
(2019) 05 MP CK 0021
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8359 Of 2019

Dr. Mumtaj Ahmed Khan

APPELLANT

Vs

Election Commission Of India

RESPONDENT

Date of Decision : 01-05-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 324

Citation : (2019) 05 MP CK 0021

Hon'ble Judges : S.K. Seth, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : A.S. Raizada, Siddharh Seth

Final Decision : Dismissed

Judgement

1. Heard on the question of admission.
2. This PIL is filed to quash the restriction imposed by the Election Commission of India in the Model Code of Conduct on political parties to use pictures of defence and military personnel in any advertisement, poster or any other campaign related activities.
3. Petitioner, an Associate Professor in the J.N.K.V.V. Jabalpur, claims to be a member of the Aam Nagrik Mitra Foundation and Organization. He claims that he has filed the present PIL on his own and not at the instance of anybody or political outfit.
4. Petitioner claims that the Election Commission of India, a Constitutional body, in exercise of the power of the superintendence and control of elections, have no authority to impose restriction in the Model Code of Conduct on the political parties. The condition contained in the Model Code of Conduct 2019 issued by the Commission for the recent Legislative Assembly Election and Lok Sabha Election 2019, is bad in law and as such, liable to

be struck down.

5. According to petitioner, no harm is done if political parties during the political campaign, are allowed to discuss in the public, the military operation

and act of soldiers. It is part of freedom of speech and expression.

6. After having heard learned counsel, we are of the opinion that there is no merit and substance in contention that the impugned condition of the

Model Code of Conduct is liable to be struck down.

7. The Election Commission of India is a Constitutional Authority. Article 324 casts a duty on the Commission to ensure free and fair election to the

legislative body at the Central and State level. The free and fair election is the bedrock of democracy. This envisages a level playing field for the

candidates in the fray. No doubt that the Model Code of Conduct has no statutory backing, but it is a consensus driven code arrived at, after

consultation with all political parties to ensure free and fair elections. It is a set of norms which has got the judicial recognition. We are of the opinion

that the contention that Commission has no power to issue and impose restriction, does not go along with what is ordained in Article 324 of the

Constitution. The restrictions imposed are reasonable restrictions in larger interests of free and fair elections. Armed forces are apolitical and neutral

stakeholder in the modern democracy. Defence Forces belong to everyone and are not appendage of any political outfit.

8. To ensure free and fair elections, it is important to remember that army or defence personnel in service are not the vote catching issues therefore, it

is vital to keep the army apolitical. The Indian army is not a politicized force nor does it play any role in the politics and administration of the country.

The democracy for all its wart and shortcomings is well entrenched in India, and executive control over the Olive Greens is firmly established. It is a

reasonable restriction and does not violate the right of freedom of speech and expression.

9. In the light of the foregoing discussion, we are of the view that the restriction as aforesaid does not call for any interference in the exercise of our

powers under Article 226 of the Constitution. The writ petition, being devoid of any substance and merit, is dismissed summarily.

10. Ordered accordingly.