

HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Side Civil Writ Petition No. 270 of 1997

(Decision dated 27.5.1997)

Harbans Singh Jalal, Ex-MLA

Petitioner

S/o S. Mehar Singh, R/o Shri Jalal Ashram,

Harbans Nagar, Bathinda (Punjab)

Vs.

1. Union of India, through Secretary,
of Home Affair, New Delhi

..Respondents Ministry

2. State of Punjab through Secretary (Home) Chandigarh.

3. Election Commission of India, New Delhi

4. Mr. M. S. Gill, Chief Election Commissioner Ashoka Road, New Delhi

5. Mr. KVS Ramamurthy, Election Commissioner New Delhi

SUMMARY OF THE CASE The Election Commission announced the programme for the general election to the Punjab Legislative Assembly on 30th December, 1996. Simultaneously, the Commission informed the State Government and all other authorities concerned that the Model Code of Conduct would come into effect from the date of announcement of the election schedule by the Commission (i.e. on 30th December, 1996). Prior to the announcement of the election schedule by the Election Commission, the political party in power in the State, namely, Indian National Congress, had announced certain welfare measures and schemes at a State level conference on 22nd December, 1996. These welfare measures and schemes were to be implemented with effect from 1st January, 1997. Enforcement of Model Code of Conduct from 30th December, 1996 affected the implementation by the State Government of the said welfare schemes from 1st January, 1997. The **present writ petition was filed before the Punjab and Haryana High Court contending , inter alia, that the Model Code of Conduct could be brought into force only from the date of actual notification of the election by the Governor of the State and not from the date of announcement of the**

election schedule by the Election Commission and that the Election Commission could not control the activities of the Government during the period between the announcement of the election schedule and the notification of the election by the Governor. ***The High Court dismissed the writ petition, holding that the Election Commission is entitled to take necessary steps for the conduct of a free and fair election, even anterior to the date of issuance of notification of election by the Governor, and from the date of announcement of the election by the Commission.*** While doing so, the Model Code of Conduct adopted to be followed by all political parties, can be directed by the Commission to be followed from the date of announcement of election schedule by it.

Writ Petition under Article 226 of the Constitution of India Prayed that this court be pleased to call for the record of this case and after perusal may pleased to

- a) Issued a writ, order or direction quashing the instructions issued by the Election Commission by way of fax message whereby State Govt. has been restrained from implementing welfare measures for the general public at large;
- b) Issue a writ order or direction communing the State Govt to implement the welfare measures announced for welfare of general public at large, ignoring the illegal and unconstitutional restrictions imposed by Election Commission;
- c) Dispense with service of advance notice on respondents;
- d) exempt filing of certified copies of annexure;
- e) award cost of the petition in favour of the petitioner.

It is further prayed that during the pendency of this petition, the operation of the instructions issued by the Election Commission (p-4 & 5) may be stayed.

Dated the 27th May, 1997

JUDGMENT

Present:- The Hon'ble The Chief Justice K. Sreedharan,

The Hon'ble Mr. Justice Swatantar Kumar

For the Petitioner : Mr. R. S. Randhawa, Advocate with Mr. G. S. Chahal, Advocate For the Respondents : Mr. Arun Nehra, Advocate for Respondent No. 1,

Mr. G. S. Grewal, Advocate-General, Punjab with Mr. D. S. Dhillon, Deputy Advocate-General For Respondent No. 2

Mr. M. L. Sarin, Senior Advocate with Mr. Hemant Sarin, Advocate for Respondents 3 to 5 K.
SREEDHARAN, C. J.

An issue of far reaching consequences is raised in this writ petition. It is whether; Election Commission can control the activities of Government during the period subsequent to the announcement of election to the Parliament or the Legislative Assembly of a State before notification in that regard is issued by the President of India or the Governor of a State, as the case may be? Short facts, necessary for disposal of this case are as follows. Petitioner was a former Convenor of Kisan Dal which is a Wing of Shiromani Akali Dal, in short, SAD. He claims to be a public man and states that he is aggrieved by the illegal and unconstitutional action of the Election Commission in imposing the restrictions on the Government of Punjab on the eve of the general elections to the Punjab State Legislature. The term of the then Assembly was to expire on March 15, 1997. SAD Party had announced free electricity to agricultural sector; abolition of octroi and Inspector Raj and other welfare measures. The Party then in power, namely, Congress also announced various welfare measures for the people of the State. Virtually, the policies announced by the parties are same, aimed to the welfare of the common people, Ruling party announced various ameliorative measures for the benefit of agriculturists, trade and industrial sector; for the welfare of women; for the welfare of people belonging to economically backward classes; war widows; pensioners; students; Food and supplies sector and Transport sector etc. They were so announced in a State level conference held on December 22, 1996, at Ludhiana. Majority of the schemes announced are unobjectionable, aimed to uplift the common man. The ruling party also announced that some of the schemes formulated by them would be implemented with effect from January 1, 1997. It is stated by the petitioner that the office bearers of SAD approached the Election Commission to prevent the Government from proceeding with the implementation of the schemes. Even though Election Commission had no legal or constitutional authority to interfere with the working of the Government in power, the Chief Election Commissioner announced the poll dates on December 30, 1996. Thereupon, he started exercising control to stall the implementation of policies announced by the State Government on Dec. 22, 1996. Immediately on the announcement of the poll dates, the Commission caused to send Annexure p-5 fax message to the Chief Secretary and the Chief Electoral officer stating that the Model code of conduct and ban on transfer of election related officers will be applicable in

the State. Any violation of instructions regarding non-transfer of officers, payment of grants out of discretionary funds and guidelines enumerated in Model code of conduct for political parties and candidates will be viewed very seriously and necessary action as deemed appropriate would be taken on each case of violation. Annexure p-4 Press Note issued by Election Commission on December 30, 1996, stated that Commission has to recommend to the Governor of Punjab to issue notification under section 15 of the Representation of the People Act, 1951 (hereinafter referred to as the Act), for issuing the requisite notification for the election to Punjab Legislative Assembly. Governor was to issue the notification on January 13, 1997, and the poll to take place on February 6, 1997. When the notification was to be issued by the Governor on January 13, 1997, it is the petitioner's contention, that Election Commission had no authority to impose any restriction whatsoever in the functioning of the Government in power with effect from the date of announcement of election up to the date of issue of notification. The argument of the petitioner is that unless a notification is issued by the Governor, as contemplated by section 30 of the Act, Election Commission cannot exercise any power, or rule in the conduct of election. Pursuant to the notification issued under section 15 of the Act, Election commission shall issue notification under section 30 of the Act, fixing dates for making nomination; their scrutiny; for their withdrawal by the candidates; date of poll and date before which election shall be completed. Prior to issue of such a notification, the Election Commission cannot have any superintendence over the activities of the Government. Election Commission has the power of superintendence of the conduct and control of elections from the date of issue of notification by the Governor and not from any earlier date. Viewed in this light, it is contended that the action of the Election Commission by directing the State Government, as per Annexure p-5 fax message, to adhere to the Model code of conduct, and other directions, is illegal and beyond their jurisdiction. Attempt on the part of the Election Commission to restrain the Government from implementing the welfare measures announced by Government, is totally beyond jurisdiction; hence unconstitutional. *The Model code of conduct is not having any statutory backing.* It is not mandatory either. Implementation of such a code of conduct, if at all, can be resorted to by the Commission only after the issuance of the notification by the Governor. Before the issuance of such a notification, Commission cannot assume powers which are available to them in regard to the conduct of elections. On these

bases, petitioner prayed for the issuance of a writ of certiorari quashing the instructions given to Government of Punjab in Annuxure p-5 message. He also prayed for the issuance of a writ of mandamus directing the State Government to implement the welfare measures announced by them ignoring the message Annexure p-5 sent by the Election Commission. First respondent, the Union of India, filed written statement supporting the contention that neither Article 324 of the constitution of India nor any other provision of the Constitution or any election law empowers the Election Commission to legally enforce the Model Code of Conduct or their other standing instructions that are impugned in the writ petition. According to Government of India, Election Commission has been of the view that under Article 324 of the Constitution, it is empowered to enforce the provisions of Model Code of Conduct and other instructions like bar on transfer of officials connected with the election work, bar on making payments from the discretionary funds etc. from the date it announced election. The said view of the Election Commission is not having any statutory backing and as such no legal consequences would follow from the breach of those provisions. Though *the Model Code of Conduct was formulated by the Election Commission in 1968 in consultation with political parties for their guidance, the Central Government or the State Governments, were not parties in formulation of that code of conduct.* The Model Code of Conduct was intended to be followed voluntarily by political parties so as to maintain election campaign on healthy lines to ensure peace and order during the campaign period. Central Government has categorically stated that the jurisdiction of the Election Commission under Article 324 of the Constitution in relation to general elections to the Assembly of a State begins only with issue of notification under section 15 of the Act. Article 324 of the Constitution vests in Election Commission the superintendence, direction and control of conduct of elections, as would be necessary for the performance of the above functions only. On behalf of State of Punjab, second respondent, Joint Secretary to Government, Punjab, Department of Home Affairs and Justice, filed written statement dated January 13, 1997. After admitting receipt of Annexure p-5 fax message sent by the Election Commission on December 30, 1996, it is contended that though the notification for poll was to be issued on January 13, 1997, the Commission enforced restrictions on the administration with effect from December 31, 1996. By the above action. Election Commission has interfered with the administration of the State and has prohibited the implementation of

various social schemes which the State Government were under obligation to fulfil, Election Commission should not have interfered with the implementation of the schemes announced prior to the commencement of election process, which commenced only by the issue of notification by the Governor. According to the State Government, Election Commission is competent to exercise its powers and to issue guidelines for enforcement of the Model Code of Conduct only from the date of issue of the notification till the declaration of the result of the election. It was further submitted that the State of Punjab did fully comply with all instructions issued by the Election Commission in keeping with the sanctity of the constitutional body. On behalf of the Election Commission, a detailed written statement has been filed. According to them, ***the Government of Kerala took steps to evolve a code of conduct for observance by organised political parties prior to the general election of 1960. The code was discussed and approved by representatives of leading political parties. In December, 1966, the same code was adopted at a conference of the representatives of political parties in Kerala. In 1966, that model code was accepted by the political parties in the States of Madras, Andhra Pradesh and West Bengal. In 1968, Election Commission circulated that code to all recognised political parties in India and to the State Governments. On acceptance by the political parties, it was extended throughout the country. In 1996, a series of meetings were held by the Commission with recognised political parties at National and State levels. All stressed need for observance of the model code of conduct and appreciated the efforts of the Commission to ensure its compliance. Some of the national parties even desired that the model code of conduct should be enforced at least three months prior to the date of election so that the party in power may not misuse the governmental machinery and its power for its partisan ends. The model code of conduct was not framed by the Commission unilaterally, but by the consensus of all political parties. Its implementation is necessary for the conduct of free and fair election and to ensure that no political party gets an unfair advantage by virtue of its being in power at the time of election. Announcement of election is made prior to the issuance of statutory notification, as contemplated by section 15 of the Act. If implementation of the model code of conduct is postponed to the date of notification, it will defeat the very purpose of the said code of conduct. No***

political party has, till date, come forward, to challenge the adherence of the model code of conduct by the Commission. Challenge now put forth by the petitioner in his individual capacity is only to be dismissed. If the **model code of conduct is not followed simultaneously with the announcement of election, it would give political parties and candidates opportunity to violate the same in between the dates of announcement of election and issuance of statutory notification. That will give opportunity to parties and candidates to resort to evil practices, if not corrupt practices. If the petitioner's contentions are accepted. Election Commission will have to remain a mute spectator to blatant violations of the code of conduct and the elections will turn out to be a farce. It is to avoid such a situation that the model code of conduct provides that it shall come into force from the date of announcement of election.** Apex court has, on many occasions, critically commented on the laxity of the election laws concerning election expenses as well as misuse of official machinery for the purpose of electioneering. Dilute the principle of free and fair election which is a corner-stone of our democracy. Use of official machinery for furthering election prospectus in some cases will fall outside the net of corrupt practices mentioned in section 123 of the Act, but will certainly vitiate the atmosphere of free and fair elections. **Philosophy underlying the model code of conduct is that unfair advantage should not be taken by the ruling party because of its being in power to tilt the views of the electorate on the eve of election.** The present writ petition has been filed purporting it to be in public interest. Actually, this writ petition is aimed at defeating the purpose of holding a free and fair election. In this view, it is contended that writ petition has only to be dismissed. Chief Election Commissioner, Dr. M. S. Gill, has been impleaded in these proceedings by name as fourth respondent. Allegations of mala fides have been made against him. So, he has filed a separate written statement denying those allegations. According to him, Election Commission is a multimember body, he being only a member. All its members took the decision and announced the election. He has no mala fide intention to interfere with the functioning of any Government. Election to Punjab Legislature took place on February 7, 1997. Notification of that election was issued by the Governor of Punjab on January 13, 1997. Election Commission announced the election to the Punjab Legislative Assembly on December 30, 1996, by issuing Annexure p-4 Press Note. Side by side with the Press Note, Annexure p-5,

fax message was sent to the Chief Secretary to Government, Punjab requiring them to follow the model code of conduct. State Government in their written statement admitted that they have duly complied with the instructions issued by the Election Commission in view of the sanctity of the Constitutional body. Thus, all the directions given by the Election Commission in Annexure p-5 were complied with from the date of announcement of election i.e., from Dec. 30, 1996, and the Election has been properly held on February 7, 1997. So, the issues raised in this writ petition have become academic. Even so, learned counsel appearing on either side wanted to have an authoritative pronouncement regarding the powers of the Election Commission between the dates of announcement and notification for the conduct of free and fair election. Therefore, we have heard counsel at length and we are passing this judgement. One of the contentions raised by the counsel representing petitioner is that the Election Commission announced the election to the Punjab Legislative Assembly on December 30, 1996. When its term was to expire on March 15, 1997. The announcement made virtually two and a half months prior to the date of expiry of the term was improper and it will go to substantiate the contention that Election Commission was bent upon stalling the welfare measures announced by Government in power, on December 22, 1996. Annexure p-4 is the Press Note issued by the Election Commission announcing the election to the State Legislative Assembly. Along with election to the Punjab State Legislative Assembly, bye-elections to the Houses of the People/State Legislative Assemblies and State Legislative Councils were announced. Reasons for making the announcement early, are stated in the notification. ***As per Section 15 of the Act, Election Commission is bound to hold the election for the purpose of constituting a new Legislative Assembly. In Punjab, general election was to be held otherwise than on dissolution of the existing Legislative Assembly. So, general election could be held at any time within a period of six months immediately preceding the date of expiry of the term of the Legislative Assembly.*** The term of the elected Legislative Assembly was to expire on March 15, 1997. So, at any time, within six months, preceding March 15, 1997, general election to the Punjab Legislative Assembly could be held. The announcement made on December 30, 1996 of the election to be notified on January 13, 1997 falls within the period of six months mentioned in Section 15 of the Act. Therefore, it cannot be said that notification violated any statutory provision.

Reasons for making the announcement for an early election are also stated in the Press Note. One such reason is presentation of Union budget and the presentation of the budgets of various States during the last week of February. According to Commission, holding of elections nearer to the date of presentation of budget will cause difficulties to the Government. The said reason is reasonable one and we do not find any ground to doubt its bona fides. Further, the Press Note states that bye-election to three Parliamentary Constituencies; biennial election to fill 13 vacancies in the Legislative Council of Uttar Pradesh; bye-election to fill one seat in the Legislative Council for Karnataka, were also announced as per Annexure p-4 Press Note. After considering all relevant factors, Commission announced general election to the Punjab Legislative Assembly; bye-election to three seats of Lok Sabha; 17 seats to various State Legislative Assemblies; one seat to Karnataka Legislative Council and 13 seats to the Legislative Council of Uttar Pradesh. The announcement of election to various bodies cannot be termed as mala fide on the basis that election to Punjab Legislative Assembly was stated to be held a few days prior to the expiry of its term. In these circumstances, we are clear in our mind that the allegation of mala fides made by the petitioner against the fourth respondent has only to be rejected and we do so. Before proceeding further, learned counsel representing Election Commission has fairly and rightly submitted that Election Commission's actions are subject to judicial review by the High Court in exercise of the powers under Article 226 of the Constitution; that Election Commission has never tried to interfere with day to day administration of any Government and that the election process starts only on the issue of a notification contemplated by section 15 of the Act. The short question now to be dealt with is: whether the Election Commission has any authority to direct the Government to follow model code of conduct, adopted by various political parties? The fact that a model code of conduct has been adopted by all recognised political parties, is not in dispute. As per the said code of conduct, certain norms are to be followed by the political parties and the party in power which faces election. On the eve of election, it has been agreed among the political parties that no action is to be taken to influence the electorate. The party in power is not to make use of governmental machinery for the betterment of its prospects in the ensuing elections. **It is also provided that Ministers and other authorities shall not sanction grant or payment out of discretionary funds from the time the elections are announced by the Commission. So,**

the date of announcement by the Commission has been accepted by all political parties as a date to be reckoned for following the model code of conduct. The argument advanced by the counsel representing the petitioner and the Central Government is that under Article 324 of the Constitution, Commission has the power of superintendence, to issue directions and to control the conduct of all elections. The conduct of election, according to the learned counsel starts only by issuance of a notification under section 15 of the Act. In support of this argument, reliance has been placed on the decisions in N. P. Pannuswami v. Returning Officer, Namkkal, A.I.R. 1952 Supreme Court 64. Hari Vishnu Kamath v. Ahmad Ishaque, A.I.R. 1995 Supreme Court 233; Mohinder Singh Gill, v. The Chief Election Commissioner, New Delhi, A.I.R. 1978 Supreme Court 851 and Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman, A.I.R. 1985 Supreme Court 1233. In the first case, appellant filed nomination for election to the Madras Legislative Assembly. Returning Officer, on scrutiny, rejected the same. He moved the High Court under Article 226 of the Constitution for the issuance of a writ of certiorari to quash the order of the Returning Officer. High court dismissed that application in view of the provisions contained in Article 329 (b) of the Constitution. While upholding decision rendered by the High Court, their lordships took the view that the word “election” used in Part XV of the Constitution should take in the entire process to be gone through to return a candidate to the legislature and that it should have the same meaning wherever that word is used in the said part of the Constitution. In Hari Vishnu Kamath’s case arising out of an election petition, their lordships followed the view expressed in N. P. Pannuswami’ case (supra) that the word “election” in Article 329 (b) was used in a comprehensive sense as including the entire process of election commencing with the issue of a notification and terminating with the declaration of election of a candidate. In Mohinder Singh Gill’s case (supra) also, their lordships reiterated the view that ***election has a very wide notation commencing from the issue of the notification calling upon the electorate to elect, and culminating in the final declaration of the returned candidate.*** Goswami, J., in his concurring judgment opined, --- “.....it is well-settled that election covers the entire process from the issue of the notification under section 14, to the declaration of result under section 66 of the Act.....” The above view has been followed in the latter decisions as well. On the basis of this statement of law made by their lordships, it is contended by counsel representing

petitioner that Election Commission can give any direction to Government only after the issuance of a notification under section 15 of the Act. At no point of time prior to the issuance of the notification can the Election Commission issue any direction to any authority, it is argued. In N. P. Punnuswami's case (supra) the Constitution Bench, quoted with approval, the following passage from Halsbury's Laws of England Edition 2, volume 12 under the heading "Commencement of the Election",--- "Although the first formal step in every election is the issue of a writ the election is considered for some purpose to begin at an early date. It is a question of fact in each case when an election begins in such a way as to make the parties concerned responsible for breaches of election law, the test being whether the contest is 'reasonably imminent'. Neither the issue of the writ nor the publication of the notice of election can be looked to as fixing the date when an election begins from this point of view. Nor, again, does the nomination day afford any criterion. The election will usually begin at least earlier than the issue of the writ. The question when the election begins must be carefully distinguished from that as to when 'the conduct and management of' an election may be said to begin. Again, the question as to when a particular person commences to be a candidate is a question to be considered in each case." The 'writ' mentioned therein, according to us, can be the notification, contemplated by section 15 of the Act. ***The conduct and management of the election may start from the date of issue of notification, but it is to be considered that the election begins earlier to the date of the notification. Parties to the election will begin their activities prior to the date of notification. It can safely be held that such activities will begin from the date of announcement of the date by the Election Commission. Activities of parties during the time lag between the date of announcement and the date of publication of the notification, should necessarily have effect in the ensuing election. Actions resorted to by the parties during this period may tend to influence the electorate.*** Are such actions of the candidates to be curbed by the Election Commission? In Halsbury's Laws of England, Fourth Edition, volume, 15 under the heading, "684. Meaning of 'candidate.'" it is observed that a candidate may be guilty of bribing or treating and election expenses may be incurred on his behalf even though the bribery or treating takes place, or expenses are incurred, before he comes within the statutory definition of candidate. ***One becomes a candidate only on filing the nomination pursuant to the***

notification, but law states that his actions prior to his becoming a candidate within the statutory definition are also to be taken note of for deciding the issue as to whether he is guilty of the offence under the election law. In paragraph, 712 of the same book, it is observed that a person can incur election expenses before he has been formally adopted by a party as a candidate. An election has been held to begin for the purpose of election expenses at periods varying from four months to thirty months before the date of the poll. It states,-----
“The necessity for determining when an election begins has been criticised on the ground that the real test laid down by the statute is not one of time but of motive; expenditure must be in reference to the conduct or management of the election. As the statute expressly recognises that election expenses may be incurred before the election, it seems that the real issue in the cases considered above was the date when a particular candidate began the conduct or management of the election. This date might, at the same election, be different for different candidates.” As per this, **it is crystal clear that the conduct and management of election cannot be decided with reference to the date of notification of the election. It can apply to the conduct and management of the election anterior to the date of notification.** It is the common case that Election Commission is duty bound to ensure free and fair election. For the said purpose, Election Commission is clothed with the powers emanating from Article 324 of the Constitution. According to their lordships of the Supreme Court ‘A.I.R. 1978 Supreme Court 851), Constitution has made comprehensive provision in Article 324 to take care of surprise situations. Their lordships observed, --- “The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstance.” Goswami, J. in his concurring judgment in that decision observed, - “The Commission may be required to cope with some situation which may not be provide for in the enacted laws and the rules. That seems to be the raison d’ etre for the opening clause in Article 327 and 328 which leaves the exercise of powers under. Article 324 operative and effective when “it is reasonably called for in a vacuous area. There is, however, no doubt whatsoever that the Election Commission will have to conform to the existing laws and rules in exercising its powers and performing its manifold duties for the conduct of free and fair elections.” In A.

Neelalohithadasan Nadar v. George Mascrene, 1994 Supp (2) Supreme Court Cases 619 their lordships stated that the principle of purity of election must have its way. The Election Commission is not only to see that free and fair election is to be held, but the purity of election should also be observed. **What is meant by purity of election? According to us, it means the election should not only be free from corrupt practices but also free from evil practices.** In Ghasi Ram v. Dal Singh, A.I.R. 1968 Supreme Court 1191, Hidayatullah, J., (as his lordship then was), observed, --- "Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies, although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. *The dividing line between an evil practice and a corrupt practice is a very thin one.* It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice. Payments from discretionary grants on the eve of elections should be avoided." From this statement of law, it is evident that activities on the eve of election should also be for the conduct of a free and fair election. "Eve of election" can only be the period prior to the date of notification of election. By the date of notification, the process of election starts. It is not with reference to the date after process of commencement of election, their lordships referred to the period 'on the eve of election'. So, according to us, during the eve of election also, the Election Commission should ensure that nothing which tends to interfere with the conduct of free and fair election, takes place. **Viewed in this light, we are of the considered view that Election Commission should take necessary steps for conduct of free and fair election even before the date of the issue of the notification.** Petitioner has no case that Election Commission acted against any statutory provision. Their action in directing the Government to follow model code of conduct did not amount to issuing direction to act against any provision of law. When it is seen that the Election Commission has been entrusted with the responsibility to have a free and fair election which should be pure, and the source of their power is Article 324 of the Constitution, we are clear in our mind that the action taken by them in issuing **Annexure p-5 is not at all illegal or arbitrary.** The existence of political parties and their participation in election cannot be denied by any one. In the present democratic system prevailing in India, political parties play a vital role in the administration of the country. Leaders

of the political parties, in their wisdom, evolved a model code of conduct, to be followed by them in election. That was so framed by them under the auspices of the Election Commission. That code does not contain any provision contrary or derogatory to any enactment. Such a code of conduct when it is seen that it does not violate any of the statutory provisions, can certainly be adopted by the Election Commission for the conduct of free and fair election which should be pure as well. On the eve of election, political parties or candidates may come forward with tempting offers to the electorate to win their favour. If such a course is allowed to be resorted to by the parties or the candidates contesting the elections, it will certainly undermine the purity of elections. In such a situation, if **Election Commission took steps to implement the code of conduct which in no way infringes any of the laws, this Court, in exercise of the powers under Article 226 of the Constitution, is not to interfere.** Election Commission has not taken any step to prevent activities of the party which is in power during the period prior to the date of announcement of the election. *Knowing the situation, Election Commission announced the election more than three weeks prior to the issuance of the notification under section 15 of the Act. This period of three weeks is to apprise the political parties of the ensuing elections, for enabling them to prepare for the election. **The said period intervening between the date of announcement and date of notification, is not at all unreasonable.** During the short period preceding the notification, the Election Commission compels the political parties, the party in power and the candidates to behave in a manner which will not undermine conduct of free and fair election.* On the basis of the observations made by the Supreme Court regarding payments from the discretionary grants at the disposal of the Ministers on the eve of election, Election Commission suggested law to be passed on the issue. Government of India, after considering that suggestion, took a decision that instead of making provisions in the rules regulating the disbursements from the discretionary grants, a convention should be adopted that for a period of three months immediately prior to the polling no expenditure should ordinarily be incurred from the Ministers' discretionary grants. So also, the Government of India in their communication dated October 28, 1969, took the view that instead of making any specific provision in the rules regulating disbursement from discretionary grants, a convention should be evolved that **for a period of three months immediately prior to the polling, no expenditure should ordinarily be incurred from a**

Minister's discretionary grant. These decisions taken by the Government show that Government was inclined to have conventions on these matters and not to have statutory provisions. In such a situation, the action on the part of the Election Commission in directing Governments to follow the model code of conduct adopted by the various national parties appears to be quite legal and proper. Election Commission has categorically stated that they have not interfered with the day to day decisions of the State Government. They only wanted officers connected with election to be retained as their respective places. They also wanted to ensure the conduct of free and fair election without interference by officers as well. If permanent executives of the State took into their heads that some of the actions which the political executive wanted to implement, as violative of directions given by the Election Commission, the Election Commission cannot be faulted. No direction of the Election Commission having the effect of interfering with the day to day decisions of the Government, has been brought to our notice either. In such a situation, we are not in a position to find any illegality in the action resorted to by the Election Commission. In view of what has been stated above, we are clear in our mind that the **Election Commission are entitled to take necessary steps for the conduct of a free and fair election even anterior to the date of issuance of notification, from the date of announcement of the election. While doing so, the model code of conduct adopted to be followed by all political parties including the political party in Government, can be directed to be followed by the Election Commission. Action of the Commission in this regard cannot be faulted, for the said model code of conduct adopted by the political parties does not go against any of the statutory provisions. It only ensures the conduct of a free any fair election which should be pure.** Writ petition fails. It is accordingly dismissed.

Sd/-AAAAA

K. SREEDHARAN, CHIEF JUSTICE.

Sd/-AAAAA

SWATANTER KUMAR, JUDGE.

May 27, 1997