

In the High-Court of Judicature at Bombay
Ordinary Original & Constitutional Jurisdiction

Writ Petition No.

of 1994

5785

SWATANTRA PARTY
(MAHARASHTRA)
AND ANOTHER

..... Petitioners

Versus

UNION OF INDIA AND OTHERS

..... Respondents

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**In the High-Court of Judicature at Bombay
Ordinary Original & Constitutional Jurisdiction
Writ Petition No..... of 1994**

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

And

In the matter of 42nd Amendments to the
Constitution of India

And

In the matter of Section 29 (A) 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
Building, 143. M.G. Road,
Bombay - 400 023.

SHRI. S. V. RAJU,

Citizen of India,
Editor, 'Freedom First'
4th floor, Maneckji Wadia
Building,
127, Mahatma Gandhi Road,
Bombay 400 001

..... Petitioners

Versus

1. UNION OF INDIA

having its office at Legal
Department, Aaykar
Bhavan, Maharshi Karve
Road, Bombay

2. CHIEF ELECTION COM-
MISSIONER OF INDIA

having its office at
Nirvachan Sadan, Ashok
Rd., New Delhi-110001

3. The Secretary

Election Commission of
India having its office at
Nirvachan Sadan, Ashok
Road, New Delhi-110 001

..... Respondents

To:

The Hon'ble the Chief Justice and the other Hon'ble Judges of the
High Court of Judicature at Bombay.

The Humble Petition of the Petitioners abovenamed:-

MOST RESPECTFULLY SHOWETH :

1. The petitioner No.1 is a political party which came into existence at a Preparatory Convention held at Bombay on 1st and 2nd August, 1959. A copy of the Statement of principles' adopted at the said Convention as also a copy of 'Statement of Policy' adopted at the National Convention of the party at Patna on March 19/20, 1960 are jointly annexed herewith and marked as Annex 'A' to this petition. The petitioner seeks registration as a political party under the Representation of the People Act, hereinafter called the Act for the sake of brevity. The petitioner No. 2 is a citizen of India, age 61 years, and is the Editor of a quarterly journal 'Freedom First'. He fully subscribes to the views of the Petitioner No. 1 Party and is a member thereof. The petitioners approach this Hon'ble High Court challenging the provisions of Section 29 (A) of the Act as being violative of fundamental rights and, consequently, ultra vires the Constitution of India.

2. The Respondent No.1 is the Union of India and the Respondent Nos. 2 and 3 are the responsible officers of Government of India in relation to the Elections to the Parliament and Legislative Assemblies and Legislative Councils throughout the Country. The petitioners are

Annexture 'A'

seeking reliefs against all the Respondents and hence they are necessary parties to this petition.

3. The petitioners state that, though the Preamble to the Constitution of the India as enacted in 1949, the people resolved:

"... to constitute India into a Sovereign Democratic Republic..."

The 42nd amendment to the Constitution of India, imposed in 1976 upon the ideals of the people of an earlier generation by introducing three new tenets. The relevant part of the Preamble to the Constitution was consequently changed to read:

'.. to constitute India into a Sovereign Socialist Secular Democratic Republic....'

4. The petitioners state that, the amendment to the Preamble of the Constitution was subsequently reflected by the introduction in 1988 of a new Section 29 (A) in the Representation of the People Act 1951.

5. The petitioners state that, in June 1989, the Election Commission issued a notification that under Section 29 (A) of the amended the Act, requiring that the then existing political parties to register within 60 days from June 15 i.e. by August 15 and that any party that came into existence after June 15 should do so within 30 days. A copy of the press report that appeared in the Times of India, June 17, 1989 is annexed with the present petition and is marked as Annex 'B'.

Annexure 'B'

6. The new Section 29 (A) of the Act as amended in 1988 calls on the political parties seeking registration to ensure that their memorandum of rules and regulations contained a specific provision that they would bear true faith and allegiance,

- a. to the Constitution of India;
- b. to the principles of socialism, secularism and democracy; and
- c. uphold the sovereignty, unity and integrity of India.

7. The petitioners state that, on August 1, 1989, the petitioner No. 1 - Swatantra Party (Maharashtra) wrote to the Election Commission seeking registration 'without prejudice to his right to question the

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Constitutional validity of the amendment to the Act making registration mandatory. A copy of the said letter is annexed to the present petition and marked as Annex 'C'.

Annexture 'C'

8. By a letter dated August 12, 1989 bearing No.56/Misc/89/3439 the respondent No.3 wrote to the petitioners No.1 stating that for the registration of any organization that the memorandum or regulations of the organization should contain a specific provision - as required by Sub-Section 5 of Section 29 (A) of the Act - that the body or association shall bear true faith and allegiance, inter alia, to the principle of socialism emphasis supplied. The said letter is annexed with the instant petition and marked as Annex 'D'.

Annexture 'D'

9. The Petitioners state that, Further, on June 28, 1994 the petitioner No. 1 wrote to the Election Commission wishing to know if his application for registration will be accepted by the Election Commission if he rejected the socialism part of Sub-Section 5 of Section 29 (A) of the Act. A copy of letter dt.28.6.1994 is annexed herewith and marked as Annex 'E' to this petition.

Annexture 'E'

10. The Respondent Election Commission replied to this by it's letter dated 14-9-94 reiterating the provision i.e. Section 29 (A) (5) of the Act and demanding compliance therewith. On this occasion also, as on the previous occasion, the letter was accompanied by a copy of Sec.29(A) of the Representation of the People Act. A copy of letter dated 14.9.1994 is annexed herewith and marked as Annex 'F'.

Annexture 'F'

11. The stipulations of Section 29 (A) create problems of conscience and principles which the petitioner No. 1 party does not wish to circumvent by prevarication and falsehood as has been done by other parties in the country. For example, the extreme leftist revolutionary parties have apparently constituted themselves by a memorandum which contains a provision to the effect that they bear allegiance to the principle of democracy; crassly communal parties have sworn allegiance to secularism and the ruling party despite its declared objective of liberalisation and globalisation has pledged or at any ^{rate} ~~art~~ continues to pledge its allegiance to the principle of socialism. Section 29 (A) poses no problem that can not be overcome by recourse to pliable conscience. There is no provision for any verification of the truth of the memoranda or regulations nor is there any instance of registration being denied to or withdrawn from any party on the basis of proven

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falsehood of the provisions in the memorandum of association of any party. The petitioner No 1 party has no wish to resort to such unconscionable procedure followed quasi-universally.

12. The petitioner No.1 has no difficulty whatsoever in confirming its allegiance to the principles of democracy and secularism as also to uphold the territorial integrity of the Republic. It encounters insurmountable difficulty in declaring allegiance to the principle of socialism. The term socialism has not been defined in the Constitution of India or in the said Act. The requirement to declare allegiance to a tenet so shrouded in vagueness can serve no possible purpose. If the provisions contained in the Constitution represent, in the view of the authors of the stipulation, the essential content of socialism, the specific requirement of the Section 29 (A) is unnecessary since the oath of allegiance to the Constitution as by law established would more than over the requirement.

On the other hand, if the dispositions of the Constitution of India are entirely socialistic but are a little less or a little more, there would arise a contradiction between the declaration of allegiance to the Constitution and that to the principle of socialism.

13. The petitioners submit that, it is significant that the Third Schedule to the Constitution which contains the texts of oaths to be taken by candidates to the election of Lok Sabha and of the State legislatures has not been modified following the amendment to the Preamble to the Constitution and of the amendment to the Act. The texts of oaths required to be taken by individual candidates continue to be limited to swearing true faith and allegiance to the Constitution of India as by law established without any reference to the principle of socialism. The oath of allegiance to the principle of socialism is insisted upon only in case of associations of persons wishing to be registered as a political party. The petitioners further submit that the provisions of the Act which deal with qualification and disqualification for membership to Legislature does not impose any such precondition. Nor do the provisions which lay down the requirements of a valid nomination lay down any such precondition. The effect of the relevant provisions of the Act is that whereas individual candidates i.e. those not set up by a registered political party may contest elections without having to bear any allegiance to the principles of socialism, parties which seek registration for the same purpose are required to do so. It is submitted that qua the purposes of the said Act, namely

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to confer and regulate the right to contest election, there is no intelligible differentia between political parties and individual candidates. The provision i.e. Section 29 (A) which only requires political parties to bear allegiance to the principles of socialism is wholly discriminatory and void being in violation of Article 14 of the Constitution of India. That socialists have the possibility of organising themselves as political parties while those having problems of conscience in declaring adherence to socialism should be stopped from organising themselves into a political party is wholly discriminatory and hence, clearly in breach of the fundamental right of association.

14. The petitioners' grievance is not against the amendment to the Preamble incorporating therein a reference to socialism. The Constitution contains many dispositions not all of which need be uniformly acceptable to any given individual or association of individuals. What is essential is that a citizen must have the right and the possibility at par with any other citizen to act and to canvass by constitutional means, for changing the dispositions of the Constitution in accordance with his inclinations howsoever unreasonable they may look to others at a given point of time. Section 29 (A) of the Act prevents committed and sincere non-socialists from agitating as an organised force in favour of getting the Constitution modified in their favour by entering the Legislature - State Assemblies as also Parliament - and influencing the persuasions of the other members of the Parliament.

15. Thus, without going into the question of the precise definition of the term socialism, the right of a non-socialist citizen to hold his personal views and be entitled to all the privileges enjoyed by the socialist fellow-citizens can not be denied. In particular his access to the legislative body as an individual and as a party can not be hindered by denying him the privileges of registration as political party. The terms socialism has been applied to a large spectrum of theories over the last two centuries. Saint Simonism based on compassion for the less fortunate and suffering fraternity, Owenism as a serious attempt at organisation of the weaker sections into economically viable units, Fabianism with its mighty intellectual prestige provided by G.B. Shaw, Sidney and Beatrice Webb, Guild Socialism advocated by G.D.H. Cole, Welfarism providing a misplaced justification for equal distribution of wealth, European type of liberal, democratic, welfarist socialism, Keynesian model entrusting the responsibility of ensuring fuller levels of employment and investment, third world

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states resorting to planning as an instrument of accelerating growth and equality, soviet type of bolshevik growth and equality, soviet type of bolshevik scientific socialism based on dialectical materialism, historical determinism, class conflict, theory of surplus value and aimed at industrialisation, nationalization, planning and dictatorship of the proletariat and last but not the least the Maoist, Guevarist, Castroist, Royist, etc. provide only part of the spectrum of ideas that have been identified with the word socialism. By virtue of the vast expanse and the political and economic power of the erstwhile Soviet Union and the use of the word socialist in the nomenclature of the soviet block countries, the word is now understood to mean, in popular parlance, a system associated with the soviet model. Other schools of socialist thought are identified by the appendage of qualifications like democratic, Christian, liberal. The term socialism used without qualifications is interpreted to refer to the system of thought propagated by Marx, Engels supplemented by the lesser prophets like Lenin, Stalin etc.

16. The Concise Oxford dictionary defines the word socialism as Political and economic theory of social organization which advocates that community as a whole should own and control the means of production, distribution and exchange; policy or practice based on this theory. It is quite clear that the word socialism in its unmixed form means much more and much less than a system based on justice, liberty, equality and fraternity that is envisaged in the Constitution of India. It, therefore, follows that oath of allegiance to both the Constitution of India and to socialism are in good part mutually contradictory.

17. The petitioners submit that, certain traits of the mainstream theory of socialism are clearly opposed if not repugnant to the basic principles and structure of the Constitution of India; for example, class-contradiction, atheism, dictatorship of the proletariat.

18. An argument may be made that the term socialism is so vague that the term socialism is so vague that no individual should have any difficulty in adhering to it or should feel any need to dissociate himself from it. The obvious corollary is that the declaration of allegiance to the principle of socialism is unnecessary. Further, the argument is far from true. The essential part of all brands of socialism is the notion of the paramountacy of society over an individual of social decision-making over individual behaviour. This concept of

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paramountacy stands in ruins today. It is now accepted quasi-universally that the mankind has, till to date, not invented anything better than the market mechanism for arriving at best decisions for the society as a whole, that holistic social decision-making is a masquerade for a few individuals hijacking the system to their advantage, that individuals are unique and hence equal, that individuals pursuing fulfillment of their unique personality interact amongst each other to produce the most desirable results and that there are no Masters neither spiritual nor economic with superior lights.

19. In most countries of the world the socialists^{are} are collapsing under the weight of their own non-viability. Even the Government of India has admitted the errors of its socialist past and professes to be pursuing the path of market oriented economies. It makes little sense in this era to deny non-socialists the possibility of organising themselves as a party in order to be able to contest political elections.

20. The position of the petitioners is thus diametrically opposed to the basic minimum of the world-view, economics, sociology and politics that is associated with the term socialist. The petitioners are, therefore, approaching this Hon'ble Court to seek relief from being forced to change his convictions or to have recourse to deceit in order to be able to exercise the basic democratic human rights embodied in the fundamental rights of being able to form a party with a view to contesting elections.

21. Section 29 (A) (5) of the Act suffers from the vice of vagueness in that it compels a association to ^{swear} ~~era~~ allegiance to the principle of socialism without any attempt to define or even indicate the meaning of the term socialism. The Section is, therefore, illegal and unconstitutional being arbitrary and, therefore, violative of article 14 of the Constitution of India.

22. Sub-Section 5 of Section 29 (A) of the Act, in as much as it compels an association or a political party to bear allegiance to the principle of socialism as a precondition to its applying for registration as political party is ultra vires Article 19 (1) (a) and (c) of the Constitution of India. The said Section has the effect of hindering and inhibiting the formation of a political party with full advantages of registration and its functioning in the political arena of the country unless it conforms to a certain point of view. The said provision is not saved by sub-clauses 2 and 4 of article 19 in that it has no bearing on the sovereignty and integrity of India or public order.

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23. Section 29 (A) makes a hostile and invidious discrimination between political parties which bear allegiance to the principles of socialism and those that do not. It is submitted that qua the purpose of registration of political parties i.e. for the purpose of contesting elections and conferring certain rights and privileges and imposing certain liabilities in relation thereto, there is no intelligible differentia between the two kinds of political parties. It is further submitted that qua the election law the differences in beliefs or political philosophies which parties may hold can not become a ground for discriminating between them so as to confer certain privileges only on parties holding one set of beliefs as long as the beliefs do not contradict or adversely affect the sovereignty and integrity of India or public order. Such a difference, as is sought to be emphasized by Section 29 (A) (5) is without any basis and has no nexus with the purpose of the Act which is avowedly an Act which provides for "the conduct of elections to the Houses of Parliament and to the House or Houses of Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decisions of doubts and disputes arising out of or in connection with such elections".

24. The petitioners further submit that qua the aforesaid objective of the Act, there is no valid difference in individuals contesting elections and parties doing so. There is thus an arbitrariness and a hostile discrimination writ large in the scheme of the Act in that it enables individual candidates contesting as independents to contest elections even though they do not bear allegiance to the principles of socialism but prevents an association of such individuals from doing so as a registered political party unless it bears allegiance to the said principles. The petitioners submit that this constitutes an unreasonable and unjustified denial of the advantages of registration only because as an association the said individuals are non-socialists.

25. The petitioners submit that the restriction which Section 29 (A) imposes on political parties nullifies the very essential and basic feature of the Constitution of India namely democracy and the fundamental right of freedom of association and of thoughts and expression on citizens for the purpose of preserving the democracy.

26. It is submitted that the right to amend the Constitution so as not to change its basic structure having been upheld and socialism not being part of the basic structure of the Constitution, the restriction imposed by Section 29 (A) has the effect of virtually denying the

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right to attempt an amendment of the political philosophy of the Government of the day reflected in the Constitution of India. The petitioners therefore approach this Hon'ble High Court under Article 226 of the Constitution of India for appropriate writ, direction and/or order in nature of writ for the reliefs prayed herein. The petitioners are entitled to all the reliefs prayed in the petition and this Hon'ble High Court has jurisdiction to try and entertain this petition.

27. The petitioners have not filed any other petition either in this Hon'ble Court or in the Supreme Court of India in this matter.

28. The petitioners state that the Petitioners have their offices at Bombay. The Respondents have their offices at Bombay. The cause of action arose at Bombay, and therefore, the Hon'ble High Court therefore has jurisdiction to try this Petition on its Original side.

29. The petitioners state that their rights are protected under the Constitution of India and the Petitioners are entitled for the reliefs prayed herein.

30. The petitioners crave leave to add to, to alter, to amend, to delete, to vary any of the grounds urged hereinabove if necessity may demand or occasion may require.

31. The Petitioners, therefore, pray that this Hon'ble court be pleased to:-

- A) issue a writ of Mandamus, or a writ in the nature of mandamus or any other appropriate writ order or direction and thereby strike down Sub-Section 5 of Section 29 (A) of the Representation of the People Act 1951 as being ultra vires the Constitution of India to the extent it requires the memorandum and rules and regulations of the association or body desiring registration to contain a specific provision that such an association and body shall bear true faith and allegiance to the principle of socialism;
- B) direct, thereupon, the Respondent No.3 to register the Petitioner No.1 as a political party under the Representation of the People Act, 1951 forthwith with law;
- C) grant interim reliefs directing the Respondent No.3 to register the Petitioner No. 1 as a political party under

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the Representation of the People act 1951 in accordance with law;

D) grant any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case.

E) To award costs of the petition.

And for this Act of Kindness, The Petitioners as in Duty Bound Shall Pray.

Bombay:

Dated : 15th day of December, 1994

L. R. Sampat
Petitioners

A. S. A. A. A. A.
Advocate for the petitioners

Verification

I, L. R. Sampat, General Secretary of the Swatantra Party (Maharashtra) of the Petitioner No. 1 above named do hereby solemnly declare that I am aware of the facts of the case and I am authorised to file this petition. I say that the contents of paras 1 to 26 are true to my own knowledge and information and the contents of paras 27 to 31 being legal submissions and prayers are true to my belief and I believe the same to be true.

Solemnly declared at

Bombay

this 15th day of Dec. 1994

Identified by me

A. S. A. A. A. A.
Advocate for the Petitioners

ed.
Before me

In the High-Court of Judicature at Bombay
Ordinary Original & Constitutional Jurisdiction

Writ Petition No. of 1994

(District : Bombay)

1. Swatantra Party (Maharashtra)
through its General Secretary,
Shri L. R. Sampat, having their
registered office at Sassoon
Building, 143, Mahatma Gandhi
Road, Bombay 400 023.
2. Shri S. V. Raju, Citizen of
India, Editor, "Freedom First",
4th floor, Maneckji Wadia Build-
ing, 127, Mahatma Gandhi Road,
Bombay 400 001.

..... Petitioners

Versus

1. Union of India having its Legal
Department at Ayakar Bhavan,
Maharshi Karve Road, Bombay.
2. The Chief Election Commis-
sioner of India, Nirvachan
Sadan, Ashok Road, New Delhi.
3. The Secretary, Election Com-
mission of India, Nirvachan
Sadan, Ashok Road, New Delhi.

..... Respondents

To,

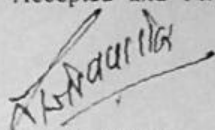
The Prothonotary & Senior Master
High Court, Bombay.

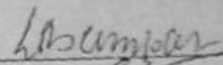
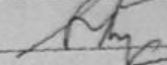
Respected Sir,

We, the Petitioners abovenamed do hereby appoint and authorise
Mr. Rajiv Patil, Advocate, High Court to act, appear and plead for
us in the above said matter.

In witness whereof we set our hands to this writing this 14th
day of December 1994.

Accepted and Filed.


RAJIV PATIL
Advocate, High Court,
6-A, Krishna Kunj,
Shivaji Park,
Dr. M. B. Raut Marg,
Bombay 400 028.

In the High-Court of Judicature at Bombay
Ordinary Original & Constitutional Jurisdiction
Writ Petition No. of 1994

SWATANTRA PARTY
(MAHARASHTRA)
AND ANOTHER

]

..... Petitioners

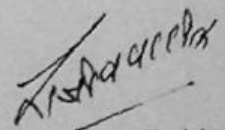
Versus

UNION OF INDIA AND OTHERS

..... Respondents

Memorandum of Address:

C/o. Rajiv Patil
6-A, Krishna Kunj,
36, Shivaji Park,
Dr. M. B. Raut Road,
Bombay 400 028.


Advocate for Petitioners.

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List of Documents on which Petitioners will rely :

1. Statement of Policy dated 19/20th March, 1960 of the Petitioner No.1 (Exhibit 'A')
2. Press Report dated 17th June, 1989, appeared in The Times of India.....(Exhibit 'B')
3. Notification issued under Section 29A of the Representation of People Act, by the Election Commission in June 1989.
4. Letter dated 1st August, 1989 by the Petitioners to the Election Commission (Exhibit 'C')
5. Letter dated 12th August, 1989 from the Secretary, Election Commission, to the Petitioners (Exhibit 'D')
6. Letter dated 28th June, 1994 by the Petitioners to the Election Commission(Exhibit 'E')
7. Letter dated 14th August, 1994 from the Election Commission to the Petitioners(Exhibit 'F')
8. Any other correspondence prior to the Petition.

Advocate for Petitioners.