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**SWATANTRA PARTY
NATIONAL HEADQUARTERS**

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

28th January 1975.

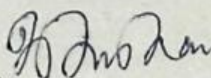
Mr. Girish Munshi,
General Secretary,
All India Swatantra party,
Bharatiya Vidya Bhavan,
K.M. Munshi Marg,
Chowpati, Bombay.7.

Dear Sir,

I am enclosing herewith a copy of the plaint/affidavit of the Writ Petition being filed against the Chief Election Commissioner of India, in respect of the "STAR" symbol, which has been frozen according to his Order dated 3-1-75, for your perusal. The Writ petition is expected to come up for hearing before Justice M.M. Ismail on Thursday the 30th instant. I shall let you know the result immediately it is known.

Thanking you and with kind regards,

Yours truly,


(V.S. Srikumar)

Jt. Secretary.

Enc: 1.

Done
1/2/75

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

(SPECIAL ORIGINAL JURISDICTION).

W.P.No. of 1975.

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

..... Petitioners.

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

-vs-

1. T.Swaminathan,
Chief Election Commission of
India.

2. Union of India.

..... Respondents.

3. Pilo Mody
General Secretary,
Bharatiya Lok Dal.

Affidavit filed on behalf of the petitioners.

I, V.S.Srikumar son of Sadasiva Iyer, Hindu,

aged about 59 years, businessman, residing at No.8 P.V.Koil St., Madras.

do hereby solemnly and sincerely affirm and state as follows:—

1. I am the Secretary of Madras District Swatantra Party, Joint Secretary of All India Swatantra Party and Member of Tamil Nadu Parliamentary Board of Swatantra Party. I am the second petitioner herein. I am filing this affidavit on behalf of myself and the 1st petitioner.

2. I submit that the All India Swatantra Party is a Political Party, founded by late Rajaji, in the year 1959. The said All India Swatantra Party has been contesting elections through out India to the Lok Sabha, Rajya Sabha and also to the State Legislatures and Councils. The said All India Swatantra Party has been contesting the elections on the basis of the ideals and fundamental principles, adopted at the preparatory convention of Swatantra Party held at Bombay on 1st and 2nd August 1959, and the statement of principles of Swatantra party adopted at the above convention, still forms the basic principles, underlying the Constitution of the Party. The Constitution of the party as amended on 14-4-1973 by the Extra Sixth National Convention in Rajaji Nagar, Madras, is the present constitution of Swatantra party and the powers of National Executive are set out in para 12 thereof.

3. I submit that neither the National Executive nor the Party's convention can deviate from the objectives and ideals and ideologies of the Party and that led to its formation and functioning as an All India Organisation. Its ideals and objectives are clearly set forth in the preparatory convention itself and as the name of the Party itself signifies, the party is pledged to Social Justice and equality of opportunity for all people, without distinction of religion, caste, occupation or Political affiliation and the Party holds that the progress, welfare and happiness of people depend on individual initiative, enterprise and energy. The ethical and moral principles of Social Policy are emphasised and social welfare of citizen of India sought to be promoted in accordance with the democratic principles as fully set forth in the Statement of principles, formulated and adopted in the above-said preparatory convention.

4. The Third Respondent became the President of All India Swatantra Party in or about 1971. After the death of Rajaji, the 3rd Respondent has been attempting to dissolve the All India Swatantra Party. The National Executive of All India Swatantra Party has no power to dissolve the party. The Third respondent has been taking steps for the dissolution of Swatantra party, and to form a National Alternative with the object of bringing about a Two Party system. With that object, the 3rd Respondent negotiated with other parties like Samyuktha Socialist Party (2) Bharathiya Karanti Dal (3) Lok Thantrik Dal (4) Utkal Congress (5) Khetihar Dal (6) Harijan Sangarsh Samithi to form a new party. The third respondent has manifested his intention to carry out that object and sent circular letters dated 16-4-74, 13-5-1974 and 1-7-74. I, particularly, from the inception have been protesting this move, on the part of the 3rd Respondent stating that the proposed dissolution of All India Swatantra Party is unjustified and unwarranted. Hence, 5 members of All India Swatantra Party filed O.S.No.5526 of 1974 on the file of the City Civil Court, Madras, praying for a declaration that the proposed action of the 3rd Respondent and 2 others viz Madhu Mehta and Dr.M.Shanthosham, to bring about the dissolution of Swatantra party as stated in the circular dated 1.7.74 is wholly illegal and ultra vires and the proposed convention to be held at New Delhi on the 4th and 5th August 1974, was not properly convened and that any resolution passed or adopted at such convention would not be binding on the members of the Swatantra party or on the Tamil Nadu Unit of Swatantra party, and for an injunction restraining the 3rd respondent from proceeding with or holding the proposed convention or take any action in pursuance of the notice dated 1-7-74. I submit that the said suit has been decreed as prayed for on 10th December 1974.

5. I, understand, the Respondent claims to be the General Secretary of the Bharatiya Lok Dal, appears to have made representations behind the back to the 1st Respondent, i.e., the Election Commissioner, that Swatantra Party, Bharatiya Kranti Dal and Utkal Congress had all merged and a new National Party, called Bharatiya Lok Dal and prayed for recognition as National Party and allotment of Symbol thereto in terms of para 16 of the Symbol Order. He appears to have furnished the list of office bearers of the so called New Party. Hence, while stating that the 3rd respondent had recognised the New Party Bharatiya Kranti Dal that the 1st Respondent ought not to have treated the third Respondent as representing Swatantra Party and ought to have published a Public Notice so that the aggrieved members of Swatantra Party could have made their representation opposing the move on the part of the 3rd Respondent and made representation on behalf of the Swatantra Party. The petitioners are not aware of the said petition said to have been submitted by the 3rd Respondent as stated in impugned order. Notice was admittedly served on any of the office bearers of Swatantra Party. The Third Respondent is aware that a suit has been filed against him and a decree has been obtained as stated above. The Third Respondent is also aware that as far as Tamil Nadu Unit of Swatantra Party is concerned, majority of the members have vehemently opposed the merger of Swatantra party and consequent dissolution thereof.

6. I submit that the 3rd respondent having taken steps to dissolve the Swatantra Party ~~whisker~~ cannot represent Swatantra Party which has not been dissolved, as the National Executive or the National Convention has no jurisdiction or power to dissolve the organisation. In the representation made by the 3rd respondent before the Election Commissioner, it was made to appear as if, there was dispute between Bharatiya Kranti Dal, and Swatantra Party, B.K.D., Utkal Congress etc. and the 1st respondent chose to decide the dispute. The 1st respondent has passed an order dated 3-1-1975 holding that the newly formed Bharatiya Kranti Dal was the result of amalgamation of Swatantra Party, B.K.D. and Utkal Congress should be national party for the purpose of Symbol order. The petitioner has obtained a copy of the order dated 3-1-75, passed by the 1st respondent, wherein, it is stated that the 3rd respondent has represented Swatantra party, in his capacity as the President.

7. I submit that the 3rd Respondent has not jurisdiction to represent the Swatantra Party in the proceedings, in which, he wanted the dissolution of the Party and amalgamation of other parties to form a new Party Bharatiya Lok Dal. The notice should have been served on the petitioners, who alone represent the Swatantra Party who are opposed

to dissolution of All India Swatantra party. A perusal of the orders shows that it is a collusive and there cannot be any dispute between Swatantra party, Utkal Congress etc., The 1st respondent should have given a Public notice of the hearing so that the other prominent leaders and members of Swatantra party could make their representation against the passing of the impugned order. The 1st respondent should have seen the conflict of interest as far as 3rd respondent is concerned.

8. I submit that the 3rd respondent who claimed to have represented Swatantra Party also before the Election Commission has no power to represent the said party, especially in view of the decree for injunction in O.S.No.5526 of 1974, on the file of the City Civil Court, Madras.

9. I submit that the order of the 1st respondent is void as the same has been passed without notice to the petitioners to whom, alone notice should have been sent, to represent Swatantra Party and the order is void and is liable to be quashed.

10. The impugned order is also void for the following among other grounds:-

- (a) The impugned order is violative of principles of natural justice as the amalgamation and dissolution and recognition of the same as a Political party cannot be done without notice to the petitioners.
- (b) The 1st respondent has no right to treat Swatantra party as a part of Bharatiya Lok Dal, thereby depriving the Swatantra party of its right when the said party is already a National party duly recognised for the purpose of Symbol order.
- (c) By reason of the impugned order, Swatantra party will be deprived of its symbol in the forthcoming election. The Election Commissioner is likely to ignore the rights of Swatantra party, unless the impugned order is set aside.
- (d) The impugned order is vitiated in law by reason of non-compliance of the mandatory provisions of para 15 and 16 of the Election Symbol Reservation and allotment order of 1968.
- (e) The Election Commissioner ought to have issued public notice either in the Press or to the Office of the Swatantra Party units in various States and heard them.
- (f) The Election Commission failed to see that there are rival sections of the Swatantra party, some wanting the merger with the other party and some opposing it and this is the case for which, public notice ought to have been issued as provided under para 15 of the Symbol Order.

(g) The Election Commission has no jurisdiction to recognise the so called Merger into a single political party without hearing the rights of Swatantra Party of Tamilnadu Unit. Under the circumstances, the impugned order cannot be binding on the unit of Swatantra party which opposed the merger.

(h) The order of the Election Commission having been passed without hearing the rival ~~unit~~ section is without jurisdiction.

11. I submit that the order cannot be challenged in a Civil Court and the petitioners have no other remedy excepting the approaching this Hon'ble court, under Art.226 of the Constitution of India.

12. The cause of action has arisen at Madras, as the Head office of Swatantra Party is at No.26 Halls Road, Madras and the impugned order passed under para 16 will have its adverse effect on the Swatantra party throughout Tamil Nadu, at the time of Election. The Swatantra party will be prevented from taking part in the Election to the Lok Sabha, Rajya Sabha and to the State Legislatures and Council.

13. It is therefore just and necessary that this court may be pleased to issue a Writ of Certiorari after calling records relating to the order dated 3-1-1975, passed by the 1st respondent and to quash the same and also stay the operation of the said order, pending disposal of the above W.P.

Solemnly affirmed at
Madras this day of Jan'y 1975 ... Before me.
and signed his name in my presence.)

Advocate/ Madras.

Advocate for the petitioners.