

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

Thursday, the 20th day of November 2025 / 29th Karthika, 1947

WP(C) NO. 42726 OF 2025(M)

PETITIONER:

KERALA CONGRESS (SKARIAH THOMAS) BUILDING NO. 711, WARD NO. 6,
CHINGAVANAM, KOTTAYAM, REPRESENTED BY ITS CHAIRMAN SHRI. BINOY
JOSEPH , PIN - 686531

RESPONDENTS:

1. THE CHIEF ELECTORAL OFFICER & SECRETARY ELECTION (GENERAL)
DEPARTMENT, KERALA LEGISLATIVE COMPLEX VIKAS BHAVAN P.O.
THIRUVANANTHAPURAM, PIN - 695033
2. ELECTION COMMISSION OF INDIA NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI
REPRESENTED BY ITS SECRETARY PIN - 110001

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay the operation of Ext. P5 Show Cause Notice and Ext.P7 Order and all proceedings pursuant thereto till the disposal of this Writ Petition (Civil).

This petition coming on for admission upon perusing the petition and the affidavit filed in support of WP(C) and upon hearing the arguments of M/S E.K.NANDAKUMAR, SENIOR ADVOCATE along with M/S. M.GOPIKRISHNAN NAMBIAR, K.JOHN MATHAI, JOSON MANAVALAN, KURYAN THOMAS, PAULOSE C. ABRAHAM, RAJA KANNAN, JAI MOHAN & POOJA MENON, Advocates for the petitioners and of SRI. M. AJAY, STANDING COUNSEL for R2, the court passed the following:

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V.G.ARUN, J

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W.P.(C).Nos.42377,42726,42780**& 42858 of 2025**

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Dated this the 20th day of November, 2025**ORDER**

The petitioners are political parties registered under Section 29A of the Representation of the People Act, 1951 (hereinafter referred to as 'the Act') and has been in existence for the past few years. The petitioners are aggrieved by the order No.F.No.56/Delisting/2025/PPS-III issued by the Election Commission of India (hereinafter referred to as the 'ECI' for short) removing them from the list of Registered Political Parties and marking them as "DELISTED RUPPs" in the register of Registered Unrecognised Political Parties ('RUPP' for short) maintained by the ECI.

2. Heard Senior Advocates T.Krishnanunni, Jaju Babu, E.K.Nandakumar along with Adv.Ajith G Anjarlekar for the

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petitioners, Adv.M.Ajay for the Election Commission of India and Adv.Deepu Lal Mohan for the State Election Commission.

3. The learned Senior Counsel appearing for the petitioners put forth the following common contentions;

4. The failure of a political party to contest in the Lok Sabha or Assembly elections for a consecutive period of six years is not a ground for de-listing that party. Neither Section 29A nor any other provision in the Act empowers the Election Commission to de-list/deregister a political party. The law on the point is laid down by the Apex Court in **Indian National Congress (I) v. Institute of Social Welfare and Others** [(2002) 5 SCC 685]. In spite of the **Indian National Congress (I)** (supra) being brought to the notice of the Chief Electoral Officer, in the replies submitted to the show cause notices, the impugned order was passed by the ECI without reference to the binding precedent. Following the decision of the Apex Court, the Delhi High Court in **Govind Yadav v. Union of India and Others** [2024 SCC OnLine Del 6016] and **Pravendra Pratap**

Singh National President (Bahujan Mukti Party) v. Election Commission of India through its Principal Secretary and Another [2025 SCC OnLine Del 619] has held that Section 29A of the Act does not confer upon the ECI any supervisory jurisdiction to review whether the party adheres to its constitution and/or to scrutinise the conformity of its internal elections within its constitutional provisions. The fact that the petitioners did not contest in the Parliament or Assembly elections for six years is of no avail, since the dynamics of coalition politics in the State may require the constituent parties to refrain from contesting in the elections. Moreover, the members of the petitioners had contested in the last election to the local bodies, which is indicative of the fact that the petitioners are political parties active within the State. The Guidelines for Registration of the Political Parties issued by the Election Commission under Section 29A(6) of the Act has no statutory force and cannot be made the basis for de-listing of registered political parties. The constitution of the petitioners

do not contain a clause that if the party fails to contest elections continuously for six years, it can be taken off the list of registered parties. The show cause notice was issued and enquiry conducted by the Chief Electoral Officer, Government of Kerala, whereas the impugned order is passed by the ECI based on that enquiry. As such, the fundamental principle that the authority who heard the parties should itself pass the order is violated. The contention that the order is the result of an institutional hearing is also not available to the respondents, the ECI and the Chief Electoral Officer of the State being different entities. Even though the impugned order provides for an appeal to the ECI within thirty days and the petitioners have preferred such appeal/petition, the appeal is an exercise in futility, as the ECI is sitting in appeal over its own decision.

5. Advocate Ajith G Anjarlekar appearing for the petitioner in W.P.(C).No.42377 of 2025 submitted that the enquiry conducted by the Chief Electoral Officer was farcical inasmuch as the so-called hearing was conducted on a day declared as

public holiday pursuant to the death of former Chief Minister Sri.V.S.Achuthanandan. Referring to Ext.P19 communication sent by the Chief Electoral Officer to the ECI, it is submitted that no party other than the petitioner was present for the hearing and the petitioner was represented by an unauthorised person.

6. Responding to the contentions, the learned Standing Counsel for the ECI put forth the following arguments;

The ECI is conferred with plenary powers and unless restricted by a statutory provision, is empowered to take decisions and pass orders to bring transparency to the process of election and ensure smooth conduct of elections to the Parliament and the Legislative Assemblies. The petitioners being RUPPs are conferred with certain benefits and privileges, which cannot be continued unless the petitioners are active in politics. The said fact depends on the participation of the registered political parties in the elections. Section 29A(4) of the Act require the applicant party to provide certain

particulars and as per Section 29A(6), the Commission is empowered to call for such other particulars as it deems fit. In support of the contention that the Election Commission has plenary powers and is empowered to take all steps to ensure smooth conduct of elections, the decision of the Apex Court in **Kanhiya Lal Omar v. R.K.Trivedi and Others** [(1985) 4 SCC 628] and **Union of India v. Association for Democratic Reforms and Another** [(2002) 5 SCC 294] are pressed into service. The Guidelines for Registration of Political Parties is issued by the Election Commission in exercise of the power under Section 29A(4) of the Act and the provisions of the Registration of Political Parties (Furnishing of Additional Particulars) Order, 1992. Further, the power to recognise a political party is conferred by the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred as 'the Symbols Order' for short). Even in the absence of the specific provision under the Symbols Order vesting power in the ECI to declare that recognised political party has ceased

to be a national party, the Apex Court in **Janata Dal (Samajwadi) v. Election Commission of India** [AIR 1996 SC 577] has with reference to paragraph 2(2) of the Symbols Order making the General Clauses Act, 1897 applicable in relation to the interpretation of the Order, held the ECI to be having the power to rescind an order granting recognition. The decision in **Indian National Congress (I)** (supra) is rendered without taking note of the three Bench decision in **Janata Dal (Samajwadi)** (supra) and without reference to paragraph 2(2) of the Symbols Order, as per which the General Clauses Act, 1897 is made applicable in relation to the interpretation of the Order as it relates to the interpretation of the Central Act. Therefore the finding in **Indian National Congress (I)** (supra) is rendered in *per incuriam*. The petitioners having filed appeal against the impugned order, cannot parallelly challenge the order under Article 226. Learned counsel then submitted that the ECI has no objection in the candidates fielded by the petitioners contesting in the local body elections, the concern of

the ECI being about the conduct of the elections to the Parliament and State Assemblies.

7. Learned Standing Counsel for the State Election Commission referred to the Local Authorities Election Symbols (Reservation and Allotment) Order, 2017 to point out that candidates of RUPPs having a member or members in the Kerala Legislative Assembly or in any local self government institution in the State of Kerala are allotted, as far as possible, the symbol of its choice. It is submitted that pursuant to the order impugned in the writ petitions, the symbol granted to some of the petitioners have been allotted to others.

8. In reply, the Senior Advocates submitted that, in **Indian National Congress (I)** (supra), the ECI had conceded that it did not have the power to deregister or cancel the registration of a political party under Section 29A of the Act. Being so, the Commission cannot be heard to contend that the judgment of the Apex Court in **Indian National Congress (I)** (supra) is *per incuriam*.

9. As per Section 2(f) of the Act, “political party” means an association or a body of individual citizens of India registered with the Election Commission as a political party under Section 29A. The procedure for registration of such an association of individuals as a political party is detailed in Section 29A extracted hereunder;

“29A. Registration with the Election Commission of associations and bodies as political parties.-- (1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made,-

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

(b) if the association or body is formed after such commencement, within thirty days next following the date of its formation.

(3) Every application under sub-section (1) shall be signed by the chief executive officer of the association or body (whether such chief executive officer is known as Secretary or by any other designation) and presented to the Secretary to the Commission or sent to such Secretary by registered post.

(4) Every such application shall contain the following particulars, namely:--

(a) the name of the association or body;

(b) the State in which its head office is situate;

(c) the address to which letters and other communications meant for it should be sent;

(d) the names of its president, secretary, treasurer and other office-bearers;

(e) the numerical strength of its members, and if there are categories of its members, the numerical strength in each category;

(f) whether it has any local units; if so, at what levels;

(g) whether it is represented by any member or members in either House of Parliament or of any State Legislature; if so, the number of such member or members.

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum or rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

(6) The Commission may call for such other particulars as it may deem fit from the association or body.

(7) After considering all the particulars as aforesaid in its possession and any other necessary and relevant factors and after giving the representatives of the association or body reasonable opportunity of being

heard, the Commission shall decide either to register the association or body as a political party for the purposes of this Part, or not so to register it; and the Commission shall communicate its decision to the association or body:

Provided that no association or body shall be registered as a political party under this sub-section unless the memorandum or rules and regulations of such association or body conform to the provisions of sub-section (5).

(8) The decision of the Commission shall be final.

(9) After an association or body has been registered as a political party as aforesaid, any change in its name, head office, office-bearers, address or in any other material matters shall be communicated to the Commission without delay."

10. A close scrutiny of the provision shows that sub-section (4) stipulates the particulars that should be contained in an application for registration of a political party. Sub-section (6) empowers the Commission to call for such other particulars as it deems fit from the applicant. As per sub-section (7), after considering all the particulars thus provided and the relevant factors, the Commission shall either register or refuse to register a political party. No provision for cancellation of registration is provided in Section 29A. The absence of such a provision was taken into consideration by

the Apex Court in **Indian National Congress (I)** (supra), paragraphs 40 and 41 of the judgment being relevant are extracted below;

"40. It may be noted that Parliament deliberately omitted to vest the Election Commission of India with the power to deregister a political party for non-compliance with the conditions for the grant of such registration. This may be for the reason that under the Constitution the Election Commission of India is required to function independently and ensure free and fair elections. An enquiry into non-compliance with the conditions for the grant of registration might involve the Commission in matters of a political nature and could mean monitoring by the Commission of the political activities, programmes and ideologies of political parties. This position gets strengthened by the fact that on 30-6-1994 the Representation of the People (Second Amendment) Bill, 1994 was introduced in the Lok Sabha proposing to introduce Section 29-B whereunder a complaint could be made to the High Court within whose jurisdiction the main office of a political party is situated for cancelling the registration of the party on the ground that it bears a religious name or that its memorandum or rules and regulations are no longer conforming the provisions of Section 29-A(5) or that the activities are not in accordance with the said memorandum or rules and regulations. However, this Bill lapsed on the dissolution of the Lok Sabha in 1996 (see p. 507 of How India Votes: Election Laws, Practice and Procedure by V.S. Rama Devi and S.K. Mendiratta).

41.To sum up, what we have held in the foregoing paragraph is as under:

1. That there being no express provision in the Act or in the Symbols Order to cancel the registration of a political party, and as such no proceeding for deregistration can be taken by the Election Commission against a political party for having violated the terms of Section 29-A(5) of the Act on the

complaint of the respondent.

2. The Election Commission while exercising its power to register a political party under Section 29-A of the Act, acts quasi-judicially and decision rendered by it is a quasi-judicial order and once a political party is registered, no power of review having been conferred on the Election Commission, it has no power to review the order registering a political party for having violated the provisions of the Constitution or for having committed breach of undertaking given to the Election Commission at the time of registration.

3. However, there are exceptions to the principle stated in paragraph 2 above where the Election Commission is not deprived of its power to cancel the registration. The exceptions are these:

(a) where a political party has obtained registration by practising fraud or forgery;

(b) where a registered political party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of Section 29-A(5) of the Act or intimating the Election Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy or it would not uphold the sovereignty, unity and integrity of India so as to comply with the provisions of Section 29-A(5) of the Act; and

(c) any like ground where no enquiry is called for on the part of the Commission.

4. The provisions of Section 21 of the General Clauses Act cannot be extended to the quasi-judicial authority. Since the Election Commission while exercising its power under Section 29-A of the Act acts quasi-judicially, the provisions of Section 21 of the General Clauses Act have no application."

11. Although learned counsel for the ECI contended that the exceptions culled out in sub-paragraph 3 of paragraph 41 above would apply to the petitioners in view of their

undertaking given at the time of registration and the subsequent breach which amounts to constructive fraud, the petitioners assert that the parties have not given any undertaking or acknowledged that, failure to contest in the elections for six years can result in their registration being cancelled.

12. The reliance placed by the ECI on the Symbols Order to trace its power for cancellation of registration also appears to be *prima facie* unsustainable, the objective of the Symbols Order being to provide for specification, reservation, choice and allotment of symbols at elections in Parliamentary and Assembly Constituencies, for the recognition of the political parties in relation thereto and for matters connected therewith. No doubt, as held by the Apex Court, the Election Commission of India is having plenary powers, but the larger question is whether such power is boundless and beyond the purview of judicial review.

13. The contention of the petitioners that the impugned order was passed without affording proper opportunity of hearing and the order is passed by an authority, other than the one which had conducted the enquiry also require consideration. Yet another pertinent aspect is that the election to the local bodies of the State has been announced and the petitioners want to field their candidates in the election. Here, the submission made on behalf of the ECI that the Commission has no objection in the petitioners contesting the election in spite of the order under challenge assumes relevance. Taking the above factor also into consideration, I find the petitioners to be entitled for the following interim order.

14. There shall be an interim stay of operation of Order No.F.No.56/Delisting/2025/PPS-III issued by the Election Commission of India, to the extent the petitioners are taken off from the list of Registered Political Parties and marked as 'DELISTED RUPPs', so as to enable the candidates of the petitioners to contest in the ongoing local bodies election, in

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the symbols allotted to the parties by the State Election Commission, if those symbols have not already been allotted to other parties.

Post on 05.01.2026.

sd/-

V.G.ARUN, JUDGE

sj



APPENDIX OF WP(C) 42726/2025

Exhibit P5

**TRUE COPY OF SHOW CAUSE NOTICE NO. EL4/168/2025-ELEC
DATED 14.08.2025 ISSUED BY THE 1ST RESPONDENT TO THE
PETITIONER**

Exhibit P7

**TRUE COPY OF ORDER NO. F NO. 56/DELISTING/2025/PPS-III
DATED 19.09.2025 ISSUED BY THE 2ND RESPONDENT DE-
LISTING THE PETITIONER**

