

MANU/UP/0743/2012

Equivalent Citation: 2012(3)ADJ217

IN THE HIGH COURT OF ALLAHABAD (LUCKNOW BENCH)

Civil Misc. Writ Petition No. 1361 of 2012

Decided On: 16.02.2012

Appellants: **Nutan Thakur (Dr.)**
Vs.

Respondent: **Election Commission of India, Nirvachan Sadan, New Delhi**

Hon'ble Judges/Coram:

D.P. Singh and Satish Chandra, JJ.

Case Note:

Election - Levy of condition - Whether condition imposed by Model Code of Conduct by Election Commission of India hit equality clause contained in Article 14 of Indian Constitution - Held, in case, something was there in election manifesto, then they could propagate their views and bring it in public notice but promise made or declaration done after notification to appease as measure of allurements, should not be healthy practice on part of peoples representative - False and malicious statement erodes peoples faith in democratic process - Petition dismissed.

JUDGMENT

1. Heard the petitioner appeared in person. Notice has been accepted by Sri Kaushlendra Yadav holding brief of Sri O.P. Srivastava on behalf of Election Commission of India. Instant writ petition under Article 226 Constitution of India has been preferred for the following relief's :

(a) Issue a writ of Certiorari quashing the part of the Code prescribed in the Model Code of conduct of the Election Commission of India, at Point VII (vi) (a)- "From the time elections are announced by Commission, Ministers and other authorities shall not announce any financial grants in any form or promises thereof as regards "promises thereof as being discriminatory in nature;

(b) Issue a writ of Certiorari quashing the Code prescribed in the Model Code of conduct of the Election Commission of India, at Point VII (vi) (c)- "make any promise of construction of roads, provision of drinking water facilities etc." as being discriminatory in nature.

2. The petitioner, who appeared in person, submits that the condition imposed by the Model Code of Conduct by the Election Commission of India hit the equality clause contained in Article 14 of the Constitution of India. According to petitioner, the embargo imposed by the Election Commission of India by clause VII (vi)(a)(c), prohibits the Minister and constitutional authorities to make promise after the notification of the election. It further prohibits to make promise for construction of roads, provision of drinking water facilities etc. Submission is that such restriction

imposed by the Election Commission of India is unreasonable and prevent the Government authorities or the Ministers to discharge their obligation while holding the office. Article 324-of the Constitution of India confers the power on the Election Commission with regard to superintendence, direction and control of the elections. It further makes it obligatory on the part of the Election Commission of India to ensure the just and fair election in the country.

3. By a catena of judgments Hon'ble Supreme Court ruled that superintendence and control falls within the domain of the Election Commission, to ensure free and fair election in accordance to law in the country and free and fair election, the Election Commission of India may issue appropriate order or direction vide *Kanhiya Lal Omar v. R.K. Trivedi*, MANU/SC/0170/1985 : AIR 1986 SC 111; *Digvijay Mote v. Union of India*, MANU/SC/0559/1993 : (1993) 4 SCC 175; *Election Commission of India v. Ashok Kumar*, MANU/SC/0540/2000 : (2000) 8 SCC 216; in the matter of Special Reference No. 1 of 2002, (2002) 8 SCC 237; and *Election Commission v. Sivaji*, MANU/SC/0379/1987 : AIR 1988 SC 61.

4. To its wisdom, by the impugned condition, Election Commission restrained the Government authorities, peoples representatives or the Ministers to make any promise with regard to financial grant or for the construction of roads, drinking water facilities after notification of the Election. The condition imposed by the Election Commission seems to be reasonable one. It is not necessary that the person, who is holding the public office as Minister or alike, may be elected to come to the office again. Promise made thereon may be an allurement to the peoples of the country, where more than 35% population is illiterate and below poverty line. On allurement/appeasement, society may act upon to cast vote. Promises are made keeping in view the financial viability of the Government and other related factors. In case it is on unfounded ground, then it is to allure the voters and may affect the fair election process. Accordingly, Election Commission of India has rightly imposed these conditions.

5. It shall not be out of place to mention that after election, peoples representatives discharge their obligation almost for a period of five years. The elections are held at the fag end of their tenure unless the assembly or parliament is suspended or dissolved earlier. While holding the office, it is always obligatory on the part of the peoples representative to discharge their obligation honestly and fairly to serve the Nation. In case they failed to discharge their obligation during their entire term while in office or in opposition, then making statement as a measure of allurement or appeasement to the peoples after issuance of Election Notification, shall be nothing but an instance of unfair practice on their part. The condition meant to check such practice by the peoples representative. Of course, in case, something is there in the election manifesto, then they can propagate their views and bring it in the public notice but promise made or declaration done after notification to appease as measure of allurement, shall not be healthy practice on the part of the peoples representative. False and malicious statement erodes the peoples fain in the democratic process.

6. In view of above, we do not find any reason to interfere with the impugned condition imposed by the Election Commission. In any case, the Model Code of Conduct notified by the Election Commission is violated, the violator must be punished severally to maintain the fairness in the election process of the country.

7. Subject to aforesaid observation, the writ petition is devoid of merit and it is hereby dismissed. No order as to costs.

