

THE ELECTION COMMISSION AND SALMAN KHURSHID

■ Dr. M.N. Buch

The one area in which India has been able to constantly improve in the matter of government is in the management of elections. Under Part XV of the Constitution we have an Election Commission, headed by the Chief Election Commissioner, which is independent because the Chief Election Commissioner can only be removed by impeachment through the same process as applicable to a Supreme Court Judge. Superintendence, direction and control of elections is vested in the Commission by Article 324 and for the purpose of election the entire executive machinery of the State dealing with elections has to be made available to the Commission by the President or the Governor, as the case may be. Under the Representation of the People Act, 1951 the conduct of elections is entirely the responsibility of the Election Commission and for this purpose it is suitably empowered by the provisions of the Act. The registration of political parties is to be done by the Election Commission and the notification for general election for Parliament and the State Legislature is to be issued by the President or the Governor, as the case may be, on the advice of the Election Commission. Thereafter, right from issuing a notification for filing of nominations for election, determining the timetable for scrutiny of nominations, their acceptance, rejection or withdrawal, fixing the dates of polls, counting of votes and declaration of results the Election Commission is fully empowered. The Commission may adjourn the polls, order a fresh poll, or rescind or countermand an election and for this purpose take all necessary steps to ensure free and fair elections. Successive Chief Election Commissioners have fine-tuned the system. That is why a Chief Election Commissioner such as N. Gopalaswamy was able to ensure that free and fair elections took place in militancy and separatist affected Jammu & Kashmir, insurgency hit North-Eastern States, lawless Bihar and West Bengal where for almost thirty-five years the Left Front had ruled and where complaints of widespread rigging were almost endemic. The Election Commission has been able to build up the credibility of our electoral system, which the world acknowledges as being of the highest order.

T.N. Seshan introduced the concept of the Model Code of Conduct, which he enforced largely by adopting an extremely aggressive posture and by using the force of his personality to over-awe the political parties. Through the Model Code of Conduct the Election Commission has put severe restrictions on government making announcements which would seduce voters to favour the party in power. The Commission has severely restricted any use of government machinery for the purpose of canvassing. It has imposed a blanket ban on transfer of officials, policy pronouncements of government, new appointments to government service or any other act which might be construed as misuse of office. By and large the Commission has succeeded in ensuring that government intervention does not act in favour of a particular party and that in as far as is possible, all political parties do have a fair chance at the polls. The defeat of Indira Gandhi and the Congress in 1977 and her return to power in 1980, the election in Kashmir which brought Mufti Mohammed Sayeed to power, the elections in West Bengal which brought Mamata Banerjee to power are all examples of how the Commission has been able to ensure that by strict enforcement of the Model Code of Conduct the electoral system can be cleansed. However, there is one lingering doubt. Suppose there is a violation of the Model Code of Conduct. What can the Commission do in such a case? The powers of the Commission to countermand a poll or rescind a poll are drawn from the Representation of the People Act, 1951. Theoretically the Commission could refuse to hold an election for the State Assembly or Parliament. Here there is some doubt whether a notification issued by the President or the Governor, as the case may be, under Part III of the Representation of the People Act, 1951 can be rescinded by the Election Commission.

This point becomes vitally important because recently Salman Khurshid, followed thereafter by Beni Prasad Verma have both issued statements about a new reservation policy to be adopted whereby nine percent of the OBC quota would be reserved for Muslims. Both have stated that they refuse to accept restrictions placed by the Election Commission on the making of such statements and that the Commission was free to do what it liked about what they had averred. This has led to a verbal duel between Yaqub Qureshi, the Chief Election Commissioner and Salman Kurshid, the Union Law Minister. The Chief Election Commissioner has reported the matter to the President and asked for her intervention. It is about time that we codified the Model Code of Conduct and gave it legal status. Penalties should be imposed for violation of the Code of Conduct and the Election Commission should be armed with coercive powers to ensure obedience of its orders. This could be done by amendments in the Representation of the People Act, 1951. The details regarding the Model Code of Conduct, the coercive powers of the Commission and the penalties to be imposed for violation of the Code can all be worked out when preparing a draft amendment of the Representation of the People Act, 1951.

In every election every party issues its own election manifesto. Obviously the purpose of the manifesto is to apprise voters about what to expect from government if a particular party comes to power. The manifesto should be based on the party's ideology and programme, though the fact is that every manifesto makes tall claims about past performance and presents before the voters an imaginary picture of what to expect from the party so that the voters are seduced into voting for the party. Similarly, when making political speeches during electioneering, all speakers on behalf of every party invariably make all sorts of statements and promises, many of which they themselves know cannot be fulfilled. Every company selling its products does exactly the same thing when advertising. Exaggeration, hyperbole and presenting a rosy picture of government which even the presenters know borders on mythology, a carnival atmosphere in which one is free to attack, even slander one's opponents, are all ingredients of the *nautanki*, carnival, fun-fair, *tamasha*, call it what you will which are all intrinsic part of the electoral process and should never be taken seriously. The Commission must come down heavily on anyone who transgresses the limits of decency, promotes communal or partisan hatred, disturbs the peace or tries to pass off total untruths as reality, which may cause hurt to a particular group of people, but otherwise the Commission should not take the content of election speeches too seriously. In the case of Salman Khurshid the Commission should certainly have rapped his knuckles, but apart from that no further action need be taken. I think it is about time that both the Commission and Salman Khurshid shook hands and then go their separate way, the Commission to ensure fair elections and Salman to sell rosy dreams to the electorate of Uttar Pradesh.
