

**THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

**WRIT PETITION No.25533 of 2008
AND
WRIT PETITION No.6171 of 2009**

COMMON ORDER: *(Per VRS,J)*

Both these writ petitions are filed by the leaders of two political parties, questioning the proceedings issued by the Election Commission of India on 30.05.2008, which lead to a series of complaints being filed against the petitioners as well as the owners of certain Television Channels, for alleged violation of the provisions of Section 126 (1) (b) of the Representation of the Peoples Act, 1951 (for short 'the Act'). The petitioners also pray for the consequential relief of quashing of all criminal complaints taken on file by the respective Magistrates in various districts.

(2) Heard Mr. Kanakamedala Ravindra Kumar, learned Senior Counsel appearing for the petitioner in the 1st writ petition, and Mr.Gandra Mohan Rao, learned counsel appearing for the petitioner in the 2nd writ petition. We have also heard the learned Government Pleaders of the respective States as well as Mr. Avinash Desai, learned counsel appearing for the Election Commission of India.

(3) It appears that the Election Commission of India announced on 16.04.2008, the conduct of elections to four Parliamentary Constituencies namely Adilabad, Karimnagar,

Warangal and Hanamkonda as well as 18 Assembly Constituencies spread over 10 districts. As per the schedule announced by the Election Commission of India, the elections were to be held on 29.05.2008. Therefore, as per the Code of Conduct that was imposed by the Election Commission, the campaigning was supposed to come to an end by 5.00 p.m. on 27.05.2008.

(4) It appears that on 28.05.2008, the petitioner in the 1st writ petition gave an interview to journalists in Krishna District and the same was telecast by two Television channels namely MAA TV and TV 9. Similarly, the petitioner in the other writ petition is said to have given an interview at Karimnagar on 28.05.2008 between 9.00 a.m. and 9.15 a.m and that the same was telecast by TV 5 channel.

(5) Upon coming to know of the telecast of these press interviews, the Election Commission of India issued a communication dated 30.05.2008 to the Chief Electoral Officer, Andhra Pradesh, Hyderabad, directing him to lodge a complaint for the violation of the Model Code of Conduct and the violation of the statutory provisions contained in clause (b) of sub-section (1) of Section 126 of the Act.

(6) Pursuant to the above directions, the District Election Officers in all the 10 districts, lodged separate complaints against the petitioners in both these writ petitions. The Managing Directors of the

three Television channels were also implicated as the co-accused in all the complaints.

(7) In other words, one press interview allegedly conducted by both the petitioners, lead to 10 different complaints being lodged by the District Election Officers of all the 10 districts where the bye-elections were scheduled to be held.

(8) Immediately after the registration of three complaints in one case and two complaints in another case, the petitioners came up with the above writ petitions challenging not only the action of the Election Commission of India in directing the initiation of prosecution, but also challenging the very validity of the complaints lodged at various places, either at the instance of the District Electoral Officer or at the instance of the police.

(9) While admitting the above writ petitions, this Court granted an interim stay of further proceedings and as a consequence, further proceedings pursuant to the complaints, were put on hold for the past nearly 7 to 8 years. In the meantime, regular Parliamentary elections have been conducted twice, once in the year 2009 and next in the year 2014. Similarly, regular Assembly elections were also held in April – May, 2014, after which the State itself has been bifurcated. In other words, much water has flown under the bridge after the impugned proceedings were initiated.

(10) Keeping the above subsequent developments in mind, if we carefully look at the nature of the complaints made and the grounds of attack of the petitioners to these complaints, it could be seen that the complaint against the petitioners was the alleged violation of the provisions of Section 126 (1) (b) of the Act. Section 126 itself, which was substituted by Act 21 of 1996, prohibits the holding of public meetings during the period of forty-eight hours ending with hour fixed for conclusion of poll. Section 126, in its entirety, is extracted hereunder:

“126. Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll. –

(1) No person shall -

(a) convene, hold, attend, join or address any public meeting or procession in connection with an election; or

(b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in that polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both.

(3) In this section, the expression “election matter” means any matter intended or calculated to influence or affect the result of an election.”

(11) The offence allegedly committed by the petitioners is that they caused the display to the public, election matter, by means of cinematograph, television or other similar apparatus. This offence, according to the Election Commission of India, is covered by clause (b) of sub-section (1) of Section 126 of the Act.

(12) But a careful look at the complaints lodged by the District Election Officers in both these cases would show that the alleged press conferences were held, not in any of the 10 districts in which bye-elections were held either to four Parliamentary constituencies or to 18 Assembly constituencies.

(13) Insofar as the petitioner in the 1st writ petition is concerned, he is stated, as per para 6 of the complaint, to have given an interview to journalists in Krishna District. But the bye-elections were scheduled to be held in Adilabad, Nizamabad, Karimnagar, Medak, Nalgonda, Mababubnagar, Hyderabad, Ranga Reddy, Warangal and Vizianagaram, but not in Krishna District.

(14) A careful look at sub-section (1) of Section 126 of the Act would show that for the purpose of attracting any one of the clauses, namely, clause (a), (b) and (c), the contravention should have occurred in any polling area. The phrase “in any polling area” is dovetailed not merely along with clause (c) of sub-section (1) of Section 126 of the Act, but is indicated separately. Therefore, it is clear that the phrase “in any polling area”, would go along with clauses (a), (b) and (c) independently. To put it differently, the contravention alleged, would be covered by clause (a) or clause (b) or clause (c), only if such contravention occurs in any polling area.

(15) The contents of the complaint lodged in the case of the petitioner in the 1st writ petition does not even state that the violation as stipulated in clause (b) occurred in any polling area. In the absence of any specific averment in the complaint that the violation occurred in any polling area, it may be difficult to hold that clause (b) stood attracted.

(16) We wish to clarify that we are not getting into the question as to whether a clever manipulation of facts by which a person can stay out of the polling area and still communicate to the voters, would not fall within clauses (b) or (c). If a person cleverly manipulates events in such a manner as to avoid the attraction of clauses (b) and (c), it would be to the Election Commission to address

the issue and invoke the mischief rule. In such cases, what we have now held may not apply.

(17) Insofar as the case relating to the petitioner in the 2nd writ petition is concerned, the only allegation against the petitioner in the 2nd writ petition, as seen from para 6 of the complaint, is that he expressed the confidence about the victory of his party in the elections. Therefore, the focus of the complaint, as seen from para 7 of the complaint, against the petitioner in the 2nd writ petition is more on “election matter” as defined in the section and less on clause (b) of sub-section (1) of section 126 of the Act.

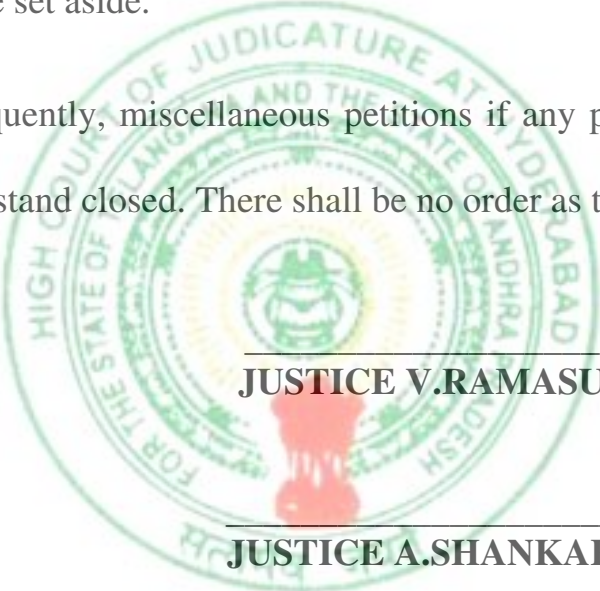
(18) Sub-section (3) of Section 126 defines the expression “election matter” to mean any matter intended or calculated to influence or affect the result of an election. We do not know how the mere expression of a hope for a victory in the election, could be said to be an election matter intended or calculated to influence or affect the result of an election. The allegations made against the petitioner in the 2nd writ petition in paragraphs 6 and 7 of the complaint merely make out the expression of a hope for victory in the elections. This may not come within the definition of the expression “election matter”.

(19) As we have pointed earlier, much water has flown under the bridge after the alleged events took place on 28.05.2008. Two Parliamentary elections and two General elections to the State

Assembly were already held after the event. The prosecution was stalled in the present complaints for the past 7 to 8 years. Therefore, no useful purpose would be served in allowing the prosecution to go on at this distance of time. However, we have gone into the purport of Section 126 from a *prima facie* point of view, to conclude that no useful purpose will be served now in allowing the prosecution to continue.

(20) Hence, these Writ Petitions are allowed and the complaints are set aside.

Consequently, miscellaneous petitions if any pending in these writ petitions stand closed. There shall be no order as to costs.



JUSTICE V.RAMASUBRAMANIAN

JUSTICE A.SHANKAR NARAYANA

20.06.2016

V V