission has also in its communication dated 5.1.2011 issued to the President of the plaintiff party, by way of reply to the claim of the plaintiff party for exclusive use of the flag against others and for enquiry and suitable action against other party causing interference to such exclusive right, categorically negated such claim. It is informed in the reply that there is no specific provision in law or in any order/guidelines of the Commission that every association or body applying for registration as a political party under Section 29A of RP Act must mention about the specification of their party flag or symbol in their memorandum or rules and regulations of the association or body and it is neither mandatory under the law nor practically possible for the commission to ensure that the specifications of the party flag, if any, given by any party, in their party constitution do not resemble the flag of any other party and the specification of

party flag by a political party in their party constitution at the time of registration has no relevance, as such, the question of holding any enquiry by the Election Commission to stop use of the flag of the plaintiff party by some other association or body does not arise herein.

10. That being the statutory requirement and the factual state of affairs, the claim made by the plaintiff and the relief as framed in the injunction application as if the party flag is registered and recognised by the Election Commission by its proceedings dated 10.12.1991 and the political party along with its flag with specific colour pattern and design is registered, recognised and approved by the election commission from 1991 onwards, is factually incorrect to the knowledge of the plaintiff party and it amounts to misrepresentation and is lacking in bonafide and on this score alone, the plaintiff is, as contended by the learned counsel for the defendant, not entitled to seek the discretionary relief of injunction as sought for herein. The Hon'ble Supreme Court in the judgment cited on the side of the defendants reported in 2010-5-LW 27 (Balwant Singh v. Jagdish singh and others) has under different context, rejected the application filed by the applicant, who approached the court, with such equally incorrect facts in the application for condonation of delay on the ground that the conduct of the party in seeking the relief on the basis of incorrect particulars, would invite criticism and it amounts to approaching the court with unclean hands so as to render it difficult for the court to exercise its discretionary power in his favour.

11. Even otherwise, the other grounds on which the plaintiff party is not entitled to any order of interim injunction are as follows:

The plaintiff's party flag specimen is filed along with the injunction application as annexure A. The detail of the same is stated in para 6 of the affidavit filed in support of the injunction application which reads as follows:

The length and breadth of the flag shall be in the ratio by 3:2 respective. Generally the flag will be the size of 3:2. The colour of the flag shall be Green, Yellow and Red. The flag shall be divided into three parts horizontally (lengthwise) in equally, where in top part Green colour, middle part Yellow colour and bottom part is Red Colour.

The specimen flag as used by the respondents is explained in para 6 at page 4 of the counter affidavit, which is extracted as follows:

The Green colour shall be prominent on the top portion measuring 4 inches and Red colour in the bottom portion measuring 4 inches in equal size and in the middle in between Green and Red colour, there shall be Yellow colour measuring 2 inches .

The reading of the same, if viewed in the light of the photographs enclosed in the typed set of paper would reveal that colour scheme and pattern of both the flags are green on top, yellow in middle and red in bottom and the colour design and pattern appears to be similar and identical. But it is very pertinent to mention at this juncture that it cannot be disputed that the political party is being identified during election by name and symbol allotted to each party and the party flag or slogan if any do not play any significant role in identifying the contestants and thus way, the party flag does nothing much to influence the voters. This court has in the foregoing paragraph dealt with the manner in which the name of the political party shall be registered under Section 29-A of RP Act, purpose of registration, scope and effect of registration of the political party and the absence of any provision of law either under RP Act or any other enactment for compulsory registration of flag, symbol or slogan.

12.Further, the Division Bench of Andhra Pradesh High court in Ajeya Bharat Party represented by its National President Ambati Krishna Murthy v. Chief Election Commissioner and two others, was of the view that the flag, slogan or symbol is not a property to get it reserved or registered or to have a monopoly over it. In that case, Ajeya Bharat Party seeks issuance of a Writ of Mandamus to declare the action of the Chief Election Commissioner, Election Commission of India, New Delhi and the Electoral Officer and E.O., Principal Secretary to Government, General Administration (Elections) Department, A.P. Secretariat, Hyderabad in allowing Praja Rajyam Party to use the petitioner's flag design with symbol, colour, slogan Prajala Rajyam widely in public meetings including electronic media, which belong to the petitioner registered political party therein, as illegal, unconstitutional and contrary to the Representation of People Act, 1950. Similar contention is

raised before the High Court that other party launched its party, without verifying the petitioner's flag, symbol, its colour and design before going for registration and thus trespassed into the rights of the petitioner's registered political party, manifesto and its features and it is for the Election Commission of India to prevent any such encroachment of other party flags, colours of the flag and its designs and symbols as well as its policy and if it is not prevented, the same is likely to confuse the voter and the petitioner is likely to loose their vote bank by virtue of unfair practice adopted by the opponent party. The Division Bench of Andhra Pradesh High court, in that case, having found distinction and difference in between the name of the party, slogan and party flag of the petitioner party and the respondent party, was not inclined to accept the claim of the petitioner to have a right over any particular design, flag with symbol, colour and slogans. It is also observed in para 8 of its judgment that ...the requirement under Section 29-A of the RP Act is only to register any association or body of individual citizens of India calling itself as a political party..... Except to register the name of the political party, there is no legal requirement to register a particular flag, design or slogans... The registration of an Association or body of individuals are entitled to get the name of the party to be called as a political party for its identification under Section 29A of the RP Act. There is no provision for registration of a flag symbol or slogan. A recognised political party will be entitled to reserve a symbol as long as it continues the required following.... The flag, slogan or symbol is not a property to get it reserved or registered or to have a monopoly over it.... The Andhra Pradesh High court in para 10 of its judgment further observed thatSection 123(3) of the RP Act prohibits the use of national symbols such as national flag or national emblem in the election campaign.... It is again held in para 11 that .In the absence of any right conferred either under the RP Act or under the Constitution of India reserving to make use of a particular flag, design or symbol, we are of the opinion that the petitioner has no right over the flag, design with symbol, colour and slogan of the third respondent political party.... the particular flag, design and slogan is not any one's property and therefore, the petitioner cannot have any right or grievance about the flag, its design, symbol, colour or slogan canvassed and made use by the third respondent party. By observing so, the petitioner is held to be dis-entitled to get any relief as sought for therein and the writ petition is dismissed as devoid of

any merits. The observation of the Division Bench of Andhra Pradesh High Court is forcibly applicable to the facts of the present case. It lays down the law that what the restriction imposed under law is in respect of national flag or national emblem in the election campaign and no such legal protection is available to any specimen flag of any registered or unregistered and recognised or unrecognised independent party against other party.

13. Further, it may be true that the plaintiff political party is, as evident from the particulars furnished herein in the form of press reports published in various newspapers regarding the activities of the plaintiff party right from 1980 till 2012 enclosed at pages 1 to 111 of Volume II of the typed set of papers filed by the plaintiff, not mere letter head party as contested by the contesting respondents. Though the plaintiff party had not participated in the election, it had alliance with other major party, which contested the elections at National and State level. The plaintiff party has been periodically conducting its public meetings and conference and has been indulging in such acts to express their protest against any government order or decision upon any issue affecting the public. As a matter of fact, both the plaintiff and defendant party had alliance with the same major party DMK in more than one election i.e. Elections held during 2009 and 2011 and had canvassed for their respective candidates by using the flag under question. It is not the case of the plaintiff party that such use of identical flag with same colour, design and pattern by two different political parties under one election front created any confusion in the mind of the voters in general and followers of each political party in particular. As already mentioned, during elections, the parties are recognised by their symbols and the votes are cast on the basis of the election symbols and not on the basis of flags. Though, both the parties contested the election held during 2009 and 2011 either independently or in alliance and the flag with the same colour pattern is being used by both the political parties atleast from 2009, the present suit along with interim application is filed only during 2011, that too, after 2011 assembly election is over. There is absolutely no plausible explanation either in the plaint or in the rejoinder for such inaction on the part of the plaintiff in not initiating any action immediately after unveiling of the flag in question by the 2nd defendant during 2009.

14.It is also pertinent to mention at this juncture that the plaintiff has in para 20 at pages 6 and 7 of the plaint, specifically stated that the cause of action for filing the suit arose on 15.12.2010, the date on which, 'Junior Vikatan', having weekly publication, published an advertisement of the second defendant in the last cover page, displaying the flag of the plaintiff as that of the second defendant and on 12.3.2011 when the first defendant used the party flag in his car and on 17.4.2011, when the first defendant Secretary and his followers assembled at Guindy with the impugned flags raising slogans. In my considered view, when the 2nd defendant party has participated in the general election from 2009 onwards by using the same flag that too having the plaintiff as one of the co political parties, the averments so raised in the plaint that the plaintiff who had alliance with the same party as that of the 2nd defendant party for the assembly election, is not aware of the flag used by the 2nd defendant till December 2010 is only an after thought and invented for the purpose of filing the case and is lacking in bonafide. The grant of injunction being an equitable and discretionary relief cannot be granted to the plaintiff party, who kept quite for long time and allowed another party to deal with their flag in its own manner as held by the Supreme Court in the judgment reported in (2008) 11 SC 1 (Mandali Ranganna and others v. T.Ramachandra and others).

15.Viewing from any angle, the applicant/plaintiff, having failed to prima facie make out any legal right to claim exclusive use of flag in question, is dis-entitled to seek any legal protection of such right and the injunction already granted is hence to be discontinued and the injunction relief sought for is to be negatived.

16.In the result, A.No.365 of 2012 is ordered as prayed for and O.A.No.786 of 2011 is dismissed.

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