
(2014) 09 P&H CK 0225
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 17886 of 2014 (OandM)

Sarvesh Bisaria

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 324

Citation : (2014) 4 SCT 460

Hon'ble Judges : Ashutosh Mohunta, Acting C.J.; Harinder Singh Sidhu, J

Bench : Division Bench

Judgement

Harinder Singh Sidhu, J.

1. Through this petition filed in public interest, the petitioner has prayed for a direction to quash the advertisement issued by the respondent-State of Punjab for appointment to the post of Chairman, Punjab Public Service Commission and the entire selection process subsequent thereto. The case of the petitioner is that the initiation of the process of appointment to the post of Chairman of the Public Service Commission during the period when the Model Code of Conduct was in force is illegal being impermissible in terms of the Model Code of Conduct.

2. The petitioner is a practising Advocate in the Supreme Court and well as before this Court and claims to have filed the present petition as the respondents are exercising their powers arbitrarily, illegally and unconstitutionally.

3. The Election Commission of India issued notification for the general elections to the Lok Sabha on 05.03.2014. By virtue of the said notification the Model Code of Conduct for the elections came into force throughout India. Clause 11 of the Compendium of Instructions of the model code deals with recruitment and is reproduced as under:

"11. Regular recruitment/appointment or promotion through the UPSC, State Public Service Commission or the Staff Selection Commission can continue. Recruitment through non- statutory bodies will require prior clearance of the

Commission."

4. It is averred that in the first week of April, 2014 the State of Punjab issued an advertisement inviting applications from the public to select the Chairman of the Punjab Public Service Commission. It is stated that this advertisement was issued without seeking permission from the Election Commission of India which was necessary in view of the afore-quoted Clause 11 of the instructions. It is alleged that the said advertisement was issued by respondent No. 1 with a view to allure the voters and persons to cast their votes in their favour and this advertisement was an inducement to the powerful people of Punjab who have their vote banks. It is stated that a Punjabi Newspaper "Ajit" had published a news article dated 09.07.2014, wherein, it was reported that one Ex Army Officer, who was serving as Chief of Staff Western Command is going to be appointed to the said office.

5. The petitioner claims that after coming to know of these facts and after authenticating the said information from his own sources, he served a legal notice dated 13.08.2014 on respondent No. 1 calling upon it to desist from making the illegal appointment of Lt. General T.S. Gill whose name he learnt had been finalized by the Selection Committee and was to be administered oath on 2nd September, 2014. Receiving no response the petitioner filed the present writ petition.

6. The petitioner, appearing in person, has contended that the issuance of the advertisement inviting applications for the post of Chairman, Public Service Commission is illegal and void being in violation of the Model Code of Conduct. Consequently, the entire process is illegal and is liable to be so declared.

7. He has further contended that though many persons had applied who are better qualified and more experienced, but it had been pre-decided to appoint" Lt. General T.S. Gill to the said post. He contended that the candidature of other persons who have applied for the said post have not been tested objectively in terms of the directions of the Full Bench of this Court in the case of Salil Sabhlok Vs. Union of India (UOI) and Others . It is also contended that the advertisement was not published in the leading national newspapers.

8. Before proceeding further, it is necessary to note that the petitioner has not even annexed the impugned advertisement which is stated to have been issued in the first week of April. It is not expected of a Court to quash a document which is not before the Court.

9. It is stated in the petition, after the issue of the advertisement in the first week of April 2014, the selection has been finalized and the oath ceremony is to take place on 2nd September. This petition has been listed today i.e., 1st September, 2014, i.e., only one day before the oath ceremony. If the petitioner was so concerned about the illegality of the move, he ought to have moved immediately after the said advertisement had been issued and not after the entire process, as per his own averments, has been completed.

10. The salutary objective behind the framing of the Model Code of Conduct and the power and authority of the Election Commission to enforce it has been recognized by the Courts. It has been held that guidelines in the shape of the Model Code of Conduct can be issued by the Election Commission under Article 324 of the Constitution.

11. Dealing with various aspects concerning the Model Code of Conduct and affirming the power of the Election Commission to enforce of the Model Code of Conduct, this Court in Harbans Singh Jalal, Ex-MLA Vs. Union of India (UOI) and Others, , observed :

"12. The short question now to be dealt with is : whether the Election Commission has any authority to direct the Government to follow Model Code of Conduct, adopted by various political parties? The fact that a model code of conduct has been adopted by all recognised political parties, is not in dispute. As per the said code of conduct, certain norms are to be followed by the political parties and the party in power which faces election. On the eve of election, it has been agreed among the political parties that no action is to be taken to influence the Electorate. The party in power is not to make use of governmental machinery for the betterment of its prospects in the ensuing elections. It is also provided that Ministers and other authorities shall not sanction grants or payment out of discretionary funds from the time the elections are announced by the Commission. So, the date of announcement by the Commission has been accepted by all political parties as a date to be reckoned for following the Model Code of Conduct.

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23. Petitioner has no case that Election Commission acted against any statutory provision. Their action in directing the Government to follow Model Code of Conduct did not amount to issuing direction to act against any provision of law. When it is seen that the Election Commission has been entrusted with the responsibility to have a free and fair election which should be pure, and the source of their power is Article 324 of the Constitution, we are clear in our mind that the action taken by them in issuing Annexure P-5 is not at all illegal or arbitrary.

24. The existence of political parties and their participation in election cannot be denied by anyone. In the present democratic system prevailing in India, political parties play a vital role in the administration of the country. Leaders of the political parties, in their wisdom, evolved a Model Code of Conduct, to be followed by them in election. That was so framed by them under the auspices of the Election Commission. That code does not contain any provision contrary or derogatory to any enactment. Such a code of conduct when it is seen that it does not violate any of the statutory provisions, can certainly be adopted by the Election Commission for the conduct of free and fair election which should be pure as well.

25. On the eve of election, political parties or candidates may come forward with tempting offers to the electorate to win their favour. If such a course is allowed to be resorted to by the parties or the candidates contesting the elections, it will certainly undermine the purity of elections. In such a situation, if Election Commission took steps to implement the code of conduct which in no way infringes any of the laws, this Court, in exercise of the powers under Article 226 of the Constitution, is not to interfere.

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29. In view of what has been stated above, we are clear in our mind that the Election Commission are entitled to take necessary steps for the conduct of a free and fair election even anterior to the date of issuance of notification, from the date of announcement of the election. While doing so, the Model Code of Conduct adopted to be followed by all political parties including the political party in Government, can be directed to be followed by the Election Commission. Action of the Commission in this regard cannot be faulted, for the said Model Code of Conduct adopted by the political parties does not go against any of the statutory provisions. It only ensures the conduct of a free and fair election which should be pure."

12. Recently, the Hon"ble Supreme Court affirmed that Article 324 of the Constitution is the fountain-head of the powers, under which, the Model Code of Conduct is issued by the Election Commission. It directed the Election Commission to frame guidelines for the election manifestos released by political parties in consultation with all the recognised political parties, in the same manner as it had framed guidelines for general conduct of the candidates, meetings, processions, polling day, party in power, etc. It also clarified that such guide lines can be issued only in areas where there is no legislation.

13. The Hon"ble Supreme Court in *S. Subramaniam Balaji Vs. The Government of Tamil Nadu and Others*, *S. Subramaniam Balaji Vs. The Government of Tamil Nadu and Others*, , held as under:--

"86. As observed in the earlier part of the judgment, this Court has limited power to issue directions to the legislature to legislate on a particular issue. However, the Election Commission, in order to ensure a level playing field between the contesting parties and candidates in elections and also in order to see that the purity of the election process does not get vitiated, as in past been issuing instructions under the Model Code of Conduct. The fountainhead of the powers under which the Commission issues these orders is Article 324 of the Constitution, which mandates the Commission to hold free and fair elections. It is equally imperative to acknowledge that the Election Commission cannot issue such orders if the subject-matter of the order of the Commission is covered by a legislative measure.

Therefore, considering that there is no enactment that directly governs the contents of the election manifesto, we hereby direct the Election Commission to

frame guidelines for the same in consultation with all the recognised political parties as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power, etc. In the similar way, a separate head for guidelines for the election manifesto released by a political party can also be included in the Model Code of Conduct for the Guidance of Political Parties and Candidates. We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of the election manifesto is directly associated with the election process."

14. Thus, the authority to frame and implement the Model Code of Conduct vests with the Election Commission as it emanates from Article 324 of the Constitution. Consequently, all complaints of breach of the Model Code of Conduct are looked into by the Election Commission either on complaints received or on coming to know from any source, and the Election Commission passes orders as it may deem appropriate whether it be a censure or warning to the violator or directing any other appropriate action to curb the violation or breach of the model code. The Constitutional Courts, when occasion arises, aid the Election Commission in enforcing the model code.

15. The petitioner did not complain to the Election Commission immediately after the advertisement was issued that it was in violation of the Model Code of Conduct. Had he done so, the Election Commission would have examined it and if found to be in violation of the model code, the Election Commission could have issued any appropriate orders including directing withdrawal of the advertisement or putting the selection process on hold.

16. The Model Code of Conduct is not a statute and no consequences, penal or otherwise, have been specified for its violation. Neither has the petitioner referred to any. The enforcement of the model code vests with the Election Commission and the Election Commission deals with all complaints of violation by taking timely action to curb the violation during the election process.

17. As of now, the model code is not in force. It remained in force from 5th March, 2014 to 19th May, 2014. Hence, without going into the question as to whether the advertisement and the consequent action was or was not in violation of the model code, it is held that the present petition, at this stage, to quash the advertisement on the ground that it is in violation of the Model Code of Conduct is not maintainable.

18. Coming to the contentions of the petitioner on the merits of the selection that the candidature of the candidates has not been properly evaluated, it only needs to be said that the petition is totally vague and bereft of any particulars to furnish cause to proceed with.

19. In *State of Punjab Vs. Salil Sabhlok and Others*, the Hon''ble Supreme Court held that the High Court should not interfere with the discretion of the government in selecting and appointing the Chairman of the Public Service Commission except in exceptional cases where it is shown that the relevant factors implied from the very nature of the duties entrusted to the Public Service have not been considered. Beyond bald allegations, there is no material in this petition to even remotely suggest that there was no such consideration. In fact, the Hon''ble Supreme Court has a word of caution for the High Courts in this regard and has advised circumspection in entertaining such petitions at the instance of trigger-happy litigants. The observations of the Hon''ble Supreme Court are reproduced as under:--

"153. In the view that I have taken, there is a need for a word of caution to the High Courts. There is a likelihood of comparable challenges being made by trigger-happy litigants to appointments made to constitutional positions where no eligibility criterion or procedure has been laid down. The High Courts will do well to be extremely circumspect in even entertaining such petitions. It is necessary to keep in mind that sufficient elbow room must be given to the executive to make constitutional appointments as long as the constitutional, functional and institutional requirements are met and the appointments are in conformity with the indicators given by this Court from time to time."

For the aforementioned reasons, this petition is dismissed.