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2ND DRAFT.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE & CONSTITUTIONAL JURISDICTION

WRIT PETITION NO. OF 1994

DISTRICT: BOMBAY / PUNE

In the matter of Articles 14,
~~and~~
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 ABOVENAMED:

MOST RESPECTFULLY SHOWETH:

2. The Petitioner is ^a political party at All India level, holding its own ideology ^{and faith in Constitution and democracy}. 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 ^{as enumerated} ~~adumbrated~~

by Gandhiji. Thus, the Petitioner party ~~though~~ ^{have}

~~are the~~ ^{the} faith in ^{Constitution} ~~exception~~ of India, democratic ^{form of}

government and fundamental rights of citizen,

The Petitioners party ^{SS} ^{be} ~~opposed~~ the ideology of

socialism which according to the Petitioners

means the State controlled ^{economy &} nation. The Petitioner

believe that socialism means that State will

interfere with each and every right of an

individual and his right for development of

private enterprise. The Petitioner believe that

socialism is opposed to the ideology of Gandhiji.

The Petitioner though stand ~~for~~ fair deal for

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

for ~~correlating to~~ ^{increased} wages ~~xxx~~ productivity

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 the statement
of policy at ^{National} ~~national~~ convention in Patna on March 1960

declaring ^{the} very policy as "prosperity" through freedom.
~~The Addition para below in free economy and liberalised~~
~~economy, and therefore state of socialist pattern of~~
A copy of the said statement of principles is annexed

government may
not be in a position
to lead the nation
or developing country
in International Market

herewith and marked as Exhibit 'A' to this petition.

being
1. The Petitioner ~~is~~ a political party, approach
this Hon'ble Court, challenging the provision of
section 29A of the Representation of the People Act
1951, which compells the Petitioner ^{change} party to challenge
its ideology which they honestly holds since its
inception and prior to 42nd Amendment to the Constitution of
India,
The Petitioner submits that provision of section 29A
of the Representation of the ^{Peoples} ~~People~~ Act 1951 are
ultra-vires the Constitution of India as it clearly
violates the fundamental rights of the citizens of India
as well as the ^{Petitioners'} ~~members~~ of ~~political party~~ i.e. the
petitioner.

3. The Petitioner state that, by ^{an} ~~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^s to register their political party

4. as per the provision of law. In June 1989 the ^{notification} Election Commission issued a ~~press note~~ that under Section 29A of the amended Representation of People Act 1988, the then existing political party^{ies} were required to register within 60 days from June 15 ~~ix.~~ by August 15 and any party that came into existence after 15 June, should do so within 30 days ^{the date of} from its inception. The new Section ~~xx~~ i.e. 29A of the the Representation of the People Act calls upon ^a political party, seeking registration, to ensure that their memorandum of rules and regulations containe^d ^{the} specific ~~provision~~ ^{statement} 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.

← Rider ^{the party}
The Petitioner states that, they bear true faith and allegiance to the Constitution of India, they also bear true faith ^{in the} principles of ~~socialism~~, secularism and democracy and they believe the sovereignty, unity and integrity of India.

However, the Petitioner do not believe in principles of socialism. The Petitioner therefore by their

letter dated 1st August 1989, addressed ~~a letter~~

to the Election Commission 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 principles of socialism. The Petitioner

states that Election Commission by their letter dt.

August 12, 1989 sent application form and other

The Petitioner states that the ~~the~~ Representation of People Act 1957 nowhere defines the term "Socialism" or "Principles of Socialism". The term ~~the~~ Principles of Socialism is too vague i.e., it is neither defined in the Constitution of India nor it is defined in Representation of People Act 1957. Character of voter is as specified.

relevant papers. The Petitioner wanted to register their political party and therefore they also requested the Election Commission to clarify whether it is must for them to affirm 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

The Petitioner states that the Respondents refused to clarify the 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

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

have virtually denied registration to the Petitioner as neither of the Respondents clarified the term socialism in terms of the said Act as they do not wish to affirm the affidavit showing

Without knowing the definition created by the Respondents, allegiance and faith to socialistic ideology. The

Petitioner states that the said amendment to the

Representation of the People Act 1951 was ~~entered~~ ^{enacted}

as the parliament by 42nd Amendment to the Constitution

adopted the following words in the Preamble:-

"~~SOVEREIGN~~ SOVERIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC"

ideology of the Respondents in fact called upon the Respondents No. 2 and 3 to state what do they mean by term principles of socialism.

Respondents refused to clarify the position in respect of specific queries of the Petitioner and refused to state that what do they mean by saying the term socialism

sub para.

-9-
After the 42nd Amendment the Preamble of the Constitution reads as follows -

"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.

6.

sub para.

The word; ~~xxxxxxx~~ socialism ^{and} secularism and democracy were substituted by the Constitution (42nd amendment) Act 1976 which came into effect

from 3rd January 1977. The Petitioners state that

on the basis of amendment to the preamble a bill was moved in the year 1988 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 ^a copy of memorandum or 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 established ^{ed} 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 grant liberty of ^{expression} ~~that impression~~, belief, faith and worship. The Petitioner have every right to ^{hold} ~~have~~ their ^{own ideology,} ~~liberty~~ ^{expression} ~~or through impression~~, belief and faith i.e. statement of policy and or political agenda of the Petitioner party. The Petitioner further submit that article 19 protects

the rights regarding freedom of speech and expression,

to form association or union. The Petitioner have

freedom of ~~people or express~~ ^{expression or speech} to say that socialism is

wrong ideology because of which a country ~~may~~ ^{shall} 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, ~~with~~ ^{with}
~~their own ideology as a political party,~~
~~having principle of faith, impression,~~

The Petitioner believe in principle of secularism and
democracy and would uphold the sovereignty, unity and

7 ~~to~~ integrity of India. The Petitioner submit that

Representation of People Act, 1951 regulate the

procedure for ~~the purpose of~~ conducting elections for

the parliament as well as legislative Assembly within

the ~~freedom~~ ^{frame} work of the Constitution. The Petitioner

respectfully submit ^{that} no enactment can force any citizen or

individual to change ~~his~~ ^{her} or ~~were~~ ideology ~~for~~ denying

the fundamental right or liberty to have faith and belief in
their own ~~impression, belief, faith and worship.~~
ideology, which is not contrary to the Constitution of India.

no enactment can compel any citizen to swear by a particularism when Article 19 of the Constitution guarantees the fundamental rights to freedom of speech and ^{ex}pression. The Petitioner states 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 oppose the~~ ~~the sovereignty unity and~~ ~~integrity of India believes in~~ ideology of socialism and have belief in trusteeship. The Petitioner submit

that to-day there are number of political party^{ies} who have ~~had~~ ^{religion, caste and class. Those} ~~led their foundation on the basis of religious, caste, and~~ ^{are communal parties or parties of the right's & parties} ~~class of their respective ideology.~~ The Petitioner ^{have no faith in socialism,}

8. state that ruling party namely: Congress-I party was 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 ^{based on} ~~clear by which they~~ advocate caste system and opposition to socialism.

Pider :- This states that either the political parties at national or regional level affirmed the affidavit stating their allegiance to socialism in their own interpretation or they have affirmed false affidavit. ~~It is~~ The term socialism is too vague term and also the said term had ~~not~~ changed its meaning at different points of time and ~~at different~~ or different interpretation to suit its ~~meaning~~, meanings. For example the Congress party meant either meant socialism means free economy or B.S.P. meant their ideology as Gandhian socialism, or the Jamat-E-Islami want to interpret Quran as ~~socialism~~ origin of socialism.

of principles opposed to socialism,

Third party namely: Shivsena which merely is in Maharashtra

Regional party is openly against the socialism

since its inception. Fourth party Jamat-E-Islami

does not even have faith in Constitution of

India as they have clearly declared that they have

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

parties ~~though they have their own ideology on the basis~~ denied their own faith still they affirm

the false affidavit saying that they have belief

principles of ~~which is nothing but making mockery of~~ Law. in socialism. The Petitioner states that if

9.

Pider

Constitution of India gives and guarantees number

~~freedom of expression~~

of ~~impression and worship~~ grant freedom

(i.e. to hold an ideology which is not of speech and expression) The said ~~principle and~~ (country.)

freedom is taken away by provisions of Section 29A

of the Representation of People Act. The Petitioner

therefore submit that section 29A not only violates

the fundamental rights of the ~~citizens and~~ member of Petitioner

but is also ultra-vires the Constitution of India

when the said Constitution ~~grants~~ all the protection to the

Citizen

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

enactment can force a particular ideology upon a citizen of India namely to have faith in socialism,

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

states 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 ^{having their own ideology} within the framework of the Constitution.

10. ~~The~~ ^{therefore} and therefore Petitioner approaches this Hon'ble

Court under Article 226 of the Constitution of India

in its inherent powers for appropriate ~~right~~ ^{order, direction and/or} order in the nature of writ, for the declaration that the ~~provisions of~~ ^{provisions of} Section 29-A of

the Representation of People Act are ultra vires the Constitution of fundamental right of citizen of India and are and are violative of fundamental rights of the citizen of India. The Petitioner states following amongst other grounds :- ^{the writ is based on}

(i) Section 29A (5) ^{of the Representation of People Act 1951} ~~compels~~ ^{compels} the

citizens of India to affirm the fact that they

believe in Socialism or Socialist ideology, when it does not give any definition of term Socialism or principles of Socialism.

(ii) It is clear from the Preamble of the Constitution of India that each citizen have liberty of thought, expression, belief, faith and worship and therefore Petitioner can very well hold the ideology which ~~is~~ opposes the ideology of socialism when they bear faith and have full allegiance to the Constitution of India and principles of ~~socialism~~, secularism and democracy. functioning of India.

(iii) Article 19-1(a) and (c) protect fundamental rights of citizen to freedom of speech and expression, 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, which term is too vague in Constitution of India or Basic Act.

(iv) The Petitioner since 1959 are holding this ^{a particular} ideology and through out oppose the ideology and principles of socialism and therefore ~~enactment~~ ^{no enactment or amendment to enactment} because and is amended in the year 1989, they

cannot ~~compel~~ be compelled to change their
~~ideology for the purpose of showing their~~
~~as political party~~
~~allegiance to the Constitution of India.~~

(v) The Petitioner believes in democracy and

secularism, ~~however the Petitioner do believe that the~~
~~people oppose to the principle socialistic pattern~~
~~of government or nation may not take a nation on~~
~~of socialism which only means the State the path of progress.~~
~~According to Petitioner the socialism leads to State~~
~~ownership, ownership and no freedom for private~~
~~order ownership. The ideology of socialism restricts~~
~~the freedom of citizens and therefore they have every~~
~~right to criticize, express or speak about their opposition to~~

(vi) The Petitioner are entitled to hold ideology ~~ideology of~~
~~socialism,~~
in free democratic country like India which is

a great example through out the world and

therefore no Government can compel ~~the any citizen or~~

Petitioner to hold ~~a~~ particular ideology ~~by~~

~~way of socialism, secularism and democracy.~~

(vii) ~~The provisions of section 29A of the~~

~~If at all such amendment is allowed to be~~
~~Representation of People Act are~~

~~in existence, it is directly in conflict with the~~

~~of India more particularly to the~~
provisions of the Constitution ~~as well as~~

~~preamble and~~

Article 19(1)(a) and 1(c), and therefore ~~those provisions are~~
~~ultra vires~~

the Constitution of India,

g. viii The Petitioner ^{submitted} ~~approach on the ground~~
~~mentioned above submit before this Hon'ble~~
~~Court that the provisions of Section 29-A be~~
~~declared as illegal, ^{inoperative in law and} ultra-vires to the~~
~~Constitution of India, and inoperative in law.~~

g. 11. The Petitioner has not filed any other
petition either in this Hon'ble Court or in the
Supreme Court of India. *in this matter.*

18/12. 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.

13. *The Petitioner is in correspondence with Regls*
Since 1989 and Bill today have not clarified the position

14. 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 ^{parliamentary debates,} documents, notifications and

in respect of
interpretation of
Section 29A (5) of
the said Act, which
is virtually a denial
of rights to the petitioners
and therefore the present
Petition is not barred by
any limitation or laches.

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 provisions of Section 29A of the Representation of the People Act ^{being} ultra-vires to the Constitution of India and being ^{violative} ~~inoperative~~ of fundamental right of 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 ^{own} individual ideology ^{and direct the Respondents No. 1 to 3} ~~without any direction of register the~~ ~~Petitioner Party without being an affidavit of affirm the~~ ~~fact to the effect that they believe in socialism;~~ ~~that Petitioner believes in principles of 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 ^{grant and} ~~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 *of*
Maharashtra,

(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

to file this Petition, I say that
Petitioner abovenamed, do hereby solemnly declare that
I am aware of the facts of the case and I am authorized
the contents of paras 1 ~~to~~ 9 are true to my own
knowledge and information and those contents of
paras 10 onwards 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.