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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 09.01.2020

+ W.P.(C) 12073/2019

M/S EG. COMMUNICATIONS PVT.
LTD. AND ORS.

..... Petitioners

versus

ELECTION COMMISSION OF INDIA AND ORS.

.... Respondents

Advocates who appeared in this case:

For the Petitioner: Ms. Sudhir Nandrajog, Senior Advocate with Mr. Ashish Mohan and Mr. Akshit Mago, Advocates.

For the Respondent: Ms. Anjana Gosain with Ms. Himanshi, Advocate for R-1
Mr. P.R. Chopra, Advocate for R-2.
Mr. Tarun Johri with Mr. Ankur Gupta, Advocate for R-3.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

W.P.(C) 12073/2019 & CM APPL.49463/2019 (stay), CM APPL.293/2020 (for condonation of delay)

1. Petitioners, by this petition, seek quashing of letter dated 13.06.2019, issued by Respondent No. 1 the Election Commission of

India, as also letter dated 26.08.2019 issued by Respondent No. 3 Delhi Metro Rail Corporation Ltd. Petitioners further seek a restraint on the respondents from interfering with the lawful business of the petitioners undertaken pursuant to their respective licence agreements.

2. Petitioners are companies/entities engaged in providing advertising spaces at various places. As per the petitioners, they had participated in the tender process for securing long-term licence for advertising rights, which are approximately for a period of 10 years. As per the petitioners, they had submitted their tenders taking into account the potential substantial earnings from political advertisements during the election period and considering that there are 4-5 elections in the span of 10 years, they had accordingly calculated and submitted their bids.

3. It is contended by the petitioners that the respondent No.1 – Election Commission of India has time and again clarified that there is no ban or prohibition on political parties from putting up their advertisement on commercially authorised sites. Reference is drawn to a Memorandum dated 15.10.2013, issued by respondent No.2, the Chief Electoral Officer.

4. It is contended that the respondent No.1 – Election Commission of India has issued the impugned directions to the respondent No.2 – Chief Electoral Officer, Govt. of NCT of Delhi to advise respondent No.3 – Delhi Metro Rail Corporation Ltd. to insert an appropriate

clause in the contract with the petitioners, which is as under: -

“No political advertisement shall be displayed/pasted at the space provided on lease for commercial advertisement during the period of Model Code of Conduct. If there is any political advertisement in the provided space, the same shall be removed immediately on enforcement of the Model Code of Conduct.”

5. Learned senior counsel for the petitioners submits that the clause 9.0 (e) of the agreement between the Petitioners and respondent No. 3 already contemplates advertisement during the period of Model Code of Conduct and the said clause reads as under:-

“Advertisements pertaining to achievements by different Governments, their Departments, Ministries, Government Undertakings, other Authorities or Political Parties shall be permitted. However, no advertisement of any political party, person violating “Model Code of Conduct” shall be allowed during the period whereby “Model Code of Conduct” has been enforced by Election Commission. Further, no advertisement which violates “Model Code of Conduct” shall be permitted during the period whereby “Model Code of Conduct” have been enforced by Election Commission”.

6. It is contended by learned senior counsel for the petitioners that if the impugned directions are implemented, petitioners would suffer grave financial loss. They would not be able to place any political advertisement even at the designated commercial spots and the political advertisements would have to be taken down.

7. It is submitted that such an action is violative of their fundamental right of freedom of speech and expression as guaranteed by Article 19(1)(a) of the Constitution of India and also their fundamental right to carry out any trade or business as guaranteed by Article 19(1)(g) of the Constitution of India.

8. It is further contended by the learned senior counsel for the petitioners that advertising in the commercially allocated sites is also regulated by Clause 4(c) of the letter dated 07.10.2008 of the respondent No.1, which stipulates as under:-

“If there is a specifically earmarked place provided for displaying advertisements in a public place, e.g. bill boards, hoardings etc. and if such space is already let out to any agency for further allocation to individual clients, the District Election Officer through the municipal authority concerned, if any, should ensure that all political parties and candidates get equitable opportunity to have access to such advertisement space for election related advertisements during the election period.”

9. It is thus contended that the action of the respondent Nos.1 and 2 in directing the Delhi Metro Rail Corporation to incorporate a clause prohibiting any political advertisement at spaces provided to the petitioner for commercial advertisement during the period Model Code of Conduct is in force and a further direction that in case there is any political advertisement in the provided space, the same shall immediately be removed, impinges upon the rights of the petitioners.

10. Per contra, Election Commission of India, in its affidavit, has contended that during the general elections of Lok Sabha, 2019, complaint, regarding display of advertisements containing photographs of certain political leaders at various stations of Delhi Metro as well as inside the coaches of Delhi Metro was received by the Commission and keeping in view of the responses received, the Commission issued the said letter dated 13.06.2019, in terms of paragraph 12.3.4 of the Model Code of Conduct Manual 2019 and thus prohibited display of election advertisements, hoarding, etc. on Government premises as also the premises owned by PSUs.

11. Learned counsel appearing for respondent No.1 – Election Commission of India submits that the rationale behind issuing such a direction is that it should not appear to the public that Government is supporting/endorsing any particular political party by permitting display of its political advertisements on Government Properties. It is contended that there is a direct nexus between the direction and the object sought to be achieved i.e. free, fair and transparent election.

12. It is further contended by the learned counsel for respondent No. 1 that petitioners have a commercial contract with the respondent No.3 and do not seek to contend that petitioners intend to politically advertise and as such, the impugned directions of respondent No. 1 and respondent No. 3 do not, in any manner, affect the rights of freedom of speech and expression of the petitioners.

13. Learned counsel for respondent No. 1 submits that on the one hand it is the interest of free, fair and transparent elections to the legislative assembly of Delhi and on the other a pure commercial interest of the petitioners and keeping in view the object behind the directions, it would, in any event, amount to a reasonable restriction. Further, it would be open to the petitioners to enforce their rights, if any, vis-à-vis any commercial loss, if occasioned, in terms of the agreement between the petitioner and the respondent No.3.

14. Clause 12.3 of the Manual of Model Code of Conduct (For the guidance of political parties and candidates) issued by the Election Commission of India/respondent No.1 reads as under:-

12.3 Restriction on Use of Public Properties for Political Advertisements

12.3.1 While prohibiting use of space in public places/public properties like railway stations, government dispensaries/hospitals, post offices, bus stands, airports, bridges, railways flyovers, roadways, government buses, government / public buildings / premises, civil structures, electric/ telephone poles, municipal/local bodies buildings, etc. for political advertisements, the Election Commission has directed that no wall writing, pasting of posters/papers or defacement in any other form, or erecting/displaying of cutouts, hoardings, banners, flags etc. shall be permitted during election period as part of election campaign.

12.3.2 It is further directed that subject to relevant law or court order, if any, the government departments (whether central or state) local authorities, joint sector

undertakings etc., municipalities, municipal corporations, marketing boards etc., while entering into a contract for providing space for publicity purpose with private advertising agencies, shall make a provision in the contract that use of the assets for political advertisement during the period Model Code will be subject to directions of the Election Commission.

12.3.3 The above restriction shall also apply in case of building/premises owned by PSUs and they shall be treated at par with government buildings for that purpose.

12.3.4 In case there is no specific provision in the bye-laws of PSUs or in their agreements with the advertisement agencies (to whom they might have let out space for advertisements) for prohibiting display of political advertisement, PSUs may be instructed to add a para in their agreements with commercial agencies/companies while providing space on lease to the advertisement agency for placing commercial advertisements that “No political advertisement shall be displayed/pasted at the space provided on lease for commercial advertisement during the period of Model Code of Conduct. If there is any political advertisement in the provided space, the same shall be removed immediately on enforcement of the Model Code of Conduct”.

15. Clause 12.3.1 prohibits use of space in public places/public properties like railway station, government dispensaries, hospitals, post offices, bus stand, airports, etc. for political advertisement and no wall writing/pasting of posters/papers of defacement in any other form or erection are permitted during the election period as part of the

election campaign.

16. Clause 12.3.2 mandates all Government Departments whether Central or State, Local Authorities, joint sector undertakings etc. to make a provision in the Contracts for providing space for publicity purpose with private advertising agencies for use of assets for political advertisement, that during the said period of Model Code, the use of such spaces will be subject to directions of the Election Commission.

17. Clause 12.3.3 further directs that the restriction as laid down in 12.3.1 and 12.3.2 shall also apply in case of building/premises owned by the public sector undertakings and shall be treated at par with the Government buildings for the said purpose.

18. Clause 12.3.4 further mandates that in case there is no specific provision in the bye-laws of the PSUs or in the agreement with the advertisement agencies to whom spaces have been let out for advertisement, for prohibiting display of political advertisement, said PSUs have been instructed to add a paragraph in the agreement that no political advertisement shall be displayed/pasted at the space provided on lease for commercial advertisement during the period of Model Code of Conduct and if any political advertisement is there in the provided space, the same shall be removed immediately on enforcement of Model Code of Conduct.

19. It is observed that the impugned directions dated 13.06.2019

issued by the respondent No.1 and directions 26.08.2019 issued by the respondent No.3 are in consonance with the Model Code of Conduct especially clause 12.3.4.

20. Petitioners are advertising agencies and have taken on licence basis spaces where they shall be displaying advertisements of 3rd parties. It is not the case of the petitioners that they are the ones who would be putting up their own advertisements. Thus, the contention of the learned senior counsel for the petitioners that the fundamental right of freedom of speech and expression is being unreasonably curtailed, has no merit.

21. Petitioners are merely service providers who have entered into contract with the respondent No.3 and hired commercial spaces for display of advertisement by the third parties. No fundamental Right of freedom of speech and expression of the petitioners is affected by the said restrictions being imposed on 3rd party advertisers or persons who seek to use the said spaces for political advertisement.

22. Further, contention of the learned senior counsel for the petitioners that the freedom to carry out any trade or business is also being curtailed, also does not hold any merit.

23. The Model Code of Conduct would be applicable only for a period of about one month. The contract of the petitioners is stated to be for a period of over 10 years. In the span of over 10 years, as per

the petitioners, about 4 to 5 elections would be held. This would imply that the petitioners would be prohibited for a period of about 4 to 5 months, when the Model Code of Conduct would be in-force, in a span of 10 years from displaying political advertisement.

24. It may be noted that there is no restriction on the petitioners, by the impugned directions, on displaying advertisements other than political advertisements during this period.

25. There are no absolute restrictions on the petitioners in carrying on any business or trade. There is only a restriction which is imposed on the petitioners on displaying a particular type of advertisement and restriction is to remain enforced only for a limited period. The restriction is not unreasonable keeping in view the object sought to be achieved by the impugned directions i.e. of free, fair and transparent election. The restrictions would also satisfy the test of reasonable restrictions as contemplated in Article 19 (6) of the Constitution of India.

26. In any event, the interest of the petitioners is purely commercial. If one were to balance equities, on the one side there is pure commercial interest of private individuals and on the other side is the general public interest of holding free, fair and transparent elections. The balance clearly tilts in favour of the general public interest.

27. Further a laudable rationale has been given on behalf of the Election Commission of India behind issuance of the impugned directions and that is that general public should not be given an impression that Government is endorsing or supporting any particular political party by permitting its advertisements to be displayed on properties owned by the Government/public sector undertakings.

28. Further, the contention of the learned senior counsel for the petitioners that the premises of DMRC as well as the Metro Pillars and the racks of trains would be at par with bus shelter as they are also open to the public and for which an exception has been created by the respondent, is not sustainable inasmuch as the bus shelters which are set up on public streets do not convey an impression that they are Government properties whereas the Metro stations, metro pillars and racks of trains do convey a feeling to the general public that they are Government properties. There can accordingly be no parity between the two.

29. Furthermore, the powers to superintend, direct, control and conduct of elections to the Parliament and the State Legislature, to the officer of the President and Vice President have been vested in the respondent No.1 – the Election Commission of India by Article 324 of the Constitution of India.

30. Keeping in view of the purpose for which the directions have been issued i.e., holding of a free, fair and transparent elections, I am

of the view that the restrictions, as imposed by the respondent No.1, are reasonable and do not violate any provision of the Constitution of India.

31. In view of the above, I find no merit in the petition. Petition is, accordingly, dismissed.

32. Since the Model Code of Conduct has already been imposed in Delhi, petitioners are given 24 hours to remove the political advertisements that are in breach of the directions issued by respondent No.1.

33. Order *Dasti* under signatures of the Court Master.

JANUARY 09, 2020
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SANJEEV SACHDEVA, J.