

proposition that before acceptance of resignation, the same can be successfully withdrawn. The petitioner had withdrawn his resignation before it was accepted by the Syndicate) and, therefore, the judgment relied by the respondent-University would have no application to the facts of this case.

(23) The up-shot of the entire discussion is that this petition is allowed. The petitioner would be allowed to withdraw his resignation as prayed for by him,—*vide* Annexures P3 and P4. Order Annexure P6 accepting the resignation of petitioner by the Vice Chancellor with effect from 18th October, 1990 and order Annexure P7 paragraph 82 of the minutes of the meeting of the Syndicate held on 23rd October, 1990 regarding waiving of the condition of three months notice after the withdrawal of the resignation are quashed. The petitioner (consequently shall be deemed to be in service for all this while.) It shall, however, be open to the respondent-authorities to proceed against the petitioner if they may so chose with regard to allegations that might be against the petitioner on account of his conversation with Miss Sudip Minhas in accordance with law. In the circumstances, however, there shall be no order as to costs.

J.S.T.

Before : A. L. Bahri, Ashok Bhan & G. C. Garg, JJ.

SHIROMANI AKALI DAL (SIMRANJIT SINGH MANN),
—Petitioner.

versus

ELECTION COMMISSION OF INDIA,—Respondent.

Civil Writ Petition No. 4091 of 1993.

September 8, 1993.

Constitution of India, 1950—Art. 226 & 324 (1)—Representation of People Act 1951—S. 29-A as amended by the Representation of People (Amendment Act), 1988—Election Symbols (Reservation and Allotment) Order, 1968—Para 6 & 7—De-recognition of political party—Boycott of elections by Shiromani Akali Dal (Mann)—Non-participaion in elections leading to de-recognition—Political party asserting that boycott was for valid reasons and such contingency not provided for in Clauses 6 & 7 of the Symbols Order—Court cannot supplement provisions in the form of an exception or a proviso to para 6 of the Order so as to save it from de-recognition as a political party—The provision of para 6 & 7 of the 1968 Order are not bad on

account of any insufficiency—Reasons for recognition and de-recognition of a political party is restricted to the limits prescribed by the Order—Neither Court nor Commission can enter upon the question of genuineness, reasonableness or sufficiency of the reasons that led a political party in not securing a seat in the legislature or the prescribed percentage of votes—Commission is bound to decide question of de-recognition on the basis of mathematical calculation—In exercise of this power neither the Commission nor the Court has any discretion to enervate upon the reasons of boycott—Section 79 (d) denying electoral right—It is for political party concerned to decide whether to participate or not in any election—Such decision cannot be subject matter of scrutiny by Court to justify action or inaction—De-recognition creates no fetters on a political party to pursue its political activities—The effect of de-recognition is limited to the choice of symbols in the future elections—Such party is entitled to contest future elections selecting out of unreserved symbols—Right to contest is not taken away by de-recognition—Right to hearing before passing an order of de-recognition—Question being beyond reference left unanswered.

(Para 6, 19, 20, 21)

Held, that it cannot be laid down that the High Court in the exercise of jurisdiction under Article 226 of the Constitution can exercise function of the legislature by amending or by adding to the stature. Such a function is of the legislature and not of the Courts. The Court can merely supplement a word or two which are considered necessary to uphold the validity of the stature which would promote the object and purpose of an enactment. Apart from that the Court has no power to travel into the realms of Legislative jurisdiction to enact or amend the stature.

Held, that the stand of the petitioners that this Court should make a provision in the form of "an Exception" or a "Proviso" to para 6 of the Symbols Order of 1968 to authorise the Election Commission not to de-recognise a political party who had failed to participate in the general elections for valid reasons. Such a course is not permitted by law. The provisions of paras 6 and 7 of the Symbols Order of 1968 are valid as already upheld by the Supreme Court. They are not bad on account of any insufficiency.

Held, that in other words recognition or de-recognition of a political party has to be within the four corners or limits as prescribed by the enactment.

Held, that the very fact that minimum standard of requisite was prescribed in para 6(A) or (B) of the Symbols Order of 1968 is indicative that if a recognised political party would not secure any vote or any seat in the elections, it would be de-recognised. It is, neither for the Commission nor for the Court for that purpose, necessarily to go into or determine the genuineness, reasonableness or sufficiency of the reasons of such a recognised political party in not getting any member elected or any vote secured or in other words the performance of such political party is not upto the requisite as provided

under para 6 (A) or (B) of the Symbols Order. The Commission was merely to take into consideration the result of the general elections of the assembly in existence and functioning to determine whether any political party was to be recognised or de-recognised. That was a matter of mathematical calculation. In such a situation the element of discretion was altogether absent. In the facts of the present case there was no option for the Election Commission but to pass orders of de-recognition of the two petitioners-political parties on the ground that they were not fulfilling the requisites in the matter of performance shown in the general elections held.

Held, that reading of para 6 (A) and (B) reproduced above makes it abundantly clear that it is the performance of the general elections of the Assembly existing and functioning that is required to be taken into consideration for the purposes of recognition of political parties. The word "if and only if" and "not otherwise" in para 6 aforesaid leaves no manner of doubt that the intention of the Authority framing the Order was that performance of the political parties in the general elections only is to be seen. Even otherwise this provision does not give the impression of arbitrariness or unsoundness. It would be otherwise unrealistic if after every election general or by such an exercise is done. The recognised parties would remain in a situation of turmoil and uncertainty if after every few months or years their status of recognised political party is to be subjected to revision. The provision as it exists allows a reasonable time between general elections for the political party to participate in the political activities of the State and to show or prove its worth in the next coming general elections.

Held, that no case for interference is made out under Article 226 of the Constitution as the petitioners political parties are not debarred from indulging in political activities and participating in the elections, general or others, Parliament or Legislative Assemblies or other democratic institutions.

Held, that Section 79 (d) of the Representation of the People Act defines electoral right to mean the right of a person to stand or not to stand, as or to withdraw or not to withdraw from being a candidate or to vote or refrain from voting at any election. Thus nobody can be compelled to vote or not to vote. Likewise nobody can be compelled to contest or not to contest any election. This is entirely the sweet will and discretion of the person concerned as to whether he is to contest any election or not. Likewise it is entirely for the political party concerned to decide to participate or not to participate in any election. Such decisions cannot be subject matter of scrutiny by the Courts to either justify the action or inaction or otherwise. Validity of an election is not dependent upon such actions or inactions.

Held, that even on de-recognition of a political party no fetters are placed on its rights to pursue political activities including participating in the elections. The only effect of de-recognition is that in

the matter of choice of symbols in the future election, would be out of un-reserved symbols. In other words symbols reserved for recognised political parties would not be available after its de-recognition. However, such political parties as un-recognised political parties could make a fresh choice of symbols and candidates of such political parties would be entitled to allotment of such symbols. The other candidates, of course, would have choice from the remaining other symbols. The right of the candidate belonging to such a political party to contest election is not thus taken away by de-recognition of a political party.

Held, that the symbols Order of 1968 is comprehensive to cover situations like the one projected in the present case i.e. of boycotting the elections as such cases would be of performance resulting in nil result and such political parties would be liable to be de-recognised under para 6 of the Symbols Order, 1968. No amendment of the afore-said order is required and no direction can be given to the Election Commission to amend the same. The ground on which a political party decides to boycott or not to participate in the elections is not justifiable either before the Election Commission or before this Court, either in any election petition or in a petition under Article 226 and 227 of the Constitution. It is entirely for the person concerned or the political party concerned to vote or participate in the election. No compulsion is attached thereto and none can be attached. Non-participation by the political parties, for whatsoever reason may be, would earn the disqualification of de-recognition. The impugned orders de-recognising the petitioners-political parties in the two cases referred to above are valid and in accordance with law.

Civil Writ Petition under Article 226 of the Constitution of India praying that :—

- (i) *need for advance notices may please be dispensed with;*
- (ii) *operation of the impugned order whereby petitioner party has been derecognised may please be stayed;*
- (iii) *need for certified copy of Annexure may also be dispensed with;*
- (iv) *issue writ of certiorari or any other writ, order or direction as this Hon'ble Court may deem fit quashing the impugned order Annexure P-1 whereby the petitioner party has been derecognised and paras 6 and 7 of the Election Symbols (Reservation and Allotment) Order 1968 as ultra vires of the Constitution of India.*

And for this, the petitioner as duty bound shall ever pray.

(This Writ Petition was considered by the Division Bench consisting of Hon'ble Mr. Justice Amarjeet Chaudhary and Hon'ble Mr. Justice N. K. Sodhi. Finding an important question of law involved in the case their Lordships observed,—vide separate orders dated 29th April, 1993 that the petition be admitted to Full Bench for disposal. Their Lordships also expressed difference of opinion on the point of interim

relief and dictated two separate orders. The petition was then laid before Hon'ble The Chief Justice for appropriate orders. Under the orders dated 29th April, 1993 of Hon'ble the Chief Justice the case was referred to third Hon'ble Judge. Hon'ble Mr. Justice M. S. Liberhan. Hon'ble Mr. Justice M. S. Liberhan,—vide order dated May 3, 1993 disagreed with the opinion expressed by Hon'ble Mr. Justice N. K. Sodhi. Finally the case was decided by the Full Bench constituted of Hon'ble Mr. Justice A. L. Bahri, Hon'ble Mr. Justice Ashok Bhan and Hon'ble Mr. Justice G. C. Garg,—vide judgment dated 8th September, 1993).

Ranjan Lakhnupal, Advocate, for the Petitioner.

G. K. Chatrath, Sr. Advocate with Vikrant Sharma, Miss Anu Chatrath, Miss Alka Chatrath, Sushant Maini and Adarsh Malik, Advocates, for the Respondent.

JUDGMENT

A. L. Bahri, J.

(1) Two writ petitions filed by two political parties; (i) Shiromani Akali Dal (Simranjit Singh Mann) (C.W.P. No. 4091 of 1993) and (ii) Shiromani Akali Dal (Badal) (C.W.P. No. 4587 of 1993), were admitted to be heard by the Full Bench, as common substantial questions of law are involved therein.

(2) With respect to grant of interim relief there was difference of opinion that the matter was referred to another Judge. Now at the final hearing we are not concerned with the issues relating to the grant of interim relief of postponing the elections.

(3) Broad facts are taken from C.W.P. No. 4091 of 1993 filed by Shiromani Akali Dal (Simranjit Singh Mann). The petitioner-party was de-recognised,—vide order dated November 20, 1992, passed by Deputy Election Commissioner under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter to be referred to as the 'Symbols Order') with the further direction that the aforesaid party shall not be entitled to the exclusive use of Symbol "lico" earlier reserved for it in the State of Punjab. Said political party was to be treated as un-recognised till its poll performance is again reviewed at the next general election as and when held. The poll performance of his political party in the last general elections held in February 1992 was held to be nil. In the other writ petition filed by Shiromani Akali Dal (Badal) order to the same effect was passed by the Deputy Election Commissioner on November 20, 1992.

In this case apart from validity of the aforesaid order being challenged on the common ground an other ground is also put forth that the order was passed in violation of the principles of natural justice as no notice of hearing was given to the petitioner. The petitioner as per allegations was not served/duly served in the proceedings.

(4) In order to focus the controversial point raised in the petition, reference be made to the background which led the political parties aforesaid to boycott the election, the result of which was considered by the respondent-Election Commissioner as nil performance. These political parties, as per allegations, were participating in the assembly elections in the State of Punjab which were to be held in June, 1991. During the process of electioneering about 30 candidates were killed. At the last moment when only polling was to take place and the electioneering had officially come to an end the election was cancelled. The reason for cancellation imputed in the petitions aforesaid was that the Congress Party had come in power at the Centre and since that Party was not participating in the Punjab Elections, the same was postponed and to be held in February 1992. By February 1992 there was no change in the Punjab situation except that the Congress Party had decided to participate in the elections. Since no assurance was given that the elections would be eventually held if the petitioner parties would participate, the petitioner-parties boycotted the elections hoping that such elections would not be held for their non-participation. In this manner the people of Punjab were treated like dirt in the elections which were to be held in June, 1991, which were cancelled by the Centre. Hence there was not reason for the petitioner political parties to contest the elections scheduled for February 1992, and to be made fools again. In the elections which were held in February 1992, eighty per cent of the voters abstained from voting. Thus how could a mandate of 20 per cent outweigh decision of 80 per cent. The total election was rigged a farce and sham. The performance of the political parties like the petitioner on the basis of such election was not valid. The provisions of paras 6 and 7 of the Symbol Order were pleaded to be bad and void being insufficient as it was not contemplated that such a situation would arise that the political party/parties would abstain from participating in the elections. By postponing the elections fixed in June 1991 the people of Punjab were taken for a ride. In that process several candidates were killed, crores of rupees were spent for nothing.

(5) Written statements have been filed in the two writ petitions aforesaid on behalf of the Election Commission of India. The respondent strongly contested the petitions. All the allegations levelled

in the petitions have been denied. With respect to the order postponing the election in June, 1991, it was stated that the aforesaid order was challenged in the Apex Court unsuccessfully. The provisions of the Symbol Order of 1968 were held to be valid by the Apex Court. Such provisions were not bad on the ground of insufficiency. The election law including the provisions of the Symbol Order, 1968, visualised the situation/situations where the political parties once recognised could be de-recognised if they had failed to secure minimum number of seats or votes, in the general elections as prescribed.

(6) Main question which has been debated on behalf of the petitioners is formulated as under :—

“The provisions of the Symbol Order of 1968 did not visualise a situation where one or more recognised political parties would boycott the elections or in the other words would not participate in the elections and on that ground alone such political parties could not be de-recognised. There should have been provision in the Symbol Order, 1968 by way of Exception or Proviso that if for certain valid reasons a Political Party or Parties did not participate in the elections, they would not be de-recognised.”

(7) Shri Ranjan Lakhanpal and Shri H. S. Mattewal, learned counsel, appearing on behalf of the petitioners, have vehemently argued that a peculiar situation existed when suddenly on the day the elections were to be held in June, 1991 that the same were postponed, as a day earlier the Congress Party came into power in the Centre. Since the Congress Party was not participating in the elections in the State of Punjab, the elections were got postponed. In this manner people of Punjab were cheated. Such were the valid reasons for the petitioners-Political parties to boycott the elections subsequently announced. In order to appreciate the legal arguments arising from such submissions it is necessary to refer to the provisions of the Constitution, the Representation of the People Act, 1951, and the Symbol Order of 1968. The Election Commission is constitutional entity. Chapter XV of the Constitution specifically deals with the subject of elections. Under Article 324, Superintendence, direction and control of the preparation of the electoral rolls and the conduct of all elections to Parliament and to the Legislature of the states and also of the offices of President and Vice-President is to vest in an Election Commission. Such Commission is constituted under Article 324 (2). The Chief Election Commission is to act as Chairman of the

Election Commission. After consultation with the Election Commission by the President, Regional Commissioners are also appointed to assist the Election Commission. Articles 325 and 326 refer to the preparation of electoral rolls. Under Article 327 the Parliament is empowered to make laws from time to time with respect to all matters relating to or in connection with the elections to the either house of the Parliament or either house of Legislature of a State. Such matters on which law can be made include preparation of electoral rolls, the delimitations of constituencies or other matters necessary for securing due constitution of House or Houses. The State Government can also make such laws in connection with the elections to the House or Houses of the legislature of the State, under Article 328. Article 329 bars jurisdiction of the Courts in election matters and it reads as under :—

“329. Bar to interference by courts in electoral matters :—
Notwithstanding anything in this Constitution :—

- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;
- (b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

(8) The aforesaid provisions of the Constitution clearly indicate the powers of the Election Commission in respect of superintendence, direction and control over the conduct of elections to the Parliament as well as State Assemblies. In the exercise of such control, the Election Commission is competent to issue orders. Such orders cannot be in contravention of the other provisions of the Constitution or the laws made by the Parliament or the State Legislature. With the two exceptions as aforesaid the Election Commission has complete control over the conduct of elections. The Representation of the People Act, 1951 is a complete Code with respect to the conduct of the elections to the Parliament as well as the State Assemblies. Section 29-A of this Act provides for registration with the Election Commission of Associations and Bodies as political parties. Such an

Association is required to make an application to the Election Commission for its registration as a political party for the purposes of this Act under sub-section (1) thereof. Sub-section (2) contemplates such Associations or Bodies which were in existence at the commencement of Representation of the People (Amendment) Act, 1988 to make such application within 60 days from such commencement and for Associations or Bodies formed thereafter within 30 days next following the date of its formation. Other necessary details which are required to be mentioned in such applications are given under sub-section (4). After considering all the necessary particulars which are required to be furnished under sub-sections (4) and (5) of Section 29-A or such particulars as are otherwise required to be furnished, and taking into consideration the necessary and relevant factors and after giving representatives of the Association a reasonable opportunity of being heard the Commission is to decide either to register the Association as a political party or not so to register. The decision of the Commission is to be final as provided under sub-section (8) thereof. Part V of the Act deals with the procedure relating to the conduct of the election in detail. A notification is required to be issued by the Election Commission under section 30 fixing dates for nominations etc. which sets the election process in motion. Ultimately with the notification of declaration of result the election process is completed as required under section 67 of the Act. An election can be challenged on the grounds given and in the manner prescribed under Chapter III of part VI of the Constitution and in no other way. When election is announced under the provisions of the Act as aforesaid that the process of allotment of symbols to the candidates eligible for participation in the election is started. The Election Symbol (Reservation and Allotment) Order, 1968 has been issued by the Election Commission to provide for specification, reservation, choice and allotment of symbol at the election in Parliament and Assembly Elections and also for the recognition of political party in relation thereto and for matters connected therewith. Para 2(h) of Order of 1968 defines political party to mean an Association or Body of individual citizens registered with the Commission as a political party under section 29-A of the Representation of the People Act, 1951. Para 3 provides for additional particulars to be submitted with an application for registration as a political party to the Commission. Para 5 provides for classification of symbols i.e. either reserved or free. Sub-para (2) of para 5 provides for reserved symbol for recognised political party for exclusive allotment to contesting candidates set up by that party. A free symbol is a symbol other than a reserved symbol. Para 6 provides for classification of political parties and para 7 provides for two

categories of recognised political parties. Since argument in the present case relates to paras 6 and 7 they are reproduced below :—

(9) "6 Classification of political parties

(1) — — — — —

(2) A political party shall be treated as a recognised political party in a State, *if and only if* either the conditions specified in clause (A) are, or the condition specified in clause (B) is, fulfilled by that party and *not otherwise*, that is to say :—

(A) that such party

(a) has been engaged in political activity for a continuous period of five years and

(b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned :—

either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number elected from that State;

“or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number;

(B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four per cent of the total number of valid votes polled by all the contesting candidates at such general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits).

(3) For the removal of doubts it is hereby declared that the condition in clause (A) or (B) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that house or, as the case may be, that Assembly."

"7. Two categories of recognised political parties :— (1) If a political party is treated as a recognised political party in accordance with paragraph 6 in four or more States, it shall be known as, and shall have and enjoy the status of, a "National party" throughout the whole of India; and if a political party is treated as a recognised political party in accordance with that paragraph in less than four States, it shall be known as and shall in the State or States in which it is a recognised political party.

(2) Notwithstanding anything contained in sub-paragraph (1) every political party which immediately before the commencement of this Order is a multi-State party shall, on such commencement, be a National party and shall continue to be so until it ceases to be a National party on the result of any general election held after such commencement.

(3) Notwithstanding anything contained in sub-paragraphs (1) every political party which immediately before the commencement of this Order is in a State a recognised political party, other than a multi-State party as aforesaid shall, on such commencement, be a State party in that State and shall continue to be so until it ceases to be a State party in that State on the result of any general election held after such commencement.

(11) Para 8 of the order provides for choice of symbols by candidates of National and State Parties and allotment thereof. Under sub-para (1) a National Party candidate is given the first choice for allotment of symbol reserved for that party and no other symbol. Likewise sub-para (2) gives choice to the candidates set up by the State party for allotment of symbol reserved for that party in the State and no other symbol. Para 12 refers to choice of symbols by other candidates and allotment thereof. Para 18 refers to the power

of the Commission to issue instruction and directions. It reads as under :—

“18. Power of Commission to issue instructions and directions

The Commission may issue instructions and directions :—

- (a) for the clarification of any of the provisions of this Order;
- (b) for the removal of any difficulty which may arise in relation to the implementation of any such provisions; and
- (c) in relation to any matter with respect to the reservation and allotment of symbols and recognition of political parties, for which this Order makes no provision or makes insufficient provision, and provision is in the opinion of the Commission necessary for the smooth and orderly conduct of elections.”

(12) Para 6 of the Order aforesaid authorises the Commission to specify as and when necessity arises that the political parties are recognised political parties or un-recognised political parties. A political party, as provided in sub-para (2) is to be treated as a recognised party in the State *if and only if* the fulfilled by that party *and not otherwise*. The necessary qualifications for a political party to get recognition under Clause (A) are three : (i) engagement continuously of such political party for a period of five years, (ii) in the general election in the State to the Legislative Assembly *for the time being in existence and functioning* returned either at least one member to the house of the people for every twenty-five members of that house or any fraction of that number elected from that State or at least one member to the Legislative Assembly of that State for every 30 members or any fraction of that number. The aforesaid conditions as laid down in clause (A) refers to the election of the members of such a political party to the house of the people Clause (B) refers to the number of valid votes of all contesting candidates set up by such party at the general elections of Assembly *for the time being in existence and functioning* and is not less than 4 per cent of the total number of valid votes polled by all the candidates contesting the general election in the State. Thus this clause refers to the minimum number of votes required to be secured by candidates of a party securing recognition, Sub para (3) of para 7 provides that when a recognised political party shall cease to be such. This would show that after general elections are held the process of recognition and de-recognition of political parties has to be started. If such political

parties already recognised fulfil the requisites as given in clauses (A) or (B) of para 6, above referred, they would continue to be so recognised and other political parties fulfilling such requisities would be recognised and such of the recognised political parties who fail to show performance as required under Clause (A) or (B), would stand de-recognised.

(13) The constitutional validity of the provisions of the Symbol Order of 1968 have already been upheld by the Supreme Court in *Kanhiya Lal Omar v. R. K. Trivedi and others* (1). Relying upon the earlier decision of the Supreme Court in *Sadiq Ali v. Election Commission of India* (2), it was held as under :—

“The Election Commission is empowered to recognise political parties and to decide disputes arising amongst them or between splinter groups within a political party. It is also empowered to issue the Symbols Order. It could not be said that when the Commission issued the Symbols Order it was not doing so on its own behalf but as the delegate of some other authority. The power to issue the Symbols Order is comprehended in the power of superintendence, direction and control of elections vested in the Commission.”

(14) It was observed that the provisions of the Symbols Order, 1968, were constitutionally valid as the Commission derived its power under Article 324(1) of the Constitution. The aforesaid Article operates in areas left unoccupied by Legislation and the word “superintendence”, “direction” and “control” as well as “conduct of all elections” are the broadest terms which would include power to make all such provisions. The earlier decisions of the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* (3) and *A. C. Jose v. Sivan Pillai* (4), were relied upon. With respect to passing of general orders and specific orders the Supreme Court in *Kanhiya Lal's case* (supra) observed in para 17 as under :—

“It may be a specific or a general order. One has also to remember that the source of power in this case in the Constitution, the highest law of the land, which is the

(1) A.I.R. 1986 S.C. 111.

(2) A.I.R. 1972 S.C. 187.

(3) A.I.R. 1978 S.C. 851.

(4) A.I.R. 1984 S.C. 921.

repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which the power is granted is effectively achieved. Viewed from this angle it cannot be said that any of the provisions of the Symbols Order suffers from want of authority on the part of the Commission, which has issued it."

(15) Faced with such a situation with respect to constitutional validity of Symbols Order of 1968 as already determined by the Supreme Court learned counsel for the petitioners with vehemence argued that the Symbols Order should be held to be bad in law on account of vagueness and insufficiency. To repeat the assertions that the situation of the kind as stated above was not contemplated that the political parties would boycott the elections or abstain from participating in the elections, the Court should supplement the provisions of the Symbols Order, 1968. To cover such-like situations where for valid reasons such political parties did not participate in the elections, they should not lose recognition. Though apparently attractive, the argument, is without any substance. The Supreme Court in *A. K. Roy v. Union of India and another* (5), observed that provisions of a statute could not be struck down on the ground of vagueness. In that case the provisions of National Security Act were under consideration. It was held as under :—

"The concepts 'defence of India', 'security of India security of the State and relation of India with foreign powers, which are mentioned in Section 3 of the Act, are not of any great certainty or definiteness. But in the very nature of things they are difficult to define. Therefore provisions of Section 3 of the Act cannot be struck down on the ground of their vagueness and uncertainty."

With respect to the general principle of interpretation of statutes in *M/s Girdhari Lal & Sons v. Balbir Nath Mathur and others* (6). The following principle was down in para 9 of the judgment :—

"The primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote and advance the object and purpose of the enactment

(5) A.I.R. 1982 S.C. 710.

(6) A.I.R. 1986 S.C. 1499.

For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute a submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the written word if necessary."

(17) From the ratio of the decisions aforesaid it cannot be laid down that the High Court in the exercise of jurisdiction under Article 226 of the Constitution can exercise function of the Legislature by amending or by adding to the statute. Such a function is of the Legislature and not of the Courts. The Court can merely supplement a word or two which are considered necessary to uphold the validity of the statute which would promote the object and purpose of an enactment. Apart from that the Court has no power to travel into the realms of Legislative jurisdiction to enact or amend the statute. In this context reference may be made to the decision of the Supreme Court in *Asif Hameed and others v. State of Jammu and Kashmir and others* (7). In para 17 of the judgment it was observed :

"Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs."

In para 19 of the judgment it was further observed as under :—

"The Constitution does not permit the Court to direct or advice the executive in matters of policy to sermonize *qua* any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

In para 21 of the judgment it was further observed as under :—

"The Constitution has laid down elaborate procedure for the legislature to act thereunder. The legislature is supreme

in its own sphere under the Constitution. It is solely for the legislature to consider as to when and in respect of what subject matter, the laws are to be enacted. No directions in this regard can be issued to the legislature by the courts."

The stand of the petitioners that this Court should make a provision in the form of "an Exception" or a "Proviso" to para 6 of the Symbols Order of 1968 to authorise the Election Commission not to de-recognise a political party who had failed to participate in the general elections for valid reasons. Such a course is not permitted by law. The provisions of paras 6 and 7 of the Symbols Order of 1968 are valid as already upheld by the Supreme Court. They are not bad on account of any insufficiency.

(18) The right of a political party to be recognised as such is creation of the statute as already referred to above. Such right is conferred on fulfilment of the requisites as provided in the statute itself i.e. as provided under para 6(A) or (B) of the Symbols Order of 1968. In other words recognition or de-recognition of a political party has to be within the four corners or limits as prescribed by the enactment. In this respect reference may be made to the decision of the Supreme Court in *N. P. Ponnuswami v. The Returning Officer, Namakhal Constituency* (8). Commenting upon the right to vote or stand as a candidate for election it was observed that it was not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it. In para 18 of the judgment it was further observed as under :—

"Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a special tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."

(19) The very fact that minimum standard of requisites was prescribed in para 6(A) or (B) of the Symbols Order of 1968 is indicative that if a recognised political party would not secure any vote or any seat in the elections, it would be de-recognised.

(20) It is, neither for the Commission nor for the Court for that purpose, necessary to go into or determine the genuineness.

(8) A.I.R. 1952 S.C. 64.

reasonableness, or sufficiency of the reasons of such a recognised political party in not getting any member elected or any vote secured or in other words the performance of such political party is not upto the requisite as provided under para 6(A) or (B) of the Symbols Order. The Commission was merely to take into consideration the result of the general elections of the assembly in existence and functioning to determine whether any political party was to be recognised or de-recognised. That was a matter of mathematical calculation. In such a situation the element of discretion was altogether absent. In the facts of the present case there was no option for the Election Commission but to pass orders of de-recognition of the two petitioner-political parties on the ground that they were not fulfilling the requisites in the matter of performance shown in the general elections held.

(21) Learned counsel for the petitioners further stressed that the provision in para 6 of the Symbols Order, 1968, that performance in the general elections only was to be seen for the purposes of recognition of the political parties is arbitrary and unsound. According to them a democratic process continues throughout even before and after the elections. The performance of the petitioner-political parties in the elections held just before the general elections in dispute either for the State or in the Parliament, could be taken into consideration. This contention is devoid of merit and is not supported by law. Reading of para 6(A) and (B) reproduced above makes it abundantly clear that it is the performance of the general elections of the Assembly existing and functioning that is required to be taken into consideration for the purposes of recognition of political parties. The word "*if and only if*" and "*not otherwise*" in para 6 aforesaid leaves no manner of doubt that the intention of the Authority framing the Order was that performance of the political parties in the general elections only is to be seen. Even otherwise this provision does not give the impression of arbitrariness or unsoundness. It would be otherwise unrealistic if after every election general or bye, such an exercise is done. The recognised parties would remain in a situation of turmoil and uncertainty if after every few months or years their status of recognised political party is to be subjected to revision. The provision as it exists allows a reasonable time between general elections for the political party to participate in the political activities of the State and to show or prove its worth in the next coming general elections.

No injustice, much less grave, is caused to the petitioners that it should call for interference by the High Court in the exercise

of jurisdiction under Article 226 of the Constitution in such like matters. No judicial process is required to be taken by the Election Commission, as already stated above, to arrive at the conclusion with respect to matters mentioned in para 6(A) and (B) of the Symbols Order of 1968. No doubt the ground being pressed in these petitions is not one of such grounds that the election could be set aside and it cannot strictly speaking be said that alternative remedy of election petition would be available to the defeated candidates or the petitioner-political parties. The grounds on which an election can be set aside are given in Section 100 of the Representation of the People Act. Be that as it may, no case for interference is made out under Article 226 of the Constitution as the petitioners political parties are not debarred from indulging in political activities and participating in the elections, general or others, Parliament or Legislative Assemblies or other democratic institutions.

(22) There is another angle of the case which needs to be noticed. Section 79(d) of the Representation of the People Act defines electoral right to mean the right of a person to stand or not to stand, as or to withdraw or not to withdraw from being a candidate or to vote or refrain from voting at any election. Thus nobody can be compelled to vote or not to vote. Likewise nobody can be compelled to contest or not to contest any election. This is entirely the sweet will and discretion of the person concerned as to whether he is to contest any election or not. Likewise it is entirely for the political party concerned to decide to participate or not to participate in any election. Such decisions cannot be subject matter of scrutiny by the Courts to either justify the action or inaction or otherwise. Validity of an election is not dependent upon such actions or inactions. The Supreme Court in *The Election Commission of India v. Shivaji and others* (9), in para 6 of the judgment observed as under :—

“In view of the non obstante clause contained in Art. 329 of the Constitution the power of the High Court to entertain a petition questioning an election on whatever grounds under Art. 226 of the Constitution is taken away.”

The decision in *N. P. Ponnuswami's* case (supra) was referred to therein.

(23) Even on de-recognition of a political party no fetters are placed on its rights to pursue political activities including participation in the election. The only effect of de-recognition is that

in the matter of choice of symbols in the future election. would be out of un-reserved symbols. In other words symbols reserved for recognised political parties would not be available after its de-recognition. However, such political parties as un-recognised political parties could make a fresh choice of symbols and candidates of such political parties would be entitled to allotment of such symbols. The other candidates, of course, would have choice from the remaining other symbols. The right of the candidate belonging to such a political party to contest election is not thus taken away by de-recognition of a political party.

(24) To conclude, the symbols Order of 1968 is comprehensive to cover situations like the one projected in the present case i.e. of boycotting the elections as such cases would be of performance resulting in nil result and such political parties would be liable to be de-recognised under para 6 of the Symbols Order, 1968. No amendment of the aforesaid order is required and no direction can be given to the Election Commission to amend the same. The ground on which a political party decides to boycott or not to participate in the elections is not justifiable either before the Election Commission or before this Court. either in any election petition or in a petition under Articles 226 and 227 of the Constitution. It is entirely for the person concerned or the political party concerned to vote or participate in the election. No compulsion is attached thereto and none can be attached. Non-participation by the political parties, for whatsoever reason may be, would earn the disqualification of de-recognition. The impugned orders de-recognising the petitioners-political parties in the two cases referred to above are valid and in accordance with law.

(25) In the petition filed by Shriomani Akali Dal (Badal Group) another question has been debated that the impugned order passed by the Election Commission is void and is liable to be quashed on the ground of non-compliance of the principles of natural justice in as far as the petitioner was not duly served with the notice before the impugned order was passed. Learned counsel for the petitioner has stated that such an order passed without notice to the petitioner would be *void abinitio* and in support of this contention reference has been made to the observation of Full Bench of this Court in *Parkash Singh Badal and others v. Union of India and others* (10). This case related to split of Akali Dal Legislature party. A break-away Akali Dal Legislature party was formed which was recognised by the Speaker. His successor took up the matter at the instance of the original Akali Dal party for disqualifying members of the

(10) A.I.R. 1987 Punjab and Haryana 263.

splinter group of party. It is in this context that in para 40 of the judgment it was observed as under :—

“As before passing the order, recognising the breakaway group as separate party, neither the political party nor any other person interested in the matter was heard, it would bind none and in that sense it can be said to be an order void *ab initio*.”

(26) During arguments it was suggested that two courses could be open. It is found that the petitioner was not served or not properly served before the impugned order was passed; one was to relegate the petitioner to the remedy of getting the *ex parte* order set aside from the Authority concerned and the second to set aside the order on that ground by this Court on proof of the ground as stated above and to direct the Election Commission to proceed to pass an appropriate order on merits according to law. Both these courses are not considered appropriate in the facts and circumstances of the case. Since two cases were referred to the Full Bench for decision of the disputed question as already referred to above, this Court was expected to answer the same and having answered as above we are of the opinion that no useful purpose would be served either sending the case back to the Election Commission with the direction to pass an appropriate order in accordance with law after hearing the petitioner or without setting aside the same to direct the petitioner to directly approach the Election Commission for getting set aside the *ex parte* order. After decision of the question of law by this Court, the Election Commission has to follow the same and after service of the parties to pass the order in accordance therewith. Thus no further comment is made with respect to the disputed question of fact of service or proper service of the petitioner before the Election Commission.

(27) For the reasons recorded above both the writ petitions are dismissed. No order as to costs.

R.N.R.