

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH:
AT HYDERABAD

WRIT APPEAL NO. 1207 OF 1994

1. All India Majlis-E-Ittehadul
Muslimeen, a Political Party
Registered under Section 29A of
the Representation of the People
Act, 1951, represented by its
General Secretary, Nizamuddin
2. Sultan Ssalahuddin Owaisi S/o Late
Abdul Wahed Owaisi, aged about
58 years, Member of Parliament,
residing at 3-6-149, Himayatnagar,
Hyderabad
3. Ibrahim Bin Abdullah Muskati,
Member of Andhra Pradesh Legislative
Assembly, c/o Darus-Salam,
Hyderabad
4. Virasat Rasool Khan S/o Late
Fazal Rasool Khan, aged 40 years,
Member of A.P. Legislative Assembly,
c/o Daruls-Salam, Hyderabad
5. Syed Sajjad S/o Syed Ahmed aged
35 years, Member of A.P. Legislative Assembly,
c/o Darussalam, Hyderabad
6. Mir Zulfekhar Ali S/o Late Mir Wajid Ali,
aged about 30 years, Former Mayor of
Hyderabad, c/o Darussalam, Hyderabad
7. Alampally Pochaiiah S/o Mallaiah,
aged 45 years, Former Mayor of
Hyderabad
8. Mohd, Bahadur Khan S/o Late Naseeb Khan,
aged, about 30years, Former Chairman
of the Standing Committee of the Hyderabad

Municipal Corporation of Hyderabad C/o
Darussalam, Hyderabad

9. M. A. Basith S/o Late Mohd. Siddiq,
aged about 45 years, Former Chairman
of the Standing Committee, Hyderabad Municipal
Corporation of Hyderabad C/o Darussalam
Hyderabad
10. M. A. Rahman S/o Mohd. Khaleelul-Rahman,
aged about 54 years, Ex-Councillor, C/o
Darussaalm, Hyderabad

Appellants
Petitioners

— **versus** —

1. The Chief Election Commission of India,
Nirvachan Sadan, Ashok Road,
New Delhi
2. The Chief Electoral Officer
Andhra Pradesh, Secretariat
Hyderabad

Respondents

Elections – Symbols – Free Symbol – Whether Election Commission can withdraw a particular symbol from list of free symbols.

Background facts

The appellant No. 1 was registered as a political party by the Election Commission, and it had contested general elections since 1960. The party had used the "Scales" in general elections since 1962.

The Election Commission had from time to time published a list of free symbols under "the Election Symbols (Reservation and Allotment) Order, 1968" for every State, and the symbol "Scales" had always been shown as a free symbol available in the State of Andhra Pradesh.

The said symbol was withdrawn from the list of free symbols and appellant No. 1 and other appellants filed a writ petition No 6474 of 1994 praying, *inter alia*, that a writ in the nature of a mandamus may be issued directing the Chief Election Commissioner of India, and the Chief Electoral Officer of Andhra Pradesh, to include the symbol "Scales" in the list of free symbols for the State of Andhra Pradesh and allot it to the appellant No. 1 and candidates sponsored for Parliament or Assembly elections or elections to municipal corporations and other local bodies.

Held

That there was no merit in the appeal and the order passed by learned Single Judge was upheld with the observation that it would be open to the appellants to approach the Election Commission of India for reconsideration of its decision to delete the symbol "scales" from the list of free symbols and for its restoration for the Assembly elections in the State of Andhra Pradesh proposed to be held in 1994.

Cases Cited in the Judgement

Badiq Ali v Election Commission of India (1972) AIR SC 187

Roop Lal Sathi v Rackhattar Singh (1982) AIR SC 1565

N.P. Ponnuswamy v Returning Officer & Others (1952) SC 64 = 1, E.L.R. 133

Samant M Balakrishna v George Fernandes (1969) AIR SC 1201

Jyoti Basu v Debi Ghosal (1982) AIR SC 983

M Karunanibhi v H.V. Hande (1983) AIR SC 558

Mohinder Singh Gill v Chief Election Commission (1978) AIR SC 851

The 2nd day of November, 1994

Oral Judgement: (Per the Hon'ble The Chief Justice):

This appeal was disposed of by us by a short order dated 27.10.1994. We now proceed to give reasons today (2.11.94).

The facts set out in the writ petition indicate that appellant No. 1 was Registered as a Political Party by the Election Commission of India under the provisions of Section 29A of the Representation of the People Act, 1951 (for short 1951 Act), and it had been contesting General Elections since 1960. In 1962 it contested elections for five seats for the Andhra Pradesh Legislative Assembly, out of which one candidate, namely the present President who is appellant No. 2, was declared elected. Late Abdul Wahed Owaisi who was the then President of the Party, had contested General Elections in 1962 for a seat in Parliament, but he lost the election. His election symbol was "Scales". In the 1962 General Elections for Assembly and Parliament, the same symbol "Scales" was allotted to the Party and its candidates. The Party also contested elections in 1972, 1978, 1983, 1985, 1989 and the mid-term poll for Parliament in 1991. In all these elections "Scales" was allotted as a symbol to the Party and its candidates. In the Municipal Elections also the Party was allotted the symbol "Scales".

The Election Commission has from time to time published a list of free symbols under "The Election Symbols (Reservation and Allotment) Order, 1968" (for short symbol order) for every State, and the symbol "Scales" has always been shown as a free symbol available in the State of Andhra Pradesh. But the said symbol was withdrawn from the list of free symbols and, therefore, appellant No. 1 and other appellants filed Writ Petition No. 6474 of 1994 in this court praying, *inter alia*, that Writ in the nature of mandamus may be issued directing the respondents, namely, the Chief Election Commission of India, and the Chief Electoral Officer Andhra Pradesh, to include the symbol "Scales" in the list of free symbols for the State of Andhra Pradesh and allot it to appellant No. 1 and candidates sponsored by it for Parliament or Assembly elections or elections to Municipal Corporations and other local bodies.

The writ petition was contested by the opposite parties, namely, the Chief Election Commission of India, and the Chief Electoral Officer of the State of Andhra Pradesh and a counter on their behalf was filed in which it was, *inter alia*, pleaded that All India Majlis-E-Ittehadul Muslimeen (appellant No.1) was a registered but unrecognised political party and, therefore, it was not entitled to the reservation of any specific symbol. The list of free symbol which was issued for the State of Andhra Pradesh included the "Scales" as a symbol for several years, but the list was reviewed in 1991 in exercise of the power under paras 5 and 17 of the 1968 Order, and on 5th March, 1991 the symbol "Scales" was removed from the list of free symbols for all the States and Union Territory as the Commission was of the opinion that the symbol "Scales" was associated with justice and judiciary which should not be involved in electoral propaganda and process.

The writ petition was dismissed by a learned Single Judge by Judgement and Order dated 30.9.1994 and it is against this judgement that the present appeal has been filed.

Learned counsel for the appellants has contended before us that the appellant No.1 had all along been allotted "Scales" as a symbol for its candidates in the Parliamentary and Assembly elections as also elections to the Municipal Corporation and, therefore, the symbol which had become synonymous with appellant No. 1 and its candidates could not be legally withdrawn from the list of free symbols for the State of Andhra Pradesh. He has also contended that in 1991 when the Election Commission had withdrawn "Scales" from the list of free symbol, the appellant No. 1 had represented to the Commission and the latter, namely, the Commission had allowed the representation and restored "Scales" in the list of free symbols to enable appellant No. 1 and its candidates to contest the 1991 General Elections on this symbol. Thereafter, the appellants had represented to the Commission to allot "Scales" as a permanent symbol to them but the Commission arbitrarily and without assigning any reason rejected the representation and did not restore the said symbol in the list of free symbols. It is contended that the order of the Commission is liable to be quashed for the reason that the order does not disclose any reason and was, therefore, arbitrary. It is also contended that the symbol "Scales" is still available to "Shiromani Akali Dal" in the State of Punjab and therefore its use should be allowed to the appellants also, particularly as the Commission cannot favour one political party and refuse the same favour to the other in the matter of allotment of symbols.

Election is a process through which the will of the people in the matter of formation of a Government is determined.

The conduct of all the elections to Parliament and to the legislature of every state including the superintendence, direction and control of the preparation of the electoral rolls are vested in the Commission under Article 324 of the Constitution.

Article 326 provides that the elections to the use of the People and to the Legislative Assembly of every state shall be on the basis of adult suffrage. Parliament has been given power under Article 327 of the Constitution to make law concerning all matters relating to the elections to either House of Parliament or the legislature of a state, including the preparation of electoral rolls, delimitation of constituencies and all other matters necessary for securing the due constitution of the Legislature, namely, Parliament or the State Legislature. In exercise of this power, Parliament has made the Representation of the People Act, 1950 (for short "1950 Act") dealing with delimitation of constituencies, preparation of electoral rolls, registration of electors etc., and the Representation of the People Act, 1951 (for short "1951 Act") dealing with the manner and conduct of election.

Under section 169 of the 1951 Act, power has been given to central government to make Rules in consultation with the Election Commission of India (for short "Commission"). Conduct of

Election Rules, 1961 have since been made in exercise of the power, and Rule 5 thereof provides as under:

Rule 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 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.
- (2) Subject to any general or special direction issued by the Election Commission either under sub-rule (4) or sub-rule (5) of rule 10, 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 on other declaration as to symbols, shall be taken into consideration under rule 10 even if that nomination paper has been rejected".

A perusal of this Rule will show that the Election Commission has been given power to specify by notification in the Gazette of India and in the Official Gazette of each State the symbols that may be chosen by candidates at elections in Parliamentary or Assembly constituencies.

Rule 10 of 1961 rules, *inter alia*, provides as under:

"Rule 10: Preparation of list of contesting candidates:

- (1) xx xx xx
- (2) xx xx xx (deleted)
- (3) xx xx xx
- (4) At an election in a parliamentary or assembly constituency, where a poll becomes necessary, the returning officer shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and shall, subject to any general or special direction issued in this behalf by the Election Commission –
 - (a) allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice, and
 - (b) If more contesting candidates than one have indicated their preference for the same symbol, to decide by lot to which of such candidates the symbol will be allotted.

- (5) The allotment by the returning officer of any symbol to a candidate shall be final except where it is inconsistent with any directions issued by the Election Commission in this behalf in which case the Election Commission may revise the allotment in such manner as it thinks fit.
- (6) Every candidate or his election agent shall forthwith be informed of the symbol allotted to the candidate and be supplied with a specimen thereof by the returning officer".

Under the aforesaid Rule every contesting candidate has to be allotted a symbol by the Returning Officer in conformity, as far as practicable, with the choice expressed in the nomination paper. But, such allotment of symbol has to operate subject to any general or special direction issued in this behalf by the Election Commission.

Now, the Commission in exercise of its power under Article 324 of the Constitution read with Rules 5 and 10 of the 1961 Rules, has already issued the Election Symbols (Reservation and Allotment) Order, 1968. Para 4 of the 1968 Symbols Order requires every political party to be registered with the Commission. The political parties have been categorised as "recognised political parties" or "unrecognised political parties". This categorisation has been specified in Para 6 of the Symbols Order. A recognised political party has been further categorised as a "national party" or a "state party".

Para 4 of the Symbols Order provides that in every contested election, a symbol shall be allotted to a contesting candidate and different symbols shall be allotted to different contesting candidates in the same constituency. Para 5 provides that symbols shall be either reserved or free. It is also provided that a reserved symbol is a symbol which is reserved for a recognised political party for exclusive allotment to contesting candidates set up by that Party, while a free symbol is a symbol other than a reserved symbol.

It is provided by Para 8 of the Symbols Order that a candidate set up a national party shall choose, and shall be allotted the symbol reserved for that party, and no other symbol. Similarly, a candidate set up by a state party shall choose and shall be allotted the symbol reserved for that Party in that state, and no other symbol. It is also provided that a reserved symbol shall not be chosen by, or allotted to any candidate other than the candidate set up by a national party or a state party for which such symbol has been reserved.

It is provided by para 9 that symbol reserved for a state party may be included in the list of free symbols in any state in which that party is not a state party, and such symbol may be allotted either to a candidate set up by an unrecognised political party, or to any other candidate.

Para 10 provides that if a candidate is set up by a party which is not a state party in the state in which elections are intended to be held but is, nevertheless, a state party in some other state and

the candidate set up by it chooses the symbol reserved for that party in the state in which it is registered as a state party, then that symbol shall be allotted to the candidate set up by that party to the exclusion of all other candidates.

Para 12, *inter alia*, provides as under:

"12 Choice of Symbols by other candidates and allotment thereof:

- (1) Any candidate at an election in a constituency in a State other than –
 - (a) a candidate set up by a national party; or
 - (b) a candidate set up by a political party which is a state party in that state; or
 - (c) a candidate referred to in paragraph 10;

shall choose and shall be allotted in accordance with the provisions hereafter set out in this paragraph, one of the symbols specified as free symbols for that state by notification under paragraph 17.

- (2) xxx xxx xxx
- (3) xxx xxx xxx ".

The "free symbols" referred to in Para 12(1) extracted above are symbols which are specified by a notification issued by the Commission under Para 17 of the Symbols Order for a particular State or States.

Para 17 is quoted below:

"17. Notification containing lists of political parties and symbols:

- (1) The Commission shall by one or more notifications in the Gazette of India publish lists specifying –
 - (a) the national parties and the symbols respectively reserved for them;
 - (b) the state parties, the state or states in which they are state parties and the symbols respectively reserved for them in such state or states;
 - (c) the un-recognised political parties and the state or states in which they function; and
 - (d) the free symbols for each state.
- (2) Every such list shall, as far as possible, be kept up-to-date."

This para contemplates the preparation and publication of the lists of political parties, recognised and unrecognised and the symbols allotted to them as also the list of free symbols.

An analysis of the statutory provisions considered and referred to above by us clearly brings out that the Commission has exclusive jurisdiction to draw up a list of free symbols for every state. The list has to be published under a Notification in the Gazette of India. The lists may be published through one or more notifications. The statutory jurisdiction of the Commission to prepare and publish the aforesaid lists also includes the jurisdiction to add to, subtract from, or in any other manner vary, the lists.

It is in the background of the above legal position that the argument of the learned counsel for the appellants that the Commission having allowed the use of "Scales" as a symbol to appellant No. 1 and the candidates sponsored by it in various elections since 1960, could not legally withdraw that symbol from the list of free symbols for the State of Andhra Pradesh, is to be considered.

The contention contemplates a "right" to use "Scales" as a symbol in the forthcoming Assembly elections and the enforcement of that "right" through this petition.

Before coming to this question we will again go to the background of certain other statutory provisions to understand the significance of "symbols" in the Parliamentary and Assembly elections in our country.

Under Section 14 of the 1951 Act, the election machinery is set into motion by a notification published in the Gazette of India on such date as is recommended by the Commission through which the President, in the case of the House of the People, calls upon all parliamentary constituencies to elect members for constituting a new House. Similarly, in the case of the State Legislative Assembly, the Governor by a Notification issued under Section 15 of the Act and published in the State Official Gazette, calls upon all Assembly constituencies to elect members for the new Assembly. Thereafter, the Commission, by another Gazette Notification, issue the election programme comprising, *inter alia*, of the last date of nomination; date of scrutiny of nominations; last date for the withdrawal of candidature; and the date on which the poll, if necessary, is to be held.

A candidate enters into the election arena by a nomination filed through a nomination paper on the prescribed form as required by section 33(1) or 33(1A). The form of nomination paper is prescribed under Rule 4 of the 1961 Rules and the candidate is required to indicate not only the party which has set up but also the choice regarding symbol. It is obvious that if he has been set up a national or state political party, the symbol reserved for that party is to be allotted to him. But if he is a candidate set up by an unrecognised, though registered, political party, a symbol will be allotted to him in accordance with the provisions of Symbols Order, 1968.

After a scrutiny of nomination papers and immediately after the expiry of the period within which candidatures may be withdrawn, the Returning Officer has to publish a list of contesting candidates among whom the election is to be held through poll on the date and during the hours

fixed by the Commission. In this list, the names of the candidates are to be arranged alphabetically according to the script of such one of those languages as the Commission may direct. Rule 10(4) of the 1961 Rules requires the Returning Officer to consider the choice of symbols and allot a different symbol to each contesting candidate in conformity, as far as practicable, with his choice but subject to general or special direction that might have been issued by the Commission. The Returning Officer has to inform the candidate or his election agent of the symbol allotted to the candidate and also to provide a specimen of the symbol to him.

Section 59 of the 1951 Act provides that at every election where a poll is taken, votes shall be given by ballot in such manner as may be prescribed. Section 62 specifies the persons who have the right to vote.

Rule 30 of the 1961 Rules provides that the ballot paper shall be in such form and shall contain such particulars in such language or languages as may be prescribed by the Commission. It is also provided that the names of the candidates shall be arranged on the ballot paper in the same order in which they appear in the list of contesting candidates. The ballot papers are issued to the voters at an election on the date of the poll and every elector to whom a ballot paper has been issued is required, in order to maintain secrecy of vote, to proceed to one of the Voting Compartments and there make a mark on the ballot paper with the instrument supplied for the purpose on or near the symbol of the candidate for whom he intends to vote, and thereafter to fold the ballot paper and insert the folded ballot paper into the ballot box.

The aforesaid scheme would indicate the significance of symbol at an election. The respondents in their counter affidavit have stated as under:

- 5.1 A ballot paper has the name of contesting candidates printed on it and the voter has to record his vote for the candidate of his choice by placing the voting mark against the name of such candidate. The percentage of illiteracy being very high in the initial stages when India achieved independence, it would have been almost impossible for the vast majority of voters to mark their votes on the ballot papers with only the names of contesting candidates printed on the ballot papers. A system had, therefore, to be devised which was suitable to the Indian conditions and under which even illiterate voters could intelligently cast their votes in secret in favour of the candidates of their choice. The Election Commission thus devised the 'election symbol system'. Under this system, each contesting candidate is allotted a different election symbol which is printed along with his name on the ballot paper. The Commission decided that the election symbols should be such commonly known objects as are familiar to, and easily recognisable by, illiterate and ignorant voters and readily

distinguishable by them from each other and at the same time no object having any religious or sentimental associations should find place in the list of approved symbols".

The above pleading is in consonance with the observations of the Supreme Court in *Sadiq Ali v Election Commission of India (1)* in which it was observed as under:

" It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidates of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of election law of India. In some countries, details in the form of letters of alphabet or numbers are added against the name of each candidate while in others, resort is made to symbols or emblems. The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice."

These observations have since been followed by the Supreme Court in *Roop Lal Sathi v Nachhattar Singh (2)*.

The Supreme Court also in the aforesaid two decisions has laid down that the Symbols Order, 1968 as also the provisions regarding allotment of symbols under Rule 10 of the 1961 Rules contain general directions of the Commission regarding allotment of symbols which have to be followed, and a Returning Officer while allotting symbols to different contesting candidates has to keep in view the general or the special directions of the Commission, so that the allotment of symbol may not be in contravention of the directions of the Commission as the allotment of symbol by the Returning Officer has always to operate subject to the general or special directions of the Commission.

Reverting now to the contention of the learned counsel for the appellants that the symbols "Scales" having been allotted to appellant No. 1 and its candidates in all previous elections should not have been withdrawn by the Commission from the list of free symbols for the State of Andhra Pradesh, it may be observed that the contention does not fall in line either with the statutory provisions discussed above or with the judgements of the Supreme Court in the case of *Sadiq Ali (supra)* and *Roop Lal Sathi (supra)*.

At the risk of repeating ourselves, we may say that under the Symbols Order, 1968 a reserved symbol is a symbol reserved for a political party for exclusive use by that party, while a symbol other than the reserved symbol is treated a "free symbol". Political parties have been classified as "recognised political parties" and "unrecognised political parties". The recognised political

party is either a national party or a state party. The right therefore, if any, has been created only in favour of either the national party or the state party by making a specific provision in the Symbols Order, 1968 as also the 1961 Rules that the reserved symbol shall not be allotted to any other party or candidate and shall be allotted only to the recognised political party either of the state level or the national level, and to the candidates sponsored by those parties at the parliamentary or Assembly Elections. An unrecognised political party has no right to insist on the allotment of a particular symbol either to the party or to the candidates sponsored by it, as the party or the candidate sponsored by it have to be allotted a free symbol in accordance with the provisions of the Symbols Order, 1968 and the 1961 Rules, or any other statutory provision in that regard.

Filing of nominations, preparation of the list of contesting candidates, allotment of symbols, poll, casting of vote through ballot, counting of votes and the result of poll constitute different stages of Election either to Parliament or the State Assembly. Each stage or component is regulated by the constitutional provisions or the law made thereunder. The entire election machinery including the entire election process is controlled by the Commission under its power of superintendence etc., under Article 324. The common law right is at no stage involved.

It is well settled that in the matter of election there is no common law right involved; (see *N.P. Ponnuswamy v Returning Officer & Others* (3)). Right to elect and right to be elected are statutory rights and not common law rights. The election contest, as held by the Supreme Court in *Samant M Balakrishna v George Fernandez* is not an action at law or a suit in equity but is a purely statutory proceeding unknown to common law.

In *Jyoti Basu v Debi Ghosal* (5) it was laid down that a right to elect, fundamental though it is to democracy is, anomalously enough, neither a fundamental right nor a common law right, but is pure and simple statutory right. Concepts familiar to common law and equity must remain strangers to election law unless statutorily are embedded. It was further laid down that the entire election process commencing from the issuance of the Notification calling upon a constituency to elect member or members, right upto the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1961, different stages of the process being dealt with by different provisions of the Act; (see also *M Karunwnidhi v H.V.Hande* (6)).

The contention of the learned counsel for the appellants that the appellant No. 1 and the candidates intended to be set up by it at the forthcoming Assembly elections are entitled to be allotted "Scales" as a symbol as the said symbol was allotted to them in previous elections, cannot be accepted as no right has been created in favour of the appellants under the 1950 Act, or the 1951 Act or, for that matter, under any other statutory provision including the Rules made under the aforesaid Acts.

Learned counsel for the appellants next contended that in certain states, especially in Punjab and Pondicherry, the "Scales" symbol is still available for allotment to political parties and the

candidates set up by them, but this facility has been denied to the appellant No. 1 and its candidates in the State of Andhra Pradesh, as the "Scales" symbol has been withdrawn by the Commission from the list of free symbols with the result that it cannot be allotted to appellant No.1 or its candidates in the State of Andhra Pradesh where they intend to contest the Assembly elections. This, it is contended, constitutes a discriminatory attitude on the part of the Commission and is thus violative of Article 14 of the Constitution, inasmuch as the Commission has allowed the use of "Scales" as a symbol in other States but the same is not being allowed in the State of Andhra Pradesh. According to the notification issued by the Commission under para 17 of the Symbols Order, 1968, Shiromani Akali Dal, which is a political party in Punjab, has been recognised as a 'state party' and, therefore, it has been allotted a permanent symbol for elections in that state.

Appellant No.1, on the contrary, is an unrecognised, though registered, political party and is, therefore, not entitled to allotment of any symbol on a permanent or regular basis. There can, therefore, be no equation between appellant No. 1 and Shiromani Akali Dal of Punjab, as both are not similarly circumstanced. The plea of Art. 14 cannot, therefore, be invoked. It may be stated that in Pondicherry also the symbol has been withdrawn and is no longer available either as a permanent symbol to any party or as a free symbol as pleaded by the respondents.

Learned counsel for the appellants then assailed the order of the Commission on the ground that it is devoid of reasons. It is contended that every executive order must conform to certain standards, one of which is that it must contain reasons so that the person against whom the order is passed may know on what basis has the order been passed against him. With reference to the plea raised by the Commission on their counter-affidavit that the symbol "Scales" was withdrawn because of its being associated with judiciary, learned counsel for the appellants has contended that the inherent defect in the order cannot be cured by setting out reasons for passing that order in the counter-affidavit, as the reasons should have been set out in the order itself. It is also contended that it is one of the principles of natural justice that the person against whom an order is passed would be informed of the reasons why the order has been passed against him, and since the order passed by the Commission does not contain reasons, the same is liable to be set aside as being violative of the principles of natural justice. It is also contended that the Commission before withdrawing the symbol from the list of free symbols ought to have first issued a notice to the appellants, and this having not been done, the order passed by the Commission is liable to be quashed.

We have already referred to the constitutional and statutory provisions and the relevant Rules relating to election symbols. We have already held above that an unrecognised political party like appellant No. 1 has no right to be allotted a permanent symbol or the same symbol each time at every election. The candidate sponsored by it can be allotted only one of the free symbols from out of the list available for the state in which it proposes to contest the election. In this view of the matter, the contention that appellant No. 1 should have been given an opportunity of hearing by the Commission before withdrawal of "Scales" from the list of free symbols cannot be

accepted. A discussion of the factual position hereinbelow will also indicate that in the particular circumstances of the case, notice was not required to be given to the appellants. The absurdity of this argument will also be apparent from the fact that, if requirement of issuance of prior notice was adhered to as a legal requirement before the exercise of jurisdiction by the Commission for withdrawal of free symbol, notice would have to be issued to hundreds of unrecognised parties all over India or to their candidates to whom free symbols might have been allotted at one or the other time.

The symbol "Scales" which was available as one of the free symbols for the State of Andhra Pradesh was omitted from the list of free symbols with effect from 5.3.1991. This omission was made from the list of free symbols for all the states and Union territories. It is set out in the counter-affidavit that the appellant No. 1, vide their letter dated 18.4.1991 (Annexure R-II to the counter-affidavit) made a request to the commission that the symbol "Scales" may be included in the list of free symbols for the State of Andhra Pradesh to enable it to contest the General Election to the House of the People which was due to be called on 18.5.1991, but the Commission informed the appellant, vide its letter dated 20.4.1991 and, therefore, at that stage no symbol could be added in the list of free symbols. But appellant No. 1 again made a request on 25.4.1991 through their letter (copy whereof has been filed as Annexure R-IV to the counter-affidavit) for the inclusion of symbol "Scales" in the list of free symbols for the State of Andhra Pradesh on the ground that the Party, in anticipation of getting the said symbol for its candidates had already incurred a lot of expenditure on publicity etc., and some of its representatives also met the Chief Election Commissioner on 24.4.1991 and made a request for the inclusion of "Scales" in the list of free symbols for the State of Andhra Pradesh as a special case for the General Election then in progress. The Commission acceded to their request and decided to include "Scales" in the list of free symbols for the State of Andhra Pradesh as a special case for purposes of that General Election. Annexure R-V to the counter-affidavit is the letter of the Commission which was sent to the President of appellant No.1. The relevant portion of the letter is quoted below:

".....With reference to your letter dated 18th April, 1991 I am directed to inform you that the Commission has acceded to your request and the symbol "Scales" is being included in the list of free symbols for the State of Andhra Pradesh as a special case for the purposes of the present General Elections. Necessary notification in this behalf is being issued today separately....."

It is also pleaded in the counter-affidavit that a similar request for the inclusion of "Scales" in the list of free symbols for the State of West Bengal was also made to the Commission by two registered unrecognised political parties, namely, Democratic Socialist party, and West Bengal Socialist Party, and the Commission acceded to their request also and included "Scales" in the list of free symbols for West Bengal for that General Election.

Immediately after the elections to the House of the People, the Commission, vide its notification dated 16.4.1992 which was published in the Gazette of India and in the Official Gazettes of all

the States including the States of Andhra Pradesh and West Bengal, where the said symbol was included as a special case only for purposes of the said General Election, where the said symbol was included as a special case only for purposes of the said General Election, withdrew the symbol "Scales" from the list of free symbols. The petitioner-party (appellant No.1) was specifically informed about the said deletion by the Commission, by its letter dated 16.4.1992 contained in Annexure R-VI to the counter-affidavit; but the petitioner-party, namely, appellant No.1, made a request in its letter dated 17.4.1992 (Annexure R-VII to the counter-affidavit) for the restoration of "Scales" in the State of Andhra Pradesh and for its allotment to appellant No.1; but the Commission vide its letter dated 7.5.1991 (Annexure R-VIII) informed the petitioner (appellant No.1) that its request cannot be acceded to as it being an unrecognised registered party had no claim for any free symbol and, therefore, "Scales" which had already been withdrawn from the list of free symbols could not be allotted to it on regular basis.

From the above it would be apparent that "Scales" had already been withdrawn from the list of free symbols in 1991 and was restored as free symbol only for purposes of General Election held in that year to constitute a new House of the People only at the request of appellant No 1 who, in anticipation of the symbol being allotted to its candidates, had already incurred huge expenditure on publicity etc.

Appellant No.1 itself wanted restoration of "Scales" as a free symbol for the State of Andhra Pradesh as a special case in 1991. Immediately after the General Elections, when the Commission withdrew "Scales" from the list of free symbols vide its letter dated 16.4.1992, a copy whereof was also sent to the president of appellant the latter, namely, the president, vide his letter dated 27.4.1992 wrote to the Commission for the restoration of that symbol on the ground that this request for allocation of this symbol on regular basis was pending with the Commission. The Commission, however, rejected the request vide its letter dated 7.5.1992. It was thereafter that the President of A.I.M.I.M. wrote to the Chief Electoral Office, Andhra Pradesh, Hyderabad, on 22.11.1993 as under:

".....You are aware of the fact that the election commission of India has deleted Scales Symbol during the Parliament elections and for all practical purposes it seems this symbol will not be included in the free symbol list.

The M.I.M. party has been allotted and using the scale symbol since last several years and on account of deletion of this symbols the party deprived of its traditionally popular election symbols.

I would like to know from you whether is there any possibility of re-inclusion of the symbol in list of free symbols and if so I wish you to consider allotment of the same in favour of our party. In case there existed no such proposals I request you to consider and recommend allotment of any free symbol exclusively for our party in view of the next Assembly Election and in this connection I further

request that you may kindly provide us with the free symbol lists as approved by the Election Commission of India to enable us to choose one among several such symbols.

I need not mention here that the All India Majlis Ittehad Muslimeen has been accepted and registered as a political party and therefore a common symbol of our choice require to be provided to our party. I earnestly hope that this representation received your immediate favourable action.

Thanking you in anticipation

This was replied to by the Chief Election Office on 16.12.93 as under:

"....I am directed to enclose a list of free symbols allotted to Andhra Pradesh State as desired in the reference cited. With regard to allotment of a specific symbol to your party I am to state that powers are vested with Election Commission of India, New Delhi, vide para 17 of the Election Symbols (Reservation and Allotment) Order, 1968. As the Election Commission of India has listed the All India Majlis-E-Ittehad-Ul-Muslimeen as a registered unrecognised political party, it is not entitled to a reserved symbol.....".

The facts stated above would indicate that the appellants had full knowledge of the withdrawal of "Scales" from the list of free symbols. They knew it in 1991 that this symbol had been withdrawn, and they also knew it that it was restored only on their request as a special case for the General Elections held in that year. They further knew it that the symbol be withdrawn after the elections in 1991. The Commission did withdraw the symbol on 16.4.1992 and the appellant No.1 was informed of it. In this situation therefore, it cannot be legally insisted on behalf of the appellants that notice of withdrawal should first have been issued to them before actually withdrawing the symbol from the list of free symbols, or that reasons for its withdrawal should have been indicated in the order by which their application for allotting the symbol on a permanent basis was rejected by the Commission.

Learned counsel for the appellants then adverted to the counter-affidavit and contended that the order by which application for allotment of "Scales" as a permanent symbol to appellant No. 1 was rejected by the Commission, does not contain any reason, and the defect in the order is sought to be cured by reasons set out in the counter-affidavit which procedure is not permissible under law as the reasons should have been disclosed in the order itself. He has in this connection placed reliance on *Mohimder Singh Gill v Chief Election Commission* (7), in which it was laid down:

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented

by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out..."

The appellants had written to the Election Commission for allotment of symbol "Scales" to them on a permanent basis. Their application was rejected by the Commission on the ground that this symbol could not be allotted to them on permanent basis as theirs was only an unrecognised political party which was not entitled to allotted any symbol on permanent basis. The order, therefore, does contain a reason. The decision of the Supreme Court referred to above cannot, therefore, be pressed in aid.

Learned counsel for the appellants drew our attention to the application of the President of appellant No.1 dated 27.4.1992 (Annexure VII to the counter-affidavit), and contended on the basis of the last paragraph that application that a request was made to the Commission for restoration of "Scales" for the State of Andhra Pradesh, but the Commission by its reply dated 27.5.1992 did not, while rejecting the request for allotment of "Scales" on a regular basis, say a word about restoration of the symbol. The last paragraph of the letter of the President of appellant No. 1 written to the Commission on 27.4.1992, is quoted below:

".....As a time when our petition for allocation of this symbol on regular basis, is pending with the Commission and we have presented a letter in this connection on 19.4.1992 for consideration, it is earnestly hoped that the symbol of "Scales" shall be restored in respect in the State of Andhra Pradesh and in favour of A.I.M.I.M. Party.....".

This would indicate that there was an application of appellant No.1 pending with the Commission for allotment of "Scales" as a symbol to it on a regular basis and that, pending disposal of that application, a hope was expressed that "Scales" as a symbol to it on regular basis would be restored in Andhra Pradesh in favour of appellant No.1. It was, therefore, not a mere request for restoration of "Scales" as a symbol in the list of free symbols, but a request for restoration of that symbol in favour of appellant No.1 pending disposal of its application for allotment of that symbol on regular basis. The Commission's reply dated 27.5.1992, in our opinion, disposes of both the prayers. It categorically says that appellant No.1 was an unrecognised registered party and had no claim for any free symbol and, therefore, the question of allotting "Scales" to this party on a regular basis did not arise. Restoration of "Scales" as a symbol in its favour was sought by appellant No.1, pending disposal of its application for allotment of that symbol on a regular basis. Restoration was, therefore, sought as an interim measure. Once the application for allotment of this symbol on a regular basis was rejected, there was no occasion to consider the request for restoration of this symbol in favour of appellant No. 1 pending disposal of its application. In any case, learned counsel appearing on behalf of the Commission had placed before us the relevant extracts of the official record to indicate that the reasons set out in the counter-affidavit for withdrawal of "Scales" as a symbol from the list of free symbols were also

contained on the original letter, and the "Scales" was withdrawn for the reason that it was synonymous with justice and judiciary and, therefore, it should not be made available to any political party for being used as a symbol at the time of General Elections.

It would thus be seen that in the counter-affidavit respondents had not invented fresh reasons, but they had merely pleaded the "reasons" which were already contained on the original file.

The appellants' counsel then contended that the reason for withdrawal of "Scales" from the list of free symbols was not reasonable, just and proper as "Scales" is associated with many trades and commercial activities and its use cannot be attributed only to justice and judiciary. It is contended that, if the reason is to be bad, the withdrawal, as a necessary consequence, would also become bad. It is pointed out that persons dealing in general merchandise or other commercial goods, or persons involved in various trades have always have to use "Scales" and, therefore, "Scales" being exclusively associated with justice or judiciary cannot be said to be correct.

It may be pointed out that "Scales" from times immemorial is regarded as a symbol and attribute of justice. This is how one speaks of holding the scales even to emphasise the idea of impartiality. An insight into the origin of this concept would reveal that **Libra**, a constellation of the **Zodiac**, is portrayed as holding a scale and the term "**Libra**" is synonymous with the symbols "Balance". In Encyclopedia Britannica, Vol. VI 15th Edition, "Libra" is described as under:

"Libra or the Balance in astronomy is a constellation of the Zodiac. In Astrology, Libra is the seventh sign of the Zodiac. It is represented by a woman (sometimes identified with Astraea, the Roman Goddess of justice) holding a balance scale".

The Oxford English Dictionary, Third Edition, Vol.II, describes "Scales" as the sign of Libra. It also quotes from Shakespeare the following lines:

"Your vows to her, and me (put in two scales). Will even weigh and both as light as tales".

In view of the above, the contention of the learned counsel for the appellants that "Scales" cannot be said to have any association with justice or judiciary, is wrong. The reasons adopted by the Commission for the withdrawal of the symbol "Scales" from the list of free symbols cannot, therefore, be said to be irrelevant.

In view of the above, we find no merits in this appeal. It is, accordingly, dismissed, and the order passed by the learned Single Judge is upheld with the observation that it would be open to the appellants to approach the Election Commission of India for reconsideration of its decision to delete the symbol "Scales" from the list of free symbols and for its restoration for the Assembly elections in the State of Andhra Pradesh proposed to be held in 1994. If such a representation

Chief Justice

is filed, the Election Commission of India, it is expected, will dispose of it with utmost expedition.

No order as to costs.

27.11.1994