

MANU/AP/0111/1998

**Equivalent Citation:** 1998(1)ALD566, 1998(1)ALT390

**IN THE HIGH COURT OF ANDHRA PRADESH AT HYDERABAD**

W.P. No. 34916 of 1997

Decided On: 31.12.1997

Appellants: **Bharatiya Janatha Yuva Morcha State General Secretary**  
**Vs.**

Respondent: **Chief Secretary, A.P. State Govt., Secretariat, Hyd. and Ors.**

**Hon'ble Judges/Coram:**

*B. Sudershan Reddy, J.*

**Counsels:**

*For Appellant/Petitioner/Plaintiff: M/s. O. Ramesh and G. Srinivasa Reddy, Adv.*

*For Respondents/Defendant: Advocate-General, Government Pleader, for GA, M/s. C.P. Sarathy and Jayasree Sarathy, Adv.*

**Case Note:**

**Constitution - policy decisions challenged - Articles 226 and 324 of Constitution of India - petitioner invoked extraordinary jurisdiction of Court under Article 226 for validity of electoral process - petitioner prays for issuance of writ of mandamus to declare policy decisions after Lok Sabha elections as illegal and violative of Model Code of Conduct - no prohibition on developmental activities by Model Code of Conduct - elected Government can declare its own policies - held, no merit to entertain writ petition.**

**JUDGMENT**

1. Heard the learned Counsel for the petitioner, learned Advocate General on behalf of the State Government of Andhra Pradesh and Sri C.P. Sarathy, learned senior Counsel on behalf of the Election Commission.

2. Conspectus of facts: The General Secretary of the State Unit of Bharatiya Janatha Yuva Morcha is the petitioner in the instant writ petition His concern and interest in the purely of electoral process made him to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner prays for issuance of an appropriate writ particularly one in the nature of Mandamus declaring all the policy decisions including "Janma Bhoomi" programme and other schemes taken by the A.P. State Government after proclamation of Lok Sabha elections as illegal arbitrary and against the natural justice apart from being violative of Model Code of Conduct issued by the Election Commission from time to time.

3. In the affidavit filed in support of the writ petition, it is inter alia stated that on 4-12-1997 the President of India dissolved the Eleventh Lok Sabha and ordered that a new House be constituted by March 15, 1998, Immediately the Election Commission declared that tentatively it would hold Polls between the third week of February and the First week of March, 1998. The Election Commission is stated to have directed all the

State Governments not to transfer senior civil and police officials and allow them to carry out poll related jobs in an impartial and firm manner. The Election Commission is stated to have directed the State Government not to start/inaugurate any Governmental new projects, not to make any promises to the people in general or sections thereof.

4. It is the case of the petitioner that the State Government is precluded from starting or inaugurating any new developmental programmes. It is precluded from giving any promises or assurances or providing any new benefits to any sections of the people. It is however, stated in the affidavit itself that the continuation of developmental programmes shall not attract the Model Code of Conduct. Once the elections are announced, the ruling parties are refrained from taking any policy decisions that may influence voters.

5. The petitioner in extenso refers to the communication issued by the Election Commission on 21-12-1997. The petitioner complains that the State Government of Andhra Pradesh miserably and wilfully acting and violating the Model Code of Conduct and declaring new projects, granting various benefits to different sections of people by announcing and inaugurating and starting different new developmental programmes through Janma Bhoomi. The petitioner details them in the affidavit as follows:

(i) State Cabinet finalised a scheme to construct 4 lakhs houses for weaker sections next year;

(ii) To release power connections to 50,000 agricultural pump sets by sanctioning 150 crore to the A.P.S.E.B. and strict instructions have been issued to ensure uninterrupted power supply for 9 hours till the elections are over;

(iii) sanction of old age and widow pensions; (iv) orders for issue of new Ration Cards.

(v) Orders and promises to set up new poly technical colleges to minorities;

(vi) Promise to lift all cases booked against the minorities in the incidents of violation that took place after the Babri demolition in 1992;

(vii) On 22-12-97 Chief Minister of A.P. state announced that through Janma Bhoomi 17,810 development works are going to take up which cost of 361.56 crores,

(viii) In Janma Bhoomi one crore release towards expenses of 1110 mobile teams and 56,000 for permanent teams;

(ix) release of one crore ten lakhs towards expenses of Free health camps;

(x) Release of two crores towards expenses of Free medical camps for animals;

(xi) release of 90 lakhs towards curing of different diseases;

(xii) C.M. further announced that Five lakhs students are going, to participate in Janma Bhoomi programme,

(xiii) On last day of Janma Bhoomi i.e., on 7-1-1998 Legal entity village meetings will be organised in 22,000 grama panchayats in addition to Manava Haram;

(xiv) It is declared that 30 crores are releasing towards victims of Road widening programme;

(xv) Under CMEY (CM's empowerment of Youth Scheme) 30,000 fresh units are allowing to receive each I lakh funds in the month of January and it impartial employment to the ruling party workers;

(xvi) C.M. approved to appoint Pay Revision Commission to satisfy 7 lakhs State Government employees and also sanctioned other various benefits to the Govt. employees;

(xvii) Special funds allotment for Assembly Constituencies and at the same time Govt directed the Collectors to stop development programmes out of funds of Parliament members which were already granted;

(xviii) That on 15-12-97 in Collectors conference the Chief Minister gave discretionary powers to Collectors to divert funds from one scheme to another for taking up projects as per local needs of district concerned in which he stressed success of Janma Bhoomi. In that meeting Planning Secretary A.K. Paritala said the Govt. released 480.55 crores towards Janma Bhoomi programme and made payments to the tune of 279.34 crores Break up funds are 29% to Roads, 15% to drains, 13% School. Buildings 5% C.C. Roads, 11% water supply, 15% Irrigation, 1% others. Total Govt. received 79,549 proposals, out of which 63,883 were given administrative sanctions and 57,759 granted technical sanction, total cost of 480.55 crores.

(xix) The State Govt. transferred Viswajit, Asst. Superintendent of Police, Nagarkurnool by breach of code of conduct and in West Godavari District due to pressure of TOP workers Govt. transferred on a large scale - CI of Rural Bhimavaram and Palakollu CI inter changed. Likewise so many transfers (some with back dated) effected by violating the Model Code of Conduct

**6.** It is specifically stated in the affidavit filed by the petitioner that the State Government is clearly violating the Model Code of Conduct by accepting the long pending demands of different sections in the eve of elections to woo the voters. It is stated to have made announcements, giving promises and assurances and promulgating different schemes to benefit various sections of people such as, teachers, NGOs, farmers, Youth, Old aged and widows etc. The State Government proclaimed schemes, developmental programmes and inaugurations of different roads, irrigation projects, school buildings, water supply, drains etc. on the eve of elections "after proclamation of elections" and after Election Commission's directions not to violate the Model Code of Conduct. The petitioner submits that all these acts of the State Government would amount to clear violation of Model Code of Conduct. The petitioner apprehends that due to Janma Bhoomi programme, the student community would be forced to associate themselves with Janma Bhoomi programme through DEO's and the students would be wasting ten more days apart from the fact that the Schools would be closed for one month from February 15th onwards.

**7.** It is stated in the affidavit that in the Janma Bhoomi programme all promises and assurances in Prajala Vaddaku palana were not fulfilled and in Srama danam, the

Government funds were misutilised. Ultimately through the schemes the ruling party, the Chief Minister is successfully focusing himself to develop his personal charisma to influence voters by spending thousand crore of rupees of Government on non-productive programmes. The petitioner apprehends that under those circumstances the elections in Andhra Pradesh State cannot be conducted impartially and legally. It is however stated that the Election Commission even after several representations and appeals of different political parties did not take any action so far. The ruling party in the State, according to the petitioner is misleading the public through the programmes of Janma Bhoomi and acting contrary to the Code of Conduct the petitioner during the course of hearing filed an additional affidavit. In the additional affidavit it is inter alia stated that the Model Code of Conduct begins from the date of proclamation of elections i.e., on 4-12-1997. From the date of notification of elections the Model Code of Conduct is applicable to all the election contestants those who filed nominations to contest. The petitioner once again refers to the Circular instructions of the Election Commission dated 19-12-1997 directing the State Governments not to transfer the officers and reiterating the Model Code of Conduct. According to the petitioner the said circular issued by the Election Commission of India would itself show that the Model Code of Conduct is applicable from the date of proclamation of the elections.

**8.** It is stated that through the Janma Bhoomi programme, the ruling party will lay foundation stones for the construction of new roads drains, bore wells and construction of houses etc. This activity cannot be said to be an ongoing developmental project. According to the petitioner, the works relating to Telugu Ganga, Jurala fly over projects, irrigation projects would have to be treated as ongoing developmental works.

**9.** The fifth phase of Janma Bhoomi declared to commence from January 1st, 1998 to 7th January, 1998. The allocation of funds were declared after proclamation of elections. The Janma Bhoomi programme includes participation of people and Shrama danam. In the recently held Collector's conference the Chief Minister directed Collectors to complete all schemes by the end of March this year.

**10.** The petitioner also refers to the financial crisis that is faced by the State Government and gives some details thereof. Certain other allegations are made by the petitioner against the Government relating to fall in Educational standard etc. with which the Court is not presently concerned.

**11.** In nutshell; the petitioner submits that the above stated acts and promises on the part of the Government and starting of new project of Janma Bhoomi would definitely impress the voters in favour of the ruling party and they are meant to woo the voters rather than welfare of the voters.

**12.** It would be appropriate at this stage to notice that Telugu Desham Party as such is not impleaded as one of the respondents to the writ petition though certain allegations and averments are made against the party. Certain allegations no doubt vague and indefinite in nature are also levelled against the Chief Minister, but the Chief Minister is not impleaded as one of the parties to this writ petition.

**13.** The State Government through its Chief Secretary filed a very comprehensive and detailed counter. The averments and the allegations levelled by the petitioner against the State Government are -denied in specific terms. There is no dispute whatsoever, about the Model Code of Conduct and various Circulars and instructions issued by the Election Commission from time to time. The Government does not dispute the jurisdiction authority of the Election Commission to issue such instructions. The circulars issued by the Election Commission announcing the elections to the 12th Lok Sabha

through its D.O. Letter dated 6-12-1997 are referred in the counter-affidavit. It is however, stated that the Model Code of Conduct as prescribed by the Election Commission has not come into operation.

**14.** In specific terms, it is stated in the counter-affidavit that the State Government, have not announced any new projects, schemes intending to grant benefits to different sections of people to woo the voters, as alleged by the petitioner. With regard to sanction of four lakh houses by the State Government, it is stated that it is an ongoing developmental scheme of the State Government for which there is already a budget provision of Rs. 166.49 crores in the State Plan 1997-98. Construction of the houses are normally taken up during the working season starting from January to July every year. With regard to the allegations relating to release of 50,000 agricultural pump sets, it is stated that it is an ongoing normal activity of the A.P.S.E.B. New connections are always released according to certain factors like availability of energy, infrastructure materials and their planning. It is stated in categorical terms that no specific government orders have been issued for sanction of new connections for any category of consumers. The details relating to the pension for the disabled are stated in the counter affidavit. The same is in the nature of relief and rehabilitation measure and it is exempted by the Election Commission of India itself

**15.** With regard to starting of three Polytechnics at Kurnools Vikarabad and Guntur for the minorities as a part of the Minorities Welfare policy, the Government issued G.O.Ms.No.401, Education (TE.1) Department dated 6-12-1997 pursuant to the policy decision taken by the Government about one year back. The decision is nothing but implementation of the policy decision already taken about an year back. However, it is admitted in the counter-affidavit the press statement of the Chief Minister on 22-12-1997 which is to the following effect:

,200 Community works have been taken up so far costing Rs. 1,000.00 crores for which Government share will be Rs.732.00 crores and People's contribution will be Rs.268.00 crores out of which 29,000 works are completed and Rs.201.00 crores paid. This includes 17,810 community works costing Rs.361.56 crores in non-work habitations which were identified in August/ October, 1997 Rounds of Janmabhoomi. All on going Community works will be completed by 15th February, 1998.

,110 Mobile Teams and 56,000 Stationary Teams will operate in January; 1998 Round of Janmabhoomi, Rs.1.00 crore released for organisational expenditure.

Rs.1.10 crore released for ongoing Free Health Camps. Safe Motherhood Campaign will be organised through 10,500 sub-centres and 11,000 Anganwadi Centres in addition to free Health Camps.

Rs. 1.10 crore released for Free Veterinary Camps, apart from Rs.90.00 lakhs released for treatment of Special Diseases.

5.00 lakh students including 1.16 lakh NSS Volunteers from 1,975 Intermediate Colleges, 805 Degree Colleges, 55 Polytechnics and 15 Universities will participate in January, 1998 Round of Janmabhoomi.

Statutory Gram Sabha will be held on 7th January in all the 22,000 Gram Panchayats.

**16.** The averments that the Government have released 30.00 crores to the victims of the road widening programme is denied. An amount of Rs.23.00 crores only have been released to take up road widening programme through G.O.R.No.522, Finance and Planning (Pig. ML) Department dated 2-9-1997 which is much before the dissolution of the Lok Sabha The details of other amounts provided for shifting of Poles and land acquisition are given in the counter-affidavit.

**17.** It is stated that the decision to appoint Pay Revision Commission was taken by the Cabinet on 4-12-1997 itself and only the terms of reference of the PRC was issued in G.O.Ms.No.565, G. A (Spl. A) Department dated 25-12-1997. No special consideration as such was shown to any of the employees it is also stated that no decision was taken in the Collectors conference to divert the funds from one scheme to another as alleged in the writ petition.

**18.** In the circumstances under which the Police officers were required to be transferred are stated in the affidavit.

**19.** It is stated that no Government officers as such has schedules to any of the programmes undertaken by the State Government. The participation of the employees of the State Government or Central Government is purely voluntary in the 5th Round of Janmabhoomi scheduled to be held from 1st to 7th January, 1998. No attempt is made by the State Government to influence the employees as well as the public in favour of the ruling party as alleged. It is the case of the State Government that Janmabhoomi is an ongoing developmental project launched in the State which is under implementation from January, 1997 and which is evolved out of the experience of Prajasa Vaddaku Palana (PVP) launched in November, 1995 in the States Four Rounds of Janmabhoomi have already been held in January, May, August and October, 1997 and the 5th round of Janmabhoomi is scheduled to be held from 1st to 7th January, 1998. No new schemes/ projects have been announced as a part of the 5th Round of Janmabhoomi process scheduled to be held from 1st to 7th January, 1998. Janmabhoomi enlists the participation of people from all walks of life for the overall development of the state and therefore, it is not meant to influence the voters in the eve of elections. It is stated in specific terms that normal developmental activities and administrative functions of the State government cannot be brought to a grinding halt in the name of elections before the actual initiation of election process.

**20.** Though I have heard the learned senior Counsel Sri C.P. Sarathy on behalf of the Election Commission, no relief as such is claimed by the petitioner against the Election Commission, Under those circumstances the Court has not directed any notice as such to the Election Commission.

**21.** Role of Election Commission : Article 324(1) of the Constitution of India vests in the Election Commission the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of all elections to Parliament and to the Legislature of every State under the Constitution. It is the constitutional obligation and duty of the Election Commission which is a high constitutional functionary to hold free and fair elections. Indeed it is a very comprehensive responsibility is imposed upon the Election Commission to conduct the elections in free and fair manner. For the aforesaid purpose and to discharge its functions and duties the Election Commission is clothed with powers of many sorts, administrative and even quasi-judicial. The Election Commission is entitled to issue such directions as it may consider in its discretion which it may bona fide consider necessary for the conduct of elections. It is entitled to issue necessary instructions from time to time and guidelines. However the power conferred upon the Election Commission which is plenary in character and its exercise thereof has

atleast two limitations. The Commission would have to act in conformity with and not in violation of any valid law relating to or in connection with the election. Secondly, it shall be responsible to the Rule of Law.

**22.** It is true that the Election has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect a candidate culminating in the final declaration of the returned candidate (See Mohinder Singh Gill v. Chief Election Commissioner, MANU/SC/0209/1977 : [1978]2SCR272 ).

**23.** In the instant case, it is required to notice that no notification yet issued by the President of India calling upon the Parliamentary constituencies to elect members, necessarily a notification by the Election Commission under Section 30 of the Representative of Peoples Act, 1951 would have to be issued only after the notification issued by the President of India under Section 14 of the Representation of the People Act, 1951 argument however, is sought to be raised by the learned Counsel for the petitioner that the Model Code of Conduct and instructions issued by the Election Commission from time to time would come into operation with immediate effect from the date of dissolution of Lok Sabha on 4-12-1997 and the announcement made by the Election Commission expressing its readiness to hold the elections between the February and March, 1998. In the counter-affidavit there is also an attempt on the part of the State Government to dispute the said proposition advanced by the petitioners. However, the learned Advocate General appearing on behalf of the State submits that in the instant writ petition there may not be any need as such to declare as to from what date the Model Code of Conduct and the instructions issued by the Election Commission would come into operation. It is submitted that the State Government had not acted in any manner whatsoever contrary to either the instructions or the Model Code of Conduct issued by the Election Commission from time to time. Under those circumstances, it is submitted by the learned Advocate General that the Court in the instant writ petition need express no opinion on the said question. However Sri. C.P. Sarathy learned senior Counsel appearing on behalf of the Election Commission brought to my notice the decision of Punjab and Haryana High Court in Harbans Singh Dalai v. Union of India and others, W.P.No.270/1997 of Punjab and Haryana High Court dated 27-5-1997, and stated that the Model Code of Conduct and instructions issued by the Election Commission shall come into immediate effect from the date of the announcement of the Election Commission's intention to make arrangement for the elections. The Court need not express any opinion on this question. Inasmuch as it does not arise for consideration in this case.

**24.** However a bare reading of Model Code of Conduct and the instructions issued by the Election Commission from time to time would reflect its realistic Pragmatic and flexible approach in prescribing do's and don'ts. There cannot be any doubt that all those instructions and Model Code of Conduct are required to be, complied with by the political parties including the party in power candidates and the staff on election duty. The learned Counsel for the petitioner mainly places reliance upon the letter/circular No.437/6198/ PLN-111 dated 19-12-1997 issued by the Election Commission of India The Circular inter aha provides that no officers connected with elections should be allowed to continue in, his/her Home district. These restrictions will cover all officers appointed for specific election duties even the District level Officers like ADM's. Deputy Collectors and Sub-Divisional Magistrates. As far as officers in the Police department are concerned the same would be applicable to DIGs, SSPs, SPS and Sub-Divisional Heads of Police. The circular however, directs all the concerned that care should be taken that, no officers are posted in their own district. The circular further directs that there should be no recruitment of personnel in different Departments, public sector Corporations and other autonomous organisations exclusively or substantially funded from the State

Exchequer. The other items in the Circular is an important one and it inter alia prohibits organisation of functions for laying of foundation stones, inaugurations etc., for sub-stations, rural feeders and such other facilities of State Electricity Boards and power utilities. It also prohibits organising functions like laying of foundation stones, inaugurations etc., for other Government Departments, Public Sector Corporations. Departmental organisations and institutions exclusively or substantially funded by State or Union Governments. All Governmental Departments, Public Sector Undertakings, Departmental organisations and Autonomous or semi-Government organisations exclusively or substantially funded by State or Union Government will strictly follow the above instructions.

**25.** The Commission itself, however clarifies that normal routine development work and administrative functions will continue and the concerned officers and officials will discharge their normal duties.

**26.** The main controversy in the instant writ petition relates to implementation of what is known as 'Janmabhoomi programme' by the State Government. The allegations made by the petitioner in the affidavit filed in support of the writ petition are already referred to in extenso. According to the petitioner, the programme is meant to boost the image of the Chief Minister, It is waste of public funds. There is no developmental activity as such. The petitioner apprehends that in the name of Janmabhoomi programme, there will be number of foundation stones inaugurations, meetings etc., and all such activities, would be meant only to influence and impress the people about the so-called achievements of the Government. The Government seriously disputes the averments and allegations made by the petitioner. According to the Government, it is an ongoing development project launched in the State in the month of January, 1997. Four Rounds of Janmabhoomi have already been held in January, May, August and October, 1997 and the 5th Round of Janmabhoomi is scheduled to be held from 1st to 7th January, 1998. Janmabhoomi enlists the participation of people from all walks of life for the overall development of the State and, therefore, it is not meant to influence the voters on the eve of elections. It is the specific case of the State Government that it is an ongoing development programme. Details about the funds already spent and are required to be spent by the Government are mentioned in the counter-affidavit

**27.** Even the guidelines, Model Code of Conduct and the circulars issued by the Election Commission do not prohibit the ongoing developmental activities. It is not as if the Government remains in suspended animation and goes in to deep slumber either on the eve of the elections or even after announcement of the election schedule. The Government's constitutional obligation and duties are not kept under suspension. Administration and management of modern State is a very complex affair. It is an art of balancing various conflicting and competing interests. It is within the province of an elected Government to declare and proclaim its own policies meant for the welfare of the people at large. Each political party may have its own perception about the nature of the development required to be undertaken by the Government. It is not possible for the Court to express any opinion about the merits and demerits of any policy or programme undertaken by the State Government. The Court is precluded from making such pronouncement upon policy matters unless demonstrated in clear terms that implementation of such policy would result in negation of Rule of Law or the Policy itself could be characterised as unconstitutional. What and which policy would be better for the people in general is always left to the elected Governments. The formulation of such policies may depend upon variety of factors and inputs. Each elected Government may have its own perception. The Courts are not required to make any pronouncement upon the merits of such policies.

**28.** The Apex Court's observation in Hindi Hitrakshak Samiti and others v. Union of India and others, MANU/SC/0157/1990 : [1990]1SCR588 are required to be borne in mind

"It is well settled that judicial review, in order to enforce a fundamental right, is permissible of administrative, legislative and governmental action or non-action, and that the rights of the citizens of this country are to be judged by the Judiciary and judicial forums and not by the administrators or executives. But it, is equally true that citizens of India are not to be governed by the Judges or judiciary. If the governance is illegal or violative of rights and obligations other questions may arise but whether as mentioned hereinbefore, it has to be a policy decision by the government or the authority and thereafter enforcement of that policy the court should not be, and we hope would not be an appropriate forum for decision."

Though an attempt is made by the learned Counsel for the petitioner in the instant writ petition to attack the validity of Janmabhoomi programme itself but without any material or foundation nothing is suggested as to how the programme could be characterised as an unconstitutional one. Under those circumstances, it is not possible for this Court to declare the said programme and policy as unconstitutional.

**29.** Minute details are given in the counter-affidavit in support of the Government's plea. It is an ongoing developmental programme. The Court has no other material or information before it so as to take any contra view in the matter. Mere averment in the affidavit that implementation of the 'Janmabhoomi programme would amount to influencing voters would not be enough to pass an order prohibiting the Government from implementing the programme itself It is not possible for this Court to issue any such directions as prayed for by the petitioner. Mere allegation that foundation stones may be laid and followed by meetings, speeches etc. would not be enough for this Court to intervene in the matter and stop the programme itself The Court cannot assume that the ongoing developmental programmes would be utilised only for laying the foundations, holding meetings and inaugurations etc. Each such incident may depend upon its own facts and circumstances. The appropriate authority may have to examine, if any such specific incident is brought to its notice that the ongoing developmental programmes are being used only for the purpose of laying foundations, inaugurations, meetings etc. Suffice it to hold that there is no such material before the Court even to hold that the Government is going ahead with the ongoing developmental programme contravening the Code of Conduct or the instructions issued by the Election Commission.

**30.** Incidentally a question may arise as to whether violation or contravention of instructions or circulars issued by the Election Commission would give rise to a cause for issuing a writ by this Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. A Full Bench of the Patna High Court in Kanhaiya Prasad Sinha v. Union of India and others, MANU/BH/0029/1990 : AIR1990Pat189 had an occasion to consider the question. The Full Bench considering the nature and scope of the power of Election Commission under Article 324 of the Constitution of India observed as follows :

"The question as to whether the directions issued under Article 324 of the Constitution are mandatory or directory is not very material because even if they- are directory in nature they cannot be easily ignored. They have to be respected and implemented. In case the directions so issued by the Commission are not respected then in appropriate cases the Court may

examine the same and pass appropriate orders. But this is a matter purely between the Commission and the concerned States and that too for the purposes of only conducting elections in a fair and smooth manner. But mere violation, if at all, does not and cannot give handle to a person to challenge his transfer on the ground that same has been made in violation of the directions issued by the Commission. There may, however, be the case where the officer challenges his transfer on the ground, of violation of the instructions issued by the Commission at a stage when the actual election process has commenced and he has been assigned specific role by the Commission in the conduct of the election. Such a case may be an exception to the general rule and I am not expressing any opinion as to whether in such a situation the concerned officer will have no locus standi to challenge his transfer when the Commission insists on revocation of the transfer."

**31.** There cannot be any doubt that Election Commission not only supervise the conduct of election but also monitors the implementation of the Code of Conduct and instructions issued by it. The Commission's power of control in this is in its amplitude. Infact it is stated in the affidavit that many political parties have made representations against the State Government of Andhra Pradesh complaining violation of Model Code of Conduct and instructions issued by the Election Commission. But it is not stated in the affidavit that the petitioner or the organisation to which the petitioner belongs made any such complaint. Under those circumstances there is no need to issue any directions to the Election Commission. Under those circumstances I am of the opinion that contravention, if any, by the political parties or the party in power of the State Government itself could not give rise to a cause for issuing any writ by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The Election Commission has its own machinery and the power of control to got its own circulars, notifications and instructions implemented.

**32.** It is required to notice that even the Election Commission does not prohibit the developmental, activities in the Country immediately after the announcement of the election. Developmental activities in the Country do not come to a grinding halt, what is sought to be achieved by the Election Commission is that no party in power running the Government should be allowed to run any distinct advantage after announcement of the elections in the matter of campaign and appeal to the voters. Election Commission directs and precludes the Government and the party in power from making any fresh promises and announcements only with a view to influence the voters.

**33.** However, it is for the Election Commission to monitor and supervise the implementation of Model Code of Conduct and the instructions issued from lime to time to the political parties, candidates and the Officials of the Government. This Court in exercise of its jurisdiction cannot dwell deep into the complaints of breach of Model Code of Conduct and instructions and decide for itself as to whether the Government or ruling party in a given case have acted contrary to the Code of Conduct and the instructions issued by the Election Commission.

**34.** Free and fair elections is a basic requirement for the survival of democracy and the institutions under the Constitution. It is not only the responsibility of the Election Commission of India but also of all the Governments including the Central Government. The Officers manning various departments under the control of the State Government are also required to discharge their duties and constitutional obligations in such a manner facilitating free and fair elections. Political parties do have their own role to play. But ultimately it is for the people to decide in what manner they should exercise their discretion. The wisdom lies with them as they are the ultimate sovereign in the

democracy.

**35.** Eternal vigilance is the price of democracy. There is no substitute for the constant vigil by the people. Even a writ of this Court cannot be a substitute for the eternal vigilance.

**36.** The great French thinker Montesquieu, said "The tyranny of a Prince in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy."

**37.** It is over to the people.

**38.** For the aforesaid reasons, I do not find any merit to entertain the writ petition and the same is accordingly disposed of with the observations as above. No costs.

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