

Case :- P.I.L. CIVIL No. - 26259 of 2020

Petitioner :- Shraddha Tripathi

Respondent :- Election Commission Of India Thru Secy.Nirvachan Sadan Newde

Counsel for Petitioner :- In Person

Counsel for Respondent :- Kaushlendra Yadav

Hon'ble Govind Mathur,Chief Justice

Hon'ble Ramesh Sinha,J.

Heard learned counsel for the parties.

This petition for writ is preferred to assail the validity of paras-10, 10A and 10-B of the Symbol Order 1968 on several counts *inter alia* that the paras aforesaid are in conflict with the provisions of Rule-10 of the Conduct of Election Rules, 1961.

According to the petitioner as per Rule 10 (4) of the Rules of 1961 an election of parliamentary or assembly constituency where the poll becomes necessary the *Returning Officer* shall consider the choice of symbols expressed by the contesting candidates in their nomination papers and it shall subject to any general or special direction issued in this behalf by the Election Commission. It is asserted that the election symbols are not being allotted by the *Returning Officer* but the Commission itself and that is not inconsonance to the provisions of Rule 10 (4) of the Rules, 1961. It is also brought to our notice that the term "*Returning Officer*" is defined under section 21 of the Representation of Peoples Act, 1951 and according to that the *Returning Officer* is a person designated or nominated by the Election Commission but not the Election Commission itself. It is further submitted that as per Sub Rule-6 of Rule-10 of the Rules, 1961, every candidate or his election agent shall forthwith be informed of the symbol allotted to the candidate and be supplied with the specimen thereof by the *Returning Officer*. According to the petitioner thrust of Sub-Rule-6 of the Rules aforesaid is that an election symbol is required to be disclosed at first instance by the *Returning Officer* to the contesting candidate or his election agent and not prior to that but under para-17 of the Order of 1968, the Commission has published the same prior to the date of allotment of symbols to the contesting candidate or its agent.

Learned Senior Advocate appearing on behalf of the Election Commission has raised certain objections regarding maintainability of the present petition on the basis of prayer clause of the petition and stated that the cause sought to be agitated is no more *res integra* in the light of certain judgments of the Apex Court.

However, looking to the issue involved, we deem it appropriate to have counter of the petition. The Commission, therefore, is directed to file a counter to the petition within a period of six weeks from today.

Let this writ petition be listed as a fresh case on 17th February, 2021.

(Ramesh Sinha, J.) (Govind Mathur, C.J.)

Order Date :- 5.1.2021

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