

INTERNATIONAL JOURNAL OF INTEGRATED LAW REVIEW

Volume 2 | Issue 2

2021

© 2021 *International Journal of Integrated Law Review*

Follow this and additional works at: <https://www.ijilr.com/>

Issue Sponsored by VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Integrated Law Review. It has been accepted for inclusion in International Journal of Integrated Law Review after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Integrated Law Review**, kindly email your Manuscript at editor.ijilr@gmail.com.

A Charge of Murder to Election Commission: A Recent Study in the Light of Corporate Crime in the Field of Governmental Institution

SHUBHAM SONTHALIA¹

As, India is a Developing Country, the role played by the judiciary is immense towards the development of the country legal prospective. Same happen when the bench of Chief Justice Sanjib Banerjee and Justice Senthilkumar Ram Moorthy of Madras High Court made the observation while hearing the Suo moto case concerning COVID-19 related issues in Tamil Nadu and Puducherry. The Hon'ble High Court Said that "Two aspects cannot be missed. First, is the Union's endeavour to indicate that surge in (COVID-19) numbers may be unexpected and prefatory measures have been taken for quite some time. Second aspect is the Election commission's concern about sensationalism. The Post-Mortem on either count may have to wait particularly in light of immediate measures that may be put in place,".

The Madras High Court came down heavily on the Election Commission of India for allowing political rallies during the COVID-19 pandemic. A visibly upset Chief Justice Sanjib Banerjee told the Election Commission's counsel "Your institution is singularly responsible for the second wave of COVID-19". The Chief Justice went to the extent of orally saying "Your officers should be booked on murder charges probably".

The Chief Justice observed that the Commission had failed to enforce COVID norms regarding wearing of facemasks, use of sanitizers and maintaining social distancing during election campaigning, despite court orders. Public health is of paramount importance and it is distressing that constitutional authorities have to be reminded in such regard. It is only when a citizen survives that he'll be able to enjoy the rights that a democratic republic guarantees", the Chief Justice further added. "The situation now is of survival and protection. Everything else comes next", the Chief Justice said.

The bench, also comprising Justice Senthilkumar Ramamoorthy, directed the Election Commission of India and the Tamil Nadu Chief Electoral Officer to hold consultations with the Health Secretary and come up with a plan on following COVID-19 protocol on the counting day.

Keywords: Political Rallies, Election Commission, Constitutional Authorities, Sensationalism, Democratic, Republic

¹ Author is a student at Centre for Post Graduate Legal Studies, Galgotias School of Law, India

I. INTRODUCTION

The Chief Election Commissioner of India {The Chief Election Commissioner vs M. R. Vijaya Bhaskar¹ has appealed to the Supreme Court of India through a Special Leave Petition against the oral comments attributed to the judges of the Madras High Court on the poll body and its officials, portraying them as responsible for the surge in the COVID-19 pandemic.

CEC urged the court to direct the police not to register cases for murder against Election Commission officials or take any coercive action on the basis of media reports on oral observations attributed to the High Court judges.

CEC contested that: Oral comments would impact or lower the faith of the masses in the poll body and the democratic process. It is also not justified in the least for an independent constitutional authority to make allegations against another which would effectively tarnish the image of the latter.

The Chief Election Commissioner vs M. R. Vijaya Bhaskar² In this Case Justice (Dr) D. Y. Chandrachud Speaking for two judges bench held that the independence of the judiciary from the executive and the legislature is the cornerstone of our republic. Independence translates to being impartial, free from bias and uninfluenced by the actions of those in power, but also recognizes the freedom to judges to conduct court proceedings within the contours of the well-established principles of natural justice.

Justice (Dr) D. Y. Chandrachud further held that The High Court ought not to have made disparaging oral observations that the EC is the “the institution that is singularly responsible for the second wave of COVID-19” and that the EC “should be put up for murder charges”.

(i) These observations were made without giving the EC an opportunity to explain the steps it had taken for maintenance of COVID-19 protocols and it had no notice that its conduct of the elections during the campaign would engage attention during the hearing;

(a) The High Court has made disparaging oral observations without proof or material and

(b) The High Court disposed of the writ petition without addressing the miscellaneous application filed by the EC.

(ii) The remarks made by the High Court were widely reported in the media and have tarnished the image of the EC as an independent constitutional authority. These remarks have reduced the faith of the people in the EC and undermined the sanctity of its constitutional authority.

² Civil Appeal No. 1767 of 2021

Mohinder Singh Gill vs Chief Election Commissioner, New Delhi³, In this case Justice V. R. Krishnaiyer of Hon'ble SC said that, we must emphasize the need for judges to exercise caution in off-the-cuff remarks in open court, which may be susceptible to misinterpretation. Language, both on the Bench and in judgments, must comport with judicial propriety.

In A.M Mathur vs Pramod Kumar Gupta⁴, Justice K. J. Shetty speaking for two Judges bench of Hon'ble SC, held that Judicial restraint and discipline are as necessary to the orderly administration of justice as they are to the effectiveness of the army. The duty of restraint, this humility of function should be a constant theme of our Hon'ble judges. This quality in decision making is as much necessary for judges to command respect as to protect the independence of the judiciary. Judicial restraint in this regard might better be called judicial respect, that is, respect by the judiciary.

Dr Raghubir Saran vs State of Bihar⁵, Chief Justice K Subba Rao speaking for a three Judges bench of Hon'ble SC observed that it is particularly advised to higher Courts to enable judges of the lower Courts to freely express their opinion: Chief Justice K Subba Rao further held that, I entirely agree with the remarks. I reiterate that every judicial officer must be free to express his mind in the matter of the appreciation of evidence before him. The phraseology used by a particular Judge depends upon his inherent reaction to falsehood, his comparative command of the English language and his felicity of expression. There is nothing more deleterious to the discharge of judicial functions than to create in the mind of a Judge that he should conform to a particular pattern which may, or may not be, to the liking of the appellate court. Sometimes he may overstep the mark.

Free speech and expression are subject to the regulatory provisions of Article 19(2) of Constitution of India, 1950. The decision in LIC vs (Prof.) Manubhai D. Shah⁶, In this Case Justice A. M. Ahmadi of Hon'ble SC develops these ideas that, The print media, the radio and the tiny screen play in the role of public educators, so vital to the growth of a healthy democracy. Freedom to air one's views is the lifeline of any democratic institution and any attempt to stifle, suffocate or gag this right would sound a death-knell to democracy and would help usher in autocracy or dictatorship. It cannot be gain, said that modern communication mediums advance public interest by informing the public of the events and developments that have taken place and thereby educating the voters, a role considered

³ AIR (1978) 851, 1978 SCR (3) 272

⁴ AIR (1990) 1737, 1990 SCR (2) 110

⁵ AIR (1964) 1 1964 SCR (2) 336

⁶ AIR (1993) 171, 1992 SCR (3) 595

significant for the vibrant functioning of a democracy.

Article 19(1)(a) of the Constitution guarantees every citizen the right to freedom of speech and expression. Over six decades ago, in 1958, a Constitution Bench of SC, In *Express Newspaper (P) Limited vs Union of India*⁷, In this Case Justice P. B. Sawant of Hon'ble SC explained that Article 19(1)(a) of Constitution of India, 1950 would carry within it, implicitly, the right to freedom of the press. The SC further held that, as with all freedoms, press freedom means freedom from and freedom for. A free press is free from compulsions from whatever source, governmental or social, external or internal. From compulsions, not from pressures; for no press can be free from pressures except in a moribund society empty of contending forces and beliefs.

Justice P. B. Sawant further observed that A free press is free for the expression of opinion in all its phases. It is free for the achievement of those goals of press service on which its own ideals and the requirements of the community combine and which existing techniques make possible.

II. ELECTION COMMISSION PROVISION IN COMPARISON WITH OTHER COUNTRIES

The Federal Election Commission (FEC) is an independent regulatory agency of the United States whose purpose is to enforce campaign finance law in United States federal elections. Created in 1974 through amendments to the Federal Election Campaign Act, the commission describes its duties as "to disclose campaign finance information, to enforce the provisions of the law such as the limits and prohibitions on contributions, and to oversee the public funding of Presidential elections."

The FEC was established in 1974, in an amendment of the Federal Election Campaign Act (FECA), to enforce and regulate campaign finance law. The commission consists of six commissioners appointed by the president and confirmed by the Senate. Each commissioner is appointed for a six-year term, but each ending on April 30. Two commissioners are appointed every two years. However, commissioners continue to serve after their terms would expire until a replacement is confirmed, but may resign at any time. By law, no more than three commissioners can be members of the same political party.

Functions of FEC – The FEC administers federal campaign finance laws. It enforces limitations and prohibitions on contributions and expenditures, administers the reporting system for campaign finance disclosure, investigates and prosecutes violations (investigations

⁷Transfer Case (Civil) No.10 of 1990

are typically initiated by complaints from other candidates, parties, watchdog groups, and the public), audits a limited number of campaigns and organizations for compliance, and administers the presidential public funding programs for presidential candidates

The FEC also maintains an active program of public education, directed primarily to explaining the law to the candidates, their campaigns, political parties and other political committees that it regulates.

The Australian Electoral System comprises the laws and processes used for the election of members of the Australian Parliament. The system presently has a number of distinctive features including compulsory enrolment, compulsory voting, majority-preferential instant-runoff voting in single-member seats to elect the lower house, the House of Representatives, and the use of the single transferable vote proportional representation system to elect the upper house, the Senate.

The timing of elections is governed by the Constitution and political conventions. Generally, elections are held approximately every three years and are conducted by the independent Australian Electoral Commission (AEC).

Functions of AES – The AEC maintains a permanent Commonwealth electoral roll. State and local elections are today based upon the Commonwealth electoral roll, maintained under joint roll arrangements. Though each state and territory regulate its own part of the electoral roll. The one enrolment application or update form can be used for Commonwealth, state and local rolls (except in Western Australia).

If a change of address causes an individual to move to another electorate (electoral division), they are legally obliged to notify the AEC within 8 weeks. The AEC monitors house and apartment sales and sends a reminder (and the forms) to new residents if they have moved to another electorate, making compliance with the law easier. The AEC conducts periodic door-to-door and postal campaigns to try to ensure that all eligible persons are registered in the correct electorate.

To receive federal public funding, a political party must be registered under the Electoral Act, which requires that they have at least 500 members. All nominations for party-endorsed candidates must be signed by the Registered Officer of a registered party. The name of registered parties appears on ballot papers. Separate registers of parties are maintained for each state and territory, with their own membership requirements.

The Electoral Commission is an independent Crown entity set up by the New Zealand Parliament. It is responsible for the administration of parliamentary elections and

referendums, promoting compliance with electoral laws, servicing the work of the Representation Commission, and the provision of advice, reports and public education on electoral matters. The commission also assists electoral agencies of other countries on a reciprocal basis with their electoral events.

The Electoral Act defines the objective of the Electoral Commission as, "to administer the electoral system impartially, efficiently, effectively, and in a way that –

1. Facilitates participation in parliamentary democracy; and
2. Promotes understanding of the electoral system; and
3. Maintains confidence in the administration of the electoral system".

The functions of the Electoral Commission are defined by law and in summary comprise-

- 1) Preparation and conduct of General Elections, by-elections, and referenda.
- 2) Allocating government monies to registered political parties for radio and television broadcasting.
- 3) Promoting public awareness of electoral matters through education and information programmes.
- 4) Giving advice to the Minister and the House of Representatives on electoral matters referred to the commission.
- 5) Making available information to assist political parties, candidates, and third parties to meet their statutory obligations in respect of electoral matters administered by the commission.
- 6) Compiling and maintaining electoral rolls.

Russian presidential elections are governed by the Russian Constitution, the Federal law on basic guarantees of electoral rights and the right to participate in referendums of citizens of the Russian Federation and the Federal law on Presidential elections of the Russian Federation. The provisions of the electoral legislation were constantly evolving, but the foundations of the electoral system remained unchanged.

The Russian presidential elections determine who will serve as the President of Russia for the next six (formerly four from 1996 to 2012 and five from 1991 to 1996) years.

Candidates can be nominated by a political party or run as independents. To officially nominate candidates, a party congress (for party candidates) or an initiative group meeting (for independent candidates) must be held. In any case, regardless of the method of

nomination, a candidate must submit to the CEC consent to be nominated by a specific political party or a specific initiative group.

The Canada Elections Act (full title: An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts) is an Act of the Parliament of Canada which regulates the election of members of parliament to the House of Commons of Canada. The Canada Election Act limits spending on election advertising by interest groups, It also sets out various provisions regarding the publication or broadcast of election advertising and election results.

The Election Commission of India is a permanent and independent body established by the Constitution of India directly to ensure free and fair elections in the country. Article 324 of the Constitution provides that the power of superintendence, direction, and control of elections to parliament, state legislatures, the office of the president of India, and the office of vice-president of India shall be vested in the election commission. Thus, the Election Commission is an all-India body in the sense that it is common to both the Central government and the state governments. The commission has the powers under the Constitution, to act in an appropriate manner when the enacted laws make insufficient provisions to deal with a given situation in the conduct of an election.

Functions of ECI – The Election Commission is regarded as the guardian of elections in the country. In every election, it issues a Model Code of Conduct for political parties and candidates to conduct elections in a free and fair manner.

The election commission has the right to allow symbols to the political parties. It gives recognition to the national parties, state parties and regional parties. It sets limits on poll expenses.

The commission is empowered with prohibiting dissemination or publication of voting trends that seek to influence voters by opinion polls or exit polls.

III. CONCLUSION AND SUGGESTION

According to my views, the Election Commission can't be held solely responsible for the hike in the Covid-19 case while conducting polls in various Cities. The political parties need to be adhered according to the norms established by the concerned state election commission. The political parties should avoid going to the high affected Covid-19 Areas and they should arrange the mask and hand sanitiser for the participants in their election rally. The political party's leaders should wear mask while performing in the Election Rallies. Now, the question

arises that can EC be solely held liable for death happened due to the Election Campaigning, again according to my view, the EC's Employees were doing their job effectively or not, is the big question which is unanswered, as the high influence of political party were on the employees of EC. The political leaders turn all the hurdles towards their way.

The EC, code of conduct published during the election was not properly followed by any political party and they were going as per their own whims and fancies. The EC should be more vigilant towards their plan for future and as well as for present. The EC was negligent towards their work and they don't prepare the roadmap and they were going without any plan. So, in that way, EC need to postpone the Election in the most Covid-19 affected States and should come up with the strong action plan for their further procedure. But this was not done in any state by EC.

The Oral observation made by the Madras High Court Judges, was not up to the mark and it will be avoiding in the future. But the state judiciary was concerned towards the increasing death of people toward Covid-19. So, there statement was made for the betterment of the management of the EC during Election in the State. The EC appealed to the Supreme Court of India through a Special Leave Petition against the oral comments attributed to the judges of the Madras High Court on the poll body and its officials, portraying them as responsible for the surge in the COVID-19 pandemic. Hence the observation made by the Hon'ble SC in this matter is Appreciable, that The High Court ought not to have made disparaging oral observations that the EC is the "the institution that is singularly responsible for the second wave of COVID-19" and that the EC "should be put up for murder charges".

There were so many past incidents in which SC reportedly ordered media to not to record the oral observation made by the HC, while conducting the Hearing. It should be the moral and ethical duty of the reporter to avoid reporting of oral observation. It will be in the Interest of the public, to react on such oral observation while applying their mind and considering the nuances of the fact and circumstances laid down in the statement.

IV. REFERENCES

1. The Chief Election Commissioner vs M. R. Vijaya Bhaskar Civil Appeal No. 1767 of 2021.
2. Mohinder Singh Gill vs Chief Election Commissioner, New Delhi AIR (1978) 851,1978 SCR (3) 272.
3. A.M Mathur vs Pramod Kumar Gupta AIR (1990) 1737,1990 SCR (2) 110.
4. Dr Raghubir Saran vs State of Bihar AIR (1964) 1 1964 SCR (2) 336.
5. LIC vs (Prof.) Manubhai D. Shah AIR (1993) 171, 1992 SCR (3) 595.
6. Express Newspaper (P) Limited vs Union of India Transfer Case (Civil) No.10 of 1990.
7. Election Commission Singularly Responsible for COVID Second Wave; officers Should probably be booked for Murder: Madras High Court, Published in LIVELAW NEWS NETWORK on 26th Apr. 2021.
8. Ensure that counting day doesn't become Super Spreader Event: Madras High Court to Election Commission, Parties, Published in LIVELAW NEWS NETWORK on 29th Apr. 2021.
9. Media Should not Report Judges Oral Comments: Election Commission moves Madras High Court over "Murder Charges" Remarks, Published in LIVELAW NEWS NETWORK on 30th Apr. 2021.
10. Post Mortem of Union's Stance on Covid Readiness and EC's Sensationalism Concerns may have to wait: Madras HC in Suo Moto Covid Case, Published in LIVELAW NEWS NETWORK on 30th Apr. 2021.
11. Election Commission Moves SC against Madras HC's Remarks that "EC Responsible for Covid & it's officers Should probably be booked for Murder", Published in LIVELAW NEWS NETWORK on 02nd May. 2021.
12. SC advises HC to avoid 'off the Cuff' oral Remarks which can be damaging to persons, Published in LIVELAW NEWS NETWORK on 30th Apr. 2021.
