

Mr. Rajeev Patil.

4804

Herewith the draft plaint. I
have taken the liberty of
making some changes.

to be on the whole it looks good
and I would like to fax it to
Mr. Shantil Joshi before we file it
in Court.

Thanks. I will speak to
you ~~later~~ this evening & tomorrow
morning at your residence.

Raj

(S.V. Raj)

Phone: (0) 261 6031

(R) 552 8691

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE & CONSTITUTIONAL JURISDICTION

WRIT PETITION NO. 100 OF 1994

DISTRICT: BOMBAY / PUNE

In the matter of Articles 14,
19, 226 of the Constitution
of India;

AND

In the matter of Representation
of the People Act, 1951;

AND

In the matter of Section 29A
of the Representation of the
People Act, 1951 in respect
of registration of political
parties.

SWATANTRA PARTY (MAHARASHTRA))

through its General Secretary)

Shri L.R. Sampat having their)

registered office at Sassoon)

Bldg., 143 M.G. Road, Bombay 23.)..Petitioners

Versus

1. UNION OF INDIA, having its)
office at Legal Dept. Ayakar)
Bhavan, Maharshi Karve Road,)
Bombay.)
2. Chief Election Commissioner of)
India, having its office at)
Nirvachan Sadan, Ashok Road,)
New Delhi 110 001.)
3. The Secretary, Election)
Commission of India, having its)
office at Nirvachan Sadan,)
Ashok Road, New Delhi 110 001.)..Respondents

TO,

THE HONOURABLE THE CHIEF JUSTICE AND

THE OTHER HONOURABLE JUDGES OF THE

HIGH COURT OF JUDICATURE AT BOMBAY.

THE HUMBLE PETITION OF

THE PETITIONERS ABOVE NAMED:

MOST RESPECTFULLY SHOWETH:

1. The Petitioner is political party at All

India level holding its own ideology. The Petitioner

party came into existence at Preparatory Convention

held at Bombay from 1st and 2nd August 1959. The

Swatantra Party is pledged to Social Justice and

equality of opportunity for all people without

distinction of religion, caste, occupation or

political affiliation. The Petitioner party holds

that progress, welfare and happiness of the people

of India depends on individual initiative,

enterprise and energy. The Petitioner party stands

for the principle of maximum freedom for the

individual and minimum interference by the State,

consistent with the obligation to prevent and

punish anti-social activities, to protect the

weaker elements of society and to create the

conditions in which individual initiative will

thrive and be fruitful. The Petitioner party is

opposed to increasing State interference in

private enterprise, to be pursued. The Petitioner

party holds that the policies of the Government

should be founded on the faith in the people

and not on State compulsion and encouragement of hatred and conflict between class and class,

expropriation, repudiation of obligations and the conferment of more and more powers on the officials of Government at the expenses of the freedom of the citizens. The Petitioners party

adheres to the principle of trusteeship adumbrated

by Gandhiji. Thus, ^{through} the Petitioner party ^{has} ~~has~~ ^{been} ~~been~~

^{Constitution} all the faith in ~~the~~ of India, democratic government and ^{in the} fundamental rights of citizen.

^{the} The Petitioners party oppose ^{the} the ideology

socialism which according to the Petitioners

means the State controlled ^{and the citizens} ~~nation~~. The Petitioner

believe that socialism means that State will

interfere with each and every right of an

individual and his right for development ^{according to his own} ~~of~~ ^{desire on}

private enterprise. The Petitioner believe that

socialism is opposed to the ideology of Gandhiji.

The Petitioner ^{for} ~~though~~ stand ~~for~~ fair deal for

labour whether ^{in the} ~~xxx~~ field, factory and office and

for ^{correlating to} ~~xxxxxxxxxxxx~~ wages ^{increased} ~~xxxxxxxx~~ productivity ~~and~~

^{the} and for workers rights to organize for the purpose

It
of collective bargaining. ~~We~~ stands for harmonising
the interest of capital and labour when they get
into conflict. The Petitioner adopted ^a the statement
of policy ^{incorporates the above beliefs} at a ⁵ nation convention in Patna on March 1960
declaring ^{the} ~~very~~ policy as "^{prosperity} ~~prosperity~~" through freedom."
A copy of the said statement of ^{policy} ~~principles~~ is annexed
herewith and marked as Exhibit 'A' to this petition.

2, ^{being} The Petitioner ~~be~~ a political party approaches
this Hon'ble Court challenging the provision of
section 29A of the Representation of the People Act
1951 which compels ^{change} the Petitioner/party to ~~challenge~~
^{it has held} its ideology which they honestly holds since its
inception and prior to ^{the 42nd} 42 amendment to the constitution.
The Petitioner submits that provision of section 29A
of the Representation of the Pople Act 1951 ^{is} ~~are~~
ultra-vires the Constitution of India as it clearly
violate the fundamental rights of the citizen of India
as well as ^{members the} ~~the~~ number of political party i.e. the
petitioner.

3. The Petitioner states that by the amendment to the Representation of the People Act 1951 - namely Section 29A each and every political party is required to be registered as political party with the election commission of India. The Petitioner wish to register their political party as per the provision of law. In June 1989 the Election Commission issued a press-note that under Section 29A of the amended Representation of People Act 1983 the then existing political party were required to register within 60 days from June 15 i.e. by August 15 and any party that came into existence after 15 June should do so within 30 days from its inception. The new Section 29A i.e. 29A of the the Representation of the People Act calls upon political party seeking registration to ensure that their memorandum of rules and regulations contained a specific provision that they would -

(i) bear true faith and allegiance to the
Constitution of India;

(ii) the principles of socialism, secularism
and democracy, and

(iii) uphold the sovereignty, unity and
integrity of India.

The Petitioner states that they bear true faith
and allegiance to the Constitution of India, they
also bear true faith, principles of socialism,
secularism and democracy and they believe the
sovereignty, unity and integrity of India.

However, the Petitioner do not believe in ^{the} principle
of socialism. The Petitioner therefore by their
letter dated 1st August 1989 addressed ~~a letter~~
to the Election Commission ^{sought} seeking registration
without prejudice to the right to question, the
constitutional validity of Section 29A making
registration mandatory on the basis of having
faith in ^{the} principle of socialism. The Petitioner
states that ^{the} election Commission by their letter
August 12, 1989 sent application form and other

relevant papers. The Petitioner wanted to register their political party and therefore they also requested the election commission to clarify whether it ^{was a} must for them to affirm ^{an} affidavit stating that they believe in socialism, when in fact, their

ideology is to oppose the socialism. Respondents,

however did not gave clear answer and called upon

the Petitioner to fill up application forms the way

it is prescribed in Section 29A. The copies of

correspondence with the Respondents No.2 and 3 are

annexed herewith and marked as Exhibit 'B' ~~t~~

(Collectively) to this apetition. The Petitioner

submit that by this letter the Respondents No.2 and 3

have virtually denied registration to the Petitioner

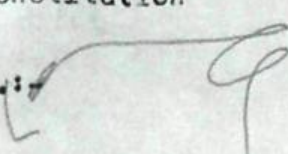
as they do not wish to affirm the affidavit showing

allegiance and faith to socialistic ideology. The

Petitioner states that the said amendment to the

Representation of the People Act 1951 was entered

as the parliament by ^{the} 42nd amendment to the Constitution

adopted the following word in the Preamble. 

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949 do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The word ~~xxxxxxxxxxxx~~ socialism, secularism and democracy were substitute by the Constitution (42nd amendment) Act 1976 which came into affect from 3rd January 1977. The Petitioners state that

on the basis of amendment to the preamble a bill was moved in the year 1938 to amend the Representation of People Act, 1951 by adding Section 29A to the said Act. The Petitioner states that in Section 29A sub-section 5 it is made clear that the Application under sub-section 1 shall be accompanied by copy of memorandum of rules and regulation of association or body by whatever name called and such memorandum of rules and regulations shall contain specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law establish as to the principle of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity of India. The Petitioner respectfully submit the Preamble to the Constitution of India itself grants *that expression belief* liberty of *that impression, believe, faith and worship.*

The Petitioner have every right to have their liberty of thought *in their* impression, belief and faith *i.e.* statement of policy and *of the* political agenda of the Petitioner party.

The Petitioner further submit that article 19 protects

even while bearing loyalty to the Sovereign of India.

the rights regarding freedom of speech and expression,

to form association or union. The Petitioner have

the freedom of people or express to say that socialism is a

wrong ideology because of which a country *is not able* may not be

~~in a position~~ to make ~~its own~~ progress. The Petitioner

have every right to form association or union on the

basis of their ideology. The Petitioner bear full

faith and allegiance to the Constitution of India,

having principle of faith, impression,

the Petitioner believe in principle of secularism and

democracy and would uphold the sovereignty, unity and

integrity of India. The Petitioner submit that

Representation of People Act, 1951 regulate the

procedure for the purpose of conducting election for

the parliament as well as legislative Assembly within

the freedom work of the Constitution. The Petitioner

respectfully submit no enactment can force any

impressing individual to change *his or her liberty of thought* ~~in~~ ~~is~~ or were ideology for

impression, believe, faith and worship. Similarly

no enactment can compel any citizen to swear by a particular 'ism' when Article 19 of the Constitution guarantees the fundamental rights to freedom of speech

and impression. The Petitioner ^{state} that by

provision of Section 29A (5) the Respondents are

compelling the Petitioner to say that they have

full faith in socialism when in fact since the inception

of party since 1959, the ^{Petitioner which began in the} sovereignty unity and

integrity of India ^{don't} believes in ideology of socialism ^{but}

^{believe in Communism} and have belief in trusteeship. The Petitioner submit

that today there are number of political party who have

^{and} led their foundation on the basis of religious, caste, ⁿ and

class of their respective ideology. The Petitioner ^{can't}

state that ruling party namely: Congress-I party was

^{be} never wedded to the principle of socialism when they

advocate free enterprise. The Petitioner submit that

another party namely: Bhartiya Janta Party never believed

in socialism as their ideology is clear by which they

^{based on the basis of religion} ^{base that} advocate caste system and opposition to socialism.

the Third party namely *the* Shivsena which *is* merely is

regional party is openly against the socialism

since its inception. Fourth party *the* Jamat-A-Islami

the does not even have to faith in Constitution of

India as they have clearly declare that they have

that only the faith in Quran and no other document. All these

have parties denied their own faith *and* still they affirmed

a the false affidavit saying that they have believe

in socialism. The Petitioner states that if *the*

Constitution of India gives and guarantees *liberty* number

thought, expression belief faith of ~~impression and worship grant freedom~~

of speech and expression. The said principle and

freedom is taken away by provision of Section 29A

of the Representation of People Act. The Petitioner

therefore submit that section 29A not only violate

the fundamental rights of the ~~member~~ of Petitioner

but is also ultra-vires the Constitution of India

when the said Constitution *guarantees* all *the* protection to

that have ~~its~~ own faith. The Petitioner states that if no

enactment can force a particular ideology upon a citizen

in that case there is no question of affirming affidavit as per the provision of Section 29A(5) of the Representation of People Act. The Petitioner state that since they have full faith and allegiance to the Constitution of India and they believe in socialism, secularism and democracy and uphold the sovereignty, unity and integrity of India, they have every right to register themselves as registered political party within the framework of the Constitution and therefore Petitioner approaches this Hon'ble Court under Article 226 of the Constitution of India in its inherent power for appropriate right declaring that provision of Section 29-A are violative of fundamental right of citizen of India and are *the* following amongst other grounds :-

- (i) Section 29A (5) _____ compel the citizen of India to affirm the fact that they believes in socialism;

(ii) It is clear from the preamble of the Constitution that each citizen have liberty thought ~~impression~~, believe, faith and worship and therefore ^{the} Petitioner can very well hold the ideology which is oppose the socialism when they have full allegiance to the Constitution of India and ^{the} principle of ~~socialis~~, secularism and democracy functioning of India.

(iii) Article 19-1(a) and (c) protect fundamental rights to freedom of speech and impression to form association or union on the basis of their own ideology. In such a case the Petitioner cannot be compelled to affirm the affidavit showing their allegiance to the socialism.

(iv) The Petitioner since 1959 are holding this ideology and through out oppose the ideology and principle of socialism and therefore simply because ^{the Constitution} and is amended in the year 1989, they

cannot ~~emp~~ be compelled to change their ideology for the purpose of showing their allegiance to the Constitution of India.

(v) The Petitioners believe in democratic and secularism ^{but} ~~people~~ oppose ~~to~~ the principle of socialism which only means ~~the~~ State ownership.

(vi) The Petitioners ^{are} are entitled to hold ideology ^{and} in free democratic country like India which is a great example through out the world and therefore no Government can compel the Petitioner to hold ^{any} and particular ideology by way of socialism ^{or} secularism ^{or} and democracy.

(vii) If at all such amendment is allowed to be in existence, it is directly in conflict with the provisions of the Constitution as well as Article 19(1)(a) and 1(c) and therefore ultra vires ^g the Constitution.

4. The Petitioner approach on the ground mentioned above submit before this Hon'ble Court that the provision of Section 29-A be declared as illegal, ultra-vires to the Constitution of India and inoperative in law.

5. The Petitioner has not filed any other petition either in this Hon'ble Court or in the Supreme Court of India.

6. The Petitioner craves leave to add to, to alter, to delete, to vary, to amend any of the grounds urged hereinabove, if necessity may demand or occasion may require.

The Petitioner, therefore, prays that :-

- (A) this Hon'ble Court be pleased to issue writ of mandamus and/or any other appropriate writ directing the Respondents Nos.1 to 3 to produce documents, notification and

bill in respect of Section 29A of

Representation of People Act;

- (B) This Hon'ble High Court be pleased to issue writ of certiorari and/or any other appropriate writ striking off the provision of Section 29A

of the Representation of the People Act be

ultra-vires to the Constitution of India and

being inoperative of fundamental rights to the

citizen of India;

- (C) This Hon'ble High Court be pleased to declare that the Petitioner have every right to register themselves as registered political party with their individual ideology without any direction to the effect that they believe in socialism;

- (D) Pending the hearing and final disposal of this petition on its merit, this Hon'ble Court be pleased to direct Respondent Nos.1 to 3 to register the Petitioner party as political party

on ad-hoc basis to enable the Petitioner
to contest the forthcoming election to the
Parliament as well as Legislative Assembly;

(E) To grant ad-interim reliefs in terms of
prayer clause (D) hereinabove; ~~xxxxxx~~

(F) To pass such other and further orders as
this Hon'ble Court deem fit on the facts and
in the circumstances of the case.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER
as in duty bound shall ever pray.

Bombay, dt. October 1994.

Advocate for the Petitioner.

I, L.R. SAMPAT, General Secretary of the
Petitioner abovenamed, do hereby solemnly declare that
the contents of paras are true to my own
knowledge and information and those contents of
paras being grounds, legal submissions and
prayers are true to my belief and I believe the same
to be true.

Solemnly declared at Bombay)
this day of October 1994)

Before me,

Advocate for the Petitioner.