
**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

(CIVIL WRIT JURISDICTION)

CIVIL WRIT PETITION NO. 4091 OF 1993

Shiromani Akali Dal (Simranjit Singh Mann) through its President S. Simranjit Singh Mann,
Office S.C.O. 152, Sector 26, Chandigarh.

.....Petitioner

versus

Election Commission of India through its Secretary, Nirvachan Sadan, New Delhi.

.....Respondent

Before

A.L. Bahari, J. Ashok Bhan, J and G.C. Gorg J.

Election Symbols – De-recognition of political party – validity of order of Election Commission withdrawing recognition of party.

Background facts:

Two writ petitions filed by two political parties, (i) Shiromani Akali Dal (Sunranji Singh Mann) and (ii) Shiromani Akali Dal (Badal) were admitted to be heard by the Full Bench, as common substantial questions of law are involved therein. The grant of interim relief encountered a difference of opinion and the matter was referred to another judge. The Full Bench took the view that that Court was not concerned with the issues relating to the grant of interim relief of postponing the elections.

The petitioner party was de-recognised by an order dated 20 November 1992 passed by the Deputy Election Commission under the provisions of Election symbols (Reservation and Allotment) Order, 1968, with the further direction that the part (facts taken from petition filed by Shiromani Akali Dal (Simranjit Singh Mann) should not be entitled to the exclusive use of the symbol "Lion: earlier reserved for it in the State of Punjab. The said political party was to be treated as unrecognised until its poll performance was again reviewed at the next general election.

The petitioners questioned the validity of the order. They also alleged that the order was not duly served in the proceedings and that amounts to violation of the principles of natural justice.

Held

That the impugned orders de-recognising the petitioners – political parties in the two cases were valid and in accordance with law.

Cases cited in the Judgement

Kanhiya Lal Omar v R.K. Tivedi & others (1986) AIR SC 111

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

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

A.C. Jose v Sivan Pillai (1984) AIR SC 921

A.K. Roy v Union of India & Another (1982) AIR SC 710

M/s Girdhari Lal & Sons v Balbir Nath Mother & Others (1986) AIR SC 1499

Asif Hameed & Others v State of Jammu and Kashmir & Others (1989) AIR SC 1899

N.P. Ponnuswami v The Returning Officer, Namakhal Constituency (1952) AIR SC 64

Election Commission of India v Shivaji and Others (1988) AIR SC 61

Porkash Singh Badal & Others v Union of India & Others (1987) AIR Punjab & Haryana 263

Civil Writ Petition under Article 226 of the Constitution of India praying that:

- (i) need for advance notices may please be dispensed with;
- (ii) operation of the impugned order whereby petitioner party has been de-recognised may please be stayed;
- (iii) need for certified copy of Annexure may also be dispensed with;
- (iv) issue writ of certiorari or any other writ, order or direction as this honourable Court may deem fit, quashing the impugned order Annexure P-1 whereby the petitioner party has been de-recognised and paras 6 and 7 of the Election Symbols (Reservation and Allotment order, 1968 as ultra vires of the Constitution of India.

And for this, the petitioner as duty bound shall ever pray.

C.W.P. NO.4091 OF 1993

(This Writ Petition was considered by the Division Bench consisting of Hon. Mr. Justice Nmarjeet Chaudhary and Hon. Mr. Justice N.K.Sodhi. Finding an important question of law involved in the case, their Lordships observed vide separate orders dated 29.4.1993 that the petition be admitted to be admitted to Full Bench for disposal. Their Lordships also expressed difference of opinion on the point of interim relief and dictated two separate orders. The petition was then laid before Hon. The Chief Justice for appropriate orders. Under the Orders dated 29.4.1993 of Hon. the Chief Justice, the case was referred to the third Hon. Judge, Hon. Mr. Justice M.S. Liberhan. Hon. Mr. Justice M.S. Liberhan vide order dated 3 May, 1993 disagreed with the opinion expressed by Hon. Mr. Justice N.K.Sodhi. Finally, the case was decided by the Full Bench which was constituted of Hon. Mr. Justice A.L. Bahri, Hon. Mr. Justice Ashok Bhan and Hon. Mr. Justice G.C.Carg vide judgement dated 8th September, 1993).

Dated the 8th September, 1993

PRESENT

THE HON. MR.JUSTICE A.L.BAHRI
THE HON. MR. JUSTICE ASHOK BHAN
THE HON. MR. JUSTICE G.C. GARG

For the petitioner: Mr. Ranjan Lakhanpal, Advocate
For the respondent: Mr G.K. Chatrath, Sr. Advocate with
Shri Vikrant Sharma, Miss Anu Chatrath, Miss Alka Chatrath,
Mr. Sushant Maini and Mr. Adarsh Malik, Advocates.

Dated the 29th April, 1993.

PRESENT
THE HON. MR. JUSTICE AMARJEET CHAUDHARY
THE HON. MR. JUSTICE N. K. SODHI

For the petitioner: Mr. G.K. Chatrath, Sr. Advocate
(Ms. Alka Chatrath, Ms. Anu Chatrath and Mr. Sushant Maini,
Advocates with him)
for the respondent

Dated the 3rd May, 1993

PRESENT
THE HON. MR JUSTICE M. S. LIBERHAN

For the petitioner: Mr. Ranjan Lakhanpal, Advocate
For the respondent: Mr G.K. Chatrath, Sr. Advocate
(Ms. Alka Chatrath, Ms. Anu Chatrath and Mr. Sushant Maini,
Advocates with him)
for the respondent

(Judgement of Division Bench Consisting of Hon. Mr. Justice Amarjoet Chauhary and Hon. Mr. Justice N. K. Sodhi dated 29.4.1993)

Amarjseet Chaudhary, J

ORDER

The Shiromany Alkali Party (M' was recognised as a state party in Punjab under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968. A political party as a national party or state party is governed by paragraphs 6 and 7 of the Election Symbols Order. The petitioner-party was de-recognised and reasons for de-recognition are that the party failed to secure 4 per cent of the valid votes in the Parliamentary/Legislative Assembly Elections which is in existence and is functioning. The petitioner-party did not challenge the impugned order dated 20.11.1992. However, notifications for holding parliamentary election to the Jalandhar parliamentary seat was issued on 19.4.1993. On the said date, election programme was also notified. The petitioner filed the writ petition subsequent to the issuance of the notification seeking direction for quashing the impugned order and also for declaring the Constitution of India, and have prayed that the party be permitted to contest as a political party.

On notice, the respondent has put in appearance and filed a detailed written statement. We have heard the learned counsel for the parties.

On consideration of the matter, we find that in this writ petition substantial questions of law are involved which deserve consideration. As such, the writ petition is admitted to Full Bench for 11.5.1993.

The case be posted for hearing on 11.5.1993 after obtaining appropriate orders from Hon. the Chief Justice.

Meanwhile, we are not inclined to stay the operation of the impugned order in toto as that would virtually amount to allowing the write petition. However, the petitioner-party may contest the election as a Political Party on any Symbol other than 'Lion'. The interim order dated 22.4.1993 passed by this Court is modified to that extent.

It is a settled principle of law that once the election process is set in motion, the High Court under Article 226 of the Constitution of India, shall not invoke its extra-ordinary jurisdiction to pass any interim order.

sd/-Amarjeet Dhaudhary
Judge

29.4.1991

N. K. SODHI J

ORDER

I agree that important questions of law are involved in this petition and that the same be admitted and heard by a Full Bench.

As regards the prayer for interim relief, I do not agree with the order proposed by my learned brother. It is a common case of the parties that the petitioner before us did not participate in the last general elections held in February, 1992 in the State of Punjab. As at present advised, I am *prima facie* of the view that a party which did not participate in the last general elections cannot be de-recognised under the provisions of para 6 of the Elections Symbols (Reservation and Allotment) Order, 1968 as the said order does not provide for such a situation. I also do not agree with the contention of the learned Advocate General, Punjab that by staying the operation of the impugned order this Court would be interfering in the election process in regard to the Jalandhar Parliamentary Constituency which has already commenced. Accordingly, I directed that the operation of the impugned order passed by the respondent shall remain stayed during the pendency of the petition. The interim order dated 22 April, 1993 stands superseded.

sd/-N.K. Sodhi
Judge

April 29, 1993

Difference of Opinion

Since there is difference of opinion, this writ petition be put up before Hon. Chief Justice for appropriate orders today.

sd/-Amarjeet Chaudhary
Judge

sd/-N.K.Sodhi
Judge

29.4.1993

(Judgement of Hon. Mr. Justice M.S. Liberhan dated 3.5.1993)

M. S. Liberhan J

ORDER

This is a matter which has arisen in the course of proceedings under Article 226 of the Constitution of India in Civil Writ petitions 4091 of 1993 and 4587 of 1993.

In substance, the allegations and grounds of challenge of the impugned order of the Election Commission dated 20.11.1992, withdrawing – recognition as a state party are the same.

Shiromani Akali Dal (Mann Group) as well as Shiromani Akali Dal (Badal Group) were treated recognised political parties for the State of Punjab provisionally and each of them was allotted reserved symbols under Section 29-A of the Representation of People Act, 1951.

It was for a limited purpose, viz. for contesting the general elections to Lok Sabha and the by-election to the Legislative Assembly and notification in this regard was issued on 19.4.1991. On 20.11.1992 the Election Commission withdrew the recognition as political parties in the State, with respect to both the parties. On 19.4.1993, notification for 4-Jalandhar Parliamentary seat was issued, calling upon to elect a member of Parliament. The Election Commission fixed the following programme vide the aforesaid notification:

- (a) the 26th April, 1993 (Monday, as the last for making nominations);
- (b) the 27th April, 1993 (Tuesday) as the date for the scrutiny of nominations;
- (c) the 29th April, 1993 (Thursday), as the last date for withdrawal of candidatures;
- (d) the 19th May, 1993 (Wednesday) as the date on which the poll shall, if necessary, be taken, and;
- (e) the 24th May, 1993 (Monday) as the date before which the election shall be completed.

In civil writ 4091 of 1993 of Shiromani Akali Dal (Mann Group) on 24.4.1993 notice of motion for 26.4.1993 was issued. Further, the respondents were directed to allot the symbol of 'lion' for the purpose of by-election to the Parliamentary Constituency of Jalandhar. Similarly, in civil writ 4587 of 1993 of Shiromani Akali Dal (Badal Group) notice of motion for 29.4.1993 was issued. It was further observed as under:

"The petitioner may file his nomination papers as a member of recognised party. This order will, however, be subject to the final decision of the writ petition. Orders be given dasti."

On the 29.4.1993, when both the writ petitions came up for preliminary hearing, the Hon. Division Bench observed as follows:

"On the consideration of the matter, we find that in this writ petition substantial questions of law involved which deserve consideration. As such, the writ petition is admitted to Full Bench for 11.5.1993."

So far, the interim prayer for stay of the operation of the impugned order, Hon. Justice Amarjeet Chaudhary, J observed:

"Meanwhile we are not inclined to stay the operation of the impugned order in toto as that would virtually amount to allowing the writ petition. However, petitioner party may contest the election as the political party on any symbol other than 'Lion'. The interim order dated 22.4.1993 passed by this Court is modified to that extent.

It is settled principle of law that once election process is set in motion, the High Court under Article 226 of the Constitution of India, shall not invoke its extraordinary jurisdiction to pass any interim order."

Observation made by brother N. K. Sodhi J, with regard to the interim stay are as under:

"As regards the prayer for interim relief, I do not agree with the order proposed by my learned brother. It is common case of the parties that the petitioner before us did not participate in the last general elections held in February 1992 in the State of Punjab. As at present advised, I am prima facie of the view that the party which did not participate in that last general elections cannot be de-recognised under the provisions of para 6 of the Elections Symbols (Reservation and Allotment) Order, 1968 as the said order does not provide for such a situation. I also do not agree with the contention of the learned Advocate General, Punjab that by staying the operation of the impugned order this Court would be interfering in the election process in regard to Jalandhar Parliamentary Constituency which has already commenced. Accordingly, I direct that operation of the impugned order passed by the respondent shall remain stayed during the pendency of the petition. The interim order dated April 22, 1993 stands superseded."

Similarly, in civil writ 4587 of 1993, the party was allowed to contest the election as a recognised political party in the state but not on a symbol of 'Bow and Arrow'. While Hon. Justice N. K. Sodhi J, as observed in the earlier petition, stayed the operation of the impugned order passed by the Election Commission dated 20.11.1992 and thus modified the orders earlier passed on 22.4.1993 as well as on 26.4.1993.

In view of the above circumstances and on account of difference of opinion with respect to stay regarding operation of the impugned order, the matter has been placed before me, under the orders of Hon. the Chief Justice.

I have heard the learned counsel for the parties at length.

Substantially, as the ground of challenge to the order dated 20.11.1992 withdrawing recognition to the political parties in the state, is that clause 6 of the Election Symbols (Reservation and Allotment) Order, 1968 suffers from insufficiency in dealing with the present situation, i.e. when a recognised political party in a state boycotts the election or does not contest the prior election, could its recognition as a political party in the state can be withdrawn for the purpose of the symbol order; the order dated 20.11.1992 is against the principles of democratic value; and the impugned order was passed in violation of principles of natural justice. Further reference to the *vires* of Order 6 of the symbol order was made.

It is conceded by the learned counsel for the parties that the petitioners to the writ petitions did not contest the last parliamentary or assembly elections held in 1992. They have not got a single member representing their parties either in the Parliamentary or in the Assembly of the State of Punjab. Neither of the parties has secured the requisite number of votes as envisaged by para 6 of the Symbols Order in the last Assembly elections.

Learned counsel for the Election Commission of India refuted the grounds of challenge and in the course of arguments argued that in view of the provisions of Articles 324 read with Article 329 of the Constitution of India, this Court cannot go into the question of legality or illegality of the order of the Election Commission withdrawing the recognition of a political party in the state. The *vires* of the symbols order were upheld by the Supreme Court. The impugned order dated 20.11.1992 being by a quasi-judicial tribunal, no writ petition is maintainable.

In order to support his contentions, the learned counsel for the respondent, relied upon *The Elections Commission of India v Shivaji and Others AIR 1988 S.C.61*; *Jyoti Basu and Others v Debi Ghosal and Others AIR 1982 S.C. 983*; *Rama Kant Panduy v Union of India JT 1993(1) S.C.440*; *N.P. Ponnuswami v The Returning Officer Namakkal Salem Distt. & Others AIR 1952 S.C.64*; *Kanhiya Lal Omar v R.K. Trivedi and Others AIR 1986 S.C. 111*; *Samanath Lal v The Chief Election Commissioner and Others 78 E.L. 1*; *S.T. Muthusami v K Nataraiyan and Others AIR 1988 S.C. 616*; *Nanhoo Mal and Others v Hira Mal and Others, AIR 1975 S.C. 2140*; *Malam Singh v The Collector Sehora, M.P and Others AIR 1971 M.P.195*; *The Republic Party of India*

v The Election Commission of India 54 ELR 141; Mohd. Yunus Saleem v Shivkumar Shastri and Others AIR 1974 S.C. 1218 and Civil writ petition 6390 of 1991 (Gurtej Singh etc. v Union of India etc.) decided on 6.6.1991.

It has become jurisprudentially and precedently an established axiom in election law, it is not an action at law or a suit in equity. These are statutory proceedings, unknown to common law. The Courts possess no common law powers. No general or equitable considerations can be imported into election proceedings or law. The statutory requirement of election law must be strictly observed. It is not an ordinary law between the private parties. Right to contest, right to vote and right to challenge an election are not common law rights. They are creations of the Statute which confers limits on these rights. These rights can be exercised and enforced in accordance with the provisions of law.

The Representation of People Act is a completed Code and election can be challenged in accordance with it. Election as understood and envisaged by the Act, includes all proceedings upto the declaration of result. An Act which is not allowed to be directly carried out should not be allowed to be carried out indirectly.

It may further be observed that when there are specific provisions for doing certain things in a particular manner, then doing it in any other mode or substantial compliance is excluded.

In a democracy, and for that matter in an election, perennial vigilance should be the watchword for all. If appropriate action was not taken at an appropriate time, in accordance with the provisions of election law which is envisaged to be construed strictly, irrespective of immediate or mediate consequences discretionary indulgence cannot be sought later. References may be made to *Nripandra Bahadur Singh v Jai Rah Verma and Others AIR 1977 S.C. 1192*. It is again a sound principle that in public interest the sword of Damocles should not be kept hanging and in election matters orders should attain finality in order to attain certainty, at the earliest.

Courts are debarred from interpreting the election law in their own terms and give effect to in spite of the fact that election law is full of anomalies.

Keeping the above principles in view, the undisputed factual position that emerges is that the petitioner was provisionally recognised and registered as a political party in the state as such. Recognition was withdrawn *vide* order dated 20.11.1992, which fact was in the knowledge of the petitioner. In case of *Shiromani Akali Dal (Badal)*, it averred that no opportunity of hearing was granted, which is not so in the case of *Shiromani Akali Dal (Mann)*. It is accepted that before the order dated 20.11.1992 was passed, an appropriate hearing was granted. There was no challenge to the withdrawal of recognition of the parties right up to 19.4.1993 when the constituency was called upon to elect a member to parliament. Under Symbols Order 1968, recognised national political parties and state political parties have reserved symbols which are notified. Similarly, for others, large number of free symbols are notified. The symbols 'Bow

and Arrow' or 'Lion' do not find mention in the notified symbols, i.e. either in reserved symbols list or in free symbols for the State of Punjab as notified on 7.1.1993. The petitioners are registered unrecognised political parties and are thus entitled to a symbol of their choice in preference to the independent candidates out of the free symbols notified under the Symbols Order, 1968. I may venture to observe that issuance of notification prescribing symbols either for recognised political parties at national or state level or free symbols for others is a step in the conduct of an election which is within the sole purview of the Election Commission as provided by Article 324 of the Constitution of India. Courts cannot in exercise of writ jurisdiction *prima facie*, issue a mandate of allotting particular symbols to the particular parties particularly when it has been notified by the Election Commission of India. Going through the Conduct of Election Rules 1961, the Representation of People Act, 1951 and Articles 324 to 329 of the Constitution, I am of the considered view that, irrespective of the fact that the petitioner failed to assert and show either by a judgement or by anything else, nor I am aware of, to persuade me that he has a vested right enforceable in law to get a particular symbol. The petitioner has no right or interest in a specific symbol reserved for recognised political party in the state whose recognition was withdrawn by the Election Commission *vide* its order dated 20.11.1992, particularly when the order of withdrawal of recognition has come into operation and remained operative for almost four months. Staying the operation of the order would be putting the clock back and granting to the petitioner indirectly what he could not claim directly.

The contention of the learned counsel for the petitioner that no body will suffer if the particular symbol demanded by the petitioner is allotted for the Jalandhar Parliamentary Constituency, is to be noted and rejected. I may observe if the contention is taken to be correct, then counter-contention that the petitioner would also not suffer in any manner if he contests the election on any other symbol. Consideration of merits and demerits, of consequences of allotment of symbol or declining it, is for the Election Commission. Ordinarily, courts would refrain from substituting its view on Election Commission, unless some patent perversity in the order is made out.

The judgements cited by the learned counsel for their respondent are mostly with respect to the effect of Article 324 to 329 of the Constitution, which will be taken note of at the time of final hearing of the writ petition. *Prima facie* interfering or giving any direction directly or indirectly for allotment of symbols would amount to interference in elections which had already commenced with effect from 19. 4. 1993.

I may venture to observe that the order of recognition or withdrawal of recognition of political parties cannot be looked upon in isolation. It is one of the steps in the conduct of election by the Election Commission. The fact that the by-election to 4 Jalandhar Parliamentary Constituency having been notified during the operation of order of de-recognition cannot be considered insignificant.

At the fag end of the arguments, the learned counsel for the petitioner vehemently contended relying upon, *Capt. Chanan Singh Sighu v Election Commission of India and Others 1992(2)*

P.L.R.12; Shri Kihoto Hollohan v Shri Zachillhu and Others J.T.1992 (1) S.C 600; and A.C. Jose v Sivan Pillai and Others AIR 1984 S.C.921, that symbol is an identity and since it already stands established, the petitioner should be granted the said symbols. The stay of the operation of the impugned order would neither affect nor would be prejudicial to any body. In my considered view, merely that a particular act would not act prejudicial to any body *per se*, in itself is not sufficient to grant an injunction or stay. In election law which is a statutory law, equity and prejudice have no place. When the Statute itself has not taken care of a particular situation, ordinarily Courts would not attempt to provide for the same. There is no gain saying that symbol is an identity, yet it was within the jurisdiction of the Election Commission to withdraw the recognition of the parties, if they do not conform to the prerequisites envisaged by para 6 of the Symbols Order. An order of competent jurisdiction is presumed to be just and in accordance with law unless shown to be otherwise. No patent error, either with respect to lack of jurisdiction or impropriety, has been pointed out except that the symbol order has not contemplated the situation of non-participation of registered and recognised political parties in any preceding election which may be an anomaly and it is for the competent authority to remove this anomaly and not for the Courts to legislate. It was observed by the Hon. Supreme Court in catena of authorities that election law is full of anomalies and it for the Legislature to remove them.

In view of the observations made above, I agree with the view taken by brother Amarjeet Chauhary J to the effect that the petitioner in pith and substance can contest the election as a political party by choosing any symbol notified by the Election Commission, with due deference, to the order of brother N. K. Sodhi J taking a contrary view, with which with respect, I do not agree, I may hasten to add that subscribing to the view would amount to interfering in the exercise of jurisdiction of the Election Commission in the conduct of the election, particularly when during the operation of the order of the withdrawal of recognition, the elections have been notified. It may be made clear that the orders dated 22.4.1992 and 26.4.1993 though having already been superseded by the order of Division Bench admitting the petition, shall stand modified in terms of order passed by Hon. Amarjeet Chaudhary J, i.e. petitioner parties in the two writ petitions may contest the election on any symbol other than symbol of 'Lion' or 'Bow and Arrow' which have been withdrawn in view of the impugned order and further not notified as symbols in the notification specifying the symbols.

I may hasten to add that the Election Commission will be at liberty to pass any appropriate order in the interest of the general public or for furtherance of the strengthening of the democratic system.

sd/-M.S.Liberhan
Judge

May 3, 1993

(Judgement of Full Bench consisting of Hon. Mr Justice G. C.Garg dated the 8th September, 1993)

JUDGEMENT**A. L. Bahri, J**

Two writ petitions filed by two political parties (i) Shiromani Akali Dal (Simranjit Singh Mann) (CWP No. 4991 of 1993) and (ii) Shiromani Akali Dal (Badal) (C.W.P. No. 4587 of 1993), were admitted to be heard by the Full Bench, as common substantial questions of law are involved therein.

With respect to grant of interim relief there was a difference of opinion that the matter was referred to another Judge. Now at the final hearing we are not concerned with the issues relating to the grant of interim relief of postponing the elections.

The broad facts are taken from C.W.P. No. 4091 of 1993 filed by Shiromani Akali Dal (Simranjit Singh Mann). The petitioner-party was de-recognised vide order dated 20 November, 1992, passed by Deputy Election Commissioner under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter to be referred to as the 'Symbols Order') with the further direction that the aforesaid party shall not be entitled to the exclusive use of Symbol "Lion" earlier reserved for it in the State of Punjab. The said political party was to be treated as un-recognised till its poll performance is again reviewed at the next general election as and when held. The poll performance of this political party in the last general elections held in February 1992 was held to be nil. In the other writ petition filed by Shiromani Akali Dal (Badal) order to the same effect was passed by the Deputy Election Commissioner on 20 November, 1992. In this case, apart from validity of the aforesaid order being challenged on the common ground, another ground is also put forth that the order was passed in violation of the principles of natural justice as no notice of hearing was given to the petitioner. The petitioner as per allegations was not duly served in the proceedings.

In order to focus the controversial point raised in the petition, reference was made to the background which led the aforesaid political parties to boycott the election, the result of which was considered by the respondent-Election Commissioner as nil performance. These political parties, as per allegations, were participating in the assembly elections in the State of Punjab which were to be held in June, 1991. During the process of electioneering about 30 candidates were killed. At the last moment, when only polling was to take place and the electioneering had officially come to an end, the election was cancelled. The reason for cancellation imputed in the aforesaid petitions was that the Congress Party had come to power at the Centre and since that Party was not participating in the Punjab Elections, the same was postponed and to be held in February 1992. By February 1992 there was no change in the Punjab situation except that the Congress Party had decided to participate in the elections. Since no assurance was given that the elections would be eventually held if the petitioner-parties would participate, the petitioner-parties boycotted the elections hoping that such elections would not be held for their non-participation. In this manner the people of Punjab were treated like dirt in the elections which were to be held

in June, 1991 and which were cancelled by the Centre. Hence, there was no reason for the petitioner political parties to contest the elections scheduled for February 1992, and to be made fools of again. In the elections which were held in February 1992, eighty per cent of the voters abstained from voting. Thus, how could a mandate of 20 per cent outweigh decision of 80 per cent? The total election was rigged a farce and sham. The performance of the political parties, like the petitioners, on the basis of such election was not valid. The provisions of paragraphs 6 and 7 of the Symbol Order were pleaded to be bad and void, being insufficient, as it was not contemplated that such a situation would arise that the political party/parties would abstain from participating in the elections. By postponing the elections fixed in June 1991, the people of Punjab were taken for a ride. In that process several candidates were killed, crores of rupees were spent for nothing.

Written statements have been filed in the two writ petitions aforesaid on behalf of the election Commission of India. The respondent strongly contested the petitions. All the allegations levelled in the petitions have been denied. With respect to the order postponing the election in June, 1991, it was stated that the aforesaid order was challenged in the Apex Court unsuccessfully. The provisions of the Symbol Order of 1968 were held to be valid by the Apex Court. Such provisions were not bad on the ground of insufficiency. The election law, including the provisions of the Symbol Order, 1968, visualised the situation/situations where the political parties once recognised could be re-recognised if they had failed to secure a minimum number of seats or votes, in the general elections as prescribed.

The main question which has been debated on behalf of the petitioners is formulated as under:

"The provisions of the Symbol Order of 1968 did not visualise a situation where one or more recognised political parties would boycott the elections or in other words would not participate in the elections and on that ground alone such political parties could not be de-recognised. There should have been provision in the Symbol Order, 1968 by way of Exception or Proviso that if for certain valid reasons a Political Party or Parties did not participate in the elections, they would not be de-recognised."

Shri Ranjan Lakhanpal and Shri H.S. Mattewal, learned counsel, appearing on behalf of the petitioners, have vehemently argued that a peculiar situation existed when suddenly on the day the elections were to be held in June 1991 that the same were postponed, as a day earlier the Congress Party came into power in the Centre. Since the Congress Party was not participating in the elections in the State of Punjab, the elections were got postponed. In this manner the people of Punjab were cheated. Such were the valid reasons for the petitioners-political parties to boycott the elections subsequently announced. In order to appreciate the legal arguments arising from such submissions it is necessary to refer to the provisions of the Constitution, the Representation of the People Act, 1951, and the Symbol Order of 1968. The Election Commission is constitutional entity. Chapter XV of the Constitution specifically deals with the

subject of elections. Under Article 324, superintendence, direction and control of the preparation of the electoral rolls and the conduct of all elections to Parliament and to the Legislature of the states and also of the offices of President and Vice-President is to vest in an Election Commission. Such Commission is constituted under Article 324 (2). The Chief Election Commission is to act as Chairman of the Election Commission. After consultation with the Election Commission by the President, Regional Commissioners are also appointed to assist the Election Commission. Articles 325 and 326 refer to the preparation of electoral rolls. Under Article 327 the Parliament is empowered to make laws from time to time with respect to all matters relating to or in connection with the elections to either House of the Parliament or either House of Legislature of a State. Such matters on which law can be made include preparation of electoral rolls, the delimitations of constituencies or other matters necessary for securing due constitution of House of Houses. The State Government can also make such laws in connection with the elections to the House or House of the Legislature of the State, under Article 328. Article 329 bars jurisdiction of the Courts in election matters and it reads as under:

"329: Bar to interference by courts in electoral matters:- Notwithstanding anything in this Constitution:-

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;
- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

The aforesaid provisions of the Constitution clearly indicate the powers of the Election Commission in respect of superintendence direction and control over the conduct of elections to the Parliament as well as State Assemblies. In the exercise of such control, the Election Commission is competent to issue orders. Such orders cannot be in contravention of the other provisions of the Constitution or the laws made by the Parliament or the State Legislature. With the two exceptions as aforesaid, the Election Commission has complete control over the conduct of elections. The Representation of the People Act, 1951 is a complete Code with respect to the conduct of the elections to the Parliament as well as the State Assemblies. Section 29-A of this Act provides for registration with the Election Commission of Associations and Bodies as political parties. Such an Association is required to make an application to the Election Commission for its registration as a political party for the purposes of this Act under sub-section (1) thereof. Sub-section (2) contemplates such Associations or Bodies which were in existence at the commencement of Representation of the People (Amendment) Act, 1988 to make such application within 60 days from such commencement and for Associations or Bodies formed thereafter within 30 days next following the date of its formation. Other necessary details which are required to

be mentioned in such applications are given under sub-section (4) and (5) of Section 29-A or such particulars as are otherwise required to be furnished, and taking into consideration the necessary and relevant factors and after giving representatives of the Association a reasonable opportunity of being heard, the Commission is to decide either to register the Association as a political party or not so to register. The decision of the Commission is to be final as provided under sub-section (8) thereof. Part V of the Act deals with the procedure relating to the conduct of the election in detail. A notification is required to be issued by the Election Commission under section 30, fixing dates for nominations etc. which sets the election process in motion. Ultimately, with the notification of declaration of result the election process is completed as required under section 67 of the Act. An election can be challenged on the grounds given and in the manner prescribed under Chapter III of part VI of the Constitution and in no other way. When election is announced under the provisions of the Act as aforesaid that the process of allotment of symbols to the candidates eligible for participation in the election is started. The Election Symbol (Reservation & Allotment) Order, 1968 has been issued by the Election Commission to provide for specification, reservation, choice and allotment of symbol at the election in Parliament and Assembly Elections and also for the recognition of political party in relation thereto and for matters connected therewith. Paragraph 2 (h) of Order of 1968 defines political party to mean an Association or Body of individual citizens registered with the Commission as a political party under section 29-(A) of the Representation of the People Act, 1951. Paragraph 3 provides for additional particulars to be submitted with an application for registration as political party to the Commission. Paragraph 5 provides for the classification of symbols, i.e. either reserved or free. Sub-paragraph (2) of paragraph 5 provides for reserved symbols for recognised political party for exclusive allotment to contesting candidates set up by that party. A free symbol is a symbol other than a reserved symbol. Paragraph 6 provides for classification of political parties and paragraph 7 provides for two categories of recognised political parties. Since argument in the present case relates to paragraphs 6 and 7, they are reproduced below:

"6 Classification of political parties

- (1) -----
- (2) A political party shall be treated as a recognised political party in a State, *if and only if* either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party and *not otherwise*, that is to say:-
- (A) that such party
- (a) has been engaged in political activity for a continuous period of five years and
- (b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned:- either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State; or (ii) at least one member to the Legislative

Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits).

(3) For the removal of doubts it is hereby declared that the condition in clause (A) of (B) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that house or, as the case may be, that Assembly.

"7. Two categories of recognised political parties:- 1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a "National party" throughout the whole of India; and if a political party is treated as a recognised political party in accordance with that paragraph in less than four States, it shall be known as, and shall in the State or States in which it is a recognised political party.

(2) Notwithstanding anything contained in sub-paragraph (1) every political party which immediately before the commencement of this Order is a multi-state party shall, on such commencement, be a National party and shall continue to be so until it ceases to be a National party on the result of any general election held after such commencement.

(3) Notwithstanding anything certain in sub-paragraph (1) every political party which immediately before the commencement of this Order is in a State a recognised political party, other than a multi-State party as aforesaid shall, on such commencement, be a State party in that State and shall continue to be so until it ceases to be a State party in that State on the result of any general election held after such commencement."

Paragraph 8 of the order provides for choice of symbols by candidates of National and State Parties and allotment thereof. Under sub-para (1) a National Party candidate is given the first choice for allotment of symbol reserved for that party and no other symbol. Likewise sub-para (2) gives choice of the candidate set up by the State party for allotment of symbol reserved for that party in the State and no other symbol. Para 12 refers to choice of symbols by other candidates and allotment thereof. Para 18 refers to the powers of the Commissioner to issue instructions and directions. It reads as under:

"18. Power of Commission to issue instructions and directions: The Commission may issue instructions and directions:-

- (a) for the clarification of any of the provisions of this Order:
- (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and
- (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or makes insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections."

Paragraph 6 of the Order aforesaid authorises the Commission to specify as and when necessity arises that the political parties are recognised political parties or unrecognised political parties. A political party, as provided in sub-para (2) is to be treated as a recognised party in the State *if and only if* the fulfilled by that party *and not otherwise*. The necessary qualifications for a political party to get recognition under Clause (A) are three: (i) engagement continuously of such political party for a period of five years; (ii) in the general election in the State to the Legislative Assembly *for the time being in existence and functioning* returned either at least one member to the house of the people for every twenty-five members at that house or any fraction of that number elected from the State or at least one member to the Legislative Assembly of that State for every 30 members or any fraction of that number. The aforesaid conditions as laid down in clause (A) refers to the election of the members of such a political party to the house of the people clause (B) refers to the number of valid votes of all contesting candidates set up by such party at the general elections of Assembly *for the time being in existence and functioning* and is not less than 4 per cent of the total number of valid votes polled by all the candidates contesting the general election in the State. Thus this clause refers to the minimum number of votes required to be secured by candidates of a party securing recognition. Sub-paragraph (3) of para 7 provides that when a recognised political party shall cease to be such. This would show that after general elections are held the process of recognition and de-recognition of political parties has to be started. If such political parties already recognised fulfil the requisites as given in clauses (A) or (B) of para 6, above referred, they would continue to be so recognised and other political parties

fulfilling such requisites would be recognised and such of the recognised political parties who fail to show performance as required under Clause (A) or (B), would stand de-recognised.

The constitutional validity of the provisions of the Symbol Order of 1968 have already been upheld by the Supreme Court in *Kanhiya Lal Omar v R.K. Irivedi and others* AIR 1986 Supreme Court III. Relying upon the earlier decision of the Supreme Court in *Sadiq Ali v Election Commission of India*, AIR 1972 Supreme Court 187, it was held as under:

"The Election Commission is empowered to recognise political parties and to decide disputes arising amongst them or between splinter groups within a political party. It is also empowered to issue the Symbols Order. It could not be said that when the Commission issued the Symbols Order it was not doing so on its own behalf but as to be delegated of some other authority. The power to issue the Symbols Order is comprehended in the power of superintendence, direction and control of elections vested in the Commission."

It was observed that the provisions of the Symbols Order, 1968, are constitutionally valid as the Commission derived its power under Article 324(1) of the Constitution. The aforesaid Article operates in areas left unoccupied by Legislation and the word "superintendence", "direction" and "control" as well as "conduct of all action" are the broadest terms which would include power to make all such provisions. The earlier decisions of the Supreme Court in *Mohinder Singh Gill v Chief Election Commissioner, New Delhi*, AIR 1978 Supreme Court 851 and *A.C. Jose v Sivan Pillai* AIR 1984 Supreme Court 921 were relied upon. With respect to the passing of general orders and specific orders, the Supreme Court in *Kanhiya Lal's case* (supra) observed in para 17 as under:

"It may be a specific or a general order. One has also to remember that the source of power in this case is the Constitution, the highest law of the land, which is the repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be constructed liberally so that the object for which the power is granted is effectively achieved. Viewed from this angle it cannot be said that any of the provisions of the Symbols orders suffers from want of authority on the part of the Commission, which has issued it."

Faced with such a situation with respect to constitutional validity of Symbols Order of 1968 as already determined by the Supreme Court learned counsel for the petitioners with vehemence argued that the Symbols Order should be held to be bad in law on account of vagueness and insufficiency. To repeat the assertions that the situation of the kind as stated above was not contemplated that the political parties would boycott the elections or abstain from participating in the elections, the Court should supplement the provisions of the Symbols Order, 1968. To cover such-like situations where for valid reasons such political parties did not participate in the elections, they should not lose recognition. Though apparently attractive, the argument, is without

any substance. The Supreme Court in *A.K. Roy v Union of India and Another AIR 1982 Supreme Court 710*, observed that provisions of a statute could not be struck down on the ground of vagueness. In that case the provisions of National Security Act were under consideration. It was held as under:

"The concepts 'defence of India', 'security of India security of the State and relation of India with foreign powers, which are mentioned in Section 3 of the Act, and not of any great certainty or definiteness. But in the very nature of things they are difficult to define. Therefore provisions of Section 3 of the Act cannot be struck down on the ground of their vagueness and uncertainty."

With respect to the general principles of interpretation of statutes in *M/s Girdhari Lal & Sons v Balhir Nath Mathur and Others, AIR 1986 Supreme Court 1499*. The following principle was down in para 9 of the judgement:

"The primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted accordingly to their plain meaning. There need be no meek and mute a submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplement, the written word if necessary."

From the ratio of the decisions aforesaid it cannot be laid down that the High Court in the exercise of jurisdiction under Article 226 of the Constitution can exercise function of the legislature by amending or by adding to the statute. Such a function is of the legislature and not of the Courts. The Court can merely supplement a word or two which are considered necessary to uphold the validity of the statute which would promote the object and purpose of an enactment. Apart from that, the Court has no power to travel into the realms of legislative jurisdiction to enact or amend the statute. In this contest, reference may be made to the decision of the Supreme Court in *Asif Hammed and others v State of Jammu and Kashmir and Others, AIR 1989 Supreme Court 1899*. In para 17 of the judgement it was observed:

"Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The

functioning of democracy depends upon the strength and independence of each of its organs."

In paragraph 19 of the judgement it was further observed as under:

"The Constitution does not permit the Court to direct or advise the executive in matters of policy to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

In paragraph 21 of the judgement it was further observed as under:

"The Constitution has laid down elaborate procedure for the legislature to act thereunder. The legislature is supreme in its own sphere under the Constitution. It is solely for the legislature to consider as to when and in respect of what subject matter, the laws are to be enacted. No directions in this regard can be issued to the legislature by the courts."

The stand of the petitioners that this Court should make a provision in the form of "an exception" or a "proviso" to para 6 of the Symbols Order of 1968 to authorise the Election Commission not to de-recognise a political party who had failed to participate in the general elections for valid reasons. Such a course is not permitted by law. The provisions of paras 6 and 7 of the Symbols Order of 1968 are valid as already upheld by the Supreme Court. They are not bad on account of any insufficiency.

The right of a political party to be recognised as such is the creation of the statute as already referred to above. Such right is conferred on fulfilment of the requisites as provided in the statute itself, i.e. as provided under para 6(A) or (B) of the Symbols Order of 1968. In other words, recognition or de-recognition of a political party has to be within the four corners of limits as prescribed by the enactment. In this respect, reference may be made to the decision of the Supreme Court in *N.P. Ponnuswami v The Returning Officer, Namakhal Constituency AIR 1952 Supreme Court 64*. Commenting upon the right to vote or stand as a candidate for election, it was observed that it was not a civil right but a creature of statute or special law and must be subject to the limitations imposed by it. In para 18 of the judgement it was further observed as under:

"Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new an unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."

The very fact that minimum standard of requisites was prescribed in para 6(A) or (B) of the Symbols Order of 1963 is indicative that if a recognised political party would not secure any vote or any seat in the elections, it would be de-recognised.

It is, neither for the Commission nor for the Court for that purpose, necessary to go into or determine the genuineness, reasonableness or sufficiency of the reasons of such a recognised political party in not getting any member elected or any vote secured or in other words the performance of such political party is not up to the requisite as provided under para 6(A) or (B) of the Symbols Order. The Commission was merely to take into consideration the result of the general elections of the assembly in existence and functioning to determine whether any political party was to be recognised or de-recognised. That was a matter of mathematical calculation. In such a situation the element of discretion was altogether absent. In the facts of the present case, there was no option for the Election Commission but to pass orders of de-recognition of the two petitioners-political parties on the ground that they were not fulfilling the requisites in the matter of performance shown in the general elections held.

Learned counsel for the petitioners further stressed that the provision in para 6 of the Symbols Order, 1968, that performance in the general elections only was to be seen for the purposes of recognition of political parties is arbitrary and unsound. According to them a democratic process continues throughout even before and after the elections. The performance of the petitioner-political parties in the elections held just before the general elections in dispute either for the State or in the Parliament, could be taken into consideration. This contention is devoid of merit and is not supported by law. Reading of para 6(A) and (B) reproduced above makes it abundantly clear that it is the performance of the general elections of the Assembly existing and functioning that is required to be taken into consideration for the purposes of recognition of political parties. The words "*if and only if*" and "*not otherwise*" in para 6 aforesaid leaves no manner of doubt that the intention of the Authority framing the Order was that performance of the political parties in the general elections only is to be seen. Even otherwise, this provision does not give the impression of arbitrariness or unsoundness. It would be otherwise unrealistic if after every election, general or by, such an exercise were done. The recognised parties would remain in a situation of turmoil and uncertainty if after every few months or years their status of recognised political party is to be subjected to revision. The provision as it exists allows a reasonable time between general elections for the political party to participate in the political activities of the State and to show or prove its worth in the next coming general elections.

No injustice, much less grave, is caused to the petitioners that it should call for interference by the High Court in the exercise of jurisdiction under Article 226 of the Constitution in such like matters. No judicial process is required to be taken by the Election Commission, as already stated above, to arrive at the conclusion with respect to matters mentioned in para 6(A) and (B) of the Symbols Order of 1968. No doubt the ground being pressed in these petitions is not one of such grounds that the election could be set aside and it cannot, strictly speaking, be said that an alternative remedy of election petition would be available to the defeated candidates or the

petitioner-political parties. The grounds on which an election can be set aside are given in Section 100 of the Representation of the People Act. Be that as it may, no case for interference is made out under Article 226 of the Constitution as the petitioners political parties are not debarred from indulging in political activities and participating in the elections, general or others, Parliament or Legislative Assemblies or other democratic institutions.

There is another angle of the case which needs to be noticed. Section 79(d) of the Representation of the People Act defines electoral right to mean the right of a person to stand or not to stand, or to withdraw or not to withdraw from being a candidate, or to vote or refrain from voting at any election. Thus nobody can be compelled to vote or not to vote. Likewise, nobody can be compelled to contest or not to contest any election. This is entirely the sweet will and discretion of the person concerned as to whether he is to contest any election or not. Likewise, it is entirely for the political party concerned to decide to participate or not to participate in any election. Such decisions cannot be subject matter of scrutiny by the Courts to either justify the action or inaction or otherwise. Validity of an election is not dependent upon such action or inactions. The Supreme Court in *The Election Commission of India v Shivaji and Others*, AIR 1983 Supreme Court 61, in para 6 of the judgement observed as under:

"In view of the non obstante clause contained in Art. 329 of the Constitution the power of the High Court to entertain a petition questioning an election on whatever grounds under Art 226 of the Constitution is taken away."

The decision in *N.P. Ponnuswami's case* (supra) was referred to therein.

Even on de-recognition of a political party, no fetters are placed on its rights to pursue political activities, including participation in the election. The only effect of de-recognition is that in the matter of choice of symbols in the future election, would be out of un-reserved symbols. In other words, symbols reserved for recognised political parties would not be available after its de-recognition. However, such political parties as unrecognised political parties could make a fresh choice of symbols and candidates of such political parties would be entitled to allotment of such symbols. The other candidates, of course, would have a choice from the remaining other symbols. The right of the candidate election is not thus taken away by de-recognition of a political party.

To conclude, the Symbols Order of 1968 is comprehensive to cover situations like the one projected in the present cast, i.e. of boycotting the elections as such cases would be of performance resulting in nil result and such political parties would be liable to be de-recognised under para 6 of the Symbols Order, 1968. No amendment of the aforesaid order is required and no direction can be given to the Election Commission to amend the same. The ground on which a political party decides to boycott or not to participate in the elections is not justifiable either before the Election Commission or before this Court, either in any election petition or in a petition under Articles 226 and 227 of the Constitution. It is entirely for the person concerned or the political party concerned to vote or participate in the election. No compulsion is attached thereto

and none can be attached. Non-participation by the political parties, for whatsoever reason maybe, would earn the disqualification of de-regulation. The impugned orders de-recognising the petitioners-political parties in the two cases referred to above are valid and in accordance with law.

In the petition filed by Shriomani Alkali Dal (Badal Group) another question has been debated that the impugned order passed by the Election Commission is void and is liable to be quashed on the ground of non-compliance of the principles of natural justice in as far as the petitioner was not duly served with the notice before the impugned order was passed. Learned counsel for the petitioner has stated that such an order passed without notice to the petitioner would be *void ab initio* and in support of this contention reference has been made to the observation of Full Bench of this Court in *Parkash Singh Badal and Others v Union of India and Others, AIR 1987 Punjab & Haryana 263*. This case related to the split of the Alkali Dal Legislature party. A breakaway Alkali Dal Legislature party was formed which was recognised by the Speaker. His successor took up the matter at the instance of the original Alkali Dal Party for disqualifying members of the splinter group of party. It is in this context that in para 40 of the judgement it was observed as under:

"As before passing the order, recognising the breakaway group as separate party, neither the political party nor any other person interested in the matter was heard, it would bind none and in that sense it can be said to be an order void *ab initio*."

During arguments it was suggested that two courses could be open, if it is found that the petitioner was not served or not properly served before the impugned order was passed; one was to relegate the petitioner to the remedy of getting the *ex parte* order set aside from the Authority concerned and the second to set aside the order on that ground by this Court on proof of the ground as stated above and to direct the Election Commission to proceed to pass an appropriate order on merits according to law. Both these courses are not considered appropriate in the facts and circumstances of the case. Since two cases were referred to the Full Bench for a decision on the disputed question as already referred to above, this court was expected to answer the same and having answered as above we are of the opinion that no useful purpose would be served either by sending the case back to the Election Commission with the direction to pass an appropriate order in accordance with law after hearing the petitioner or without setting aside the same to direct the petitioner to directly approach the Election Commission for getting set aside the *ex parte* order. After decision of the question of law by this Court, the Election Commission has to follow the same and after service of the parties to pass the order in accordance therewith. Thus, no further comment is made with respect to the disputed question of fact on service or proper service of the petitioner before the Election Commission.

For the reasons recorded above both the writ petitions are dismissed. No order as to costs.

sd/- A.L.Bahri
Judge

sd/- Ashok Bhan
Judge

sd/- G.C.Garg
Judge

September 8, 1993

Words:- 12350

Costs:- 31.00

Copies:- - 55

Ty.By: Harinder

Ex.By:

True Copy

Supervisor (Copy Branch)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT SIDE

C. P. NO. 4587 OF 1993

1. The Shiromani Alkali Dal (Badal), through its President, Sh. Parkash Singh Bada, resident of 156, Sector 9-A, Chandigarh
2. Sh. Sukhdev Sing Dhindsa, Secretary General, Shiromani Alkali Dal (Badal) r/o Kothi No. 504, Sector 11-B, Chandigarh

Petitioners

versus

Election Commission of India, through its Secretary, Nirwachan Sadan, New Delhi,

Respondent

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that:

- (i) Need for advance notices may please be dispensed with;
- (ii) Operation of the impugned order whereby petitioner party has been de-recognised may please be stayed during the pendency of this petition;

OR

in the alternative for the present;

- (iii) It be entitled to the conclusive use of the Symbol "Bow & Arrow" earlier reserved for it in the State of Punjab;
- (iv) Need for certified copy of Annexure may also be dispensed with;
- v) Issue writ of certiorari or any other writ, order or direction as this Hon. Court may deem fit quashing the impugned order Annexure P/1 whereby the petitioner party has been de-recognised and paras 6 & 7 of the Election Symbols (Reservation and Allotment Order, 1968 as ultra vires of the Constitution of India.
- (vi) Issue any other order or direction as deemed fit in the circumstances of the case;
- (vii) Service of advance notices on the respondents be dispensed with;
- (viii) Costs of the writ petition be also awarded to the petitioners.

And for this, the petitioner as duty bound shall ever pray.

Dated the 8th September, 1993

PRESENT

THE HON. MR JUSTICE A. L. BAHRI
THE HON. MR JUSTICE ASHOK BHAN
THE HON. MR JUSTICE C. C. CARG

For the petitioners: Mr H.S. Mathewal, Sr. Advocate with Mr B.S.Virk, A Advocate
For the respondent: Mr. G.K.Chatrath, S.Adv.with Sarvshri vibrant Charma, Anu Chatrath, Alka Chatrath, Sushant Maini and Adarsh Malik, Advocates.

ORDER

For orders see C.W.P. No 4091 of 1993

September 8, 1993

Words: 500

Costs: 1-25

Copies: 12

Ty.By: D. S. Tiwana

Ex.By

Sd/-A.L. Bahri

Judge

Sd/-Ashok Bhan

Judge

Sd/- G.C. Carge

Judge

True Copy

Supervisor Copy Br.
