

IN THE HIGH COURT OF ORISSA : CUTTACK
 (WRIT JURISDICTION)
 W.P.(C) No. 556/2007

CODE NO. 110100

In the matter

An application under Article 226 and 227 of the Constitution of India;

In the matter of

An application under the Orissa Zilla Parishad Act and Orissa Zilla Parishad Election Rules, 1994

AND

In the matter of

The Communist Party of India, At- Bhagawati Bhawan, Ashok Nagar, Bhubaneswar, At/Po- Bhubaneswar, Dist:Khurda, represented through its Secretary Sri Nityananda Pradhan, aged about 62 years, S/o Late Radhakrushna Pradhan.

PETITIONER

-Versus-

1. State Election Commission, represented though its Secretary, Janpath, Bhubaneswar - 22, Dist - Khurda.
2. State of Orissa, represented through the Secretary to Government in Panchayati Raj Department At/P.O - Bhubaneswar, Dist - Khurda.

OPPOSITE PARTIES.

2. 16.01.2007. Heard learned counsel for the petitioner Shri S.D. Das, learned counsel for opposite party no.1- State Election Commission Shri Susanta Ku. Das and learned Addl. Government advocate for opposite party No.2.

By means of this writ petition the petitioner, the Communist party of India which is a political party has prayed for a writ of mandamus directing the State Election Commission to allow the petitioner to use the symbol allotted to them as a National Political party when there is no dispute or in the alternative to accept the form no.17 of Zilla Parishad Rules submitted by them under Annexure-2 to the writ petition.

It is not disputed that the Election process has been started and there is settled law that once an election process has been set in motion it is not justified by this Court in interfering with the election process giving direction to the election Officer to stall the proceeding or to conduct the election process afresh. But since the last date of allotment of symbols is tomorrow and the learned counsel for the petitioner Shri Das produces notification of the State Election Commission No.3995/SEC dated 01.11.2006 regarding allotment of symbols of Zilla Parishad Election *inter alia* mentioning as under :

"(1) Candidate sponsored by national party or State party in Form No.18 shall be allotted symbols reserved by the Election Commission of India for such political party.

(2) Candidate set up by a political party registered with Election Commission of India (ECI) in any Constituency but not a State party in Orissa intents to choose a symbol out of the free symbols on the claim that such symbol has been allotted to the party by the ECI, then the said symbol shall be allotted to that candidate subject to production of the letter of registration by the ECI."

In the Zilla Parishad Election Rules there is no time limit for submission of Form No.18 before the concerned Election Officer by the candidate sponsored by the political party. However, Form No.18 is to be submitted at least at the time of filing of nomination papers by such candidate. Therefore, we are of the opinion that while considering the allotment of symbol, the provision of law as well as notification issued by the State Election Commission, Orissa including the above quoted notification shall be taken into consideration. However, we do not mean that the Election Officer may undertake any act by which the election process will be disturbed.

The writ petition is disposed of with the above direction.

UCC be granted on proper application today.

Sd/- I.M. quddesi-J
Sd/- A.K. Parichha-J