

(2014) 04 AHC CK 0227

Allahabad High Court

Case No: Civil Misc. Writ Petition (P.I.L.) No. 20909 of 2014

Syed Mohd. Fazal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: April 18, 2014

Acts Referred:

- Representation of the People Act, 1951 - Section 126-A, 126-B

Citation: (2014) 5 ADJ 336 : AIR 2014 All 151 : (2014) 4 ALJ 685 : (2014) 104 ALR 658 : (2015) 2 AWC 1654

Hon'ble Judges: Dhananjaya Yashwant Chandrachud, C.J; Dilip Gupta, J

Bench: Division Bench

Advocate: Bhoopendra Nath Singh and Shashi Nandan Srivastava, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Dr. D.Y. Chandrachud, C.J. and Dilip Gupta, J.

This writ petition, which has been filed in the public interest, seeks two reliefs:

(i) Issue a writ, order or direction in the nature of mandamus commanding the respondents to ensure the restriction on publication and dissemination of results of Opinion and Exit Polls imposed by section 126-A of Representation of the People Act, 1951 during the current general election of 2014 from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the poll in all the States and Union Territories;

(ii) Issue a writ, order or direction in the nature of mandamus restraining the Television Channels, Newspaper and any other media from releasing the results of exit and opinion poll, during voting for 2014 general election from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the poll in all the States and Union Territories.

Section 126-A and section 126-B of the Representation of the People Act 1951 were introduced by Act 41 of 2009, which was brought into force with effect from 1, February 2010. Section 126-A provides as follows:

126-A. Restriction on publication and dissemination of result of exit polls, etc.--(1) No person shall conduct any exit poll and publish or publicize by means of the print or electronic media or disseminate in any other manner, whatsoever, the result of any exit poll during such period, as may be notified by the Election Commission in this regard.

(2) For the purposes of sub-section (1), the Election Commission shall, by a general order, notify the date and time having due regard to the following, namely--

(a) in case of a general election, the period may commence from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the poll in all the States and Union territories;

(b) in case of a by-election or a number of by-elections held together, the period may commence from the beginning of the hours fixed for poll on and from the first day of poll and continue till half an hour after closing of the poll:

Provided that in case of a number of bye-elections held together on different days, the period may commence from the beginning of the hours fixed for poll on the first day of poll and continue till half an hour after closing of the last poll.

(3) Any person who contravenes the provisions of this section shall be punishable with imprisonment for a term which may extend to two years or with fine or with both.

Explanation.--For the purposes of this section,--

(a) "exit poll" means an opinion survey respecting how electors have voted at an election or respecting how all the electors have performed with regard to the identification of a political party or candidate in an election;

(b) "electronic media" includes internet, radio and television including Internet Protocol Television, satellite, terrestrial or cable channels, mobile and such other media either owned by the Government or private person or by both;

(c) "print media" includes any newspaper, magazine or periodical, poster, placard, handbill or any other document;

(d) "dissemination" includes publication in any "print media" or broadcast or display on any electronic media.

2. In exercise of the powers, which have been conferred by sub-section (1) of section 126-A, a notification has been issued on 3rd April, 2014 by the Election Commission of India. The notification takes note of the fact that schedules for the general elections to the Lok Sabha and to the Legislative Assemblies of four States as well as

for bye-elections to the Legislative Assemblies of nine States were announced by the Commission on 5th March, 2014. The notification, in this background, imposes the following restrictions on conducting any exit poll or publishing or publicizing by means of the print or electronic media or dissemination in any other manner, whatsoever, the result of any exit poll in connection with the aforesaid general elections. The relevant part of the notification reads as follows:

Now, therefore, in exercise of the powers under sub-section (1) of section 126-A of the R.P. Act, 1951, the Election Commission, having regard to the provisions of sub-section (2) of the said section, hereby notifies the period between 7.00 a.m. on 7th April 2014 (Monday) and 6.30 p.m. on 12th May, 2014 (Monday), as the period during which conducting any exit poll and publishing or publicizing by means of the print or electronic media or dissemination in any other manner whatsoever, the result of any exit poll in connection with the current General Elections to the House of the People, 2014 and the State Legislative Assemblies of Andhra Pradesh, Arunachal Pradesh, Odisha and Sikkim 2014 and bye-elections from assembly constituencies in the State Legislative Assemblies of Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Mizoram, Uttar Pradesh, Tamil Nadu and West Bengal to be held simultaneously with the general election to Lok Sabha shall be prohibited.

3. The relief which has been sought in these proceedings is for a prohibition on the publication or dissemination of the results of opinion and exit polls, on the ground that restrictions have been imposed by section 126-A.

4. Section 126-A contains a prohibition on publishing or publicizing by means of the print or electronic media or on dissemination in any other manner, whatsoever, the result of any exit poll during such period, as may be notified by the Election Commission. The expression "exit poll" has a statutory definition in Explanation (a) and means (i) an opinion survey respecting how electors have voted at an election; or (ii) an opinion survey respecting how all the electors have performed with regard to the identification of a political party or candidate in an election. In our view, having regard to the legal position u/s 126-A which imposes a prohibition in regard to the exit polls, as defined, the notification which has been issued by the Election Commission on 3rd April, 2014 is in the context of that prohibition. The statutory function, which is assigned to the Election Commission under sub-section (2) of section 126-A, is to notify the date and time over which the prohibition shall remain in force having due regard to the periods which are set up in Clause (a) which applies in the case of a general election and in Clause (b) which applies in the case of a bye-election or a number of bye-elections held together. In our view, it would not be open to the Court to widen the ambit of the prohibition, beyond what has been legislated upon by Parliament in terms of section 126-A. In determining the extent of the prohibition and the wisdom of imposing such a prohibition, Parliament has to constitutionally balance the right to information on one hand, and the need to

conduct a free and fair election on the other. It is for Parliament, which is the legislative body, to consider where that line should be drawn. Since Parliament has made that determination by laying down norms in section 126-A, it would be impermissible for the Court to expand the nature of extent of the prohibition. In fact, the notification, which has been issued by the Election Commission on 3rd April, 2014, implements the provisions of section 126-A during the ensuing elections to the Lok Sabha, to the State Legislative Assemblies and to the bye-elections of State Legislative Assemblies. Hence, we have no reason to entertain the petition. The petition is, accordingly, dismissed. There shall be no order as to costs.