

# CHIEF ELECTION COMMISSIONER OF INDIA V. M.R. VIJAYA BHASKAR AND OTHERS, 2021 SCC ONLINE SC 364; 2021 AIR SC 2238

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## Abstract

*Chief Election Commissioner of India v. M.R. Vijaya Bhaskar & Others (2021) is a very important discourse of the relation of power between the judiciary and constitutional bodies in particular in the face of the pandemic of the COVID. It became a dispute because Hon'ble Madras High court made oral remarks that held Election Commission responsible for the second wave of COVID 19 for failing to implement health guidelines during state elections. Though not officially recorded, the comments were widely reported in the media and the Election Commission has asked the Supreme Court's highest chief justice for relief under Article 136 of the Constitution. Judicial restraint, the scope of judicial overreach and the role of media reporting on court proceedings are all important issues raised by the case. Inherent in Article 19(1)(a) and the importance of the press in democratic society, Supreme Court emphasized the press' role but scrutinized whether court's oral observations could be reported as official statements. It also highlighted the need to curb measured judicial comments, if they could affect the public perception of constitutional people. The verdict suggests that the balance between the judicial observations and the autonomy of other institutions should be maintained and warns of judicial discretion that has to be exercised with caution. Additionally, the judgment takes a swipe at the bigger idea of judicial overreach, which occurs when the court makes remarks beyond the scope of the case. While the Supreme Court agreed the judiciary with restraint, it did not allow the High Court's observations to interfere and instead accentuated the judiciary's independence and the need for constitutional decorum. In the end, this means that this landmark case finally emphasizes once again but failed in upholding democratic principles, the delicate balance of the judiciary, executive, and the media. It reminds us of the importance of responsible judicial discourse and the press in allowing the judiciary to be transparent without distorting judge's remarks.*

**Keywords:** *Contempt of Court, Judicial Activism, Supreme Court of India, Judicial Restraint, Chief Election Commissioner of India, Balance of Power*

## Introduction

The case study deals with the landmark judgement of the Supreme Court of India, i.e. The Chief Election Commissioner of India vs Mr. Vijayabhakara; the case underscored the controversy between the order given by the Hon'ble High Court of Madras and the election commission regarding the health and safety rules and regulations pertaining to the 2nd wave of COVID-19 during the elections.

The article is an in-depth analysis of the case which arose during the 2nd wave of COVID-19 and legislative assembly election of Tamil Nadu and other states. The dispute arose between the Election Commission of India and the Hon'ble High Court of Madras was due to the orally made comment by the 2-judge bench of the High Court regarding the non-compliance of COVID-19 guidelines by the Election Commission. This article aims to explore the response of the Supreme Court to the writ petition filed by the Election Commission under Article 226 of the Constitution of India, which not only questions the role of the judiciary but also the role of the<sup>1</sup> Media.

## Facts of the case

On the 26th of February 2021, the Election Commission of India announced general elections for the legislative assembly of the states - Kerala, West Bengal, Assam, Tamil Nadu, and the Union Territory - Puducherry. During the preparation for the elections, on the 12th of March 2021, the Election Commission sent a letter to the political parties' President and

<sup>1</sup> India Const. art. 226.

General Secretary, informing them about the importance of adhering to the given COVID-19 protocol guidelines during the time of the elections. Subsequently, on the 9th of April 2021, another letter was issued by the Election Commission with regard to the norms, rules and guidelines of social distancing and similar kinds of regulations, including wearing masks in public places. However, in view of the disobedience and no signs of improvement, the Election Commission banned the rallies, public meetings, and street plays between the time 7 pm and 10 am for the election campaigns with its order dated 16th of April 2021.

A candidate from the political party - All India Anna Dravida Munnetra Kazhagam (AIADMK) was sent as a representative to the Election Commission, requesting them to take precautionary measures to ensure health and safety at the counting booths in the surge of the growing cases of COVID-19. With the failure in response by the Election Commission, a writ petition was filed in the Hon'ble High Court of Madras under Article 226<sup>2</sup> of the Constitution of India. The writ was heard by a 2-judge division bench consisting of Justice Sanjib Banerjee, the Chief Justice of the Madras High Court, and Justice Senthil Kumar Ramamoorthy. An order dated 26th of April 2021 was passed by the Hon'ble bench, where they issued a ruling stating while pointing out the Election Commission, "*The solely responsible institution for 2nd wave of covid is the Election Commission*" and "*Election Commission should be charged with murder*". Although such remarks were only made orally and hold no official record of it, the media reported the comments given by the Hon'ble Bench, and that further made headlines worldwide.

In light of the same, the Election Commission filed a special leave petition under Article 136<sup>3</sup> of the Constitution of India before the Supreme Court of India, as the application wasn't addressed on its merit and also with regards to the oral remarks and observations given by the Hon'ble bench of Madras High Court in their order.

### Issue

1. Whether the freedom of speech and expression of the Press and Media, extends to the reporting of the oral observations and remarks passed by the court within the courtroom?

### Reasoning

The Apex Court stated the importance of Article 19(1)(a) of the Constitution,<sup>4</sup> which talks about the freedom of speech and expression. The court acknowledges the critics the critical role of the media in ensuring and guaranteeing transparency and a sense of responsibility in society, which constitute the integral component of a thriving democracy

Article 226<sup>5</sup>, which grants power to issue writs in the High Court in the case of enforcement of fundamental rights and/or any other similar purpose. In this writ petition, the respondent filed an application in the High Court under the said provision of the Indian Constitution in order to ensure proper compliance with COVID-19 protocols during the elections.

Additionally, Article 129<sup>6</sup> and Article 215<sup>7</sup> of the Indian Constitution are also recognised in the case where these provisions empower the Supreme Court of India and the High Courts of India, to punish themselves for their own contempt, like in this case, the oral remark made by the High Court of Madras was noted by Supreme Court of India.

### Analysis

The verdict underscores the controversy between the order given by the Hon'ble High Court of Madras and the election commission regarding the health and safety rules and regulations pertaining to the 2nd wave of COVID-19 during the elections. The 2-judges bench of the High Court severely criticised the Election Commission for their irresponsibility and carelessness in ensuring adequate health and safety regulations during the COVID-19 and even pointed out that the Election Commission Officials might be held liable for the murder, i.e. the death of the COVID -19 Pateints, which got infected during the election. This observation, yet being oral, raises a substantial question with regard to the scope of the discretion of the judiciary in India.

Judiciaries in India have been given and ensured a considerable right to freedom of expression, which allows them to make observations and pass further comments on the case within the courtroom. In this case, the comment given by the

<sup>2</sup> *Supra* Note. 1

<sup>3</sup> India Const. art. 136.

<sup>4</sup> Article 19(1) *All citizens shall have the right- (a) to freedom of speech and expression;*

<sup>5</sup> *Supra* Note. 1

<sup>6</sup> India Const. art. 129.

<sup>7</sup> India Const. art. 215.

Hon'ble High Court of Madras on the working of the Election Commission during the time of pandemic explains the need for judicial restraint in between exercising the freedom of expression. Judicial Restraint is significant as it is required to maintain the balance between the powers of the judiciary and other organs of the government. In cases where the court oversteps, it can also lead to judicial activism and judicial bias, which can further lead to the illegitimacy of the Judiciary in India.

Another aspect which can be seen in this case is 'Judicial Overreach', as the comments given by the Hon'ble High Court of Madras were questions on whether or not the court exceeded its authority and made observations which weren't explicitly related to the case. Judicial Overreach happens when the court in power encroaches or oversteps the functions of the other organs of the government, and in this case, the Supreme Court focused on the question of whether or not it was necessary on the part of the High Court to adjudicate such comments. It is believed that such remarks holds and carries a significant and considerable influence on public opinion on the functioning of the particular organ or institution. Though the Supreme Court gave insights on judicial restraints and judicial overreach along with the need for measured observations by the court, primarily related to the matters that might affect the public opinion of the constitutional bodies, it also declined to interfere with the observations and comments made by the Hon'ble Madras High Court.

### **Conclusion**

This case is a landmark judgement that deals with one of the significant topics of constitutional law that being the balance of power. The verdict given by the Supreme Court of India established a balanced equilibrium within the relationship between the judiciary and the other organs of the government. In this case, The 2-judges bench of the High Court severely criticised the Election Commission for their irresponsibility and carelessness in ensuring adequate health and safety regulations during the COVID-19 and even pointed out that the Election Commission Officials might be held liable for the murder, i.e. the death of the COVID -19 Pateints, which got infected during the election. This observation, yet being oral, raises a substantial question with regard to the scope of the discretion of the judiciary in India.

The media, i.e. the Press, is considered as the fourth organ of the Democracy, being its duty to accurately furnish the report of the court to the public for its independent opinion. Although, in the present case the same was challenged, the Supreme Court on the other hand declined to interfere with the observations and comments made by the Hon'ble Madras High Court.

