

AD-27  
Ct No.09  
20.05.2024  
TN

WPA No. 14161 of 2024

All India Trinamool Congress  
Vs.  
Election Commission of India and others

Mr. Jishnu Saha, Ld. Sr. Adv.,  
Mr. Soumen Mohanty,  
Mr. Ayan Podder,  
Mr. Agnish Basu,  
Mr. Soham Dutta,  
Ms. Syed Kishwar,  
Ms. Riddhi Jani

.... for the petitioner

Mr. Lakshmi Kr. Gupta, Ld. Sr. Adv.,  
Mr. Anuran Samanta

.... for the ECI

Mr. Ratnanko Banerji, Ld. Sr. Adv.,  
Mr. Arunabha Deb,  
Mr. Soumabho Ghose,  
Ms. Ashika Daga,  
Mr. Kanishk Kejriwal,  
Mr. Tirthankar Das,  
Mr. Raunak Das Sharma

.... for the respondent no. 3

- 1.** Heard learned counsel for the parties.
- 2.** Learned senior counsel appearing for the petitioner contends that the petitioner is a political party which is participating in the ongoing parliamentary elections and is being prejudiced adversely by certain advertisements being published in the respondent no. 3-newspaper as well as other newspapers by the respondent no. 2, which is a rival political party.
- 3.** Learned senior counsel places reliance on the provisions of the Manual of Model Code of Conduct and Media Compendium issued by the Election Commission

of India (ECI). By relying on certain clauses of the same, it is argued that criticism of other parties or their workers based on unverified allegations or distortion is to be avoided. That apart, during the election period, the print media should refrain from publishing any unverified allegation against any candidate or political party, either directly or impliedly, as per guidelines issued by the Press Council of India's election reporting-1996 and further guidelines issued on July 30, 2010 to be followed during election. Further, no political party or candidate or any other organization or person shall publish any advertisement in the print media on poll day and one day prior to poll day (silent period).

- 4.** In the present case, the petitioner has annexed certain advertisements which are offending from the perspective of the petitioner. At least one of those, it is argued, dated May 12, 2024 was published during the silent period as contemplated in the Model Code of Conduct (MCC).
- 5.** Despite repeated complaints having been lodged with the ECI, it is alleged by the petitioner that the Commission has not been taking any steps thereon. Only after filing of the writ petition, on May 18, 2024, a communication was made indicating that the Commission has issued a show cause notice to respondent no. 2, which is to be replied to by May 21,

2024, pertaining to the advertisement published during the silent period on May 12, 2024.

- 6.** It is argued by the petitioner that by virtue of such slanderous advertisements, the respondent no.3 and other newspapers have been carrying an agenda from the respondent no. 2, which is diametrically contradictory to the MCC. As such, the petitioner seeks injunction which, as per the submission of the petitioner, would be to facilitate free and fair elections.
- 7.** Learned senior counsel appearing for the ECI submits that the ECI has the power to look into the matter to ensure compliance of its advisories and the MCC.
- 8.** Accordingly, the ECI has already issued a notice on the basis of the complaint of the petitioner regarding the offending advertisement dated May 12, 2024, directing show cause to be filed by the respondent no. 2 by May 21, 2024, that is, tomorrow.
- 9.** It is contended by learned counsel for the ECI that in the event this court adjudicates either way on the present prayers, the same might have an adverse and prejudicial effect on the adjudication made by the ECI. That apart, learned senior counsel for the ECI cites Article 324 read in conjunction with Article 329 of the Constitution of India which debar the intervention of courts in matters pertaining to conduct of elections.
- 10.** Learned senior counsel for the ECI, during passing of the order, points out that 21<sup>st</sup> May has been fixed not

as a date of hearing but for reply to the show-cause notice issued by the Commission on May 18, 2024.

- 11.** It is further pointed out that some of the previous complaints of the petitioner have been resolved.
- 12.** Learned senior counsel appearing for the respondent no. 3, a leading vernacular daily, submits that the respondent no. 3, while carrying out its commercial duties, merely carries advertisements given by different entities. It is argued that even the petitioner has given advertisements which have been carried duly by the respondent no. 3.
- 13.** It is submitted that the respondent no.3, is a part of the media, and it falls within the domain of functioning of the media to carry advertisements. Upon due payments having been made and all compliances by the concerned entity, the respondent no. 3 has a right to carry such advertisements and has no role to play in the allegations made by the petitioner.
- 14.** It is further pointed out that the writ petition is also bad for non-joinder of necessary parties since from the annexure at page-41 of the writ petition it is evident that similar advertisement has been carried by at least another media house in its daily. Moreover, there are other newspapers and media platforms which are carrying the advertisements complained of by the petitioner, who have not been impleaded in the present writ petition. It is, thus, argued that such selective

allegation against the respondent no.3 vitiates the present challenge.

- 15.** Upon a careful perusal of the resolution allegedly arrived at by the ECI, those appear *ex facie* to be insufficient. Insofar as the complaint dated May 05, 2024 is concerned, from the bunch of documents handed over in court today and relied on by the ECI, it is seen that the resolution was merely in the form of a statement that the complaint has been “resolved” and the matter has been taken up by the office of the Chief Electoral Officer, West Bengal.
- 16.** With an asterisk, at the bottom, it is indicated that if the complainant is not satisfied, it can re-open the complaint within 7 days of resolution, which indicates that the statement made thereinabove is the complete resolution of the complaint.
- 17.** Again, at page-10 of the bunch of documents handed over by the ECI, regarding one of the other advertisements in respect of which the petitioner had lodged a complaint, one of the resolutions seems to be that the matter has been taken up by the office of the Chief Electoral Officer, West Bengal, which appears against serial no.1 of the resolution sheet. Against serial no.4, it has also been mentioned that another complaint has been resolved merely by way of a finding that the alleged complaint is not related to the 152-Tollyganj Assembly Constituency but is related to the whole State of West Bengal; so, it may be sent to the

Media Certification and Monitoring Committee (MCMC) for necessary action.

- 18.** Regarding another complaint, as appearing from page-4 of the bunch of documents handed over by the ECI, the Chief Electoral Officer has referred the matter to the Election Commission of India through its Secretary.
- 19.** It is seen from the said communication dated May 16, 2024 that by virtue of the same, the Chief Electoral Officer has merely enclosed a copy of the advertisement for the perusal of the Election Commission of India with the transcript of the advertisement.
- 20.** However, this court is not satisfied that any of such so-called 'resolutions' are resolutions in the real sense of the term. The said matter is merely an exercise by the ECI in passing the buck regarding the complaints made by the petitioner.
- 21.** Insofar as the conduct of the elections by the ECI is concerned, looking into the provisions of Articles 324 and 329 of the Constitution of India, it is clear that the same pertains in a blanket fashion to all facets of conduct of elections.
- 22.** It is well-settled by the Supreme Court and by various High Courts of the country on several occasions that the court cannot interdict in an election process so as to throw a spanner in the wheels of the election and/or to halt the election process altogether.
- 23.** The purpose of the court can at best be, in a challenge under Article 226 of the Constitution of India, to

facilitate the process of election and not to halt the same or to prevent the smooth process of the election.

- 24.** In the present case, what the petitioner seeks is to ensure free and fair elections by way of preventing the respondent no.2 from publishing alleged advertisements in violation of the MCC.
- 25.** Thus, the petitioner does not seek to interdict the process of election or to halt the same but clearly to facilitate free and fair elections, which is in consonance with the purpose enumerated in Articles 324 and 329.
- 26.** Moreover, the present challenge is wider in scope than the limited and restricted focal lens of the conduct of the electoral process and also hits at the rights of the petitioner and its functionaries under Article 21 of the Constitution of India as well as under Article 19 of the Constitution of India, in order to practice, profess and propagate their political philosophy as well as to have a right to a free and fair electoral process.
- 27.** Thus, the petitioner, as any other political party, is also entitled under Article 14 of the Constitution of India to seek that the court ensures free and fair play in the electoral process and to protect the rights of any and every political party in that regard.
- 28.** It must be mentioned here that even as per the ECI, the advisories of the ECI do not entitle the ECI to pass any restraint order as such or take any penal action against the political party is concerned but merely to censure the said political party if there is a violation of the MCC.

- 29.** Thus, the remedy sought before the writ court, to vindicate and protect the fundamental rights of the petitioner, cannot be granted by the ECI, since the scope of exercise of power of the ECI is merely to ensure that the advisories issued by it are adhered to.
- 30.** Insofar as the arguments of the respondent no.3 are concerned, there is justification in the contention of the respondent no. 3 that the other media houses or newspapers etc. which are carrying the same advertisement ought also to have been impleaded as parties to the present writ petition. The writ petition is not merely to restrain media houses but primarily to restrain the respondent no.2, being the ruling political party of the country having the responsibility to lead from the forefront, from publishing advertisements which squarely violate the political rights of the petitioner and its functionaries.
- 31.** A perusal of the impugned advertisements dated May 04, 2024, May 05, 2024, May 10, 2024 and May 12, 2024 clearly evince that those are in violation of the letter and spirit of the MCC.
- 32.** Insofar as the allegations made therein are concerned, those are not in the form of news items, nor do they refer to any specific source for making the said blanket allegations against the petitioner/party. The name of the advertiser appears in microscopically small print, thus giving an impression that the same is a general article.



- 33.** The MCC clearly prohibits all participants in the election process from criticism of other parties or their workers based on unverified allegations or distortion.
- 34.** Moreover, as per the MCC, during the election period, the print media should also refrain from publishing any unverified allegation against any candidate or political party either directly or impliedly as per guidelines issued by the Press Council of India.
- 35.** It is also clear that in the garb of advertisements, the present impugned allegations and publications made against the petitioner are outright derogatory and definitely intended at insulting the rivals and levelling personal attacks against its functionaries.
- 36.** Hence, the said advertisements, being directly contradictory to the MCC, which operate as guidelines, as well as being violative of the right of the petitioner and all citizens of India to a free, fair and untainted election process, the respondent no.2 ought to be restrained from further publishing the same until further orders.
- 37.** It may be mentioned here that the apprehension of the ECI that its decision on the complaints made by the petitioner may be prejudiced by any order of this court is illusory, since the power of issuance of injunctions by writ courts in the context of ensuring free and fair election process is beyond the limited power of the ECI to deal with the complaints.

- 38.** Moreover, in the present case, as discussed above, the ECI has grossly failed to address the complaints raised by the petitioner in due time. This court is surprised that no resolution worth the name has been arrived at regarding the said complaints till date, more so, since most of the phases of the electoral process are already over and only two phases are left and the entire election process shall be concluded by June 04, 2024.
- 39.** A resolution of the complaints after the election is over means nothing to the court and, as such, in view of the failure on the part of the ECI to interdict and act on the complaints of the petitioner in due time, this court is compelled to pass an injunction order in the terms enumerated hereinbelow.
- 40.** Accordingly, the respondent no.2 is hereby restrained from further continuing with the publication of the offending advertisements dated May 04, 2024 (Annexure P1); May 05, 2024 (Annexure P3); May 10, 2024 (Annexure P5) and that dated May 12, 2024 (Annexure P8) till June 04, 2024 or until further order, whichever is earlier.
- 41.** The respondent no.2 is further restrained from publishing advertisements in any form of media which is violative of the MCC issued by the ECI during the aforesaid period.
- 42.** The matter shall next be listed in the monthly list of June, 2024. Liberty, however, is given to the parties to mention for earlier enlistment before the appropriate

Vacation Bench sitting during the oncoming summer vacation in the event any exigency arises.

(Sabyasachi Bhattacharyya, J.)