

EC'S RECENT DIRECTIVE ON POLITICAL BIOPICS AND SOCIAL MEDIA: ELECTION 2019

BLANKET BAN ON POLITICAL BIOPICS

The feature film 'PM Narendra Modi' was supposed to be released on April 11, i.e. the same date on which polling for the 2019 General Elections commenced. However, the Election Commission of India (*EC*) stayed its release through an [order](#) dated April 10. The whole controversy finds its roots in the petition filed by congress activist Aman Panwar in the apex court praying for a stay on the release of the movie. However, the court refused to accede to the plaintiff's demands in its entirety. [The petition was accordingly dismissed](#) because the court held that "whether the film will tilt the electoral balance in favour of any political party, is a question that can and should be addressed by the Election Commission of India".¹ A similar petition was also filed in the Bombay High Court which was also dismissed on similar lines.²

In simpler words, the EC was the competent authority (other than CBFC) to issue directions, if any, against the screening of the film. Since the CBFC granted a go-ahead to the film's screening, it fell down upon the EC to decide whether the film will violate the Model Code of Conduct (*MCC*). The EC took into consideration the complaints it received regarding the films 'PM Narendra Modi', 'Lakshmi's NTR' and 'Udyama Simham'; its duty to take necessary measures to create a level playing field; and the Supreme Court's observations regarding the film 'PM Narendra Modi'. It hence ordered a blanket ban on each and every biopic based on any political party or candidate. The relevant extracts of the order have been reproduced hereunder:

Any Biopic material in the nature of biography/hagiography sub-serving the purposes of any political entity or any individual entity connected to it, which is intended to, or which has the potential to disturb the level playing field during the elections, **should not be displayed in Electronic media including cinematograph** during the operation of MCC.

Any poster or publicity material concerning any such certified content, which either depicts a candidate (including prospective) for the furtherance (or purported to further) of electoral

¹ *Aman Panwar v Union of India* WP(C) No. 450 of 2019 in the Supreme Court of India.

² *Satish Sugriv Gaikwad v Ministry of Information and Broadcasting* PIL No. 42 of 2019 in the High Court of Bombay.

prospect, directly or indirectly, **shall not be put to display in electronic media** in the area where MCC is in operation.

PAID ADVERTISEMENTS

Most of the services that are provided by Social media platforms such as Facebook, Google and Twitter are provided free of cost to the users. To generate enough revenue to keep their services free and for their own commercial gain, social media platforms allow advertisers to target specific audiences with their advertisements. These advertisers also include national political parties.

In a petition filed in the Bombay High Court, questions regarding paid advertisements on these platforms were raised.³ The Petitioner contended that these advertisements will unfairly affect the general elections if not regulated and hence sought directions to be issued against the EC for it to take appropriate regulatory measures. The main issue arising before the court was whether Section 126 of the Representation of Peoples Act, 1951 (*the Act*) takes within its ambit social media platforms? Section 126 of the Act is reproduced hereunder:

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; or
- (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 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.

As of April 19, the petition is not yet disposed off. However, the court has provided an interim arrangement during the pendency of the petition. The court took into consideration the submission of the social media platforms that they would cooperate with the EC in ensuring free and fair elections. Finally, the Court relied upon the [press release dated 23rd March by the](#)

³ *Sagar Rajabhau Suryawanshi v Election Commission of India* PIL No. 3 of 2019 in the High Court of Bombay.

[EC](#), which prohibited, among others, airing of paid advertisements 48-hours before polling commences. Relevant extracts of the press release have been reproduced hereunder:

The Commission once again reiterates that the TV/Radio channels and cable networks/**internet website/social media platforms [emphasis added]** should ensure that the contents of the programs telecast/ broadcast/displayed by them during the period of 48 hours referred to in Section 126 **do not contain any material, [emphasis added]** including views/appeals by panelists/participants that may be construed as promoting/prejudicing the prospect of any particular party or candidate(s) or influencing/affecting the result of the election. This shall, among other things include display of any opinion poll and of standard debates, analysis, visuals and sound-bytes.

All Internet websites and Social Media platforms [emphasis added] must also comply with the provisions of The Information Technology Act, 2000 and ECI guidelines No-491/SM/2013/Communication, dt 25th October, 2013, for all political content on their platform. As regards political advertisement, the same needs precertification by the Committees set up at State/District level as per the Commission's order No.509/75/2004/JS-I, dt 15th April, 2004.

CONCLUDING REMARKS

Feature films and paid advertisements on social media platforms, both go against ensuring that a level playing field exists for free and fair elections. Venkatesh Nayak of the Commonwealth Human Rights Initiative correctly notes that small and regional parties can simply not meet these kind of challenges.⁴

It cannot be denied that feature films capture the attention of the audience in a manner no other method can. Just for the sake of argument, even if it is assumed that they are not intentionally used to propagate political agendas, then also, it cannot be contradicted that they diminish/advance the electoral prospect of a political party/candidate. Hence, even if the films are not per se 'advertisements' or 'campaigning material', they do need to be controlled.

If literal interpretation of Section 126 of the Act is done, then there can be no stay on the release of political biopics once they are given a green signal by the CBFC. However consideration must be taken of the vast powers vested upon the EC by article 324 of the Constitution⁵ and judicial decisions which call for greater involvement of EC regarding aspects not specifically mentioned in the Act⁶. Thus if construed in such a manner, it cannot be denied that the EC is more than capable of filling lacunae, if any, in laws regarding elections. Considering the order of the EC putting up a blanket ban on all political biopics, it can be concluded that

⁴ Gaurav Bhatnagar, 'Does the Release of 'PM Narendra Modi' Violate Model Code of Conduct?' (*The Wire*, 20 March 2019) <https://thewire.in/film/release-of-pm-narendra-modi-does-not-violate-model-code-of-conduct-say-ex-ec-chiefs> accessed 19 April 2019.

⁵ *Mohinder Singh Gill v The Chief Election Commissioner* (1978) 1 SCC 405.

⁶ *Ministry of Information and Broadcasting v M/s Gemini TV* (2004) 5 SCC 715.

screening/airing of such films or their clips/trailers during the operation of MCC will amount to its violation.

The Bombay High Court has not yet answered that whether social media platforms fall within the ambit of Section 126 of the Act. However, from the direction that the petition has taken, it would be difficult not to observe that social media platforms also have to abide by the limitations prescribed under the Representation of Peoples Act, 1951. Moreover, it is apparent from the order issued by the EC that it understands social media platforms to be within the ambit of Section 126 of the Act. Even the social media platforms are not denying such a responsibility, rather they have established their cooperation with the EC in ensuring free and fair elections.