
**THE MEDIA'S RIGHT TO REPORT JUDICIAL
PROCEEDINGS THAT ARE NOT RECORDED AS
HIGHLIGHTED IN THE CASE OF CHIEF ELECTION
COMMISSIONER OF INDIA VS. MR VIJAYABHASKAR
(2021) 9 SCC 770**

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ABSTRACT

During the second wave of COVID 19 when elections took place in Tamil Nadu, few people had concerns about how these elections might lead to an increase in the cases. In this case we will understand about how the oral observations made by a Division Bench of the Madras High Court created a very negative impact on the Election Commission as it was widely reported by media. When this matter went to the Supreme Court, the protection given by Article 19(1)(a) of the Indian Constitution to media was highlighted as it not only gives people information about the proceedings but also protects the integrity of the judiciary.

BACKGROUND OF THE CASE:

- 1) General Elections to the Legislative Assemblies of certain states including the state of Tamil Nadu were announced on 26-2-2021.
- 2) On March 12 2021, the Election Commission sent a letter to the presidents and general secretaries of national and state political parties, urging them to follow the COVID-19 protocols.
- 3) Another letter was issued by the Election Commission to political parties on April 9, 2021, expressing concern over their failure to comply with the given instructions. The letter warned that if the practice continued, public meetings and rallies would be prohibited by the Election Commission
- 4) On April 16th 2021, the Election Commission issued an order prohibiting rallies, public meetings, and street plays between 7 p.m. and 10 a.m. during the campaign period. It also sent a letter emphasizing on the significance of safety measures and strict adherence to COVID-19 protocols.
- 5) On the same day, the respondents, a representative of the AIADMK candidate from the Karur Legislative Assembly constituency submitted a formal request to the Election Commission, urging them to ensure stringent adherence to COVID-19 protocols at both the polling booths and counting booths so that the increase in COVID-19 cases can be curbed.
- 6) As the Election Commission gave no response, the respondents lodged a writ petition in the Madras High Court under Article 226 of the Indian Constitution “seeking a direction to ensure fair counting of votes at that constituency by taking effective steps and arrangements in accordance with COVID-19 protocols”.
- 7) On 26th April 2021, the Division Bench of the Madras High Court, consisting of the then Chief Justice Sanjib Banerjee and Justice Senthilkumar Ramamoorthy, conducted the hearing for the writ petition. They issued an order stating that the Election Commission had been unable to ensure compliance with COVID-19 protocols.
- 8) Furthermore, the Hon'ble Court expressed its concern regarding the Election Commission's failure to grasp the significance of adhering to COVID-19 protocols. Despite repeated orders from the Madras High Court to follow these protocols, the Election Commission remained silent while campaigns and rallies were conducted without adherence.
- 9) The court further upheld that public health is of paramount importance. It added that it

is distressing that the Election Commission being a constitutional authority should be reminded about it.

- 10) During the hearing, it was claimed that the High Court made an oral assertion regarding the Election Commission, suggesting that it is “the institution that is singularly responsible for the second wave of COVID-19” and that the Election Commission “should be put up for murder charges”.
- 11) The Election Commission filed a counter affidavit before the Madras High Court listing out the orders issued and steps taken to manage the elections during the pandemic. The commission filed a miscellaneous application to pass an interim direction to the media to only report the proceedings that are recorded. The Election Commission also requested the Hon'ble Court to issue an interim directive, urging the police authorities not to register an FIR or a complaint for the offense of murder solely based on oral proceedings or media reports.
- 12) Furthermore, on April 30, 2021, the Hon'ble Court reexamined the case and disposed of the petition, bringing it to a close miscellaneous application.
- 13) Aggrieved by this order the Election Commission approached the Supreme Court of India.
- 14) The concern raised was that the assessment of the miscellaneous application did not consider the merits of the case, and their specific concern regarding the oral remarks made was left unaddressed.
- 15) The Supreme Court held that the Freedom of speech and expression guaranteed under Article 19 (1)(a)¹ of the Indian Constitution extends to reporting the proceedings of judicial institutions. The works of the courts has a direct impact on the citizens and the citizens are entitled to ensure that the courts do not use their powers arbitrarily. And their capacity to engage in such direct actions relies on the extent of accessible information, which underscores the significance of media freedom to comment on and report about proceedings.
- 16) The Supreme Court also held that the freedom of media to report proceedings not only protects the fundamental rights of citizens but also protects the integrity of judiciary and ensures justice for all.
- 17)

¹ INDIA CONST, art. 19, cl. 1, sub cl (a)

ISSUES RAISED:

- 1) Whether the media has the right to report the proceedings other than the proceedings recorded?

ANALYSIS:***Regarding the Freedom of Speech and Expression of the Media and open courts-***

The constitution guarantees media the freedom to provide information and to express ideas and opinions on all matters of interest. Physically and metaphorically speaking, the courts must be open, except for in camera proceedings where the case is about sexual abuse of a child or if it is a matter of marital privacy. In the case **Mohd. Shahabuddin v. State of Bihar**² the court observed that a court can be called an open court if the public has a right to be admitted and they have access to enter the court and observe the conduct of the judicial proceedings. The Indian Jurisprudence system has recognized that the media has full freedom to report ongoing litigation before the courts, within limits. Open courts boost public confidence and keeps the behavior of the judiciary in check. The judgement provided in this case as based on the fact that restricting media on reporting court proceedings does not come under the jurisdiction of the judiciary. It is a violation of the fundamental right of speech and expression and open court proceedings. Our entire legal system functions on the principle that giving open access to court proceedings protects constitutional freedoms of the people of India. Open court system means that information about courts is available to the public. The citizens have the right to be informed the issues presented before the court and the arguments put forth by both the parties.

In the case **Swapnil Tripathi v. Supreme Court of India**³ the Hon'ble Court highlighted the fact that people who are not very involved in litigation rely on media to know about judicial decisions. If this information is not available, it violates their right to know. In the absence of media, courts will be absent from the lives of the people which is not correct because courts exist to provide justice to people.

In the case **Express Newspaper (P) Ltd v. Union of India**⁴ it was held that the work performed by the courts affect the rights of citizens and it also helps the citizens to analyse the extent to which the executive has done its duties which is to enforce the law. The media has

² Mohd. Shahabuddin v. State of Bihar, W.P. (CRL) 1558/2020

³ Swapnil Tripathi v. Union of India Writ petition (C) No. 66 of 2018

⁴ Express Newspaper (P) Ltd v. Union of India 1959 SCR 12

the right to gather information and publish information relating to administration of justice, without affecting the presumption of innocence. While this right is subject to certain restrictions, the media must ensure that it does not undermine justice between parties. The judgment rendered in this case emphasizes that the court should refrain from taking any actions that would discourage fair and precise reporting of proceedings. With media reporting the court proceedings, and social media as well providing the citizens with real time updates, it can be inferred that media is a 'virtual' extension of the court.

Regarding the oral remarks made by the Hon'ble Judges of the Madras High Court-

The judges had made very negative remarks about the Election Commission and even though they were not recorded, they were published all over media. The judiciary has limited jurisdiction when it comes to electoral matters and its conduct. It should exercise caution and refrain from making oral statements about subjects that do not fall within its jurisdiction, as they fall under the purview of another constitutional authority with specialized expertise. In the case **Emperor v. Bal Gangadhar Tilak**⁵ it was observed that Independence also refers to the freedom of judges to conduct court proceedings within the principles of natural justice. It's the role of the judge to get responses from the counsel which will help them get a proper understanding of the case at hand and also to test how strong the arguments placed before them are. The judgement provided by the judges reflect their thought process.

In order to provide justice to the aggrieved party, the judges have to listen to the arguments put forth by both the parties and then arrive at an appropriate judgement based on law. But, the observations made do not have a binding value. They are merely observations that create a path towards justice. When a judge expresses his point of view, he is encouraging the opposition party to persuade him more. Discouraging these practices will create a closure for judging. But, while it is important to ensure the freedom of expressions of the judges, it is equally important to ensure that the judges exercise judicial restraint before using extreme language. It is the duty of the Supreme Court to intervene when a judge breaches his duty and does not exercise judicial restraint. Judges should refrain from making statements that are easily prone to misinterpretation. Language used in the court while arguing or providing a judgement forms an important part of judicial process and is responsive to the fundamental principles enshrined in the constitution. As the judges of the Madras High Court, it is expected of them to ensure a degree of caution while talking about an authority established by the Constitution itself. By

⁵ Emperor v. Bal Gangadhar Tilak (1908) 10 Bom LR 848

making statements stating that the Election Commission should be charged for murder and that it is the reason behind the outbreak of the second wave of COVID-19 without any conclusive proof, the judges have overstepped.

In this case, rather than issuing severe remarks, the appropriate course of action of the court would have been to encourage the Election Commission to enforce stricter compliance with COVID-19 protocols. The oral observations made are not recorded. The formal opinions of the judiciary are seen through judgements and orders and not be oral observations. Since these verbal remarks are not officially documented, there is no possibility of their removal. The Supreme Court cannot curtail the power of media to report judicial proceedings because of a statement made by a judge which is not even recorded in the first place. Preserving the freedom of speech and expression for individuals who wish to voice their opinions, listen and be heard is of utmost importance. Regarding the complaint filed in Khardah Police Station The court had held that if the FIR has already been registered in Kolkata, the person aggrieved can get remedies under the Code of Criminal Procedure, 1973.