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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 13.05.2024**

+ W.P.(C) 6691/2024 & CM APPL.27902/2024

(74) UMED SINGH Petitioner

Through: Mr. Tanuj Jaglan and Mr. Mohit Siwach,
Advs.

versus

ELECTION COMMISSION OF INDIA Respondent

Through: Mr. Sidhant Kumar, Mr. Om Batra and Mr.
Sarhak Sareen, Advs. for ECI.
Mr. Ripin Sood, Adv. for R/GNCTD
(through v/c)
Mr. Amit Sharma, Adv. for R-3/DJB
(through v/c).

+ W.P.(C) 6724/2024 & CM APPL.27982/2024 (for directions)

(76) ANIL KUMAR TRIPATHI Petitioner

Through: Mr. Tanuj Jaglan and Mr. Mohit Siwach,
Adv.

versus

ELECTION COMMISSION OF INDIA Respondent

Through: Mr. Sidhant Kumar, Mr. Om Batra and Mr.
Sarhak Sareen, Advs. for ECI.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J.(Oral)

1. The present petitions have been filed by the petitioners impugning the letter and list dated 27.03.2024 issued by the respondent – Election Commission of India ('ECI'). It is further sought that the petitioners be



allowed to contest the ongoing Lok Sabha Election as party candidate/s of the Akhil Bharat Hindu Mahasabha ('**ABHM**'), a registered unrecognized political party, on its symbol and the respondent be directed to issue symbol and accept Form A and Form B from the petitioner as a candidate of the ABHM.

2. The petitioner in W.P. (C) 6691/2024 is stated to be the member of the ABHM since 27.11.2019 and appointed as President of the Haryana State unit of ABHM by the National President of the ABHM, namely, Sushree Rajyashree Chaudhuri whereas petitioner in W.P. (C) 6724/2024 is stated to be the member of the ABHM since 06.02.2003. The petitioners intend to contest the ongoing Lok Sabha Election as a party candidate of ABHM on its symbol.

3. As per Clause 13 of the Election Symbols (Reservation and Allotment) Order, 1968 read with Form A and Form B of the Symbols Order, in order to contest elections on behalf of a political party on its reserved symbol, the political party is required to:

- a. Furnish to the Returning Officer and Chief Electoral Officer in Form A signed by the President/Secretary of the party the name and specimen signature of such person authorised to intimate the names of the candidates proposed to be set up by the party at the election.
- b. Send a notice to the Returning Officer in writing in Form B signed by the person authorized by the party in its Form A certifying that a particular candidate is contesting elections on behalf of the party.



4. Vide the impugned letter and list dated 27.03.2024, the ECI has directed the Chief Electoral Officers of all the States and Union Territories not to accept Form A and Form B from any person on behalf of certain registered unrecognized political party mentioned in the list enclosed, which includes ABHM at serial no.1. Disputes with respect to elections of office bearers of ABHM are stated to be pending since 22.02.2019 and there is stated to be no approved list of office bearers of ABHM. The said letter dated 27.03.2024 reads as under:

*“To
The Chief Electoral Officers of
All States and Union Territories.*

*Subject: List of parties having Dispute w.r.t election office bearers
– reg.*

Sir/Madam

I am directed to forward herewith a list of registered unrecognized political parties (RUPPs) having dispute w.r.t election office bearers. In this regard, you are informed that there is no approved list of office bearers of these parties as per the records of the Commission, hence Form-A and Form-B etc. cannot be accepted from anyone on behalf of these parties. This may be brought to the notice of all Returning Officers and Officers concerned for strict compliance

2. Kindly acknowledge receipt of this letter.

*(Manish Kumar)
Under Secretary”*

5. A Division Bench of this court in ***Swami Chakrapani v. Election Commission of India***¹, has noted the *inter se* disputes in ABHM inasmuch as, several rival persons were claiming to be party president. It was held that such disputes have to be resolved in a civil suit and that ECI does not have

¹ 2021 SCC OnLine Del 4432



power to decide such disputes pertaining to registered unrecognized political party. It was held as under:

“10. Analysis and Findings

Having heard learned Senior Counsel appearing on behalf of the Appellant and learned counsels for ECI and interveners respectively, we see no reason to entertain the present appeal for the following facts and reasons:—

(i) The claim by the Appellant that he is the National President of ABHM is in dispute. Communication dated 17.03.2020 sent by ECI to the Appellant reveals that there are as many as five other groups who are claiming to be genuinely elected party President.

(ii) From the record, it is evident that in the earlier round of litigation, Appellant had filed a writ petition before this Court being W.P. (C) No. 704/2011, which was allowed by the learned Single Judge vide judgment dated 02.05.2011, setting aside the letter dated 14.01.2011 issued by ECI withdrawing the recognition of the Appellant and restoring the recognition. However, on an appeal filed by a third party, being LPA No. 522/2011, the Division Bench of this Court set aside the order of the learned Single Judge, vide judgment dated 16.03.2012. The observations of the Division Bench are extremely relevant and have a direct bearing on the issue raised by the Appellant in this appeal. Relevant paras of the judgment of the Division Bench are as follows:—

“8. It is this ambivalent attitude of respondent No. 1 ECI which has weighed with the learned Single Judge in quashing the letter dated 14.01.2011. We may however notice that even the learned Single Judge has not returned any finding as to the correctness of the decision dated 11.11.2010 of respondent No. 1 ECI recognizing respondent No. 2 Swami Chakrapani as President/office bearer of ABHM. We are of the view that in the face of disputes since the year 2004, the recognition in the year 2010 of respondent No. 2 Swami Chakrapani as the President/office bearer, notwithstanding the dismissal of the civil suit for non prosecution, could not have been accorded without it being established before the respondent No. 1 ECI, i) as to who all were the members of ABHM; ii) whether the elections as prescribed in the Rules and Regulations of ABHM had been held or not; and iii) whether the respondent No. 2 Swami Chakrapani had so been elected as the office bearer/President. There was no such material before the respondent No. 1 ECI. It cannot also be lost sight of that even as on 11.11.2010, the respondent No. 1 ECI was continuing to receive opposition to the claims of respondent No. 2 Swami Chakrapani. The said



opposition however appears to have been disregarded by the respondent No. 1 ECI only for the reason of being without any substantiating documents. However when respondent No. 1 ECI continued to receive objections to the claim of respondent No. 2 Swami Chakrapani, it undoubtedly reviewed its decision dated 11.11.2010.

9. We differ from the opinion of the learned Single Judge that the respondent No. 1 ECI could not have so reviewed its decision without an order of a competent Court of law. That would have been the position had the recognition earlier accorded to the respondent No. 2 Swami Chakrapani been with the consent of all concerned or had the communication of his election as President/office bearer been a unanimous one. It could then have been said that subsequent objection thereto was an afterthought and ECI would then have been justified in refusing to revoke the recognition without Court order of the earlier unanimous intimation being no longer valid. However the respondent No. 1 ECI on 14.01.2011 appears to have felt that its earlier decision dated 11.11.2010 was erroneous. The learned Single judge has held that the respondent no. 1 ECI could not have so corrected its decision. We are however of the view that this Court in exercise of powers of judicial review ought not to interfere with a decision of a body such as the respondent No. 1 ECI which decision is otherwise found to be correct in law. Such a decision cannot be quashed/set aside merely for the reason that earlier an erroneous decision had been taken. We are further of the view that in the face of such challenges, it is for the person who is wanting to exercise rights as President/office bearer to seek a declaration to such office and he cannot be allowed to hold office or to exercise powers thereof merely for the reason of the others having not approached the Court of law. We may however clarify that we have so concluded in view of there being no unequivocal document before us of the election of the respondent No. 2 Swami Chakrapani as office bearer of ABHM in accordance with its constitution. Rather what is before us is, material to show that there have been disputes since the year 2004 as to the internal management of ABHM and which do not appear to have been resolved at any point of time. Merely because the persons who had filed the suit chose not to pursue the same cannot confer any legitimacy to the respondent No. 2 Swami Chakrapani when a large number of other persons concerned with ABHM are continuing to dispute the claim of respondent No. 2 Swami Chakrapani. We have also perused the written statement filed by the respondent No. 2 Swami Chakrapani in the suit aforesaid and from which also we are unable to cull out any clarity



on the matter. Moreover the said suit was filed in the year 2007 while what was for consideration in the year 2010 was the election of the respondent No. 2 for the period 2010-12.

10. ABHM as aforesaid is not a recognized political party. Though the term “recognized political party” is not defined in the Act but the Explanation to Section 52 thereof provides that “recognized political party” means a political party recognized by the Election Commission under the Election Symbols (Reservation and Allotment) Order, 1968. The said Order vide Clause 15 thereof empowers the ECI, when there are rival sections or groups of a political party each of whom claims to be that party to after taking into account all the available facts and circumstances and hearing representatives of the sections or groups, decide which of such rival section or group is that recognized political party; such decision of ECI is made binding on all such rival sections or groups. However the said Clause does not apply to unrecognized political parties as ABHM is. ECI was/is thus not empowered to in the face of rival claims of respondent no. 2 Swami Chakrapani and others take any decision as to whose claim was correct. That being the position, ECI could not have on 11.11.2010 recognized respondent no. 2 Swami Chakrapani as the President/office bearer of ABHM. We are thus of the view that the decision dated 11.11.2010 of ECI of preferring the claim of respondent no. 2 Swami Chakrapani over that of others was clearly beyond the powers/jurisdiction of ECI. Axiomatically the corrective action of ECI on 14.01.2011 is found to be in accordance with law and thus cannot be faulted with. We may mention that the Supreme Court in Janata Dal (Samajwadi) v. Election Commission of India (1996) 1 SCC 235 has held the ECI empowered to rescind its orders even in the absence of any specific power therefor. It was held that Section 21 of the General Clauses Act, 1897 applies. ECI was thus empowered to, on 14.01.2011 rescind the earlier order dated 11.11.2010 which as aforesaid was beyond its powers/jurisdiction.

11. We are further of the view that in the absence of ECI being empowered to decide such inter se disputes of an unrecognized political party, the decision dated 11.11.2010 was an administrative decision, not taken in exercise of any quasi judicial powers. The Supreme Court in R.R. Verma v. UOI (1980) 3 SCC 402, has held that decisions in administrative matters cannot be hidebound by the rules and restrictions of judicial procedure.”

(Emphasis Supplied)



(iii) It is again a matter of record that against the aforesaid decision of the Division Bench, Appellant preferred a Review Petition being No. 403/2012, which was dismissed by the Division Bench, vide order dated 13.07.2012 and the relevant part of the same reads as under:—

“2. In our opinion we have nowhere stated as to whether it is Swami Chakrapani or somebody else who is the President of the ABHM. The only question of law which is decided is to the effect that since ABHM is an unrecognized political party any internal dispute in the said party is not to be decided by the Election Commission of India (ECI). This position is made abundantly clear in para 11 of the judgement. If Swami Chakrapani claims that he continues to be the President and further faction within the said political party which is disputed the said claim of Shri Chakrapani i.e. the inter se internal disputes has to be resolved by Civil Court. Because of this reason we made it clear that if Swami Chakrapani claims himself to be the President it is for him to seek a declaration to this effect. However in case Swami Chakrapani feels that his claim to the Presidentship of ABHM is beyond the pale, it may be for the faction to approach Court of Law.

3. We reiterate that in so far as the subject matter of writ petition or LPA is concerned, the same was limited to the powers of the ECI where it was held that ECI did not have any power to exercise any quasi-judicial powers and decide these issues pertaining to unrecognized political party. In support of this conclusion we had referred the judgment of Supreme Court in R.R. Verma v. UOI (1980) 3 SCC 402 wherein it is held that decision in administrative matters cannot be hidebound by the rules and restrictions of judicial procedure.”

(Emphasis Supplied)

(iv) Challenge to the orders of the Division Bench was unsuccessful and the SLP was dismissed in limine on 06.05.2013. Reading of the order of the Division Bench leads to an inevitable conclusion that the only remedy available to the Appellant is to seek a declaration in a civil suit with regard to his claim to be a National President of ABHM. The Division Bench clearly observed that it was beyond the powers and jurisdiction of ECI to recognize the Appellant as the President, more so, in view of the inter se disputes, where several rival persons were claiming to be the party President. It was also observed that notwithstanding the dismissal of the civil suit for non-prosecution, filed by one of the rival groups, Appellant could not be recognized as the National President, in the absence of any material to show that he was the elected President and especially in face of the material on record, showing internal disputes in



the Management since 2004. The Division Bench also held that in case any person wanted to exercise his or her rights as President/office bearer, it was for him to seek a declaration to that effect and he cannot be allowed to hold office merely for the reason that the others have not approached the Court of Law.

(v) It may also be useful at this stage to allude to the order of the Division Bench dated 13.07.2012, passed in the Review Petition, wherein it was held that the inter se disputes have to be resolved in a civil suit and if the Appellant claimed himself to be the President, it was for him to seek a declaration to that effect. It was reiterated that the ECI does not have the power to exercise any quasi-judicial powers and decide the inter se disputes pertaining to unrecognized political party.

(vi) The learned Single Judge in the impugned judgment has taken note of the orders passed by the Division Bench and noted that despite the said orders, the Appellant has yet again raised the same contentions. Having so observed, the learned Single Judge, in our view, rightly rejected the plea raised by the Appellant on the ground that once the said plea was rejected by the Division Bench and the order was upheld by Hon'ble the Supreme Court, the only remedy available to the Appellant was to seek a declaration, in case he desires to stake a claim to the presidentship of ABHM.

(vii) Moreover, as brought out by the Interveners, in the applications being CM Appls.34412/2020 and 11804/2021, there are two suits presently pending bearing Civil Suit No. 344/2020 and Civil Suit No. 147/2021 before the Trial Courts at Delhi and the inter se disputes between different groups are yet to be resolved. It is also pointed out that that two criminal complaints, bearing Nos. 18831/2016 and 20918/2016 which have a nexus with the present issue are also pending.

(viii) In view of the aforesaid aspects of the matter and the judgments aforementioned, this Court disagrees with the Appellant that his claim of being the National President is undisputed and that there are no rival claims to the said position. As held by the Division Bench, it is not for the ECI to resolve the said disputes and in case the Appellant desires, he is at liberty to take recourse to filing a declaratory suit or any other appropriate civil remedy to claim the National presidentship of ABHM. Thus, in our view, no direction can be issued to the ECI by this Court to recognize the Appellant as a National President of ABHM, in the wake of disputes pending in that regard and no infirmity can be found by the impugned judgment passed by the learned Single Judge. (ix) Aforesaid aspects of the matter have been properly appreciated by the learned Single Judge while deciding W.P. (C) No. 5608/2020 by judgment and



order dated 10.09.2020. No error has been committed by learned Single Judge while deciding the writ petition. We are in full agreement with the reasoning given by the learned Single Judge in the judgment dated 10.09.2020 rendered in W.P.(C) No. 5608/2020.

(emphasis supplied in original)

6. Pursuant to aforesaid judgment of the Division Bench, two civil suits bearing Nos. 147/2021 and 224/2022 are stated to have been instituted before the learned Additional District Judge, Patiala House Court, New Delhi. Civil suit bearing No. 147/2021 has been instituted by Sushree Rajyashree Chaudhuri, whereas, civil suit bearing No. 224/2022 has been instituted by Swami Chakrapani Ji Maharaj, for declaring themselves as the National President of the ABHM. In the said suits, vide order dated 21.03.2024, the applications under Order 39 Rule 1 & 2 of Code of Civil Procedure, 1908 filed by the plaintiffs therein, seeking recognition/to act as lawful office bearer of ABHM, stand dismissed. The trial court held that Swami Chakrapani Ji Maharaj has been unable to make out a *prima facie* case. The Court has also rejected the claim that Sushree Rajyashree Chaudhuri was elected as a President of ABHM, being the weakest one.
7. The petitioners rely on para 10(III) of the aforesaid order dated 21.03.2024, which reads as under:

“10....

III) Election Commission of India is free to determine the grant of symbols/form A and B in accordance with its previous precedents or as deem fit. In the present case no direction has been passed to Election Commission of India from this Court. The individual components or faction can approach Election Commission of India and Election Commission of India can take any decision as deemed fit.”

8. Learned counsel for the petitioners submits that the impugned letter dated 27.03.2024 has been issued by the respondent in utter violation of



aforesaid direction of the trial court as well as in utter violation of previous precedents of the ECI. It is submitted that in past, since 2020, ECI has time and again allowed the National President of the ABHM namely, Ms. Sushree Rajyashree Chaudhuri to sign Form A, and the person authorised by her to sign Form B. It is submitted that the letter dated 27.03.2024 suffers from non-application of mind and is not a reasoned order thereby violating the well-entrenched principles of natural justice. It is further submitted that ECI is estopped from objecting to the petitioners' contesting the Lok Sabha elections as a candidate of the ABHM by its own act and conduct.

9. *Per contra*, learned counsel for the respondent, who appears on advance notice, submits that evidently there are unresolved disputes as regards the office bearers of ABHM. It is submitted that this court in ***Chandra Prakash Kaushik v. Election Commission of India***², ***Swami Chakrapani*** (supra) has noted that disputes have been persisting in ABHM since at least 2009. It is submitted that there are no recognised office bearers of ABHM given the long-standing internal disputes in the party. The order dated 21.03.2024 passed by the trial court, it is submitted, makes it clear that none of the rival sections could establish a *prima facie* case claiming to be office bearer of ABHM. Further, the said order noted in context of Ms. Sushree Rajyashree Chaudhuri's claim, that the same is without merit. Consequently, it is not possible for the ECI to accept Form A and Form B on behalf of ABHM. It is also submitted that it is not for the ECI to adjudicate the internal disputes of a registered unrecognized political party like ABHM. In this regard, reliance has been placed on ***Chandra Prakash Kaushik***

²2012 SCC OnLine Del 1617 : (2012) 129 DRJ 265 (DB)



(supra), *Swami Chakrapani* (supra) and *Janata Party v. Election Commission of India*³. Lastly, it is submitted that the present writ petitions should not be entertained at this stage in view of the bar and as per under Article 329(b) of the Constitution of India. In this regard, reliance has been placed on order dated 25.06.2019 passed by the Supreme Court in W.P. (C) 774/2019 titled as '*Paresh Dhanani v. Election Commission of India*'. It is submitted that assuming the petitioners file their nomination papers on behalf of ABHM which is not accepted, the only remedy available to the petitioner is, filing of an election petition under Section 80 of the Representation of the People Act, 1951.

10. I have perused the record and considered the submissions of the parties; I find no merit in the submissions advanced by learned counsel for the petitioners.

11. The aforesaid narration of facts shows that, admittedly, internal disputes exist in ABHM as regards the office bearers of the ABHM. The said disputes are subject matter of civil suits pending before the learned ADJ in Patiala House Court. In the said suits, Swami Chakrapani Ji Maharaj, Ms. Sushree Rajya Shri Chaudhuri and Munna Kumar Sharma (all three) claim to be National President of ABHM. The interlocutory applications filed in the said suits by the plaintiffs therein claiming themselves to be the officer bearer/s of ABHM, stand dismissed. Vide order dated 21.03.2024, the learned ADJ has held that the facts of the matter are such that the best course of action is to direct the parties to lead evidence after framing of issues.

³2024 SCC OnLine Del 2642



Therefore, the issue as to who are the officer bearers of ABHM is still at large.

12. Further, in terms of the settled law⁴, ECI cannot adjudicate the inter se disputes pending between rival sections or groups of a “unrecognized political party”. In *Janata Party* (supra), this Court has noted that unlike Clause 15 of the Symbols Order, 1968, which empowers ECI to decide disputes between rival sections or groups of a “recognised political party” each of whom claims to be that party, there is no corresponding provision that empowers ECI to decide disputes between rival sections or groups of a “unrecognized political party”, like ABHM.

13. In the said conspectus, ECI cannot be directed to accept Form A (which is to be signed by the President/ Secretary of the concerned party) and Form B (which is to be signed by the person who has been authorised in Form A) from persons on behalf of ABHM. Therefore, the impugned letter and list dated 27.03.2024 does not suffer from arbitrariness or non-application of mind.

14. Certain past incidents where the ECI has accepted Form A and Form B from persons on behalf of ABHM cannot advance the case of the petitioners. It is well settled that Article 14 of the Constitution of India does not contemplate negative equality. If a person possesses a right, they must receive equal treatment. However, if the right is absent, they cannot demand equal treatment since the right itself does not exist. Reference in this regard may be made to *State of Odisha v. Anup Kumar Senapati*.⁵

⁴ See: *Chandra Prakash Kaushik* (supra), *Swami Chakrapani* (supra) and *Janata Party* (supra).

⁵ (2019) 19 SCC 626, paras 39 to 47.



15. Thus, the past acts of the ECI do not confer any legal right on the petitioners to get the same benefit in derogation of the legal position. In fact, learned counsel for the ECI submits that an inquiry will be initiated to ascertain as to how Form A and Form B (as prescribed under Election Symbols Order, 1968) came to be accepted on behalf of ABHM on previous occasions. It is candidly submitted that the ECI was remiss in doing so. The same, however, cannot justify perpetuation of the same mistake.

16. Also, since the election process has been set in motion and is at an advanced stage, this court is loathe to interfere with the same, at this stage in proceedings under Article 226 of Constitution of India. In *Election Commission of India v. Ashok Kumar*⁶, the Supreme Court has observed that “the courts must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar under Article 329(b), but brought to it during the pendency of the election proceedings. The court must guard against any attempt to retard, interrupt, protract or stall the election proceedings. Care has to be taken to see that there is no attempt to utilize the court’s indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end.”

17. In the present case, the petitioners did not approach the court at the earliest. The impugned letter is dated 27.03.2024, whereas the present petitions have been filed on 08.05.2024 and which came to be listed before this court only on 10.05.2024. By the said date, the last date for filing nominations in six out the seven phases of the 18th Lok Sabha Elections was already over and the notification for the seventh phase of the elections had

⁶ (2000) 8 SCC 216



already been issued. The last date for filing nominations in the seventh phase is also ending tomorrow i.e. 14.05.2024. It is too late in the day for this court to interfere in the election process which is well under way.

18. In view of the aforesaid, the prayers made in the petitions cannot be acceded to. Accordingly, the present petitions, along with pending applications, are dismissed.

SACHIN DATTA, J

MAY 13, 2024/hg