BLOGS

Important Judgement for CLAT PG 2024-ECI v. Mr. Vijaya Bhaskar

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Election Commission of India vs. Mr. Vijaya Bhaskar

Dated – 6th May 2021

Court: The Supreme Court of India

Bench: Justices Dhananjaya Y. Chandrachud and M. R. Shah

The Supreme Court bench of Justice Dhananjaya Y. Chandrachud and Justice M. R. Shah said that the idea of an **"open court"** means that information about a court case, including oral comments by the bench, must be available to the public. The main issue in the case was whether or not a judge had the right to hold court proceedings and talk to the parties during a hearing, and whether or not the media had the right to report not only court decisions but also court proceedings or comments made during these proceedings.

This decision is very important because it protects the freedom of the media to report on court cases. The right of the media to report court proceedings is a sine qua non for a healthy democracy. The media would have the right to report everything that transpires during a court proceeding. Though the opinion of the court is always expressed through judicial orders, the reporting of the media is merely considered to be reporting on court proceedings.

Facts of the case

1. On February 26th, 2021, the Election Commission (EC) announced general elections to the legislative assemblies of Tamil Nadu, Kerala, West Bengal, Assam, and Puducherry. In the state of Tamil Nadu, voting was scheduled for April 6, 2021, with results being announced on May 2, 2021. As part of getting ready for the elections, the EC sent a letter to the presidents and general secretaries of all national and state political parties on March 12, 2021. The letter stressed the importance of following the COVID-19 protocol during the elections.

2. Another letter was issued on April 9, 2021, during the polling phase regarding the disobedience to the norms of social distancing, wearing masks, and other similar restrictions by the candidates

set up by political parties. Eventually, when there was no improvement in following the guidelines, EC issued an order on 16th April 2021 to ban the rallies, public meetings, and street plays between 7 pm and 10 am during the campaign days. Another such letter was issued on the same day, focusing on the strict adherence to safety protocols.

3. On April 16, 2021, with regards to the rising number of Corona cases, the AIADMK candidate sent a representation to the Election Commission, urging it to take adequate steps and precautions to secure the health and safety of officers in the counting booth.

4. As no response was obtained by the election commission, a writ petition in the High Court was filed to seek directions that significant steps are taken and arrangements are made following COVID-19 protocols on May 2, 2021, also to ensure that COVID-19 protocols are followed in the polling booths in Karur Legislative Assembly Constituency of Tamil Nadu, and that was accepted by the Madras High Court under Article 226 of the Indian Constitution.

5. This writ petition was heard by a 2-judge division bench of Madras High Court comprising of Chief Justice of Madras High Court Justice Sanjib Banerjee and Justice Senthil Kumar Ramamoorthy and the order was passed on 26th April 2021.

6. Even though the order was passed by the Madras High Court, the thing that irked the election commission was the remarks passed and certain observations made by the judges during the proceedings, which did not go down well. The remarks that were made by the judges and pointed out in the petition are: “The solely responsible institution for the 2nd wave of COVID is the Election Commission” and “The Election Commission should be charged with murder.”

7. Though the above remarks were made orally and this was not recorded in the order of the high court, the media reported the remarks, which made headlines in print, electronic, and social media. This made the election commission file a special leave petition before the Supreme Court of India that their miscellaneous application was not assessed based on merits and also regarding the oral observation and remarks of the Madras High Court.

Judgement by the Madras High Court

The Court heard the petition and passed an order that:
Though the polling was mostly peaceful, the EC failed to ensure the adherence of the protocols by the political parties during the campaigns and rallies.

Despite repeated court orders to maintain the norms, the EC remained silent when the orders were violated. Though the situation in the state was under control, the polling and the counting of votes in no way should have acted as the catalyst for a further surge in the cases. Public health is the most important thing, and the fact that the constitutional authorities need to be reminded of this is upsetting to the court.

The prevailing situation is one of survival, and to enjoy the rights of the democratic republic, the citizens need to survive first. Also, the EC needs to keep up with regular cleaning, keeping things clean, making sure people wear masks, and sticking to the rules about distance, all while consulting with the State Health Secretary and the Director of Public Health.

On April 30th, the petition was disposed of in light of the measures taken along with the miscellaneous application. Related Provisions Article 19(1) of the Constitution of India, 1950 All citizens shall have the right (a) to freedom of speech and expression; freedom of the press is not specifically mentioned in Article 19(1) (a) of the Constitution, and what is mentioned there is only freedom of speech and expression.

In the Constituent Assembly Debates, it was made clear by Dr. Ambedkar, Chairman of the Drafting Committee, that no special mention of the freedom of the press was necessary at all as the press and an individual or a citizen were the same as far as their right of expression was concerned.

In ***Romesh Thaper vs. State of Madras*** and ***Brij Bhushan vs. State of Delhi***, the Supreme Court took it for granted that the freedom of the press was an essential part of the right to freedom of speech and expression. It was observed by Patanjali Sastri J. in Romesh Thaper that freedom of speech and expression included the propagation of ideas, and that freedom was ensured by the freedom of circulation.

Appellant's Arguments

The Senior Counsel appearing on behalf of the ECI made the following submissions:

i. The High Court shouldn't have made negative oral comments about the ECI, because these comments had nothing to do with the case before the court and were made before the ECI had a chance to explain what steps it had taken to keep COVID-19 protocols in place.

ii. These comments made by the High Court were widely reported in the news, which hurt people's trust in ECI and weakened the constitutional authority of the court.

iii. Judicial review of the ECI is limited when it comes to questions about how elections are run, and courts should be careful about what they say about the ECI or the election process.

iv. During the pandemic, the ECI has run a number of state elections and taken steps to make sure COVID-19 protocols are followed, but the actual enforcement is up to the state government. The ECI does not take over governance from the States even during elections and has a limited number of personnel at its disposal.

v. The media must make sure that their coverage of court cases is accurate and must not try to make them more interesting.

Supreme Court's Observation

1. The Supreme Court said that these conversations are necessary to protect constitutional freedoms and to give people the right to know what is going on in court. The conversation that goes on during the proceedings shows how the process is set up and should be available to the public. Oral arguments are based on the open exchange of ideas, through which these are tested and analyzed.

2. The Apex Court also said that the citizen has a right to know about the arguments brought before the court, the response of the other side's lawyer, and the issues brought up and dealt with in court. This would make sure that the judicial process is open to public scrutiny. In the case of ***Mohammed Shahabuddin v. State of Bihar*** (2010), it was pointed out that this is needed to keep democratic institutions open and accountable and to keep the public's faith in them.

3. The Supreme Court further observed that oral remarks made during any judicial proceedings are never recorded as part of the order or judgment, and thus, the question of removing them does not arise. The court did agree that the remarks made by the Madras High Court judges were harsh. The Apex Court said that while making such "off-the-cuff" statements, judges should restrain themselves in open courts. It was emphasized that the language used by the judges while making oral observations or in their judgments should have judicial propriety.

Judgement by the Supreme Court

1. The Supreme Court bench consisting of Justice Dhananjaya Y. Chandrachud and Justice M. R. Shah rejected the prayer of the election commission to restrict the media from reporting any oral remarks made by the judges, as it struck at the fundamental principles guaranteed under the Indian Constitution. Furthermore, the judges explained that the concept of "open court" requires

that the information regarding the judicial proceedings in a court be accessible to the public, and thus it should be made available in the public domain.

2. The Court also took the example of print media reporting the trials or court proceedings during the British Raj, like the sedition trial of Lokmanya Tilak. The Supreme Court judges advised that it would be better if the constitutional authorities accepted the new reality rather than complaining. The Court also praised the high courts for their commendable job during the COVID crisis.

3. The Apex Court included media reporting of judicial proceedings under the fundamental right of freedom of speech and expression, stating that it is part of freedom of the press. The Election Commission has a track record of being an independent body, so it should maintain being so.

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