

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P. (MD) .No.8613 of 2019

G.Muthukumar

.. Petitioner

Vs.

1.The State Chief Election Commissioner,
Office of the State Election Commission,
Fort St.George, Chennai.

2.The Returning Officer,
23 Karur Parliamentary Constituency,
Karur District.

3.The Media Monetary Committee,
Rep. by Tahsildar,
Tamilnadu Arasu Cable TV Corporation Ltd.,
Karur District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the 2nd 3rd respondents, to grant permission to video telecast of the election campaigning of the petitioner by regularising the timings in accordance with the rules on the basis of petitioner's representation dated 02.04.2019 within the time stipulated by this Court.

For Petitioner : Mr.S.Kumaradevan

For R1 and R2 : Mr.Niranjan Rajagopalan

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

An independent candidate, contesting in 23rd Karur Parliamentary Constituency, has filed the instant writ petition for a Mandamus, directing the Returning Officer, 23 Karur Parliamentary Constituency, Karur District and Media Monetary Committee, represented by Tahsildar, Tamilnadu Arasu Cable TV Corporation Limited, Karur District/respondents 2 and 3 herein, to grant permission to telecast the petitioner's election

campaign, by regularising the timings, in accordance with the rules, on the basis of his representation, dated 02.04.2019.

2. Petitioner has contended that local channels under the control of Arasu Cable TV Corporation, do not telecast the election campaign of independent candidates. Hon'ble Supreme Court in S.L.P.(C).No.6679/2004, dated 13.04.2004, has directed that permission should be given equally to all the candidates, irrespective of the fact, as to whether the candidates are from the recognised political parties or not.

3. According to the petitioner, he had approached the local TV channels, requesting them, to telecast the video of his election campaign, but they refused to do so. Therefore, the petitioner has sent a representation dated 02.04.2019, to the respondents, explaining the above facts, and requested to take necessary action, by granting permission. But the representation has not been acted upon, by the respondents. Hence, petitioner has filed the instant writ petition, for the relief, as prayed for.

4. In support of the relief, learned counsel for the petitioner has placed reliance on a decision of the Hon'ble Supreme Court, in Secretary, Ministry of Information and Broadcasting vs. Gemini TV (P) Limited and others, reported in (2004) 5 SCC 714.

5. Responding to the above, Mr.Niranjan Rajagopalan, learned counsel for respondents 1 to 3 submitted that pursuant to the decision of the Hon'ble Supreme Court in S.L.P.(C).No.6679/2004, dated 13.04.2004, Election Commission of India has issued instructions on 15.04.2004, relating to advertisements of political nature on TV Channel and cable networks. Inviting the attention of this Court to Paragraph Nos.4, 5 and 6 of the said instruction, he submitted that application submitted for certification, shall contain the following details:-

- "(a) The cost of production of the advertisement;
- (b) The approximate cost of proposed telecast of such advertisement on a television channel or cable network with the break-up of number of insertions and rate proposed to be charged for each such insertions;
- (c) It shall also contain a statement whether the advertisement inserted is for the benefit of the prospects of the election of a candidate(s)/parties;
- (d) If the advertisement is issued by any person other than a political party or a certificate, that person shall state on oath that it is not for the benefit of the political party or a candidate and that the said advertisement has not been sponsored or

commissioned or paid for by any political party or a candidates"

Pointing out the time schedule, within which, an application to be filed, he submitted that the petitioner has only made a representation, and not an application for certification, stated so in paragraph No.4 of the instruction, dated 15.04.2004.

6. Mr.Niranjana Rajagopalan, learned counsel for the Election Commission of India, further submitted that, as per paragraph No.7 of the instructions, dated 15.04.2004, the Chief Electoral Officer of every State/Union Territories, would constitute a Committee to look into the complaints/grievances of any political party or candidate or any other person, in regard to the decision to grant or refuse certification of an advertisement and such committee has been constituted. He also submitted that Election Commission of India, has issued further instructions on 21.11.2008 and 13.09.2018 respectively, to the Chief Electoral Officer of all States and Union Territories, regarding advertisements on political nature on radio and pre-certification of political advertisement on electronic media.

7. Learned counsel for the Election Commission of India, further submitted that on the request of the petitioner, District Election Officer-cum-Collector, Karur District, has issued proceedings in RC.No.A4/3814/2019, dated 06.04.2019, stating that the petitioner has not obtained prior permission from the Media Certification and Monitoring Committee, respondent No.3 and therefore, it is open to the petitioner to submit an application to the said Committee, who may be directed to consider the application, in accordance with the decision of the Hon'ble Supreme Court.

8. Notwithstanding the time schedule, prescribed in the instructions of the Election Commission of India, in the matter of advertisements of political nature on TV Channel and cable networks, learned counsel for the respondents submitted that the petitioner may be permitted to make a fresh application, containing the details, in Paragraph No.5 of the instructions, dated 15.04.2004, to the Media Certification and Monitoring Committee/Tahsildar, Tamil Nadu Arasu Cable TV Corporation Limited, Karur District, 3rd respondent herein, who on receipt of the same, would pass appropriate orders, in terms of the instructions issued.

9. Heard the learned counsel for the parties and perused the material available on record.

10. Let us consider the decision of the Hon'ble Supreme Court of India, in Secretary, Ministry of Information and

Broadcasting vs. Gemini TV (P) LTD. and others, reported in (2004) 5 SCC 714, wherein, it was ordered as hereunder:-

"1. On 2-4-2004, while issuing notice on the special leave petition and passing an ad interim order, we directed the Election Commission of India to suggest modalities as regards the advertisements to be telecast on the electronic media, by cable operators and television channels. In pursuance thereof, the Election Commission has suggested the modalities on an affidavit giving various suggestions. A copy of the said affidavit was handed over to the Union of India and the learned Attorney General, who has also made a few suggestions. Shri K.K. Venugopal, learned Senior Counsel appearing for the Election Commission of India, Shri Soli J. Sorabjee, learned Attorney General, and Shri K. Ramakanth Reddy, learned counsel appearing for the respondent cable operators, agreed that these modalities, as suggested by the Election Commission of India, may be made part of the order of the Court.

2. Before we pass the order, it will be worthwhile to notice certain provisions of the Cable Television Networks (Regulation) Act, 1995 (for short "the Act"), as amended from time to time, and the Rules framed thereunder. The object of the Act is to regulate the operation of the cable television network in the country. Section 6 of the Act provides that no person shall transmit or retransmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code. Section 11 of the Act provides that if any authorised officer has reason to believe that the provisions of the Act have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network. Section 12 of the Act provides for confiscation of the equipment in the event of any violation of the provisions of the Act. Similarly, Section 13 of the Act also provides for seizure or confiscation of the equipments and punishment. Section 16 further provides for punishment for contravention of the provisions of the Act. Section 19 lays down that an authorised officer, if he thinks necessary or expedient so to do in the public interest, may, by order, prohibit any cable operator from transmitting or retransmitting any advertisement which is not in conformity with the prescribed programme code and advertisement code and it is likely to promote enmity on grounds of religion, race, language, caste or community or any other grounds whatsoever, disharmony

or feelings of enmity, hatred or ill will between different religious, racial, linguistic or regional groups or castes or communities or which is likely to disturb public tranquillity. Section 22 of the Act empowers the Central Government to frame rules to carry out the provisions of the Act. The Central Government in exercise of the powers conferred on it by Section 22 of the Act is empowered to make rules which are known as the Cable Television Networks Rules, 1994 (for short "the Rules"). Rule 7 of the Rules provides that where an advertisement is carried in the cable service it shall be so designed as to conform to the laws of the country and should not offend the morality, decency and religious susceptibilities of the subscribers. Sub-rule (2), inter alia, provides that no advertisement shall be permitted which derides any race, caste, colour, creed and nationality; is against any provision of the Constitution of India; and tends to incite people to crime, cause disorder or violence or breach of law or glorifies violence or obscenity in any way. Sub-rule (3) further provides that no advertisement shall be permitted the objects whereof are wholly or mainly of religious or political nature; advertisements must not be directed towards any religious or political end. It is in this background, we now propose to pass the following order:

Every registered, national and State, political party and every contesting candidate proposing to issue advertisement on television channel and/or cable network will have to apply to the Election Commission/designated officer (as designated by the Election Commission), not later than three days prior to the date of the proposed commencement of the telecast of such advertisement. In case of any other person or unregistered political parties, they will have to apply not later than seven days prior to the date of the telecast. Such application shall be accompanied by two copies of the proposed advertisement in electronic form along with a duly attested transcript thereof. In case of first phase of elections, the application shall be disposed of within two days of its receipt and until decision thereon is taken, our order dated 2-4-2004 shall apply. In case of subsequent phase of election, the application shall be disposed of within three days of its receipt and until the decision thereon is taken, our order dated 2-4-2004 shall apply. While disposing of such applications, it will be open to the Election Commission/designated officer to direct

deletion/modification of any part of the advertisement.

The application for certification shall contain the following details:

- (a) the cost of production of the advertisement;
- (b) the approximate cost of proposed telecast of such advertisement on a television channel or cable network with the break-up of number of insertions and rate proposed to be charged for each such insertion;
- (c) it shall also contain a statement whether the advertisement inserted is for the benefit of the prospects of the election of a candidate(s)/parties;
- (d) if the advertisement is issued by any person other than a political party or a candidate, that person shall state on oath that it is not for the benefit of the political party or a candidate and that the said advertisement has not been sponsored or commissioned or paid for by any political party or a candidate; and
- (e) a statement that all the payments shall be made by way of cheque or demand draft.

3. We find that Section 2(a) of the Act defines "authorised officer", within his local limits of jurisdiction, as: (a) District Magistrate; (b) Sub-Divisional Magistrate; or (c) Commissioner of Police. Similarly, Section 28-A of the Representation of the People Act, 1951 provides that the Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other officer appointed under this part and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of the results of such election and, accordingly, such officer shall during that period, be subject to the control, superintendence and discipline of the Election Commission.

4. Since it is not physically possible for the Election Commission to have a precensorship of all the advertisements on various cable networks and television channels, it has become necessary to authorise the Election Commission to delegate its powers in this behalf to the respective District Magistrates of all the States or Union Territories, not below the rank of a Sub-Divisional Magistrate or a member of the State Provincial Civil Service. This may be done by a general order issued by the Election Commission. These officers shall act under the control, superintendence and discipline of the

Election Commission. The Election Commission in its turn may delegate its powers to the Chief Electoral Officer of each State or the Union Territories, as the case may be.

5. The Chief Electoral Officer of each State or Union Territory may appoint a committee for entertaining complaints or grievances of any political party or candidate or any other person in regard to the decision to grant or to refuse certification of an advertisement. The Committee so appointed shall communicate its decision to the Election Commission.

6. The Committee so constituted will function under the overall superintendence, direction and control of the Election Commission of India.

7. The decision given by the Committee shall be binding and complied with by the political parties, candidates or any other person applying for advertisements in electronic media subject to what has been stated above.

8. The comments and observations for deletion or modification, as the case may be, made, shall be binding and complied with by the political party or contesting candidate or any other person concerned within twenty-four hours from the receipt of such communication and the advertisement so modified will be resubmitted for review and certification.

9. We may clarify that provisions of Section 126 (sic 125) of the Representation of the People Act, 1951, shall apply to the advertisement covered by this order.

10. If any political party, candidate or any other person is aggrieved by the decision taken either by the Committee or by the designated officer/Election Commission, it will be open for them to approach only this Court for clarification or appropriate orders and no other court, tribunal or authority shall entertain any petition in regard to the complaint against such advertisement. This order shall come into force with effect from 16-4-2004 and shall continue to be in force till 10-5-2004."

11. Instructions issued by the Election Commission of India, from time to time, are extracted hereunder:-

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 509/75/2004/JS-I

Dated:15th

April, 2004

To

The Chief Electoral Officers
of all States / Union Territories.

Subject:- Supreme Court's Order dated 13th April 2013 relating to advertisements of political nature on TV Channel and cable networks.

Sir,

I am directed to enclose herewith a copy of the order dated 15th April 2004 passed by the Commission in pursuance of the Order dated 13th April, 2004, of the Hon'ble Supreme Court in SLP (C) No. 6679 of 2004 (Ministry of Information and Broadcasting Vs. M/s. Gemini TV Pvt. Ltd. and others).

2. It may be noted that the Commission has directed that for pre-viewing, scrutinizing and certifying advertisements to be telecast over TV channels and cable networks by any registered political party or by any group or organization / association, having headquarters in NCT of Delhi, the Chief Electoral Officer, Delhi is to constitute a Committee as directed in paragraph 6 (i) of the Order. Similarly, the Chief Electoral Officers of other States / Union Territories will constitute Committees for dealing with applications by political parties and other associations/ groups with headquarters in their States / Union Territories, as per paragraph 6 (iii). Vide paragraph 6 (v) of the Order, the Returning Officer of every Parliamentary Constituency have been declared as Designated Officer for previewing, scrutinizing and certifying advertisements by individual candidates contesting election from the constituency concerned. For the candidates contesting the current general election to the Legislative Assemblies of Andhra Pradesh, Karnataka, Orissa and Sikkim and the bye-elections in some States, the Returning Officer of the Parliamentary Constituency comprising the Assembly Constituency concerned will entertain applications for certification of advertisements.

3. The Chief Electoral Officers of all States / Union Territories are also required to constitute further a Committee to attend to complaints / grievances in 8 Compendium of Instructions on Paid News and Related Matters (December-2013) regard to the decision of the Committees / Designated Officers on the application for certification of advertisements.

4. Each application for certification is to be submitted before the Committee concerned or the Designated Officer concerned in a statement as per the format prescribed in Annexure-A appended to the Order. The certificate for telecast for an advertisement is to be given by the Committee / Designated Officer in the format as given in Annexure-B appended to the Order. The applicants are required to submit two copies of the

proposed advertisements in electronic form alongwith an attested transcript thereof.

5. A proper record in a register should be maintained for all applications received for certification. Each application should be serially numbered and the serial numbers should also be indicated on the two copies in electronic form and the receiving officer should affix his signature on the electronic copy. After issue of certificate, one electronic copy of the advertisement as certified for telecast, should be retained by the Committee / Designated Officer.

6. All Chief Electoral Officers may take immediate action for acquiring, by hiring or purchase, necessary equipments / infrastructure, such as television, VCR, VCD, etc. that may be required for the purpose of previewing and scrutinizing of advertisements by the Committees and Designated Officer in their State / Union Territory. Any purchase made are to be in accordance with the rates and procedures approved by the State Governments for similar items. 7. The Commission's order may be given wide publicity and this may be specifically brought to the notice of all District Election Officers / District Magistrates, Returning Officers, TV Channels, cable operators and political parties in the State / Union Territory.

8. Kindly acknowledge receipt.

Yours faithfully,
(K.F. WILFRED)
SECRETARY

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No.509/75/2004/JS-I

Dated : 15th April, 2004

सत्यमेव जयते
O R D E R

1. Whereas, Section 6 of the Cable Television (Regulation) Act, 1995, provides that no person shall transmit or re-transmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code; and

2. Whereas, Sub- rule (3) of Rule 7 of the Cable Television Network (Regulations) Rules, 1994 laying down the advertising code in terms of the abovementioned Section 6 provides that "no advertisement shall be permitted, the objects whereof, are wholly or mainly of a religious or political nature; advertisements must not

be directed towards any religious or political end"; and

3. Whereas, the High Court of Andhra Pradesh, by its judgement and order dated 23-03-2004 in WPMP No.5214/2004 (Gemini TV Pvt. Ltd. Vs. Election Commission of India and others), suspended the above mentioned provisions of Rule 7(3) of the Cable Television Network (Regulation) Rules, 1994; and

4. Whereas the Hon'ble Supreme court, by its interim order dated 2-4-2004, in SLP (Civil) No.6679/2004 (Ministry of Information & Broadcasting Vs M/s Gemini TV and Others), in substitution of the order under challenge, had directed as below:-

(i) No cable operator or TV channel shall telecast any advertisement, which does not conform to the law of the country and which offends the morality, decency and susceptibility of views or which is shocking, disgusting and revolting;

(ii) The telecast shall be monitored by the Election Commissioner of India;

(iii) The question as to whether the expenditure incurred by the candidate on inserting such advertisement should or should not be included, shall be considered on 5th April, 2004; and

(iv) The modalities whether such advertisements are in conformity with law, shall be laid down by the Election Commissioner of India. 10 Compendium of Instructions on Paid News and Related Matters (December-2013)

5. Whereas, The Hon'ble Supreme Court of India by its further order dated 13th April, 2004, in SLP (Civil) No.6679/2004, has directed as follows:

" --- Before we pass the order, it will be worthwhile to notice certain provisions of the Cable Television Networks (Regulation) Act, 1995 [for short, "the Act"], as amended from time to time, and the Rules framed there under. The object of the Act is to regulate the operation of the cable television network in the country. Section 6 of the Act provides that no person shall transmit or retransmit through a cable service any advertisement unless such advertisement is in conformity with the prescribed advertisement code. Section 11 of the Act provides that if any authorized officer has reason to believe that the provisions of the Act have been or are being contravened by any cable operator, he may seize the equipment being used by such cable operator for operating the cable television network. Section 12 of the Act provides for confiscation of the equipment in the event of any violation of the provisions of the Act. Similarly, Section 13 of the Act also provides for seizure or confiscation of the

equipment and punishment. Section 16 further provides for punishment for contravention of the provisions of the Act. Section 19 lays down that an authorized officer, if he thinks necessary or expedient so to do in the public interest, may, by order, prohibit any cable operator from transmitting or retransmitting any advertisement which is not in conformity with the prescribed programme code and advertisement code and it is likely to promote enmity on grounds of religion, race, language, caste or community or any other grounds whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religion, racial, linguistic or regional groups or castes or communities or which is likely to disturb public tranquility. Section 22 of the Act empowers the Central Government to frame Rules to carry out the provisions of Act. The Central Government in exercise of 11 Compendium of Instructions on Paid News and Related Matters (December-2013) nature, advertisements must not be directed towards any religious or political end. It is in this background, we now propose to pass the following order:

Every registered National and State, political party and every contesting candidate proposing to issue advertisement on television channel and/or cable network will have to apply to the Election Commission/Designated Officer (as designated by the Election Commission) not later than three days prior to the date of the proposed commencement of the telecast of such advertisement. In case of any other person or unregistered political parties, they will have to apply not later than seven days prior to the date of the telecast. Such application shall be accompanied by two copies of the proposed advertisement in electronic form along with a duly attested transcript thereof. In case of first phase of elections, the application shall be disposed of within two days of its receipt and until decision thereon is taken, our order dated 2nd April, 2004, shall apply. In case of subsequent phase of election, the application shall be disposed of within three days of its receipt and until the decision thereon is taken, our order dated 2nd April, 2004, shall apply. While disposing of such applications, it will be open to the Election Commission/Designated Officer to direct deletion/modification of any part of the advertisement. The application for certification shall contain following details:

(a) The cost of production of the advertisement;

(b) The approximate cost of proposed telecast of such advertisement on a television channel or cable

network with the break-up of number of insertions and rate proposed to be charged for each such insertion;

(c) It shall also contain a statement whether the advertisement inserted is for the benefit of the prospects of the election of a candidate(s)/parties;

(d) If the advertisement is issued by any person other than a political party or a candidate, that person shall state on oath that it is not for the benefit of the political party or a candidate and that the said advertisement has not been sponsored or commissioned or paid for by any political party or a candidate; and

(e) A statement that all the payments shall be made by way of cheque or demand draft. 12 Compendium of Instructions on Paid News and Related Matters (December-2013)

We find that Section 2(a) of the Act defines "authorized officer", within his local limits of jurisdiction, as (a) District Magistrate; (b) Sub-divisional Magistrate; or (c) or Commissioner of Police. Similarly, Section 28-A of the Representation of People Act, 1951 provides that the Returning Officer, Assistant Returning Officer, Presiding Officer, Polling Officer and any other officer appointed under this part and any police officer designated for the time being by the State Government, for the conduct of any election shall be deemed to be on deputation to the Election Commission for the period commencing on and from the date of the notification calling for such election and ending with the date of declaration of results of such election and, accordingly, such officer shall during that period, be subject to the control, superintendence and discipline of the Election Commission.

Since it is not physically possible for the Election Commission to have a precensorship of all the advertisements on various cable networks and television channels, it has become necessary to authorize the Election Commission to delegate its powers in this behalf to the respective District Magistrates of all the States or Union Territories, not below the rank of a Sub-divisional Magistrate or a member of the State Provincial Civil Service. This may be done by a general order issued by the Election Commission. These officers shall act under the control, superintendence and discipline of the Election Commission. The Election Commission in its turn may delegate its powers to the Chief Electoral Officer of each State or the Union Territories, as the case may be.

The Chief Electoral Officer of each State or Union Territory may appoint a committee for entertaining

complaints or grievances of any political party or candidate or any other person in regard to the decision to grant or to refuse certification of an advertisement. The committee so appointed shall communicate its decision to the Election Commission.

The committee so constituted will function under the overall superintendence, direction and control of the Election Commission of India.

The decision given by the committee shall be binding and complied with by the political parties, candidates, or any other person applying for advertisements in electronic media subject to what has been state above.

The comments and observations for deletion or modification, as the case may be, made, shall be binding and complied with by the concerned political party 13 Compendium of Instructions on Paid News and Related Matters (December-2013) or contesting candidate or any other person within twenty four hours from the receipt of such communication and the advertisement so modified will be re-submitted for review and certification.

We may clarify that provisions of Section 126 of the Representation of People Act, 1951, shall apply to the advertisement covered by this order.

If any political party, candidate or any other person is aggrieved by the decision taken either by the committee or by the Designated Officer/Election Commission it will be open for them to approach only this court for clarification or appropriate orders and no other court, tribunal or authority shall entertain any petition in regard to the complaint against such advertisement. This order shall come into force with effect from 16th April, 2004 and shall continue to be in force till 10th May, 2004.

This order is being issued in exercise of the powers under Article 142 of the Constitution of India and it shall bind all the political parties, candidates, persons, group of persons or Trusts who propose to insert the advertisement in the electronic media, including cable network and/or television channels as well as cable operators.

It will be open to the Election Commission to requisition such staff as may be necessary for monitoring the telecast of such advertisements. Where the Election Commission is satisfied that there is a violation of this order or any provisions of the Act, it will issue an order to the violator to forthwith stop such violations and it will also be open to direct seizure of the equipments. Every order shall be promptly complied with by the person(s) on whom such order is

served.

The funds to meet the cost of monitoring the advertisements should be made available to the Election Commission by the Union of India. Adequate publicity of this order shall be given by the Union of India on the electronic media and through print media.

This order is in continuation of the order passed by this Court on 2nd April, 2004 and shall remain in operation as an interim measure till 10th May, 2004.

Subject to the aforesaid order, the judgement of the High Court of Andhra Pradesh dated 23rd March 2004 shall remain stayed. This order is passed 14 Compendium of Instructions on Paid News and Related Matters (December-2013) not in derogation of but in addition to the powers of the Central Government in regard to the breach of the provisions of the Act."

6. Now therefore, in pursuance of the aforesaid directions of the Hon'ble Supreme Court, the Election Commission, hereby directs as follows: -

(i) The Chief Electoral Officer Delhi is hereby directed to constitute a Committee comprising the following persons to deal with the applications by the political parties and organizations mentioned in para

(ii) herein below: -

a) The Joint Chief Electoral Officer - Chairperson.

b) Returning Officer of any Parliamentary Constituency in Delhi.

c) One expert being an officer not below the rank of Class- I officer to be requisitioned from the Ministry of Information & Broadcasting.

(ii) The above Committee will entertain applications for certification of any advertisement to be inserted in a television channel or cable network by the following:-

a) All registered political parties having their headquarters in NCT of Delhi.

b) All groups or organizations or associations or persons having their headquarters in NCT of Delhi.

(iii) The Chief Electoral Officer of every other State/Union Territory is hereby directed to constitute the following Committee to deal with applications by political parties and organizations mentioned in para (iv) below: -

(a) The Additional/Joint Chief Electoral Officer - Chairperson.

(b) Returning Officer of any Parliamentary constituency located in the capital of the State.

(c) One expert being an officer not below the rank of Class- I officer to be requisitioned from the

Ministry of Information & Broadcasting.

(iv) The Committee constituted in para (iii) above will entertain applications for certification for advertisement on television channel and cable network by the following:-

(a) All registered political parties having their headquarters in that State/Union Territory,

(b) All organisations or group of persons or associations having their registered offices in that State/Union Territory.

(v) The Returning Officer of every Parliamentary constituency in the country are hereby declared as Designated Officers for the purpose of entertaining 15 Compendium of Instructions on Paid News and Related Matters (December-2013) application for certification of an advertisement proposed to be issued on cable network or television channel by an individual candidate contesting the election from the Parliamentary constituency of which such Designated Officer is the Returning Officer and candidates contesting in the Assembly constituencies falling within that Parliamentary constituency. The said Returning Officer may co-opt any of the Assistant Returning Officers, not below the rank of a Subdivisional Magistrate belonging to the State Provincial Civil Service to assist him in the task of certification of applications.

7. The Chief Electoral Officer of every State/Union Territory will constitute the following Committee to entertain complaints/grievances of any political party or candidate or any other person in regard to the decision to grant or refuse certification of an advertisement:- (i) The Chief Electoral Officer - Chairperson.

(ii) Any Observer appointed by the Election Commission of India

(iii) One expert to be co-opted by the Committee other than the one mentioned in paras 6 (i) and 6 (iii) above.

8. The applications for certification of any advertisements by every registered political parties and every contesting candidates shall be made to the Committees mentioned in paras 6 (i) and 6 (iii) above or the Designated Officer as mentioned in para 6 (iv) above, as the case may be, not later than 3 (three) days prior to the date of the commencement of the telecast of such advertisements. In the case of first phase of elections such applications shall be disposed of within 2 (two) days of its receipt and until decision thereon is taken, the order of the Supreme Court dated 2-4-2004 shall apply.

9. Where an application for certification of advertisement is by any other person or unregistered political parties, it will have to be made not later than 7 (seven) days prior to the date of telecast.

10. Every such application, in the format prescribed at Annexure A, shall be accompanied by the following:

(i) Two copies of the proposed advertisement in the electronic form along with a duly attested transcript thereof.

(ii) The application for certification shall contain following details:-

(b) The approximate cost of proposed telecast of such advertisement on a television channel or cable network with the break-up of number of insertions and rate proposed to be charged for each such insertion;

(c) It shall also contain a statement whether the advertisement inserted is for the benefit of the prospects of the election of a candidate(s)/parties;

(d) If the advertisement is issued by any person other than a political party or a candidate, that person shall state on oath that it is not for the benefit of the political party or a candidate and that the said advertisement has not been sponsored or commissioned or paid for by any political party or a candidate;

(e) A statement that all the payment shall be made by way of cheque or demand draft.

11. While taking a decision on the applications for certification of an advertisement, it will be open for the Committees constituted in para 6 (i) and 6 (iii) above or the Designated Officer as in para 6 (v) above or the review Committee as constituted in para 7 above to direct deletion/modification of any part of the advertisement. Every such order making comments and observation for deletion and modification shall be binding and be complied by the concerned political party or contesting candidate or any other person within 24 hours from the receipt of such communication. The advertisement so modified will be re-submitted for review and certification.

12. Where the Committees constituted in para 6 (i) and 6 (iii) above or the Designated Officer or the review Committee as constituted in para 7 above as the case may be, is satisfied that the advertisement meets the requirements of the law and in accordance with the directions of the Supreme Court as inserted in paras 4 and 5 above, it should issue a certificate to the effect of the advertisement concerned is fit for telecast. The format for the certificate is at Annexure B.

13. The directions contained in the order dated 13th April 2004 by Supreme Court shall be strictly complied with by everyone concerned and will remain in operation till 10th May 2004 and it shall bind all the political parties, candidates, persons, group of persons or Trusts who propose to insert the advertisements in the electronic media, including the cable networks and/or television channels as well as cable operators.

By Order
Sd/- (K.F. WILFRED)
SECRETARY

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 509/75/2004/J S-I/Vol .II/RCC Dated: 21st
November, 2008
To

The Chief Electoral Officers
of all States and Uts.
Subject: - Advertisement of political nature on Radio -
regarding.
Sir/Madam,

The Ministry of Information & Broadcasting vide letter No. 1/04/2004-BC/1V dated 20th November, 08, has informed that the Code for Commercial Advertising has been amended to provide for advertisements by political parties/candidates/persons in the form of spots and jingles on Radio also. Consequent upon this, the Commission has issued orders to the effect that the committees set up in the office of the Chief Electoral Officers to scrutinize political advertisements on TV channels/Cable Networks, will also deal with applications for pre-broadcast scrutiny of advertisements by political parties/candidates/other persons in connections with General Elections to the House of the People and State Legislative Assemblies during the period the Model Code of Conduct is in force in connection with such elections. A copy of the order is enclosed.

A copy of the order may be furnished to each of the political parties having headquarters in your State/UT, including State units of all recognized political parties. This may also be given vide publicity for information of other authorities concerned and the general public.

Please acknowledge receipt of this letter.

Yours faithfully,
(K.F. WILFRED)
SECRETARY

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 509/75/2004/J.S.-I/VOL.II Dated: 26th Sept., 2007

To

- (1) The Chief Secretaries of
all States and Union Territories.
- (2) Chief Electoral Officers of all
States and Union Territories

Sub. Supreme Court Order dated 13th April 2004, relating to advertisement of political nature on TV Channel and cable networks.

Sir,

I am directed to invite your attention to Commission's letter No. 509/75/2004-JSI, dated 15th April 2004, forwarding therewith its Order of even No. dated 15th April 2004, its subsequent letter and Order of even Nos. dated 22nd July 2004 and dated 20th September 2004 respectively, on the subject cited (copies enclosed for ready reference). The Hon'ble Supreme Court vide its order dated 5.7.2004, has directed subsequently that its order dated 13.04.2004 will remain in operation until further orders.

2. In this connection, I am further to state that the orders of the Election Commission, referred to above, were issued in pursuance of the Hon'ble Supreme Court directions dated 13.04.2004 with reference to the provisions of the Cable Television Networks (Regulation) Act, 1995 and the rules framed thereunder.

3. The Hon'ble Supreme Court's directions dated 13.04.2004 inter-alia provides in specific and unambiguous terms that -

"This order is being issued in exercise of the powers under Article 142 of the constitution of India and it shall bind all the political parties, candidates, persons, group of persons of Trusts who propose to insert the advertisement in the electronic media, including cable networks and/or television channels as well as cable operators."

4. You are aware that the provisions of Model Code of Conduct for Guidance of Political Parties and Candidates come into force from the date of announcement of the election schedule by the Commission and till the completion of election process.

5. In this connection I am further to state that the directions dated 13.04.2004 of Hon'ble Supreme Court, referred to above, have been issued under Article

142 of the Constitution of India, the scope and ambit of which are applicable in the whole of territory of India at all times and not restricted only during the period commencing from the date of announcement of the election schedule by the Commission and till the completion of election process.

6. It has been brought to the notice of the Commission that instructions/directions issued by it, in pursuance of orders passed by Hon'ble Supreme Court in the matter, are not being followed by the Political Parties etc. as provided in the said directions of the Hon'ble Supreme Court relating to advertisements of political nature in the electronic media, including cable networks and/or television channels as well as cable operators. The advertisements of political nature are being telecast over T.V. channels and cable networks without getting certification of advertisement(s) for telecast from the Competent Authority.

7. I am, therefore, to request that the Commission's Orders issued in this behalf, as referred to above may be given wide publicity and this may specifically be brought to the notice of all District Election Officers/ Returning Officers & all other concerned authorities, T.V. Channels and cable operators and political parties in the State/Union Territory for strict compliance. It may also be brought to their notice that failure to comply with the orders of the Hon'ble Supreme Court will amount to contempt of the Court. The Chief Electoral Officer may also issue a suitable Press Note in this behalf.

8. A copy of instructions issued by you in this behalf may also be endorsed for its information and record.

9. Kindly acknowledge the receipt.

सत्यमेव जयते
Yours faithfully,
(A.K.MAJUMDAR)
PRINCIPAL SECRETARY

WEB COPY
ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 509/75/2004/JS-I/Vol.II/RCC
November, 2008.

DateD: 21st

ORDER

Sub :- The Commission's Order dated 15th April, 2004, regarding advertisement on political nature on T.V. Channels & Cable T.V. Networks - Extension to Radio.

1. The Commission vide its order No. 509/75/2004/JS-1 Dated: 15th April, 2004 in pursuance of the order dated 13-04-2004 of the Hon'ble Supreme Court in SLP (Civil) No. 6679/2004 (Ministry of I&B Vs M/s Gemini TV and Others), issued directions regarding advertisements of political nature on TV. Channels & Cable T.V. Networks.

2. The Ministry of Information & Broadcasting has, vide their letter No. 1/04/2004- BC.IV dated 20th November, 2008, informed that clause-II (4) of the Code for Commercial Advertising on all India Radio, has been amended by adding the following proviso :-

"But advertisements in the form of spots and jingles on payment of prescribed fees, from political parties/candidates/any other person shall be accepted only in respect of General Elections to Lok Sabha/General Election to the State Assemblies/General Election to Local bodies during the period when the Model Code of Conduct is in force. Such advertisements shall be subject to prebroadcast scrutiny by the Election Commission of India/authorities under the Election Commission of India in respect of elections to Lok Sabha and the State Assemblies and State Election Commissions in the case of Local bodies."

3. In view of the above, the Commission has directed that its order dated 15th April, 2004, regarding advertisements of political nature on TV, Channels & Cable T.V. Networks shall apply to advertisements on Radio also, including the Private FM Channels, during the period Model Code of Conduct is in operation in connection with general election to the House of the People or to the Legislative Assembly of any State / UT. Accordingly, for broadcasting any advertisement of political nature on Radio, application for certification for broadcast shall be submitted to the Committee set up in the office of the Chief Electoral Officer of the State concerned for pre-broadcast scrutiny and certification permitting broadcast of the advertisement. The application shall be submitted in the same format as the one prescribed vide the order dated 15-4-2004 for advertisement on TV Channel/Cable/Networks, alongwith the Tape/CD and an attested

transcript of the proposed advertisement. The format for certification of advertisement shall also be the same as that prescribed in the order dated 15-4-2004. The reference to 'telecast' in these formats shall be read to include broadcast' for the purposes of advertisements on Radio.

4. It is clarified that all other directions and the conditions specified in the order dated 15th April, 2004, and the subsequent instructions on the subject shall apply in the cast of advertisements of political nature on Radio.

By order,
(K.F.WILFRED)
SECRETARY

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No.491/MCMC/2018/Communication

Dated: 13th September, 2018

To

(1) The Chief Secretaries of
all States and Union Territories.

(2) Chief Electoral Officers of
all States and Union Territories

Subject: Supreme Court Order dated 13th April 2004 - pre certification of political advertisement on electronic media.

Sir/Madam,

I am directed to invite your attention to Commission's letter No.509/75/2004-JS-I, dated 15th April 2004, forwarding therewith its Order of even No. dated 15th April 2004, its subsequent letter No.509/75/2004/J.S.-I/Vol.II dt. 26th Sept, 2007 (copy enclosed), and 491/Paid News/2012/Media dt 27th August, 2012.

2. The Hon'ble Supreme Court's directions dated 13.04.2004 inter-alia provides in specific and unambiguous terms that -

"This order is being used in exercise of the powers under Article 142 of the constitution of India and it

shall bind all the political parties, candidates, persons, group of persons or Trusts who propose to insert the advertisement in the electronic media, including cable networks and/or television channels as well as cable operators."

3. Under Article 142 of the Constitution, the scope and ambit of the directions dated 13.04.2004 of Hon'ble Supreme Court, referred to above would be applicable in the whole of territory of India at all times and not restricted only during the period, as has already been clarified vide the Commission's letter dated 26th Sept. 2007, referred to above.

4. I am, therefore, to request that the instructions/clarifications may be brought to the notice of all Media Certification and Monitoring Committees (MCMCs)/District Election Officers/Returning Officers/media/political parties & all other stakeholders in the State/Union Territory for strict compliance.

5. A copy of instructions forwarded by you in this regard may be sent for information and record.

6. Kindly acknowledge the receipt.

Yours faithfully,
(Pawan Diwan)
Under Secretary"

12. From the reading of the above, we could deduce that there is a specific time limit, within which, an application have to be filed. But the learned counsel for the Election Commission of India, submitted that application, if any, submitted by the petitioner, would be considered, in accordance with the rules and instructions issued by the Election Commission of India.

13. From the representation of the petitioner, dated 02.04.2019, enclosed in the typed set of papers, it could be deduced that the same does not satisfy the requirements contemplated in the instructions, dated 15.04.2004, of the the Election Commission of India. However, having regard to the submission of Mr.Niranjan Rajagopalan, learned counsel for Election Commission of India, the petitioner is permitted to make a fresh application, satisfying the conditions, today itself, without waiting for the copy of the order made in this writ petition, and on the request of the same, the Media

Monetary Committee, represented by Tahsildar, Tamilnadu Arasu Cable TV Corporation Limited, 3rd respondent shall consider and pass orders, in accordance with law, immediately.

With the above directions, writ petition is disposed of. No Costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

dm

To

- 1.The State Chief Election Commissioner,
Officer of the State Election Commission,
Fort St.George, Chennai.
- 2.The Returning Officer,
23 Karur Parliamentary Constituency,
Karur District.
- 3.The Media Monetary Committee,
Rep. by Tahsildar,
Tamilnadu Arasu Cable TV Corporation Ltd.,
Karur District.

W.P. (MD) .No.8613 of 2019

NRL (CO)
GN(15/04/2019)

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