

THE HON'BLE SRI JUSTICE JOYMALYA BAGCHI

Writ Petition (SR) No.2928 of 2021

ORDER:

State of Andhra Pradesh is aggrieved by the decision of the State Election Commission, dated 28.01.2021, suspending launching of scheme for door-to-door delivery of essential commodities under Public Distribution System through Mobile Dispensing Units.

2. Heard *Sri S.Sriram*, learned Advocate General, representing the writ petitioner-State of Andhra Pradesh and *Sri N.Ashwani Kumar*, learned counsel appearing for the respondent-State Election Commission (hereinafter referred to as 'Commission').

3. Learned Advocate General appearing for the State argues decision to implement door-to-door delivery of essential commodities under Public Distribution System had been announced on the floor of the State Legislative Assembly in June, 2019. Pursuant thereto, sortex quality rice and small-pack polypropylene bags were procured through Civil Supplies Corporation. The scheme was implemented in one of the Districts, namely, Srikakulam. As the last mile delivery raised environmental concerns, a 'revised scheme' was undertaken to supply essential commodities via Mobile Dispensing Units. Accordingly, administrative sanction for purchase of Mobile Dispensing Units was given and lists of beneficiaries have

also been prepared. In the meantime, the Commission issued Notification on 08.01.2021 to hold elections to the Gram Panchayats in the State of Andhra Pradesh. Such decision came to be assailed by the State on the score it would impact Vaccination drive; and, a learned Single Judge of this Court, by order, dated 11.01.2021 stayed the said process. Subsequently, in appeal by the Commission, the Stay was vacated on 21.01.2021, which came to be affirmed by the Supreme Court on 25.01.2021. During the prevalence of the stay, it is contended by the learned Advocate General the Chief Minister had launched the project for door-to-door delivery via Mobile Dispensing Units. On the same day, the respondent-Commission issued a notice upon the Chief Secretary of the State calling upon him to submit comments with regard to the aforesaid scheme. Comments were duly submitted by the Chief Secretary. Ignoring the comments on behalf of the State, the Commission, by the impugned order, advised against the launching of the scheme in rural areas.

4. Learned Advocate General submits decision of the Commission was not in public interest as the scheme is a part of an ongoing process for supplying essential commodities to marginalized persons and would not impact election process in any manner. He further submits that the scheme being an ongoing one launched in public interest may be permitted to be continued in view of Clause (2) of Model Code of Conduct governing elections.

5. *Sri N.Ashwani Kumar*, learned counsel appearing for the Commission submits that the Commission had taken into consideration the beneficial impact of the scheme amongst the weaker sections of people, however, in view of the complaints received from political parties that the Mobile Dispensing Units used would carry the party colour of the ruling political party in the State and other allied aspects, was of the opinion the scheme may be deferred pending further examination of all aspects.

6. In rebuttal, learned Advocate General submits the panchayat elections are party-less and therefore, the concern of the Commission was misconceived.

7. Having heard the learned counsels for the parties, it appears both the parties are at *ad idem* over the issue that the scheme launched for supply of essential commodities via Mobile Dispensing Units is one of public interest as it serves to feed the marginalized sections of society. While the State would like me to believe it is an ongoing scheme, the Commission is of the opinion launching of the last mile delivery scheme via Mobile Dispensing Units is a new one and appears to have been undertaken in a manner, which seeks to influence the voters. Hence, the Commission suspended the said scheme pending further examination of all aspects of the matter. However, learned Advocate General drawing my attention to Clause (2) of the Model Code of Conduct submits an absolute embargo on the scheme was unwarranted. Model Code of Conduct comes into

force upon issuance of Notification of an election process. In the present case, such Notification has already been issued. Clauses (1) and (2) of the Model Code of Conduct deal with announcement of new projects/schemes as well as on-going schemes.

Clauses (1) and (2) of the Model Code of Conduct reads as follows:

*“(1). Announcement of new projects or programme or concessions or financial grants in any form or promises thereof or laying of foundation stones, etc., which have the effect of influencing the voters in favour of the party in power is prohibited.*

*(2). These restrictions apply equality to new schemes and also ongoing schemes. But it does not mean that in the case of national, regional and State Utility Schemes, which have already been brought up to the stage of completion, their utilization or functioning in public interest should be stopped or delayed. The coming into force of the Model Code of Conduct cannot be given as an excuse for not commissioning such schemes or allowing them to remain idle. At the same time, it should be ensured that the political functionaries and without any fanfare or ceremonies whatever, so that no impression is given or created that such commissioning has been done with a view to influencing the electorate in favour of the ruling party. If in doubt, a clarification should be obtained from the State Election Commission.”*

8. It appears from the aforesaid clauses the jurisdiction of the Commission to impose a restriction/prohibition on new as well as ongoing schemes cannot be faulted. However, while imposing such an embargo, the Commission may look into the nature of the scheme, stage of completion and the necessity of its continuation,

i.e., whether stoppage or delay of its utilization or functioning would be contrary to public interest. Moreover, instead of putting an absolute embargo or prohibition on such schemes of public interest, it is open to the Commission to ensure the commissioning of such schemes through civic authorities without associating political functionaries or fanfare or ceremonies of such nature, which would give an impression that commissioning of such scheme has been undertaken with a view to influence the electorate in favour of the ruling party. The scheme in question when judged from the aforesaid perspective is undoubtedly a public utility scheme undertaken by the State. Right to food and nutrition is a Fundamental Right of every citizen. It is also the constitutional duty of the Commission to ensure free, fair and impartial elections to the panchayats. How to balance the Fundamental Right to access to food and nutrition of the people on one hand with the constitutional duty to ensure purity of the election process on the other hand is an issue for the Commission to decide in the first place. In order to enable itself to do so after considering all aspects, the Commission had on a *prima facie* finding suspended the public utility scheme. Action of the Commission cannot be said to be either without jurisdiction or actuated with any bias or malice.

9. However, concern of the State that suspension of a public utility service would affect delivery of essential commodities including food to hungry mouths cannot be ignored.

10. Learned Advocate General emphatically submits the intention of the State is not to utilize such exercise for political campaigning or to seek mileage on behalf of the ruling party. He submits the Commission ought to have given an opportunity of hearing to the representative of the State to disabuse its mind of any unfounded apprehension that the party colours of the ruling party would be used in vehicles which would carry the essential commodities to the door step of the citizens or any other subterfuge to influence voters would be resorted to.

11. In the light of the aforesaid submissions and as the Commission has not taken a final decision with regard to the issue whether the policy of supply of essential commodities via Mobile Dispensing Units may be permitted without affecting the fairness of the election process, I give liberty to the State to approach the Commission with necessary materials in order to demonstrate that the aforesaid policy falls within Clause (2) of the Model Code of Conduct and would be undertaken in the manner as has been envisaged therein, that is, by use of civic authorities alone without associating any political functionary or use of fanfare or ceremonies at the behest of political parties to justify their claim of proprietorship over the scheme. It must be borne in mind that such schemes are not undertaken as bounties from political parties but by use of taxes collected from ordinary citizens to ensure that the benefits of a growing economy are uniformly shared. In the event

the State approaches the Commission, as aforesaid, within forty eight (48) hours from the date, the Commission shall take necessary decision thereon within five (5) days from the said date; and, if necessary, after giving adequate opportunity of hearing to the Chief Secretary and all other public functionaries as the Commission may deem fit and proper. While taking such decision, the Commission may be advised to bear in mind its own observations with regard to utility of the scheme benefitting members of the weaker sections and the doctrine of proportionality entrenched in the realm of public law while resolving conflicts between competing right as in the present case, namely, the right of continued access to food and nutrition on one hand and the right to a free, fair and impartial election on the other.

12. I do not wish to make any further observation in the matter as the Commission is the charioteer of the election process and upon the issuance of notification, it has over all supervision over every governmental action including implementation of prevalent or ongoing schemes, and if necessary, to issue necessary directions to ensure while the said schemes benefit the affected/targeted sector, they are not utilized for political propaganda or mileage. I hope and trust the Commission shall exercise its constitutional duty in the light of the aforesaid observations and in accordance with law.

13. With these observations, the Writ Petition is disposed of.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

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**JOYMALYA BAGCHI, J**

31-01-2021  
PNV/RAR