

BEFORE THE ELECTION COMMISSION OF INDIA

CORAM :

HON'BLE O.P. RAWAT
ELECTION COMMISSIONER

HON'BLE Dr. NASIM ZAIDI
CHIEF ELECTION COMMISSIONER

HON'BLE A.K. JOTI
ELECTION COMMISSIONER

Dispute Case No.2 of 2017

In re:Dispute Case No. 2 of 2017 - Dispute in All India Anna Dravida Munnetra Kazhagam – application under paragraph 15 of the Election Symbols (Reservation & Allotment) Order, 1968.

Shri E. Madhusudhanan and two others Petitioners

Vs.

Smt. V.K. Sasikala and another Respondents

ORDER

The All India Anna Dravida Munnetra Kazhagam ('AIADMK' for short) is a recognised State Party in the State of Tamil Nadu and Union Territory of Puducherry with the symbol 'Two Leaves' allotted as its reserved symbol in the said State and Union Territory under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 ('Symbols Order' for short). As per the provisions of the Constitution of AIADMK, the party is headed by the General Secretary.

2. Ms. J. Jayalalithaa, who was elected as the General Secretary in 2014 expired on 5th December, 2016. There were some communications from the AIADMK

regarding nomination/appointment of Smt. V.K. Sasikala as the General Secretary of AIADMK in the meeting of the General Council of the party convened on 29th December, 2016, till a General Secretary is duly elected as per Rule 20(2) of the Party's Bye-Laws.

3. An application under paragraph 15 of the Symbols Order was filed by Shri E. Madhusudhanan and two others on 16th March, 2017. The petitioners challenged the alleged nomination of Smt. Sasikala as the General Secretary on the ground that the General Council had no power to make such nomination and also on the ground that Smt. Sasikala did not fulfil the qualification for holding the post of General Secretary as she did not have the mandatory five years continuous membership of the party. They also, inter alia, sought a direction allotting the reserved symbol of the AIADMK to their group. The petitioners contended that the rank and file of the AIADMK was supporting them and it is merely the legislature wing of the party, a miniscule faction, which is supporting the Respondents.

4. In view of the fact that a bye-election from 11-Dr.Radhakrishnan Nagar Assembly Constituency in Tamil Nadu had been notified by the Commission on that day (16th March, 2017), the Commission sent copy of the application to the Respondents asking them to submit their reply by 20th March, 2017. Both the groups were directed to submit documents to support their claims by the said date. On a request from the Respondents, they were permitted to file the documents by 21st March, 2017.

5. On 20th March, 2017, the petitioner filed an application to make additional submissions and to produce documents. On 21st March, 2017, they submitted individual affidavits in 59 Volumes, affirming support, mostly from the Branch Secretaries of the Party. The respondents also filed 57 volumes of individual affidavits as evidence of their strength.

6. In view of the urgency involved in the matter inasmuch as tomorrow (23rd March 2017) is the last date for filing nominations in 11-Dr.Radhakrishnan Nagar Assembly Constituency in Tamil Nadu, the matter was heard by the Full Commission today, i.e., 22nd March, 2017. The hearing commenced at 10.30 a.m., as scheduled, and continued for more than six hours at a stretch upto 05.00 p.m. Elaborate arguments were advanced by Shri CS Vaidyanathan and Shri Krishan Kumar, both learned senior counsels, for the petitioners No.1, 2 and 3. Equally detailed oral submissions were made by Shri A Sundaram, Shri Mohan Parasaran and Shri Salman Khurshid, all learned senior counsels, on behalf of respondents No.1 and 2. In addition, the Commission also heard Shri Manoj Pandian, learned counsel for Shri KC Palanisamy, Ex-Member of Parliament, who had earlier made a petition before the Commission on 6th January, 2017 in a related matter and who desired to be heard in the matter in terms of para 15 of the Symbols Order, as per his request received on 21st March, 2017. In support of their claims, the petitioners have filed voluminous records containing documents and individual affidavits of a large number of Members of Parliament, State Legislative Assembly of Tamil Nadu and members of the party at

various organizational levels running into 15,890 pages contained in 59 volumes. The index of individual affidavits filed by the petitioners itself runs into three volumes containing 554 pages. To counter the claims of the petitioners, the respondents have also filed equally voluminous records in 57 volumes comprising approximately 3,975 pages.

7. In their oral submissions, the above mentioned learned senior counsels have referred to the various provisions of the party constitution and also placed reliance on a catena of decisions of the Hon'ble Supreme Court dealing with the issue of splits in the political parties and also the orders issued by the Election Commission in such matters from time to time during the last more than four decades. Whereas, the learned senior counsels for the respondents placed heavy reliance on the decision of the Hon'ble Supreme Court in *Sadiq Ali Vs. Election Commission and Another* [1972 AIR 187, 1972 SCR (2) 318] in support of their claim, particularly based on the test of majority, the learned senior counsels for the petitioners sought to make a distinction in the matter of application of the ratio of *Sadiq Ali's* case to the facts and circumstances of the present case, contending, inter alia, that the constitution of the AIADMK is different and *sui generis*, whereunder it is the primary members of the party who have a vital role in the organizational structure as the General Secretary of the party, who is the Chief Executive Authority of the party, is directly elected by them (Primary Members).

8. In the original petition, under para 15 of the Symbols Order, the petitioners have also raised the issue of the eligibility of the respondent No.1 to be elected as General Secretary of the party, besides raising other objections as regards the total absence of any provisions relating to appointment of interim or protem General Secretary of the party. They also contended that a person who is disqualified even from contesting any election to Parliament or state legislature or even becoming an election agent of a candidate, and even not being entitled to vote at an election, how could such a person be appointed to a post whereby the whole conduct of the party affairs comes into his or her hands and even select candidates for elections on behalf of the party. They also drew attention to the observations of the Hon'ble Supreme Court in the case of *K Prabhakaran Vs. P Jayarajan* (AIR 2005 Supreme Court 688) to the effect that the criminal elements should not be allowed to enter not only in the august Houses of Parliament and state legislature, but even in politics. They also drew attention to the 244th Report of the Law Commission making observations to the same effect.

9. In their reply, apart from the other submissions, the respondents contended that there is no split in the party and it is only a matter of internal dissent. However, the Commission is satisfied based on the documents filed and the oral submissions made by the learned senior counsels of both the parties, that there are two rival groups in the party led by Shri E. Madhusudhanan and Smt. V.K. Sasikala, and each group claims

to be the party and therefore, the matter needs determination in terms of para 15 of the Symbols Order.

10. The Commission, at the outset of the hearing itself, had told all the parties that it would not go into the question of the appointment of respondent No.1 as General Secretary of the party, and that the present hearing would be confined only to the question of allotment of the reserved symbol of the party to its candidate at the current bye-election from 11-Dr.Radhakrishnan Nagar Assembly Constituency, for which the nominations would close by 03.00 p.m. tomorrow (23rd March, 2017). Thus, for the time being, the Commission is concerned only with the limited aspect of use of the said symbol 'Two Leaves' reserved for the party in the said bye-election from 11-Dr.Radhakrishnan Nagar assembly constituency.

11. From the foregoing, it would be apparent that the examination and analysis of voluminous documents and huge number of affidavits filed by both the groups in support of their respective claims would require considerable time as both the groups have pointed out several discrepancies and legal infirmities in those individual affidavits. A deeper examination and more closer look would also be required to the various provisions of the party constitution on which both the groups relied to buttress their submissions on factual and legal basis. No one would grudge the fact that it is almost humanly impossible to study all the aforesaid records running into more than 20,000 pages and to analyze the oral submissions made by the learned senior counsels for more than six hours continuously, and then come to a definite finding or

conclusion on the disputed questions of facts and law. After the close of the hearing at about 05.00 p.m. today, any hasty decision in a matter of a few hours before the commencement of the nominations process at 11.00 a.m. tomorrow (23rd March, 2017) may lead to an erroneous conclusion or finding, prejudicially affecting the rights and interests of either or both the groups. Furthermore, the learned counsel for the petitioners have also orally submitted that they have collected, and are in the process of collecting, more individual affidavits from the members of the party at various organizational layers and wings of the party for the submission whereof they require some more time. It would not be fair in the interest of equity, justice and fair play – in-action to deny them the opportunity of doing the needful in the matter, as prayed for.

12. Having regard to the above facts and circumstances and the practical difficulties in evaluating and adjudicating upon the huge evidence running into more than 20,000 pages adduced by both the parties – that too filed late in the evening yesterday (21st March, 2017) – and the oral submissions made by their learned senior counsels, the Commission is not in a position to give any final decision at the present juncture in the short time available mentioned above. Consequently, the Commission is left with no other option in these compelling circumstances but to make an interim order which may be fair to both the contending groups. In order to place both the rival groups on even keel to protect their rights and interests, and going by the past precedents in such cases, the Commission hereby makes the following interim order,

purely for the purposes of the current bye-election from 11-Dr.Radhakrishnan Nagar assembly constituency in Tamil Nadu, pending the final determination of the dispute raised by the petitioners in their petition dated 16th March, 2017 in terms of para 15 of the Symbols Order:-

- (a) Neither of the two groups led by the petitioners (Shri E. Madhusudhanan, Shri O Panneerselvam and Shri S. Semmalai) and the respondents (Smt. V.K. Sasikala and Shri TTV Dhinakaran) shall be permitted to use the name of the party 'All India Anna Dravida Munnetra Kazhagam' simplicitor;
- (b) Neither of the aforesaid two groups shall also be permitted to use the symbol 'Two Leaves', reserved for 'All India Anna Dravida Munnetra Kazhagam';
- (c) Both the groups shall be known by such names as they may choose for their respective groups, showing, if they so desire, linkage with their parent party 'All India Anna Dravida Munnetra Kazhagam'; and
- (d) Both the groups shall also be allotted such different symbols as they may choose from the list of free symbols notified by the Election Commission for the purposes of the current bye-election from 11 - Dr.Radhakrishnan Nagar assembly constituency in Tamil Nadu.

Accordingly, both the groups are hereby directed to furnish, latest by 10.00 a.m. tomorrow (23rd March, 2017):

- (i) the names of their groups by which they may be recognized by Commission; and
- (ii) the symbols which may be allotted to the candidates set up, if any, by the respective groups. They may indicate the names of **three** free symbols, in the order of their preference, anyone of which may be allotted to their candidates by the Commission;

13. Further, the both the above referred groups are allowed a further and the final opportunity of adducing all such documents and affidavits on which they propose to rely on their respective claims, latest by 17th April, 2017 (Monday). They may also take notice that the matter will be further heard by the Commission on a date to be intimated later.

O R D E R E D A C C O R D I N G L Y

Sd/-

(O.P. RAWAT)
ELECTION COMMISSIONER

Sd/-

(Dr. NASIM ZAIDI)
CHIEF ELECTION COMMISSIONER

Sd/-

(A.K. JOTI)
ELECTION COMMISSIONER

New Delhi the 22nd March, 2017