

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 12566 of 2019 (O&M)

Date of decision : 10.5.2019

Rajneesh Garg, A.D. C. to Shri Manohar Lal Khattar Petitioner
versus
Chief Electoral Officer, Haryana and others ... Respondents

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Baldev Raj Mahajan, Advocate General, Haryana, with
Mr. Deepak Balyan, Additional Advocate General, Haryana,
Mr. Gagandeep Singh Wasu, Additional Advocate General,
Haryana, and Mr. Vivek Saini, Deputy Advocate General,
Haryana.

Rajiv Sharma, J.

Notice of motion.

Mr. Namit Kumar and Mr. G.P.S. Bal, Advocates, accept notice
on behalf of the respondents.

The present petition has been filed by Rajneesh Garg, ADC to
Shri Manohar Lal Khattar, Chief Minister, Haryana. According to the
averments made in the writ petition, the Chief Minister, Haryana, had been
extensively travelling throughout the State of Haryana for the last so many
days. He was scheduled to fly back by a private helicopter from Mandi
Dabwali to Chandigarh. However, due to inclement weather conditions in
Mandi Dabwali caused by dust storm, the helicopter could not take off. The
distance between Mandi Dabwali to Chandigarh is around 340 Kms. It takes
about five hours to travel from Mandi Dabwali to Chandigarh by road. It is
in these circumstances, the Chief Minister decided to travel back to

Chandigarh by road. However, the fact of the matter is that the Deputy Commissioner-cum-Returning Officer, Jind, has orally informed the petitioner that the Chief Minister was not permitted to stay overnight in the Rest House at Jind/Narwana after 5.00 PM. The petitioner has made a representation to the Chief Electoral Officer, Haryana, in the evening of 10.05.2019 as well as to the Election Commission of India on 10.05.2019, mentioning therein the extra ordinary circumstances, due to which Chief Minister could not fly from Mandi Dabwali to Chandigarh.

Learned Advocate General, Haryana, has informed us at the bar that no response has been received back from the office of Chief Electoral Officer, Haryana, Chandigarh as well as from the Chief Election Commission of India, to the representations made vide Annexures P-2 and P-3, both dated 10.05.2019.

It is categorically mentioned in the petition that the Chief Minister was travelling from Mandi Dabwali to Chandigarh purely for non-political purpose. He was not indulging in any political activity/campaigning or influencing the voters or the elections in any manner whatsoever.

Learned counsel appearing on behalf of the respondents have drawn the attention of the court to paragraphs 8.1.1 and 8.2.1 of Chapter 8 of the Model Code of Conduct issued by the Election Commission of India. Paras 8.1.1 and 8.2.1 read as under :-

“8.1.1 In order to strengthen the law and order on the day of poll and to ensure an atmosphere where the electors do not feel intimidated in any manner, the Election Commission has directed that all ministers, members of Parliament and State Legislative and other

political functionaries who have been provided with security should leave the constituency as soon as the campaign period ends, i.e. 48 hours before the time fixed for the close of poll.

8.2.1 During the course of campaign in an election, the political parties mobilize their supporters, including from outside the constituency of poll, in order to bolster that campaign. In view of the fact that after the closure of campaign period no campaign can take place within the constituency, presence of political functionaries and party workers, who have been brought from outside the constituency and who are not voters of the constituency, should not remain present in the constituency as their continued presence after end of campaign period may undermine the atmosphere for free and fair poll. Hence, the Election Commission has directed that the district election administration/police administration shall ensure that all such functionaries leave the constituency immediately after the campaign period is over.”

There is no doubt, whatsoever, in our mind that these restrictions have been imposed by the Election Commission to strengthen the democracy and to hold the elections in a transparent and fair manner. It is a fit case, where the principle of *lex non cogit ad impossibilia* would be attracted. In other words, law does not enforce impossibilities. The respondents should have taken a common sense view by taking into consideration the entire facts and circumstances of the case, more particularly when all the facts were brought before the respondents. The court can take judicial notice of the fact that the weather had started packing up in the after-noon at Chandigarh. It would have been extremely difficult for the Chief Minister to travel distance of 340 Kms. at one stretch.

Accordingly, in view of the observations and discussions made hereinabove, the respondents are directed to permit the Chief Minister, Haryana, to stay in Government Rest House, Jind/Narwana, tonight.

Learned counsel appearing on behalf of the respondents has jotted down the gist of the order, to be conveyed to the respondents. This order shall not be treated as a precedent, since the same has been passed in peculiar facts and circumstances of the case.

The petition stands disposed of, accordingly.

Copy of this order be supplied to learned counsel for the parties under the signatures of the Bench Secretary.

(RAJIV SHARMA)
JUDGE

10.5.2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No