

## CHAPTER 8

# RESTRICTION ON ELECTIONEERING DURING PERIOD OF 48 HOURS BEFORE CLOSE OF POLL

### Main topics discussed in the Chapter:-

- Restriction on Presence of Political Functionaries in a Constituency During the Last 48 Hours
  - ✓ Measures to Check
  - ✓ Exemption from Restriction
- Telecast of Election Matters During the Last 48 Hours
- Whether Broadcasting of Election Related Matter over Radio Could be done during Last 48 Hours
- Advertisements in Print Media
- Telecast of Feature Films (Other Than Commercial advt.) of the Actors Contesting Elections

### 8.1 Introduction

8.1.1 In order to strengthen the law and order on the day of poll and to ensure an atmosphere where the electors do not feel intimidated in any manner, the Election Commission has directed that all ministers, members of Parliament and State Legislative and other political functionaries who have been provided with security should leave the constituency as soon as the campaign period ends, i.e. 48 hours before the time fixed for the close of poll.

8.1.2 *Section 126 of the Representation of the People Act, 1951*, prohibits holding of public meeting in the period of 48 hours ending with the hour fixed for the close of poll, when election campaign comes to an end. (*Section 126 of the Representation of the People Act, 1951* is reproduced below :-

“Section - 126 Prohibition of public meetings during period of forty – eight hours ending with hour fixed for conclusion of poll –

(1) no person shall –

(a) *convene, hold or attend, join or address any public meeting or procession in connection with an election; or*

(b) *display to the public any election matter by means of cinematograph, television or other similar apparatus.*

(c) *Propagate any election matter to the public by holding, or by*

*arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the hour fixed for the conclusion of the poll for any election in the polling area.*

- (2) *Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.*
- (3) *In this section, the expression “election matter” means any matter intended or calculated to influence or affect the result of an election.”*

## **8.2 Restriction on Presence of Political Functionaries in a Constituency During the Last 48 Hours**

8.2.1 During the course of campaign in an election, the political parties mobilize their supporters, including from outside the constituency of poll, in order to bolster that campaign. In view of the fact that after the closure of campaign period no campaign can take place within the constituency, presence of political functionaries and party workers, who have been brought from outside the constituency and who are not voters of the constituency, should not remain present in the constituency as their continued presence after end of campaign period may undermine the atmosphere for free and fair poll. Hence, the Election Commission has directed that the district election administration / police administration shall ensure that all such functionaries leave the constituency immediately after the campaign period is over.

**8.2.2 Measures to Check:-** The Election Commission has directed that in order to ensure that the above instruction is carried out, the election administration / police administration may take all necessary measures which may include:

- (i) Checking of kalyan mandapams / community halls etc., to find out whether any outsiders have been accommodated in these premises.
- (ii) Verification of lodges and guesthouses to keep a track of the list of

occupants.

- (iii) Set up check-posts at the constituency borders and track the vehicular movement from outside the constituency.
- (iv) Verify identity of the people / group of people in order to find out whether they are voters or not and to establish their identity.

**8.2.3 Exemption from Restriction:-** An instance came to notice of the Election Commission during an bye-election in 2017 that a prominent political leader didn't leave the constituency after campaign period was over, citing some medical reasons. The Election Commission, having considered the matter issued following guidelines-

- (i) The District Election Officer concerned, in consultation with Chief Electoral Officer, would constitute a Medical Board for health check-up of the political functionary seeking exemption. The Medical Board shall, after medical examination of the patient and his/her medical history, will give report whether condition of the patient( political leader) is such that he can't move or be shifted under medical attendance out of the constituency in an ambulance or vehicle.
- (ii) The exemption would only be considered by the Election Commission after consideration of report of the Medical Board received through Chief Electoral Officer concerned.
- (iii) Such political functionary to whom exemption has been granted may be allowed to stay in the constituency subject to the condition that this is in no manner be used for any political/election related activities in any way. To ensure this, a video surveillance team headed by a magistrate with suitable police personnel shall be deployed at all the entrances of place of stay till completion of poll. Expenditure incurred for such stay should be duly accounted for in election expenditure accounts of the contesting candidate for that constituency.

## **8.3 Telecast of Election Matters During the Last 48 Hours**

8.3.1 Previously, Section 126 prohibited only the convening /holding or

attending, joining or addressing any public meeting/procession in connection with an election during the period of 48 hours ending with the hour fixed for conclusion of poll for any election in the polling area concerned. However, the scope, extent and dimension of the prohibition contained in the Section were expanded with amendment in the said Section in 1996 when vide Sub-section (1)(b), prohibition was made applicable to display of any election matter by means of cinematograph, television or other similar apparatus during the prohibited period of 48 hours.

- 8.3.2 But in the era of wide reach of electronic media in the country, it is impossible to block any matter being covered on electronic media in a specific area, state or constituency.
- 8.3.3 During the general election to House of People in 2014, some complaints were made to News Broadcasting Standards Authority (NBSA) against certain television channels that they had telecast live the release of manifesto by Bharatiya Janata Party at New Delhi on 7 April 2014, when some constituencies in Assam and Tripura were going to poll on the very day. It was contended that it amounted to violation of provisions of Section 126 (1)(b) and Model Code and also guidelines issued by NBSA. After detailed hearing of the complainants, NBSA held that in the scenario of a multi-phased election, prohibition of display to public of any election matter in operation in a constituency in State ‘X’ cannot obviously prevent the telecast of electioneering being carried on in State ‘Y’, in respect of a candidate belonging to the very political party whose candidate is also contesting in a constituency in State ‘X’. The media would be entitled to broadcast the electioneering in regard to a contesting candidate of a particular party in one state, irrespective of the fact that transmission would be seen in other states. It was further held that so long as the broadcast of the election related programme in State ‘Y’ is not used for promoting or attacking any specific candidate in State ‘X’, there can be no objection. What are prohibited are any advertisements or sponsored programmes or any reports supporting or criticizing a candidate with an intention to influence or effect the results of an election. Covering a general event relating to a political party which is relevant and of common interest across the country or across a

state, which does not extol the public to support any candidate or which does not criticize any candidate in the constituency going to polls, is not a violation of any guidelines.

#### **8.4 Whether Broadcasting of Election Related Matter over Radio Could be done during Last 48 Hours**

Clause (b) of sub-section(1) of Section 126 bans display of election material through T.V. or similar apparatus. As for radio, the Election Commission clarified that it would be treated as 'other similar apparatus' for this purpose and hence broadcasting /propagating any election matter through radio would be covered under clause (b) and would not be permissible during the period of 48 hours mentioned in the said section.

#### **8.5 Advertisements in Print Media**

8.5.1 Unlike political advertisements in electronic media which are not regulated by any statutory law but are governed by the directions of the Supreme Court, the political advertisements in print media are subject to certain restrictions imposed by law itself. As per Section 127A of the Representation of the People Act, 1951, no person can print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of the printers and publisher thereof. Further, no person can print or cause to be printed any election pamphlet or poster, unless the printer has obtained a declaration, in duplicate, as to the identity of the publisher thereof, signed by the publisher and attested by two persons to whom he is personally known.

8.5.2 Furthermore, the printer is required to send one copy of the said declaration together with four copies of the printed material and a statement showing the number of copies printed and the printing charges realized from the publisher, to the chief electoral officer of the state, if such document has been printed in the capital of the state, or to the district magistrate of the district in which it is printed, in any other case. The above provisions apply in relation to the advertisements published by the political parties and candidates in the newspapers as well.

- 8.5.3 Any person who prints or publishes or causes to be printed or published any election pamphlet or poster in contravention of the above statutory restrictions is punishable with imprisonment for a term extending up to six months or with fine which may extent to two thousand rupees, or with both.
- 8.5.4 As per the law, the content of any such election pamphlet or poster is not required to be pre-certified from any authority, unlike the advertisements in electronic media which require pre-certification by the Media Certification and Monitoring Committees set up by the Election Commission at the district and state levels under the directions of the Supreme Court. However, the advertisements published by the political parties and candidates in the e-version of newspapers requires pre-certification. Further, the restrictions on the publication of advertisements on electronic media during the period of 48 hours ending with the hour fixed for the close of poll do not extend to the publication of advertisements by political parties and candidates in print media.
- 8.5.5 During the general election to the Bihar legislative assembly in 2015, certain advertisements of offending nature were published in some prominent newspaper in Bihar on the day previous to the date of poll. To ensure that no such instance was repeated on the date of poll and no untoward incident may take place because of any inflammatory or hate advertisements, the Election Commission, in exercise of its powers under Art 324 of the Constitution directed that no political party or candidate or any other organization or person shall publish any advertisement in the newspapers on the day of poll and one day prior to poll unless the contents of the advertisement proposed to be published were got pre-certified by them from the Media Certification and Monitoring Committee (MCMC) at the district or state level, as the case may be. Similar direction was also issued to all newspapers in the state of Bihar that they should not publish any advertisement in the newspapers on the day of poll and one day prior to poll which had not been pre-certified by the said MCMC. The above direction of the Election Commission was brought to the notice of all political parties in the state of Bihar and also given wide publicity to all media of mass communication for general

information and strict compliance.

- 8.5.6 From then onwards, at all subsequent general elections, the Election Commission has been issuing similar directions with the modification that the aforesaid pre-certification of advertisements in newspapers is required in respect of all such advertisements as intended to be published on poll day and one day prior to poll day.

## **8.6 Telecast of Feature Films (Other Than Commercial advt.) of the Actors Contesting Elections**

The question of whether to permit telecasting of films of the actors, who are contesting election, on TV channels or not was brought to the attention of the Commission. After due deliberations the Commission directed that telecast of films and commercial advertisements involving film actors who are contesting elections will not be restrained on TV channels or Cinema Theatres. However, **telecast of such feature films (other than commercial advertisements) will not be allowed on Doordarshan** during the period of enforcement of Model Code of Conduct, considering that Doordarshan is run on public funds.

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