

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

IA No. 2 of 2021

in

WP (SR) No.3926 of 2021

(taken up the proceedings through video conferencing as house motion)

ORDER:

The writ petition is filed seeking a writ of mandamus declaring the action of the respondents 1 and 2 as illegal arbitrary violative of Article 21 and rules of natural justice with regard to the order dated 06.02.2021 and consequential letter dated 06.02.2021 issued by the 4th respondent.

The matter was taken as a house motion and heard in view of the urgency that was expressed by the petitioner.

The petitioner before this Court is the Minister for Panchayat Raj and Rural Development, Mines and Geology, Government of Andhra Pradesh. He is questioning the order dated 06.02.2021 by which, the State Election Commission-1strespondent has held that in a press conference held on 05.02.2021 the petitioner made certain statements which amount to veiled threat etc., to the SEC and the officers. Therefore, the petitioner was directed to be confined to his residential house till the elections are concluded by 21.02.2021. However, he was permitted to attend his constitutional duties and legitimate responsibilities as a Minister, seek medical aid etc., which was impugned in this Writ Petition. This was conveyed to the 4th respondent - Director General of Police, who was asked to implement the said order. Questioning the same, the present writ petition is filed. An interim application was also moved seeking to suspend the impugned order.

Sri C.V.Mohan Reddy, learned Senior Counsel appeared for the Petitioner; Sri N.Ashwin Kumar, learned counsel appeared for the 1st respondent – State Election Commission; Sri B.Adinarayana Rao, learned Senior Counsel argued for Sri Ashwin Kumar, for the respondents 3 and 4, the learned Advocate General appeared.

Sri C.V.Mohan Reddy, learned counsel arguing on behalf of Sri V.R.N.Prasanth, learned counsel for the Petitioner submitted that the learned counsel for the petitioner that the 1st respondent does not have the power to pass an order restraining a person from moving out of his house and that such an order is violative of the constitutional freedoms guaranteed under the Constitution of India. He points out that the said action cannot be traced to any statute or legislation. Factually, he submits only basing on a newspaper clipping the impugned order came to be passed. He argues that the newspaper report is distorted and incorrect. Relying on the order, he submits that there are only two enclosures to the said order, while reference is made to the electronic and print media in general. He submits that the Government of Andhra Pradesh wanted to encourage unanimous elections in the polls being conducted and that the petitioner as a responsible Minister was only propagating this Government policies. He points out that as per the Andhra Pradesh Panchayat Raj (Conduct of Election) Rules 2006 (for short 'the Act') issued by G.O.Ms.No.142 P.R & R.D(Elections) Department, dated 03.05.2006, if there is only one validly nominated candidate, the Returning Officer should forthwith declare the election. He therefore, submits that the 1st respondent cannot conduct an enquiry before the elections result is announced in terms of Rule 16 of the Act. He argues that the conclusions in the impugned Order are disproportionate to the alleged utterances and that the rules of natural

justice are also not followed. He relies upon the decision in **A.C.JoshVs.Sivan Pillai**¹ and argues that Commission cannot override the rules and direct the postponement of the results. The learned senior counsel submits that the impugned order prohibiting the minister from leaving his house speaking to references violates to its constitutional of rights under Articles 14 19 and 21 of the Constitution of India.

Sri B.Adinarayana Rao, learned senior counsel commenced his arguments thereafter. He contends that the State Government has absolutely no say in the issues relating to elections and that as per Article 243(k) of the Constitution of India, the superintendence direction and control including the conduct of the election rests in the election commission only. He submits that during the electoral process, the 1st respondent is vested with all special powers to ensure a free and fair election and that the actions of the 1st respondent cannot be questioned in this regard since the power of superintendence includes the power to issue orders like the orders in the present case. He points out that a bald allegation is made in the writ affidavit that the 2nd respondent has distorted the statements of the petitioner. Learned senior counsel submits that there are no details furnished as to how the 2nd respondent distorted the statements. He also points out that it is not denied that the press conference was in fact held on 05.02.2021 at Tirupati by the petitioner. Learned senior counsel submits that the comments made in the said press conference are a direct affront to the powers of the election commission and undermines its independence. He points out that the Returning Officers and others were warned not to heed the directives of the 1st respondent and to declare the elections immediately wherever the elections are unanimous. He also points out to the statement made by

¹ 1984 (2) SCC 656

the petitioner that stern action would be taken against the Officers and that they would be put under black list as long as the Government, he represents will be there. Learned Senior Counsel argues that this Statement that Officers would be black listed as long as this Government is in power amounts to clear interference and a direction to disregard the 1st respondent. He argues that the power of superintendence and control given to the 1st respondent by the Constitution takes within its sweep and the power exercised by the 1st respondent in this case. He submits that the Order does not totally prohibit the petitioner from moving and that it also enables him to discharge his constitutional duties as a Minister. Relying upon ***Public Interest Foundation Vs. Union of India***² and Paragraph-66 of this decision, learned senior argues that the Order has to be passed in a peculiar situation prevailing in the State of Andhra Pradesh and as the Statute is silent on this issue, the 1st respondent has the power and that would come within the ambit of superintendence and control. He also submits that the rules of natural justice cannot be put in a state bracket formula and would depend upon circumstances of the case. He also distinguishes the case laws cited by the learned counsel for the petitioner.

Learned Advocate General appearing for the State submits that in the order impugned the facts are not clearly stated and that there is clear discrepancy between the press conference and the contents thereof be produced in the order. He also submits that personal liberty can only be deprived by following the procedure established by law and that the power to order house arrest is not available to the 1st respondent. He also points out that the post decisional hearing or opportunity given by

². 2019 (2) SCC 224

the 1st respondent will not be of any use as the orders were passed contrary to law.

With regard to the gag order imposed, learned Advocate General argues that delicate balance between that free speech and inflammatory speeches must be considered before such an order is passed. He submits that the conditions imposed are disproportionate.

In rejoinder, learned senior counsel for the petitioner argues that they have made a clear allegation that the press conference is distorted. He submits that the impugned order and restrictions therein are completely disproportionate and are violative of the rights guaranteed to the petitioner by the Constitution.

This Court during the course of hearing suggested if a via media solution could be arrived at if possible.

For the petitioner, learned senior counsel Sri C.V.Mohan Reddy, on instructions, submits that the petitioner will not make any personal statements against the 1st respondent, but, will propagate its Government policies. This was only concession the petitioner is willing to make.

Hence this Court is deciding the interlocutory application.

The petitioner before this Court is a Minister, who has taken oath on the Constitution of India. The 1st respondent is another Constitutional authority with certain powers that are being given for smooth conduct of the elections in the State. They are the contesting parties.

The press conference in the State was held on 05.02.2021. There are two issues that were discussed by the petitioner in his press conference. viz., i) declaration of results in the panchayats where the election is unanimous and ii) that action that would be taken against the Officers if they follow the 1st respondent's direction. As far as the

declaration of elections is concerned, this Court is not called upon to decide the same and does not wish to go further into this issue. As far as the 2nd issue is concerned, in the press conference, the petitioner has clear stated as follows:

“that the State Government would make a note of the Officers (Collectors and Returning Officers) and would definitely (khachithanga) take action against them and also blacklist them for the period in which this Government is in power.” The press conference is available in the YOU TUBE and a part of the same is also reproduced in the impugned order.”

This part of the statement (about action/blacklisting) is the issue involved in the present Writ Petition.

While the present Government is encouraging unanimous elections in the opinion of this court, the statement of the petitioner that action would be taken against the Officer and that they would be blacklisted cannot be said to be an action that can be classified as propagation of Government Policy. If the petitioner had limited himself to the advantages of unanimous elections or the incentives provided the submission of the learned senior counsel can be accepted. However, in the prima facie opinion of this Court, the statement of the petitioner that action will be taken definitely and that the Collectors and Returning Officers would be blacklisted is an interference with the exercise of duties by the Officer during elections.

What survives for consideration are the conditions imposed in the impugned order.

As per the settled law, no person can be deprived of the life and liberty except as per the procedure established by law and what is called due process of law. The case law in this regard is too well settled to be

repeated. The power to restrain a person's free movement or a house arrest can only be imposed if it is supported by law. In the opinion of this Court, the power of superintendence and control over the elections and its process cannot extend to passing an order restraining the petitioner from leaving his house. Although, in the later part of the order, some concessions are given, this Court after a *prima facie* examination of the issue is of the opinion that the State Election Commission does not have the power to direct that the petitioner should be confined to his residential premises till 21.02.2021.

However, as far as the press statements etc., issued by the petitioner are concerned, this Court holds that the petitioner was not merely advocating or propagating his party's policies. The language used leaves much to be desired. The Returning Officers and Collectors were told that they would face disciplinary action and would be black listed. In the *prima facie* opinion of this Court, this would interfere with their free discharge of duties more so, during the election period. It is also settled law that the freedom of speech is not absolute and that a reasonable restriction can be imposed. In the opinion of this Court, if the restriction that was imposed in the peculiar facts and circumstances of the case considering the ground reality is seen, this Court finds that there is a underlying purpose to the restriction imposed which is to prevent statements that will interfere in discharge of the electoral duties by the Officers. The prevailing conditions make it clear that there is no levellost between the contesting parties and the ground situation is surcharged with the differences and mutual accusations. The evil sought to be remedied and the urgency also points out to the need for imposition of this restriction. In the opinion of this Court, the restriction imposed on the petitioner from speaking to the press till 21-2-2021 is not

disproportionate to the issue involved. The decision in **Jamshed Ansari Vs. High Court of Allahabad**³ is relevant here. Needless to mention free and fair elections are needed to be held where the voters exercise their franchise freely and the results are to be declared as per law. Any statement which has the effect of interference with this process, particularly when it was directed to the Returning Officers is in the *prima facie* opinion of this Court an interference in the electoral process. The Hon'ble Supreme Court of India in **Bhim Singh Vs. Election Commission of India**⁴ has held that the functionaries have to adopt realistic, pragmatic approach having due regard to the ground realities. Therefore, this Court holds that the restriction imposed on the petitioner restraining from speaking to the press for a period of fifteen days till the election process is completed is a reasonable restriction, which has to be imposed in the peculiar facts and circumstances of the case as detailed in paragraphs -12&13 of the order impugned.

Hence, the interlocutory application is allowed in part. The order in so far as it restrains the petitioner from leaving his residential premises is set aside. However, the other part of the order where the petitioner is restrained to speaking to press/electronic media etc., till 21.02.2021 is upheld.

Notice.

07.02.2021
Mjl/*

JUSTICE D.V.S.S.SOMAYAJULU

³.2016 (10) SCC 554

⁴.1996 (4) SCC 188