

W.P.No.7588 of 2021

THE HON'BLE CHIEF JUSTICE
and
SENTHILKUMAR RAMAMOORTHY, J.

ORDER

(Order of the Court was made by *the Hon'ble Chief Justice*)

There appears to be a serious breach by the sixth respondent political party in how it conducted its campaign in Puducherry for the forthcoming Assembly elections.

2. The initial order of this Court was made on March 24, 2021 where it was noticed that the relevant party had apparently accessed personal records of citizens and the Election Commission was required to look into the allegation with the degree of seriousness that the matter deserved. Notices were issued by the Election Commission to, inter alia the relevant political party and to the service-providers, particularly, BSNL, Airtel, Jio and Vodafone. What is further evident is that bulk SMS/messages/voice messages were sent on the electronic media by the sixth respondent political party, which amounted to resorting to campaign on the electronic media without obtaining the previous permission of the Election Commission in such regard.

3. Despite the initial order of Court being widely reported and the notice of March 07, 2021 being issued to the relevant political party, it appears to have paid no heed to the matter and continued with the campaign till about March 29, 2021, without seeking to reply to the Election Commission. According to the petitioner, the messages were received on telephone numbers that were linked to the Aadhar and not on other telephones or mobile phones which were not linked to the Aadhar. The Unique Identification Authority of India is a party to the present proceedings and such authority has maintained that no breach was detected in the security protecting the information that such authority retains.

4. According to the sixth respondent political party, it has not obtained the information from UIDAI, but such information has been garnered through the efforts of its karyakartas. The petitioner, however, finds it laughable that karyakartas would be seeking information from residents of Puducherry on a door-to-door mission and citizens would happily oblige and make over their personal details and phone numbers to such karyakartas. The petitioner insinuates that the source must be otherwise and it would not do for UIDAI to merely represent that the information did not emanate from such authority, more so since the obvious access of such political party to the

authority and the information in the possession of the authority is apparent.

5. According to the sixth respondent party, it applied on March 02, 2021 and again on March 08, 2021 for permission to undertake the SMS campaign. Though some confusion has been sought to be created as to when such application was made as the Election Commission maintains that no application was received by it on March 02, 2021 or March 08, 2021, the sixth respondent party relies on documents that bear the apparent signature and rubber stamp of some election official. But, quite apart from the deliberate confusion that has been sought to be created, what is undeniable is that the sixth respondent resorted to a mode of campaign that required prior permission to be obtained, without obtaining such permission.

6. The Election Commission appeared to initially treat the matter lightly by saying that the cyber crime cell of the local police was looking into the matter. It is only upon the Court requiring the Election Commission to investigate into the issue with the degree of seriousness that it deserved that the Election Commission took some steps. It is now submitted by the Election Commission that the matter rests with the Election Commission in Delhi as to what appropriate

action ought to be taken in the light of the facts that have emerged.

7. It is completely within the domain of the Election Commission to deal with the issue, as to whether there has been a breach of the Model Code and the consequences therefor. Apart from the unfair mileage, that the sixth respondent political party may have gained in resorting to a form of campaign without obtaining prior permission therefor as required, there is the more serious matter of the privacy of the citizens being breached. This huge aspect of the matter should not be lost in the politics of the season or the hullabaloo of the attendant campaigning.

8. There is a credible allegation which has been squarely levelled that only mobile phones linked to the Aadhar have received the SMS/messages. It is incumbent on the UIDAI to provide an adequate answer. There is no doubt that such body would treat and guard the information regarding citizens that it possesses with a degree of responsibility and an appropriate inquiry would be conducted to ascertain the source of the leak, if any. It is completely unacceptable that such information would have been obtained by karyakartas as suggested by the sixth respondent political party.

9. There is no doubt that the criminal investigation which has been initiated will continue and that the Election Commission will not put a lid on the matter and will deal with the perceived breach in accordance with law. Most importantly, the UIDAI is required to answer how details and particulars furnished to it in confidence by citizens and in the hope that the confidentiality would be preserved, may not have been adequately protected.

10. The matter will appear six weeks hence and after the forthcoming elections are done and dusted, for appropriate answers to be received. It needs to be emphasized that it is the stand of the Election Commission that such Commission "is under the constitutional mandate ... to protect the privacy and profiling of electors and ... shall take all precautionary measures". At paragraph 16 of the Election Commission's action-taken-report filed on March 25, 2021, such Commission has also asserted as follows :-

"16 ... It is noteworthy to mention that the privacy and profiling of electoral rolls has been a serious concern as it makes the electors vulnerable. one of the key issues concerning data mining is that it can be used to cause serious security problems. It is further relevant to mention herein that the way in which data is used in elections in India as well as for political campaigns is highly privacy invasive much

less, raises important and substantial security questions, and has a very strong potential to undermine faith in the democratic process, thereby defeating the very purpose of free and fair election. The ECI is under a Constitutional obligation/mandate and therefore is duty bound to ensure free and fair election in India by controlling, supervising and directing if not preventing the micro voter targeting through data mining and enriching the data with more specifics with the help of electoral rolls."

11. If only to not undermine the faith in the democratic process in the country and to ensure the conduct of free and fair elections, all respondent authorities need to provide answers as sought.

12. List the matter on 11.06.2021.

सत्यमेव जयते

(S.B., CJ.) (S.K.R., J.)
01.04.2021

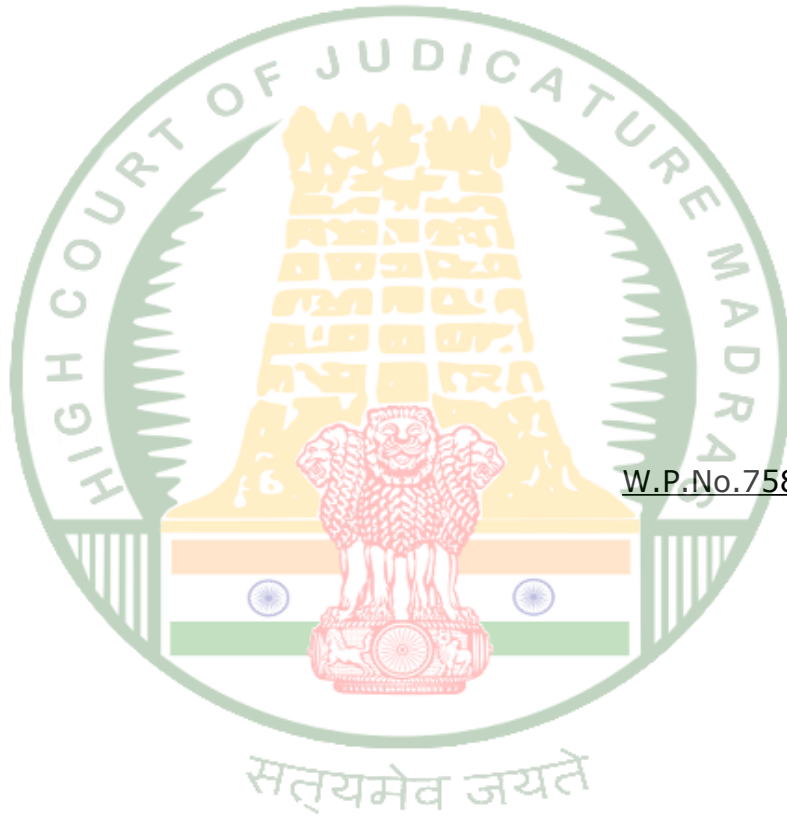
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