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SWATANTRA PARTY NATIONAL HEADQUARTERS

~~26, HALLS ROAD, EGMORE, MADRAS-600 008.~~

10-A, Flowers Road, Madras.84.

26th April 1975.

Reflected in N.H. file
CS

Sri Girish Munshi,
General Secretary, All India Swatantra party,
Bharatiya Vidya Bhavan,
K.M.Munshi Marg,
Chowpati, Bombay.7.

Dear Sri Munshiji,

Mr.Doraiswami Nader of Virudhunagar has sent a reply to my letter dated 22nd and a copy of it is enclosed herewith. Please give due consideration to the points he made made and let me know your decision at an early date and oblige.

The Election Commission has filed a Counter and I am sending herewith a copy of the same. Please go through the same and send me a detailed draft reply and oblige.

I am meeting our senior Advocate, Mr.N.C.Raghavachariar tonight or tomorrow for preliminary discussion and preparation of a reply. I hope yourself and your friends were able to meet our President, Mr.Sundaram at Bombay and have a fruitful discussion.

Thanking you and with my regards,

Yours truly,

V.S. Srikumar
(V.S.Srikumar)
Jt.Secretary.

Enc: Copy of letter of Mr.Doraiswami Nader
" of Counter filed by Election
Commission.

c.c: Mr.G.K.Sundaram, President, All India Swatantra Party.

Copy of letter of Mr.A.Doraiswami Nadar
of Virudhunagar.

25-4-1975.

Sri V.S.Srikumar,
Jt.Secretary,Swatantra party,
National Headquarters,Madras.

Dear Sir,

Thank you for your letter dated 22nd instant which reached me just now 3 p.m.

I had clearly stated in my previous letter "The validity of the Electoral Roll published as at present must be challenged" You have some misunderstanding about the delimitation of constituencies which I know it was done on 1971 census. But the quarrel is with the Electoral roll.

The Indian Express Jan.24,1975 published the following:--

Opposition deplores crash plan to revise Poll Rolls.

Leaders of the opposition parties on Wednesday alleged that the Election Commission's crash programme to revise the electoral rolls was part of a scheme to deny young voters "who are drifting away from the ruling party" their right of franchise.

Mr.Kamaraj reiterated his demand for preparation of a fresh voters' list for the coming elections as the modifications were made in the 1965 list in a haphazard way and these would not reflect the real state of affairs.

The new list should be prepared after a thorough check up as was used to be normally done during the census enumeration

Indian Express Feb.28.

The opposition leaders said that they failed to understand how could the old "unrevised rolls be published as draft rolls when no new proposals had been included in the existing ones.

The reason given for drastically advancing the date was

p.t.o.

the need for reducing the paper and the volume of printing work which cannot be called anything but trivial.

The unseemly haste of the Commission made the entire process of election a mockery they said.

The Hindu Editorial - Tuesday January 7 - 1975.

Post-Census Delimitation of constituencies.

" The publication of the results of the 1971 census and the changes in the distribution of population from natural growth and migration are therefore deemed to make it obligatory that the consequent delimitation of constituencies and the preparation of the fresh electoral rolls should precede a general election.

This view has been endorsed by the Union Home Minister, Mr. Brahmananda Reddy in a reference to the pending Gujarat Assembly elections.

I hope the above shall convince you the matters raised in my previous letter.

A. Duraiswamy.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction).

W.P.No.558 of 1975.

1. G.K.Sundaram,
President,
All India Swatantra Party

2. V.S.Srikumar,
Joint Secretary,
All India Swatantra Party

Both representing All India Swatantra
Party as its President and Secretary.

.. Petitioners.

-Vs-

1. T.Swaminathan,
Chief Election Commissioner of India

2. Union of India,
Represented by Secretary,
Ministry of Law, New Delhi.

.. Respondents.

3. Pileo Noddy,
General Secretary,
Bharatiya Lok Dal.

Counter-affidavit filed on behalf of the Chief Election
Commissioner, Respondent No.1.

I, K.Ganesan, son of Shri M.G.S.Krishnan, aged 48 years, do hereby
solemnly affirm and state as follows:-

1. I am working as Under Secretary (Legal) in the Election Commission of India and am competent to file this affidavit on behalf of Respondent No.1.
2. I have read the affidavit of the petitioners and understood its contents.
3. Before traversing the various averments and allegations made in the petition, I crave leave of this Hon'ble Court to raise the following preliminary objection.

PRELIMINARY OBJECTION.

Before its merger with the Bharatiya Kisan Dal, United Congress and other political parties to form the new political party i.e. Bharatiya Lok Dal, the Swatantra Party was a recognised National Party for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968, (Hereinafter referred to as the Symbols Order), with its reserved symbol "Star". After taking into account all facts and circumstances of the case relating to the amalgamation of these parties to form a new party, the Commission gave its decision in terms of paragraph 16 of the Symbols Order in the impugned order of 3 January 1975. In doing so,

the Commission was satisfied on the basis of the records produced before it, that the decision of merger was taken by the majority of members of these parties both in their organisational and legislative wings. Under the Symbols Order, the decision of the Commission is binding on the newly formed Party and all the component units thereof. The new party Bharatiya Lok Dal was recognised as a national party on the ground that the erstwhile Swatantra party was a national party for the purposes of the Symbols Order. Therefore, not only the members of that Party in Tamil Nadu but also the members in all other States and Union territories are vitally concerned with the impugned order. They are outside the territorial jurisdiction of this Hon'ble Court. The members of the legislative assemblies of various States who were elected on the ticket of Swatantra Party or Bharatiya Kranti Dal or Utkal Congress now belong to the newly formed party Bharatiya Lok Dal and are so treated in some Legislatures by specific directions of the concerned Speaker or Chairman. All these members have acquired certain rights and privileges under the Election Symbols Order as members of the Bharatiya Lok Dal and many of them also as members of the Legislature. It is submitted that the writ of this Hon'ble Court cannot run beyond the territories of Tamil Nadu. Therefore, any decision of this Court in favour of the petitioners will prejudicially affect these members and the position referred to above and might result in direct conflict with other High Courts with reference to their jurisdictional authority. For these reasons, it is prayed that this Hon'ble Court may be pleased to accept this preliminary objection and reject the writ petition without going into the merits thereof.

4. Without prejudice to the above preliminary objection, I crave leave of this Hon'ble Court to state in brief the circumstances leading to the decision of the Commission as recorded in its impugned order dated 3 January, 1975 in so far as they are relevant to the writ petition.

(a) As already stated hereinabove, before its merger with other political parties to form the Bharatiya Lok Dal, the Swatantra party was a recognised National Party for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968, with its reserved symbol "Star". It had State units in a

number of States and Union territories. It had also elected members in the various legislatures and both Houses of Parliament. The State units of that party were only branches of the National Party and had no separate existence but were subject to the control of the National Party. According to the records of the Commission, Shri Piloo Mody was the President and Sri Madhu Mehta was the General Secretary of the Party. On examination of the certified documents filed by Shri Piloo Mody before the Commission in connection with the Proceedings under paragraph 16 of the Symbols Order for the determination of the question of amalgamation of this party and other political parties referred to above to form the new party Bharatiya Lok Dal, the Commission was satisfied that the National Convention of the Party held in New Delhi in August 1974, by a vast majority, adopted certain resolutions which inter alia dealt with the decision regarding the dissolution of the party and merger thereof with other parties to form the Bharatiya Lok Dal and the authorisation given to its President Shri Piloo Mody to take necessary steps in that direction including the intimation to be sent to the Commission about the dissolution of the party and the request for freeing the symbol of the party. A copy of the document pertaining to these resolutions as filed before the Commission may be seen in Annexure G.1 of the impugned order. I crave leave of this Hon'ble Court to refer to and rely on the various original documents produced by Shri Piloo Mody and others which formed part of the proceedings before the Commission under paragraph 16 of the Election Symbols Order.

(b) The petitioners in the Writ petition who claim to be members of the party cannot therefore disown knowledge of the decision taken at the National Convention of the party held as long back as August 1974 and of the fact that the President of the Party Shri Piloo Mody would intimate to the Chief Election Commissioner about the dissolution of the party and request him to free the symbol of the party to avoid its unfair exploitation. The petitioners cannot also plead ignorance of the provisions of paragraph 16 of the Election Symbols (Reservation and Allotment) Order, 1968 which deals with the power of the Commission in cases of amalgamation of one or more political parties to form a new political party under which alone the President of the Swatantra Party could bring the matter before the Commission as a con-

consequence of the resolution adopted by the party's National Convention held in August 1974.

(c) From the documents produced by the President of the party, Shri Piloo Mody, the Election Commission was satisfied that the party by a vast majority of its members had taken a decision to dissolve the party and merged the party with other parties to form the new party by name and style of Bharatiya Lok Dal. Shri Piloo Mody had also furnished a list of members elected to both Houses of Parliament and to the Legislatures of various States who supported the decision of the merger. Individual declarations from many of these members were also furnished to Election Commission by Shri Piloo Mody. Having regard to all facts and circumstances referred to above in relation to the determination of the question under paragraph 16 of the Symbols Order and applying the well accepted principle of "rule of majority", the impugned order of the Commission dated 3 January, 1975 was passed.

(d) The petitioners have nowhere in the petition challenged that the majority of the majority of the members of the erst-while Swatantra Party, either in its organisational wing or in the legislative wing, did not support the decision of the merger taken by that party. They have merely challenged the decision of the merger with reference to the provisions of the constitution of the Party and the principles and aims of the party with which the Commission is not concerned. In cases falling under paragraph 16 of the Election Symbols (Reservation and Allotment) order, 1968, the Commission could not go into the question of interpretation of the constitution of the party or rightness or wrongness of the meetings of any organ of the party. For its subjective satisfaction for the purpose of the determination of the question under paragraph 16 of the Symbols Order, the Commission was concerned only with the question whether the majority of members of the party supported the decision of the merger or not.

(e) A State unit of a recognized National party like Swatantra party either in Tamil Nadu or in any other State has no separate existence vis-a-vis the Election Symbols Order. The State unit cannot lay claim to the status of recognition as National party accorded to that party under that Order.

(f) Paragraph 16 of the Symbols Order does not contemplate any public notice to be issued. ^{Ignorance} ~~Ignorance~~ of the provisions of that paragraph cannot be pleaded before any court. It was for the persons aggrieved by the decision of the National Convention of the Swatantra party which was taken in August 1974 to agitate the matter before the decision of the Commission was taken on 3rd January 1975. In fact, as the order would itself disclose, the State unit of the Party in Maharashtra raised certain objections before the Commission which were rejected after due consideration for the reasons given in the impugned order. Similarly, the State unit of Tamil Nadu could have raised its objections before the decision of the Commission in its impugned order of 3 January, 1975 was taken. Having failed to avail of this opportunity, which was available to aggrieved persons immediately after the decision of the National Convention was known to the members of the Swatantra Party, the petitioner cannot now legitimately claim that the principles of natural justice have been violated by the Commission in regard to the passing of the impugned order of 3 January, 1975.

(g) Though there is no requirement under paragraph 16 of the Symbols Order to give public notice to all the State units of a National Party before a decision is taken under that paragraph, newspapers including "The Hindu" of Madras carried a news item in its issue dated 4 December 1974 that an inquiry is being conducted by the Election Commission to decide whether the Bharatiya Lok Dal should be a National or a State party and what symbol should be allotted to it. A copy of the said news item is annexed hereto as Annexure I.

(h) The relief claimed by the petitioners in the petition is that this Hon'ble Court should call for the records relating to the order of the Commission dated 3 January 1975 and ~~quash~~ quash the same and also stay the operation of the said order. It is submitted that the grant of such relief to the petitioners who even conceding that they represent only a State unit of the party, would disturb the national character of the Party and its recognition as a National Party. It would also have the effect of recognising a single State unit as the National Party. It is submitted that the granting of such a relief is clearly beyond the powers of this Hon'ble Court as this Court cannot substitute completely a new order in the place of the impugned order and affect the rights and privileges of

of the members of the Party in all other states without due notice to them.

For the reasons stated hereinabove, it is prayed that the writ petition be dismissed.

5. Reply on merits.

(i) Paragraph 1 of the affidavit:- I say that the averments in this paragraph are not accepted for want of knowledge. It is, however, submitted that for the purposes of Election Symbols (Reservation and Allotment) Order, 1968, the Swatantra party ceased to exist after the Commission had passed the impugned order of 3 January, 1975 and that therefore no person can claim that he belongs to that party.

(ii) Para 2:- I say that the averments in this paragraph are not accepted for want of knowledge. It is further submitted that they are not relevant for the determination of the question raised in the writ petition.

(iii) Para 3:- I say that the answering respondent is not concerned with the averments in this paragraph. For the reasons stated hereinabove, they are also not relevant for the determination of the question of amalgamation decided under paragraph 16 of the Election Symbols Order. The Commission was not concerned with the Constitution of the Swatantra Party or its aims and objects. It was concerned only with the relevant facts and circumstances relating to the amalgamation of the political parties to form the new party, Bharatiya Lok Dal.

(iv) Para 4:- I say that the averments in this paragraph are not accepted for want of knowledge. They are also not relevant to the determination of the question of amalgamation to be decided under paragraph 16 of the Symbols Order. It is further submitted that the Commission has not been served with the certified copies of the decree of the City Civil Court, Madras, said to have been passed in favour of the petitioners. It is further submitted that the Commission is not bound by the decision of the City Civil Court, Madras, in regard to matters covered under the Election Symbols (Reservation and Allotment) Order, 1968 which has been made in pursuance of the provisions of article 324 of the Constitution. Rules 5 and 10 of the Conduct of Elections Rules, 1961 and all other powers enabling the Commission in that behalf.

(v) Para 5:- I say that for the reasons stated hereinabove, no public notice was required to be published in terms of paragraph 16 of the Election

Symbols Order. It is further submitted that the notice was served on the President of the Swatantra Party, Shri Piloo Mody and the General Secretary, Shri Madhu Mehta who, according to the records of the Commission, continued to be the President and General Secretary of the party till the decision of the Commission in its impugned order of 3 January was given. It is therefore, not correct that the notice was not served on any of the office-bearers of the Swatantra party as alleged. The other averments and allegations in this paragraph are not admitted either for want of knowledge or for the reason that the answering respondent is not concerned with them.

(vi) Paragraph 16:- I say that till the final decision in terms of paragraph 16 of the Election Symbols Order was taken on 3 January 1975 the Commission was satisfied that Shri Piloo Mody, respondent No.3, was entitled to represent the party which has been dissolved, as according to the records of the Commission he was the President of that Party. It is further stated that Bharatiya Kranti Dal was one of the parties to the merger to form the Bharatiya Lok Dal and a dispute under paragraph 15 of the Election Symbols Order between three rival groups in that party which was a recognised State Party in the State of Uttar Pradesh, was also before the Commission and therefore both the cases, i.e. the dispute under paragraph 15 of the Symbols Order and the question of amalgamation of the Swatantra Party with other parties to form the Bharatiya Lok Dal under Paragraph 16 of the Symbols Order were dealt with together. It is further stated that, in doing so, the Commission was not concerned with any dispute between Bharatiya Kranti Dal and Swatantra Party, Bharatiya Kranti Dal, Utkal Congress etc. as alleged.

(vii) Para 7 i:- For the reasons stated hereinabove, it is stated that the Commission was satisfied that the respondent No.3 had the right to represent the Swatantra Party in the proceedings before the Commission under paragraph 16 of the Symbols Order and that no notice to the petitioners by the Commission was necessary under the law. The allegation that the order of the Commission was a collusive order is baseless and therefore denied. It is further stated that no public notice was required to be given in regard to the determination of the question of amalgamation under paragraph 16 of the Symbols

Order. It is further stated that the petitioners cannot plead ignorance of the provisions of paragraph 16 of the Symbols Order or of the decision of the National Convention of the Swatantra Party held in August 1974 to dissolve the Swatantra Party and of the authorisation given to Shri Piloo Mody to approach the Commission for necessary action in connection with that decision. As already stated hereinabove, the news item in "The Hindu" dated 4th December, 1974 clearly indicated that the inquiry into the question of recognition of the new party Bharatiya Lok Dal was being conducted by the Election Commission. For these reasons, the allegations in this paragraph are denied.

(viii) Para-8:-- I say that the allegation in this paragraph is denied as the Commission is not concerned with the decree of the City Civil Court, Madras. The Commission has exclusive jurisdiction in matter falling under paragraph 16 of the Symbols Order and therefore in such matters, it is not bound by any injunction of the City Civil Court, Madras. It is further stated that the injunction of the City Civil Court, Madras, has not been formally communicated to the Commission.

(ix) Para 9 :- I say that for the reasons stated hereinabove, no notice was required to be given to the petitioners.

(x) Para 10:-- For the elaborate reasons stated hereinabove, I deny

- (a) that the impugned order is void;
- (b) that the impugned order is violative of the principles of natural justice;
- (c) that the Commission has no right to decide the question of merger of Swatantra Party with other parties to form the new political party by name and style of Bharatiya Lok Dal.
- (d) that there is any non-compliance with any of the provisions of paragraphs 15 and 16 of the Election Symbols (Reservation and Allotment) Order, 1968;
- (e) that public notices in the press or to the units of the party in various states were required and that paragraph 15 of the Symbols Order provided for the issue of public notices in such cases;
- (f) that the impugned order was not binding on the units of the

Swatantra party which were opposed to the merger; and

(g) that the order of the Commission was without jurisdiction.

I deny and dispute each and every allegation and submission contained in the affidavit of the petitioners which is contrary to or inconsistent with the statements and submissions contained in this counter-affidavit as if they were so done specifically and set out verbatim.

(xi) Para 11 :- For the reasons stated hereinabove, it is submitted that the order of the Commission cannot be challenged in proceedings under article 226 of the Constitution.

(xii) Para 12:- For the reasons stated hereinabove, I say that the averments in this paragraph are denied.

(xiii) Para 13:- For the elaborate reasons stated hereinabove, no writ whatsoever or no order or direction in the nature of a writ, should be issued and the order of the Commission should not be quashed as prayed for by the petitioners.

For the reasons stated hereinabove, it is prayed that the writ petition be dismissed with costs.

Deponent.

Solemnly affirmed at New Delhi
on this day of March, 1975
and signed his name in my presence.

Before me.

Verification.

I, K. Ganesan, Under Secretary (Legal), Election Commission of India, hereby solemnly state that -

- (i) what is stated in paragraphs 1 and 2 is true to my personal knowledge;
- (ii) what is stated in paragraphs 3 (part), 4(a), (b), (c), (d) part, (f), (g), 5(i), (ii) part, (iii) part, (iv) part, (v), (vi), (vii) part and (xii), is true to my knowledge derived from official records; and
- (iii) what is stated in paragraphs 3 (part), 4(d) part, (e), (f), (H), 5(ii) part, (iii) part, (iv) part, (vii) part, (viii), (ix), (x), (xii) and (xiii), is by way of submissions.

Deponent.

Solemnly affirmed at New Delhi
on this day of March, 1975
and signed his name in my presence.

Before me.

Annexure XX I.

Extract of news from "The Hindu" dated 4th December, 1974
published from Madras.

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Recognition of BLD.

NEW DELHI, Dec.3,

An enquiry is being conducted by the Election Commission to decide whether the Bharatiya Lok Dal should be a National or a State party and what symbol should be allotted to it, the Lok Sabha was told today.

HIGH COURT : MADRAS

W.P.No.558 of 1975

G.K.Sunderam, President
All India Swatantra
Party and another

Petitioner

Vs.

T.Swaminathan,
Chief Election Commissioner
of India and two others

Respondents.

COUNTER AFFIDAVIT FILED ON BEHALF OF
THE 1st RESPONDENT.

S.M. ALI MOHAMED

Junior Central Govt.Standing Counsel.
Counsel for the 1st Respondent.