

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8785 of 2020

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Century Business Private Limited, A Company incorporated Under the
Laws of India having Registered Office at 108, Emarat Firdaus, Exhibition
Road, Patna-800001 through its Director Shashi Kumar Chaudhary Son
of Sri Banwari Lal Chaudhary.

... .. Petitioner

Versus

1. The Chief Electoral Officer, 7 Sardar Patel Marg, Mangles Road, Patna-800015.
2. The Additional Chief Electoral Officer, 7 Sardar Patel Marg, Mangles Road, Patna-800015.
3. The District Election Officer-Cum-District Magistrate, Bihar, Patna.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Sr. Adv.

Mr.Raju Giri, Adv.

For the Respondent/s : Mr. Siddharth Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 21-10-2020

Heard Mr. S.D. Sanjay, learned senior counsel assisted
by Mr. Raju Giri, learned counsel for the petitioner and Mr.
Siddharth Prasad, learned counsel for the Chief Electoral
Officer, Bihar (respondent no. 1)

2. The present writ petition has been filed for a direction
to the respondents to allow the petitioner, which is a private



registered company, registered under the Indian Companies Act, 1956, to put up 950 hoarding at different sites in the State of Bihar including Unipoles, BQS and Wall Wraps etc., on private properties as part of election campaign.

3. The petitioner claims to have been engaged by a political party, namely, Bhartiya Janta Party for putting up such hoardings.

4. The necessity for filing this writ petition arose when the authorities concerned did not give any categorical reply to the representation/letter by the petitioner seeking approval from the Chief Electoral Officer, Bihar for putting up the hoardings with the permission of the owners of the properties as mandated under the Defacement of Property Act, 1987.

5. Mr. S.D. Sanjay, learned senior counsel for the petitioner has also brought to the attention of this Court that the District Electoral Officer has sought guidelines from the Chief Electoral Officer, Bihar for granting permission to the petitioner for putting up hoardings on behalf of a political party.



6. It must be stated here that this case has been listed today on the mentioning of the petitioner having been allowed.

7. Mr. S.D. Sanjay, learned senior counsel for the petitioner submits that he had personally visited the office of the Chief Electoral Officer, Bihar for seeking permission on behalf of the petitioner for putting up the hoardings but he was made to understand that the stand of the Election Commission is that in view of the Prevention of Defacement Act, 1987 and the amendment to the aforesaid Act in section 3 of the parent Act, no such hoardings would be permitted to be put up by any political party but it would only be allowed for "*person or persons*" contesting election.

8. To understand the arguments on behalf of the petitioner, it would be first necessary to refer to the relevant provisions of the Prevention of Defacement of Property Act, 1988. Section 3 of the Act referred above reads as hereunder:-

3. Penalty for defacement of property-



(1) Anybody, who defaces any property in public view by writing or marking with ink, chalk, paint or any other material, except for the purpose of indicating the name and address of the owner or occupier of such property shall be deemed to have committed an offence under this Act and shall be punishable with imprisonment for term which may extended to six months or with fine, which may extend to one thousand rupees, or with both.

(2) Where any offence committed under sub-section (1) is for the benefit of some other person or a company or body corporate or an association of persons (whether incorporated or not), then such other person or President, Chairman, Director, Partner, Manager, Secretary, agent or any other officer or person concerned the management thereof, as the



case may be, shall, unless he proves that the offence was committed without his knowledge or consent be deemed to be guilty of such offence.

(3) The owner or the occupier of a private property, after giving written consent, may permit, any "*person or persons*" **(emphasis provided)** contesting an election, to which the Representation of The People Act, 1951 is applicable, either as an independent candidate or on the symbol of a recognized political party, to use his private property for the purpose of election campaign during the period notified by the Election Commission for the completion of the process of that election.

9. A perusal of the provision contained in section 3 of the aforesaid Act, it becomes rather clear that defacing a public property has been rendered an offence with a punishment and that if such offence is committed for the benefit of some



other person or a company or body corporate or an association of persons, then, the head of such association, whoever he may be, would be responsible for such defacement unless it is proved that the offence has been committed without his knowledge or consent, or else he would be held guilty for such offence. Sub-clause 3 of Section 3 of the Act further specifies that the owner or the occupier of a private property can give written consent and permit any "*person or persons*" contesting an election to which Representation of People Act, 1951 is applicable either as independent candidate *or* on the symbol of a recognized political party to use such property for the purposes of election campaign during the period notified by the Election Commission for the completion of the process of that election.

10. It would also be necessary to understand what defacement actually means.

11. Section 2 defines defacement as impairing or interfering with the appearance or beauty or damaging, disfiguring, spoiling or injuring in any other way whatsoever



a property, which could be building, structure, wall, tree, fence, post or any other erection. The defacement could be by way of decoration, lettering, ornamentation etc produced by the stencil, which would come within the domain of 'Writing'.

12. A brief background underlying the purpose of enacting this act is also necessary to be noted.

13. It was observed in the past that during the elections, political parties indulged in defacement of public as well as private buildings by sticking posters and wall writings and that too many a times without permission of the owner of the buildings. After the election were over, the cost of removing the posters and wall writings had to be borne by public exchequer in case of public buildings and the individuals in case of private buildings. In either case, it was the general public at large which had to bear the loss for no fault of theirs. To avoid this, this Act has been implemented and in fact, most of the States have their local laws to prevent such defacement and bring the guilty / defaulters to book.



14. Considering this aspect of the matter, the Election Commission, in exercise of its powers of superintendence under Article 324 of the Constitution of India, has come out with the Model Code of Conduct for the guidance of political parties and candidates.

15. Clause VI of part - 1 of Model Code of Conduct, referred to above, provides that no political party or candidate shall permit its followers to make use of individuals' land, building, compound wall etc without his permission for erecting flagstaffs, suspending banners, pasting notices, writing slogans etc. A consolidated instruction has been issued with respect to prevention of defacement of public and private places.

16. With respect to defacement of private buildings, if the local law does not expressly permit wall writings, pasting of posters and any permanent or semi permanent defacement, which is not easily removable, the same shall not be resorted to under any circumstance, even on the pretext of having obtained the consent of the owner of the property. If the local law permits then, the contesting candidates or the



political parties concerned, shall obtain prior permission from the owner of the property and information would be transmitted by the candidate or the political party, clearly stating the name and address of the owner of the property from whom such permission has been obtained and the expenditure incurred or likely to be incurred for the purposes.

17. There are other do's and dont's in the consolidated instructions so far as putting up posters and banners are concerned but that does not concern the present dispute here.

18. In this context, Mr. S.D. Sanjay, learned senior counsel for the petitioner submits that the Defacement of Property Act, 1987 intended to include the political parties also as a political party is not an abstract entity but it consists of a group of persons. Apart from this, it has been argued that the Model Code of Conduct as well as the local law regarding defacement have to be read in conjunction and the spirit behind the enactment of local law has to be understood before taking any decision with respect to the



issue whether "*person or persons*" who would be permitted to put up hoardings after obtaining consent from the private property holders, would include political parties also.

19. The argument is that any "*person or persons*", who contests elections, either does it independently or under the banner of any political party, when symbol of such political party is given to it. In that case, ousting a political party from the clause "*person or persons*" in Sub-clause 3 of Section 3 of Prevention of Defacement of Property Act, 1987 would not be justified, logical or purposeful.

20. In support of the aforesaid arguments, learned senior counsel for the petitioner has further submitted that in the State of Jharkhand also, there is similar local law with respect to defacement of property and similar amendment, as in the State of Bihar, has been brought about and the Chief Electoral Officer, Jharkhand permitted the political parties to put up the hoardings. He, therefore, submits that no two standards can be adopted in two different contiguous States. Lastly, it has been submitted that putting up hoardings does not at all amount to defacement, which has



been defined in Section 2A of the Prevention of Defacement of Property Act, 1987. Not allowing the political party to put up the hoardings would actually defeat the very purpose of controlled campaigning during the elections. An additional ground of the elections being held during Covid -19 Pandemic has also been urged by learned senior counsel for the petitioner and it has been submitted that putting up hoardings by a political party would in a large measure prevent congregation of persons. Lesser number of persons would be required to visit in physical form to individual houses.

21. Thus, it has been requested that the petitioner be permitted to put up the hoardings and the respondents be directed to allow the request made by the petitioner who has been engaged by a political party for putting up hoardings in the entire State of Bihar.

22. Mr. Siddharth Prasad, learned Advocate for the Chief Electoral Officer, Bihar, however, has contested the aforesaid arguments and has submitted that the Prevention of Defacement of Property Act, 1987 has been enacted for



specific purpose, viz. to prevent defacement and squandering of either public or private money in restoring the buildings after defacement. The Act has an overriding effect, which is clear from Section 6 thereof. Section 3(3) of the Act is absolutely clear in its import and ambit that only "*person or persons*" contesting in the elections are permitted to put up hoardings over private properties after obtaining requisite permission and there is deliberate exclusion of any political party as a class from this privilege.

23. In support of the aforesaid argument, he submits that a candidate has a budgetary limit for campaigning and, therefore, he or she would be rather discreet in putting up hoardings or posters over private buildings as it would entail expenses. No such limit has been prescribed for any political party and if a political party is permitted, even after seeking permission from private property holders, to put up hoardings, the entire State would stand defaced and it would be very difficult to restore the same without spending huge public money.

24. Apart from this, Mr. Prasad harps on the point that a



statute has to be interpreted in its literal sense unless it causes any mischief. If the language of an Act or a Rule is clear, then, it does not require any artificial rule of interpretation to be applied. The construction of particular Act or a Rule must not be strained to include cases, which have plainly been omitted from the natural meaning of the words (refer to **Nelson Motis vs. Union of India and Another. [AIR 1992 SC 1981]**).

25. He further submits that in **Gurudevdatto Vksso Maryadit & Ors vs State Of Maharashtra & Ors [2001 (4) SCC 534]**, the Hon'ble Supreme Court has clarified that it is a cardinal principle of interpretation of statute that the words of statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity and unless there is something in the context or in the object of statute to suggest to the contrary. The golden rule is that the words of statute must *prima facie* be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear,



plain and unambiguous, then, the Courts are bound to give effect to that meaning, irrespective of the consequences. The Supreme Court has gone on to state that the words themselves best declare the intention of the law giver.

26. It has further been submitted that in the last parliamentary elections, following the mandate of Prevention of Defacement of Property Act, 1987, no political party was permitted to put up hoardings on its own over the private buildings even after permission from the individual property holders.

27. After having heard the learned counsel for the parties, this Court is of the view that Section 3(3) of Bihar Prevention of Defacement of Property Act, 1987 would be rendered meaningless if the clauses "*person or persons*" is not understood to include a political party also. The reason for saying so are as hereunder:-

(a) A person of persons contesting an election to whom, the Representation of People Act, 1951 is applicable, either as an independent candidate or on the symbol of a recognized political party is permitted to use the private



property for the purposes of election campaign. The reference to Representation of People Act and the symbol of a recognized political party do indicate that persons would include a political party also. A political party does not exist in vacuum and is not an abstract entity. It consists of persons.

(b) The purpose behind the enactment of the local law regarding defacement is obviously to prevent defacement and to limit squandering of money in restoring the property; be it public money or private money and the Model Code of Conduct for the guidance of political parties takes care of the aforesaid spirit behind the enactment of the Act. It has clearly specified the manner and method in which such permission from the private property holders shall be obtained. Even in States, where there is no local law on the subject of defacement of property, the Model Code of Conduct insists for doing minimum damage or defacement of public / private properties.

(c) The State of Jharkhand, which has a local law with provisions in *pari materia* with that of the Bihar local



law, has permitted the use of private property for election campaigning / putting up of hoardings, flagstaffs etc over private property after obtaining prior permission from the property holders to political parties also.

(d) No two standards can be applied in interpreting an Act or Rule in two different contiguous States.

(e) With the strict measures suggested in the Model Code of Conduct and guidance, it would be easier for the authorities to track the entity for recovering money or asking them to restore the defacement caused during elections. The hoardings by a political party, which would include a large group of persons including candidates contesting on the symbol of such political parties, would prevent piecemeal and sporadic hoardings and there would be lesser chances of defacement of public and private property beyond redemption.

(f) The golden rule of construction is to be preferred first but subject to the caveat that if any mischief is caused while strictly interpreting the rules, there would be no harm in reading it down by infusing practically into the rule in



question.

(g) Unless, the phrase "*person or persons*" the rule is supplemented by or understood to mean political parties, the entire force and life of the intention of the legislature would stand emasculated.

(h) The interpretation as suggested by the learned senior counsel for the petitioner clearly appears to carry out the obvious intention of the legislature.

28. For the aforesaid reasons, this Court is of the view that Section 3 the Prevention of Defacement of Property Act, 1987 would include political parties also, subject to all other conditions, which have been provided in the Act and the Model Code of Conduct.

29. The Chief Electoral Officer, Bihar ought to have responded to the letters of the petitioner. If the stand of the Chief Electoral Officer, Bihar would have been disclosed in black and white, it would have curtailed much time, which has been consumed in this litigation.

30. Apart from this, the statement made by Mr. Prasad on instructions from the respondent / Chief Electoral Officer,



Bihar that in the last parliamentary election, no political party was permitted to use the private buildings even after permission, for putting up hoardings, does not convey complete information viz. whether it was asked for or whether any instruction was issued that the political party shall not be permitted to use private buildings in campaigning for the election. It is precisely for these reasons that this Court has opined that the stand of the Chief Electoral Officer, Bihar ought to have been disclosed on the representation / letter of the petitioner.

31. The writ petition is thus allowed and disposed of with a direction tot he respondents that the petitioner be permitted to put up the hoardings in the State of Bihar, subject to the conditions enumerated in the Act and which the petitioner would be required to fulfil and with the further caveat that there is no other impedimenta in allowing such prayer of the petitioner.

32. It is expected that the decision at the level of the respondents shall be taken as expeditiously as possible, keeping in mind that the elections have been notified and the



dates of three phases have also been notified being
28.10.2020, 03.11.2020 and 07.11.2020 respectively.

(Ashutosh Kumar, J)

sunilkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.10.2020
Transmission Date	N/A

