

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 27389 of 2026

All India Secular Front and Anr.

Vs.

The Election Commission of India & Ors.

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.

Mr. Samim Ahammed

Mr. Nazimuddin Siddiqui

Mr. Arka Ranjan Bhattacharya

Ms. Saloni Bhattacharjee

Md. Nasirul Haque

Mr. Asif Ikbal Baidya

Ms. Reshma Khatun

Ms. Huma Shakil

Ms. Shabnam Mostari

Mr. Enamul Islam

....For the petitioners.

Mr. Dama Seshadri Naidu, Sr. Adv.

Mr. Prateek Kumar

Mr. Deepak Sharma

....For the respondent no. 1.

Mr. Jishnu Chowdhury, Sr. Adv.

Ms. Sanskriti Agarwal

Ms. Anamika Pandey

....For the respondent no. 2.

Mr. Biswaroop Bhattacharya

Mr. Sumitava Chakraborty

....For the respondent no. 3.

Hearing Concluded On : 28.09.2026

Judgment Delivered On : 30.09.2026

Judgment Uploaded On : 30.09.2026

Krishna Rao, J.:

1. The petitioners have filed the present writ petition praying for direction upon the respondent authorities to allot the Electoral Symbol “Envelope” to the petitioners to contest the Nandigram Assembly Constituency By-Election under the Electoral Symbol “Envelope”.
2. The petitioner no. 1 is a registered unrecognized political party. The petitioners have contested the general election to the House of the People held in the year 2024 and general election to the West Bengal Legislative Assembly, 2026 and in the said elections, the respondent authorities had allotted the symbol “Envelope” to the petitioners to contest the said election.
3. The petitioner no. 1 contested the general election to the West Bengal Legislative Assembly, 2026 with the symbol “Envelope” and the

petitioner no. 2 was elected as a Member of the Legislative Assembly from the Bhangar Legislative Assembly Constituency.

4. Mr. Bikash Ranjan Bhattacharyya, Learned Senior Advocate, representing the petitioners submits that the petitioner no. 1 contested the Legislative Election from 30 seats and secured 14% votes from those seats. He submits that after completion of general election to the West Bengal Legislative Assembly, 2026, two members, namely, Suvendu Adhikari and Humayun Kabir who had been elected from two different Assembly Constituencies, resigned from their respective seats resulting in two vacancies, namely, Rejinagar and Nandigram. The petitioner no. 1 decided to contest the Nandigram Assembly Constituency through its former candidate and continue its electoral activities and campaign using the symbol “Envelope”.
5. Mr. Bhattacharyya submits that the Election Commission of India notified that a Bye-Election would be held in the abovementioned constituency along with other constituencies. Following the announcement of the Bye-Election and acting upon the representation of the Election Commission, the petitioner no.1 continues his electoral activities, organizational arrangements and campaign preparations on the basis of the symbol “Envelope”. The candidate set-up by the petitioner no. 1 filed a nomination on 17th September, 2026 by contesting the bye-election with the same symbol “Envelope”.

- 6.** When the petitioner no. 1 was proceeding on the basis of the symbol “Envelope”, the Election Commission of India by an impugned order dated 18th September, 2026, recognized the political entity described therein as “Democratic Trinamool Congress” and allotted the electoral symbol “Envelope” to the said party, the respondent no. 3 herein. Mr. Bhattacharyya submits that the Election Commission of India without any prior notice and without any opportunity of hearing to the petitioner no. 1 and without communicating to it any decision whereby the earlier allotment communicated by the Memorandum dated 10th March, 2026, had been withdrawn, cancelled or modified.
- 7.** Mr. Bhattacharyya submits that the impugned order dated 18th September, 2026 with regard to allotment of symbol “Envelope” to the respondent no. 3 is without considering the petitioner no. 1’s previous electoral use of the symbol and the specific confirmation dated 10th March, 2026. The petitioner no. 1 has submitted an objection to the Election Commission of India on 18th September, 2026 by bringing to its notice the earlier application, the previous allotment and use of “Envelope”, and the express confirmation dated 10th March, 2026, but the respondent authorities have not considered the representation of the petitioners.
- 8.** Mr. Bhattacharyya submits that the action of the respondent authorities by allotting the symbol “Envelope” to the respondent no. 3 creating a serious scope for confusion amongst the electors as to the identity of the candidate and the political party with which the symbol

“Envelope” had previously been associated and had been used by the candidates of the petitioner no. 1. He submits that the petitioner no. 1 has arranged its electoral and campaign activities on the basis of the representation made by the competent constitutional authority through its Memorandum dated 10th March, 2026 and subsequent departure from that position without any notice or any opportunity of hearing to the petitioners, the petitioners have lost its legitimate expectation.

9. Mr. Jishnu Chowdhury, Learned Senior Advocate, appearing for the respondent no. 2 submits that on 23rd February, 2026, the petitioners had applied for the symbol “Envelope” to contest the West Bengal Legislative Assembly Election, 2026, and accordingly the symbol “Envelope” was allotted to the petitioners by an order dated 10th March, 2026.
10. Mr. Chowdhury submits that the Election Commission of India has issued a notification for bye-election of Rejinagar and Nandigram Assembly Constituencies on 6th October, 2026. As per Schedule of Bye-Election, the last date for making nominations was 16th September, 2026, date of scrutiny of nominations was on 17th September, 2026 and the last date of withdrawal of the candidatures was 19th September, 2026. He submits that there was a dispute before the Election Commission of India in relation to the election symbols of All India Trinamool Congress (hereinafter referred to as “AITC”) and accordingly, by an order dated 18th September, 2026, the Election Commission of India has not permitted the use of symbol “Flowers and

Grass” reserved for AITC and allotted the symbol “Envelope” to the Democratic Trinamool Congress and “Football Player” to “Mamata All India Trinamool Congress”.

- 11.** Mr. Chowdhury submits that the petitioner no. 1 is an unrecognized political party and the petitioner no. 1 has contested two elections with the symbol “Envelope” which was the free symbol (not allotted to any other party) and after the election is over, the petitioners cannot claim any right over the said symbol.
- 12.** Mr. Chowdhury submits that paragraph 10-B of the Political Parties and Election Symbols 2026, explicitly provides concession to registered unrecognized political party only at a general election to the Legislative Assembly of a State or the House of the People may be allotted a common symbol subject to fulfillment of the conditions. He submits that para 10-B does not provide for common symbol reservation for bye-election. He submits that allotment of the free symbol to the candidates in bye-elections is governed by para 12 of the symbol orders and the rules of the Conduct of Elections Rules, 1961, determined by the officer at the time of symbol after the stage of withdrawal of the candidatures.
- 13.** Mr. Chowdhury submits that in the bye-election, the allotment of free symbol is governed exclusively in para 12 of the symbol orders. The symbol “Envelope” is a free symbol out of 184 symbols and is not a reserved symbol. The petitioners cannot claim the said symbol as its

right over the same as the symbols are not property. In support of his submission, he has relied upon the judgment in the case of ***Subramaniam Swamy vs. Election Commission of India*** reported in ***(2008) 14 SCC 318***.

14. Mr. Chowdhury submits that the petitioners have used the symbol of “Envelope” in the 2024 Lok Sabha General Election and 2026 West Bengal Legislative Assembly Election is irrelevant for the bye-election. He submits that in the Memorandum dated 10th March, 2026, it is categorically mentioned that further use of common symbol by the respective party(s) is not allowed after the completion of the said election.

15. Mr. Chowdhury submits that the Election Commission of India exercised its power under Article 324 of the Constitution of India issued an order dated 18th September, 2026 by allotting new names and available free symbols to the All India Trinamool Congress faction to save their candidates from summary rejection at scrutiny on the very same day. In support of his submission, he has relied upon the judgment in the case of ***Samata Party Through Shri Uday Mandal its President Vs. Election Commission of India and Others*** in ***W.P. (C) 14830 of 2022*** passed by the Delhi High Court and submits that the Election Commission of India possess explicit authority under the Symbol Order to declare the erstwhile reserved symbol as free symbol and allocate it to meet the exigencies of an election dispute.

- 16.** Mr. Dama Seshadri Naidu, Learned Senior Advocate, representing the respondent no.1 submits that in Para 10B of the Symbol Order deals with the concession of granting a common symbol to an unrecognized political party and is limited to General Election and it has no application beyond the General Election. The petitioners would have a right to apply for the same concession only when the next General Election are announced or become due and has no right to use the symbol for the purpose of the current bye-election for which it is was a free symbol.
- 17.** Mr. Naidu submits that there is no provision for automatic continuation of the concession to use the common symbol for all elections to come including by elections. He submits that the petitioner is seeking a status akin to a status of a recognized political party which is granted a reserved symbol under para 8 of the Symbols Orders.
- 18.** Mr. Naidu submits that on completion of West Bengal Legislative Assembly Election, the concession for that electoral event stood exhausted. Filing a nomination under the exhausted symbol “Envelope” cannot revive it or create an independent right of the symbol. He submits that in the order dated 10th March, 2026, it is clearly and categorically mentioned that the concessional allotment of common symbol is limited only for the forthcoming General Elections to the Legislative Assemblies or the Lok Sabha and further use of common symbol by the respective parties is not allowed. The order further

prescribed that the said symbol shall remain free symbol for the constituencies where the petitioner does not file a candidate form.

- 19.** Mr. Naidu submits that the petitioners have not submitted any application for the use of the symbol “Envelope” in the current bye-election. The petitioners have filed representation on 18th September, 2026, after the nomination of its candidate was accepted and free symbol was allotted to a recognized party.
- 20.** Mr. Biswaroop Bhattacharya, Learned Advocate, representing the respondent no.3 submits that the respondent no.3 is the recognized political party in the State of West Bengal and the Election Commission of India by an order dated 18th September, 2026, allotted the symbol of “Envelope” to the respondent no.3.
- 21.** Mr. Bhattacharya submits that after recognize the respondent no.3 as recognized political party, the Election Commission of India finds that the Symbol “Envelope” which was free symbol was allotted to the respondent no. 3. He relied upon para 5 of the Symbol Order, 2026 and submits that once the free symbol is allotted to the recognized political party by the Election Commission of India, the petitioners cannot claim the same as right over the said symbol, admittedly, the petitioner no. 1 is an unrecognized political party.
- 22.** The petitioner no.1 has contested two elections that is General Election to the House of the People held in the year 2024 and General Election to the West Bengal Legislative Assembly 2026 with the symbol

“Envelope”. By an order dated 10th March, 2026, symbol “Envelope” as allotted to the petitioners by the Election Commission of India. At paragraph 4 of the said order, it is clearly informed to the petitioners that *“the common symbol allotted to the respective party(s) is only for the forthcoming General Election to the Legislative Assemblies or Lok Shaba as mentioned in table above. Further the use of common symbol by the respective party(s) is not allowed after the completion of the said election”*.

The petitioners have accepted the order dated 10th March, 2026 and contested the West Bengal Legislative Assembly 2026 with the said symbol.

23. The petitioners claiming Symbol “Envelope” on the basis of the order dated 10th March, 2026, on the pretext that the present election is bye-election of the same constituencies in which the petitioners had contested the election with the same symbol. Section 150 of the Representation of People Act, 1951, provides for casual vacancies in the State Legislative Assemblies. Two members who have been elected from the two different Assembly Constituencies resigned from their respective seats. The Election Commission of India announced the Bye-Election on 7th September, 2026 and Schedule of the Election was issued on 9th September, 2026.

24. Para 10B of the Symbol Order deals with concession of granting common symbol to an unrecognized political party to the House of the

People. Explanation (i) of the Para 10B provides that *“The concession of allotment of common symbol to the candidates of a registered unrecognized party under this paragraph shall be available to a party at any two general elections to the House of the People, or any two general elections to a State Legislative Assembly or at one general election to the House of People and the other at a general election to a State Legislative Assembly, as the party may choose.”*

25. Explanation (ii) of Para 10B of the Symbol Order provides that *“A party that has availed of this concession on two occasions shall, however, be eligible for the concession in any subsequent general election subject to the condition that at least on anyone of the previous two occasions when the party availed of the facility, the votes polled by all the contesting candidates set up by the party at the general election in the State concerned was not less than one percent of the total valid votes polled in that State.”*

26. The above two provisions speaks about only general election to the State Legislative Assembly and General Election to the House of People and not with respect to Bye-Election. In the writ petition, the petitioners have not disclosed any request of the petitioners for allotment of symbol “Envelope” prior to 18th September, 2026. The petitioners are claiming symbol “Envelope” on the basis of the order dated 10th March, 2026.

27. The General Election to a State Legislative Assembly is provided under Section 15 in Part III of the Representation of People Act, 1951 and Bye Elections are governed under Section 150 of Part IX of the Act of 1951. The Election Commission of India after the vacancies arose, has declared bye-election. In the order dated 10th March, 2026, it was clarified that further use of common symbol by the respective party (s) is not allowed after the completion of the said election.

28. Classification of symbols and Classification of political parties provided in paragraphs 5 and 6 of the Symbol Order which reads as follows:

“5. Classification of symbols – (1) For the purpose of this Order symbols are either reserved or free.

(2) Save as otherwise provided in this Order, a reserved symbol is a symbol which is reserved for a recognized political party for exclusive allotment to contesting candidates set up by that party.

(3) A free symbol is a symbol other than a reserved symbol.

6. Classification of political parties- (1) For the purpose of this Order and for such other purposes as the Commission may specify as and when necessity therefore arises, political parties are either recognized political parties or unrecognized political parties.

(2) A recognized political party shall either be a National party or a State party.”

29. A dispute came up before the Election Commission of India in relation to the “All India Trinamool Congress” with respect to use of name of the Political party. The Commission has not allowed either of the two groups to use the name of the party “All India Trinamool Congress” or

its symbol “Flowers and Grass” reserved for the “All India Trinamool Congress”. The Commission has allotted “Democratic Trinamool Congress” name for one group led by Shri Arup Roy with the symbol “Envelope” and treated as a recognized political party in the State of West Bengal, Meghalaya and Tripura. The group led by Ms. Mamata Banerjee is allotted the name “Mamata All India Trinmool Congress” with the symbol “Football Player” and treated as a recognized political party of the State of West Bengal, Meghalaya and Tripura.

30. The order dated 18th September, 2026, was challenged before the Hon’ble Supreme Court being Writ Petition (Civil) No. 1213 of 2026 and the Hon’ble Supreme Court has not upset the order passed by the Commission and the proceeding is pending before the Hon’ble Supreme Court for adjudication.
31. In the case of ***Desiya Murpokku Dravida Kazhagam vs. Election Commission of India*** reported in ***(2012) 7 SCC 340***, the Hon’ble Supreme Court held that no political party is entitled to allotment or use of an election symbol permanently and that a registered unrecognized party has not vested right to exclusive allotment of a common symbol at every subsequent election.
32. In the case of ***Subramanian Swamy Vs. Election Commission of India*** reported in ***(2008) 14 SCC 318***, the Hon’ble Supreme Court held that:

“31. *That leaves us with the last argument that the symbol amounts to a property and, therefore, a political party cannot be deprived of its property. The argument must be rejected at the outset as the symbol can never have even the traces of the concept of a property.*

32. *It may be that a recognised political party would have a right of exclusive use of the symbol but the Symbols Order makes it very clear that such right to use the symbol can be lost with the dismal performance of the party.*

34. *A symbol is not a tangible thing nor does it generate any wealth, it is only the insignia which is associated with the particular political party so as to help the millions of illiterate voters to properly exercise their right to franchise in favour of the candidate of their choice belonging to a particular party. In the election process it is not merely the individual candidate's personality or his identity that weighs with the voters. It is undoubtedly a very relevant factor but along with it the voter also can and does vote in favour of the party. It is under such circumstances that the symbol becomes relevant and important. However, all that it provides for is the essential association that it has with a particular party. The party concerned would have a legal right to exclusively use the same but that is not, in our considered opinion, a property of the party and, therefore, the Election Commission which is required to ensure free, fair and clean elections have every right to deprive a particular party with a dismal performance of that symbol. The Election Commission puts a clamp on the right of such a political party to use the symbol rightfully. We are, therefore, not in a position to accept the argument that symbol is a property of a party and, therefore, such property cannot be taken away from that political party. The symbol may be an outcome of intellectual exercise but it does not become an “intellectual property” which concept has monetary implications. In case of a political party as contemplated in the Symbols Order, monetary angle is conspicuously absent.”*

- 33.** The petitioners are claiming symbol of “Envelope” on the basis of the order dated 10th March, 2026. The order dated 10th March, 2026, clarified that use of common symbol by the respective party(s) is not allowed after the completion of the said election. The election for which the symbol “Envelope” was allotted to the petitioners was completed on declaration of result of the said election in the month of May, 2026. The petitioners have not disclosed any document in the present writ petition that the petitioners have applied the symbol “Envelope” for this bye-election. Now the commission by an order dated 18th September, 2026, allowed the symbol “Envelope” to the Democratic Trinamool Congress. The said order is also under challenged before the Hon’ble Supreme Court.
- 34.** This Court finds that the symbol “Envelope” was allotted to the petitioners to contest the West Bengal Legislative Assembly Election, 2026 which is completed in the month of May, 2026 and thus the petitioners cannot claim any right over the said symbol for the bye-election as the allotment of symbol for the said election was the conditional one.
- 35.** Considering the above, this Court did not find any merit in the writ petition. Accordingly, **WPA No. 27839 of 2026** is **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)