

(2014) 09 DEL CK 0336

In the Delhi High Court

Case No : W.P.(C) No. 1950/2014 and CM No. 4077/2014

Mithilesh Kumar Pandey

APPELLANT

Vs

Election Commission of India

RESPONDENT

Date of Decision : 16-09-2014

Acts Referred:

Constitution of India, 1950 — Article 74, 75

Representation of the People Act, 1951 — Section 123

Citation : (2014) 4 RCR(Civil) 526

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : P.R. Chopra, Advocate Sanjay Jain, ASG, Akshay Makhija, Akash Nagar and Mike Desai, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This petition is filed by an Advocate, as a Public Interest Litigation, contending:-

(i) that the recent experience shows that the political parties who were bitter rivals during the election process and campaigns, post-election, actually end up supporting each other and together forming a Government;

(ii) such a practice of formation of post-poll alliances is in blatant disregard to the wishes of the voters who feel cheated and at the same time helpless;

(iii) post-poll alliances are not compatible with the Indian concept of democracy and enhance political instability;

(iv) that the Consultation Paper dated 8th January, 2001 of the National Commission to Review the Working of the Constitution (NCRWC) titled "Review of the Working of Political Parties specially in relation to Elections and Reform Options" has also observed that formation of post-poll alliances amongst political opponents is an area of concern;

(v) that inspite of repeated representations of the petitioner, the respondent Election Commission of India (ECI) has not issued any directions prohibiting political parties from entering into post-poll alliances and to make manifesto a legal binding document;

(vi) that the present Government (at the time of filing of the petition in March, 2014) also has reneged on more than 40% of its promises made in Parliament;

(vii) that during election campaign, false promises are made and which are never honoured;

(viii) the political parties continue to campaign with false and misleading advertisements;

(ix) that the Law Commission also in its 170th Report on Electoral Reforms has observed that the proliferation of political parties, necessitating the formation of coalitions, with all internal contradictions, has contributed to instability in governance and has to be checked;

(x) that the manifesto released by a political party forms the basis of the party's election campaign since it compiles in one document the policies of the party; the party explicitly seeks the votes of the electorate on the basis of statements and promises made in the manifesto; the manifesto of a political party is analogous to making an "offer" as understood in the law of contract, which contract is complete on the acceptance of the "offer", that is to say, at the time when the voters vote for that political party and the party ultimately comes to power or makes the Government;

(xi) that the political parties should not be permitted to carry out acts which are in blatant disregard and breach of their own manifestos;

(xii) where a political party expressly states in the manifesto that it will not ally with any political party post elections, then for such party to enter into a post election alliance with a rival political opponent amounts to an abuse of election system and such practices must be held to be illegal and corrupt; the ordinary voter is a helpless sufferer in such situation;

(xiii) that political opponents who, for the purpose of forming the Government, ally with each other post elections, should also be punished under the provisions of Indian Penal Code, 1860 for criminal breach of trust, cheating and for misleading the voters into believing that they would not ally with other parties post election;

(xiv) that had the voters known that a political party would ally with a rival party post election, then the voters perhaps would have voted differently in the election;

(xv) Articles 74 and 75 of the Constitution of India do not impose any Constitutional compulsion that a Prime Minister must have an absolute numerical majority in the Parliament; all that they require is that there shall be a Council of

Ministers headed by the Prime Minister to aid and advise the President.

On the basis of the aforesaid contentions, the following reliefs are claimed in the petition:

- "a. Issue a writ/order/direction declaring unconstitutional "the practice of post-poll alliances among parties which contested elections against each other"; and;
- b. Issue a writ /order/direction directing the Respondent to issue directions preventing political parties from violating their own manifestos when such parties enter into post-poll electoral alliances in order to form a government; and
- c. Issue directions to competent authority to take steps to make the manifesto a legal binding document and direct competent authority to take action against Election Commission for not initiating action against political parties and person for violating manifesto; and
- d. Issue a direction to ban the misleading advertisement."

2. The petition though was filed, as aforesaid, in March, 2014 but was on the request of the petitioner adjourned from time to time for admission purposes. The counsels for the respondents appear on advance notice. We heard the petitioner appearing in person as well as the learned ASG for the purpose of admission and reserved order.

3. We, at the outset, invited attention of the petitioner appearing in person to the judgment of Justice R.C. Lahoti (as his Lordship then was) of this Court in ANZ Grindlays Bank Pie Vs. The Commissioner, MCD and Others, where, dealing with an argument of promissory estoppel and legitimate expectations on the basis of election manifesto, it was held that election manifesto of a political party howsoever boldly and widely promulgated and publicised, can never constitute promissory estoppel or provide foundation for legitimate expectations. It was further held that it is common knowledge that political parties hold out high promises to the voters expecting to be returned to power but it is not necessary that they must be voted in by the electorate; the political parties may commit to the voters that they would enact or repeal certain laws but they may not succeed in doing so for reasons more than one and they know well this truth while making such promises and the electorate to which such promises are made also knows it. It was further held that neither the plea of promissory estoppel nor the plea of legitimate expectations can be founded thereon.

4. We similarly drew the attention of the petitioner appearing in person to the judgment of the Supreme Court in S. Subramaniam Balaji Vs. The Government of Tamil Nadu and Others, pertaining to election manifesto announcing that if the said party and its alliance was elected to power, it will launch scheme for free distribution of colour television sets to each and every household which do not possess the same. One of the arguments for consideration was that promise of such freebies in election manifesto of a political party, in substance is a bribe or inducement u/s 123 of the Representation of the People Act, 1951 thereby

affecting the level playing field between the candidates and which in turn disrupts free and fair election. It was further the argument that such promises in election manifesto should be considered as corrupt practice. The Supreme Court held that though such arguments may sound good but the implementation of the suggestion of construing the promises made in the manifesto as a corrupt practice was fraught with difficulty. It was held that the manifesto of a political party is a statement of its policy and the question of implementing the manifesto arises only if the political party forms a government and is not a promise of an individual candidate and the provisions of the Representation of the People Act clearly draw a distinction between an individual candidate put up by a political party and the political party as such and the provisions of the Act as they exist place no fetter on the power of the political parties to make promises in the election manifesto. More importantly, it was held, "it is not within the domain of this Court to legislate what kind of promises can or cannot be made in the election manifesto".

5. We thus enquired from the petitioner appearing in person that how, in view of the aforesaid position, the matter can be said to be open for consideration of this Court.

6. The petitioner argued that the matter in issue in the present petition is different from what was for adjudication in the judgments aforesaid, however without reference to the passages of the judgments on which we have relied upon. The petitioner contended that the matter aforesaid before the Supreme Court was not concerned with post-poll alliances, as this petition is.

7. Undoubtedly so. However, the fact remains that the sole basis in this petition for the reliefs claimed, is the election manifesto and in fact the reliefs as set out hereinabove are also on the basis of election manifesto. The petitioner, neither in the petition has referred to nor during the hearing could give any other basis, except the election manifesto, for the reliefs sought. The repeated argument of the petitioner is that the political parties, which in their election manifesto have declared that they will not form government with the support of any other political party and/or political parties which have contested against the other political parties, cannot post elections take support of the same adversaries. On the said aspect, the judgment aforesaid of the Supreme Court laying down, i) that the provisions of the Representation of the People Act place no fetter on the power of the political parties to make promises in the election manifesto, and, ii) that it is not for the Courts to legislate what kind of promises can or cannot be made in the election manifesto, applies on all fours.

8. Reference in this regard may also be made to what Lord Denning, sitting in the House of Lords observed in *Bromley London Borough Council Vs. Greater London Council* 1982 (1) All England Law Reports 129. It was said:-

"A manifesto issued by a political party - in order to get votes - is not to be taken as gospel. It is not to be regarded as a bond, signed, sealed and delivered. It

may contain - and often does contain - promises or proposals that are quite unworkable or impossible of attainment. Very few of the electorate read the manifesto in full. A goodly number only know of it from what they read in the newspapers or hear on television. Many know nothing whatever of what it contains. When they come to the polling booth, none of them vote for the manifesto. Certainly not for every promise or proposal in it. Some may be influenced by one proposal. Others by another. Many are not influenced by it at all. They vote for a party and not for a manifesto. I have no doubt that in this case many ratepayers voted for the Labour Party even though, on this one item alone, it was against their interests. And vice versa. It seems to me that no party can or should claim a mandate and commitment for any one item in a long manifesto. When the party gets into power, it should consider any proposal or promise afresh - on its merits - without any feeling of being obliged to honour it or being committed to it. It should then consider what is best to do in the circumstances of the case and to do it if it is practicable and fair."

The same view was followed by the High Court of Justice Queen's Bench Division Administrative Court in *R (Island Farm Development Ltd.) Vs. Bridgend County Borough Council* [2006] EWHC 2189 (Admin).

9. In view of the aforesaid legal position, post-poll alliances cannot be declared as illegal on the ground of being contrary to the manifesto of the political parties entering into the alliance and it is not within the domain of this Court to legislate or issue a direction therefor, making the manifesto a legally binding document on the political party issuing the same.

10. We may record the contention of the learned ASG that if the post-poll alliances are so prohibited, in the event of a hung House / Parliament, with neither party having the required majority, the only option will be to conduct a re-election and which is not a feasible or a practical solution; elections are held at huge costs and the country can ill-afford such repeated elections. It was argued that such repeated elections would thus not be in public interest and this petition rather than being in public interest is against the public interest. However in view of the judgment aforesaid of the Supreme Court and of this Court and with which we do not see any reason to disagree, we do not feel the need to deal with the said argument.

11. The petition is devoid of any merit and is dismissed.