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## THE CHIEF ELECTION COMMISSIONER OF INDIA V. M.R. VIJAYABHASKAR AND ORS.

~ *Kaanan Bhatia*

**Citation:** Civil Appeal No. 1767 of 2021 (Arising out of SLP (C) No. 6731 of 2021)

**Court:** Supreme Court of India

**Decided on:** 06.05.2021

**Bench:** Dr. D.Y. Chandrachud and M.R. Shah, JJ.

### I. INTRODUCTION AND CONTEXT

This case is one of the landmark cases that upheld the freedom of the media to report on court proceedings on one hand, and on another the authority and the conduct of the judges to make oral remarks during case proceedings. The case talks about balancing the powers between two constitutional authorities, the Election Commission of India and the higher judiciary, emerged during the COVID-19 pandemic.

During proceedings before the Madras High Court in a writ petition seeking enforcement of COVID-19 protocols for counting-day arrangements in the 135-Karur Assembly Constituency, certain oral remarks were reportedly made from the Bench. Although not part of the written order, these comments were widely circulated in print, electronic, and tele-media, prompting the EC to approach the Supreme Court on the grounds that such remarks were baseless, had tarnished its image as an independent constitutional authority, and required judicial intervention.

The dispute therefore evolved into a larger inquiry about constitutional transparency, the nature of open courts, the limits of judicial expression, and the media's indispensable function in reporting judicial activity to the public.

## II. FACTS OF THE CASE

The Election Commission of India announced the general election to the Tamil Nadu Legislative Assembly, along with four other States, on 26 February 2021. After the notification, the Commission issued several directions to political parties and candidates emphasising the need to strictly observe COVID-19 guidelines throughout the electoral process.

The respondent who was a contesting candidate from the 135-Karur Assembly Constituency filed a writ petition in Madras High Court claiming no action had been taken on the representation he had sent to the Election Commission highlighting concerns regarding the arrangements for counting day in light of the rising number of COVID-19 cases.<sup>1</sup>

During the course of hearing on 26 April 2021, certain oral observations were allegedly made by the Division Bench stating that the *“EC is singularly responsible for the second wave of COVID-19”* and *that the EC “should be put up for murder charges”*.<sup>2</sup> Even though these remarks did not find place in the official order, they were extensively reported across print, electronic and digital media. Following this, an FIR was filed against Deputy Election Commissioner and other officials of the EC Under Sections 269, 270 and 304 read with Section 120-B of the Indian Penal Code, 1860 in Khardah Police Station, Kolkata

The Election Commission thereafter moved a miscellaneous application before the High Court seeking, among other things, a restraint on the media from reporting oral comments that were not reflected in the judicial record, and a direction that no coercive steps be taken on the basis of a complaint lodged in Kolkata alleging criminal wrongdoing.

On 30 April 2021, the High Court disposed of the writ petition after reviewing the steps taken for counting day and closed the miscellaneous application. Aggrieved by the alleged oral observations and their media circulation, the Election Commission approached the Supreme Court by way of a Special Leave Petition.

## III. LEGAL ISSUES

The Supreme Court identified and addressed two major issues:

1. Whether the alleged oral observations made by the High Court, which do not form part of the written judicial record, can justify any restraint on the media’s right to report on open-court proceedings, and whether such reporting can be limited only to the contents of the signed order.

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<sup>1</sup> Civil Appeal No. 1767 of 2021 (Arising out of SLP (C) No. 6731 of 2021), ¶ 5

<sup>2</sup> Ibid, ¶ 7.

2. Whether the Election Commission is entitled to seek protection from coercive action or criminal process on the basis of media reports of oral remarks, and whether such oral comments of a court possess any legal consequence warranting interference by the Supreme Court.

#### **IV. COURT'S REASONING**

Addressing the second issue first the Supreme Court stated that if any complaint has been lodged, the ordinary statutory remedies under CrPC are available to the aggrieved person, including constitutional authorities. Such matters cannot be addressed by issuing general directions or a blanket injunction insulating a constitutional authority from the operation of law.

Addressing the first issue, the Court stated that the EC has struck against two very important aspects- the Constitution-open court proceedings; and the fundamental right to the freedom of speech and expression.

The Court observed that the functioning of courts in India is based on the idea of open justice, where hearings are conducted in public and where all the citizens are entitled to know what happens inside the courtroom. An open court proceeding ensures that the judicial process is subject to public scrutiny.<sup>3</sup> The Court further noted that the exchanges between the Bench and the Bar including questions, comments, and observations form an important part of the ordinary course of proceedings and assist the Court in understanding the matter. Therefore, oral remarks and comments are not intended to be authoritative statements of law, nor do they represent the final view of the Court unless they are mentioned in the written order. The sole purpose of these remarks in this case were to urge the EC to ensure stricter compliance of COVID-19 related protocols during elections.

The Court held that the media has the right to report what transpires in open court. To say that only what appears in the signed order may be published would be contrary to settled constitutional principles.

The court further noted that the internet, including social media, have refashioned and, in significant ways, revolutionized the means through which information is relayed. As a result the use of live, text-based communications would enable the media to produce fair and accurate reports of the proceedings, which in turn becomes an extension of the open court proceedings and should be utilized (For example- Virtual Proceedings)

The Court further held that oral observations, even if strong, cannot form the basis of any restraint on reporting. What is not part of the judicial record cannot be "expunged," nor can courts pass orders preventing the press from carrying news of what occurs during a hearing. The Court clarified that while

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<sup>3</sup> Supra Note 1, ¶19

judges are expected to exercise caution and balance in the language they use, those expectations of restraint cannot justify imposing limits on the freedom of the press and media, until and unless it falls under Article 21(2).

## V. RATIO DECIDENDI

1. Oral observations made by a court during the hearing do not constitute part of the judicial record and therefore cannot be the basis for any direction restricting publication or seeking their removal.
2. The principle of open justice requires that the media be free to report on court proceedings, including oral exchanges, unless the court has specifically ordered otherwise in accordance with law.
3. A direction confining reporting only to written orders would violate the constitutional guarantee of freedom of expression and is therefore impermissible.
4. No blanket protection can be granted against criminal proceedings merely because they arise out of media reports of oral comments; statutory remedies remain available and must be pursued in the ordinary manner.

## VI. SIGNIFICANCE

This case is an important case as it reaffirmed the sanctity of open court proceedings, public access, and unrestricted reporting as indispensable and important features of the judicial process. By declining to curb the press from reporting oral exchanges in court, the judgment strengthens the principle that justice must not only be done but must be seen to be done, and that public scrutiny remains a vital safeguard for judicial legitimacy. Oral remarks play a crucial role in understanding how the bench arrived at a decision as well as to advise and correct the parties as well.

The ruling aligns with and reinforces a long line of precedents in which the Supreme Court has emphasised transparency as an essential component of the justice system:

1. *Mohammed Shahabuddin Vs. State of Bihar*<sup>4</sup>- The court noted that Open Court and transparency are integral to judicial processes. The court held that “... *even if the press is present, if individual members of the public are refused admission, the proceedings cannot be considered to go on in open courts...an "open court" is a court to which general public has a right to be admitted and access to the court is granted to all the persons desirous of entering the court to observe the conduct of the judicial proceeding*”

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<sup>4</sup> Mohammed Shahabuddin Vs. State of Bihar (2010) 4 SCC 653

2. **Swapnil Tripathi v. Supreme Court of India**<sup>5</sup>– The court stressed upon the importance of live streaming judicial proceedings. It was held that “ [...] *Through these judicial decisions, this Court has recognised the importance of open courtrooms as a means of allowing the public to view the process of rendering of justice. First-hand access to court hearings enables the public and litigants to witness the dialogue between the Judges and the advocates and to form an informed opinion about the judicial process.*”

Read together with these cases, the present judgment fortifies the constitutional guarantee that the public has a right to follow what happens inside a courtroom, and that the press acts as an essential vehicle of this constitutional value.

## VII. CONCLUSION

In conclusion, the Court held that the controversy did not warrant any interference, as the alleged oral observations of the High Court formed no part of the judicial record and could not be made the basis for the directions sought. The Court reiterated that proceedings in open court belong to the public and that the media is free to report what transpires, subject only to recognized constitutional limitations. The plea to confine reporting to the written order was found to be inconsistent with the principles governing open justice. The court further said that as the remarks were oral in nature, there is no question of getting them expunged. The Court also made it clear that any grievance arising from a complaint must be addressed through the remedies provided in law such as the CrPC in this case, and no general protection could be issued. With these findings, the appeal was disposed of, while emphasising that expectations of restraint in judicial language cannot translate into restrictions on transparency or public access to court proceedings.

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<sup>5</sup> Swapnil Tripathi v. Supreme Court of India (2018) 10 SCC 639