

Political Advertisements on Television and Cable Networks

Review of relevant regulations

The issue of advertisements on television and cable networks led to considerable controversy during the 2004 general elections. The Cable Television Network (Regulation) Rules, 1994, prohibit advertisements of a political nature. This issue was raised before the Andhra Pradesh High Court (*Gemini TV v Secretary Ministry of Information and Broadcasting et al*), which suspended the operation of Rule 7 (3) of the Cable Television Network (Regulation) Rules, 1994, relating to the prohibition of political advertisements. The matter went to the Supreme Court which, by its order dated 13 April 2004, modified the High Court's order and directed the Election Commission to monitor such advertisements on television and cable networks during the 2004 general elections. The Government is considering amending the relevant provisions of the Cable Television Network (Regulation) Rules, 1994, to provide for a suitable advertisement code and monitoring mechanism.¹

The Supreme Court, in its April 4 decision², clarified that the Code for Commercial Advertising on All India Radio prohibits advertisements of a political nature. The Ministry of Information and Broadcasting has confirmed that the Code for Advertising on All India Radio is also applicable to advertisements on FM channels. Therefore, advertisements of a political nature are prohibited on all radio channels.³

According to the Supreme Court order and the subsequent instructions of the Election Commission, advertisements of a political nature to be displayed on TV/Cable networks have to be first certified by a Committee set up for this purpose. The Supreme Court's April 4 directions provide in specific and unambiguous terms that the order is binding on all "political parties, candidates, persons, group of persons of Trusts who propose to insert the advertisement in the electronic media, including cable networks and/or television channels, as well as cable operators."

Election Commission's Directions

Following the Supreme Court judgment, the Election Commission issued the following directions:

- i) The Chief Electoral Officer, Delhi, has been directed to constitute a Committee comprising the following persons to deal with applications by political parties and organizations:
 - a) The Joint Chief Electoral Officer – Chairperson.
 - b) Returning Officer of any Parliamentary Constituency in Delhi.

1 http://www.eci.gov.in/PROPOSED_ELECTORAL_REFORMS.pdf

2 Ministry of Information & Broadcasting Vs M/s Gemini TV and Others (2004)5 SCC 714

3 http://www.eci.gov.in/CurrentElections/ECI_Instructions/ins_081107.pdf

- c) One expert – a person not below the rank of Class-I officer -- to be requisitioned from the Ministry of Information & Broadcasting.
- ii) This Committee will entertain applications for certification of any advertisement to be inserted in a television channel or cable network from the following:
- a) All registered political parties with headquarters in National Capital Territory of Delhi.
 - b) All groups or organizations or associations or persons with headquarters in National Capital Territory of Delhi.
- (iii) The Chief Electoral Officer of every other State/Union Territory has been directed to constitute the following Committee to deal with applications by political parties and organizations :
- (a) The Additional/Joint Chief Electoral Officer -- Chairperson.
 - (b) Returning Officer of any Parliamentary constituency located in the capital of the state.
 - (c) One expert – a person not below the rank of Class-I officer -- to be requisitioned from the Ministry of Information & Broadcasting.
- (iv) This Committee will entertain applications for certification of any advertisements on television channels and cable networks by the following:
- (a) All registered political parties with headquarters in that State /Union Territory,
 - (b) All organisations or group of persons or associations with registered offices in that State/Union Territory.
- (v) The Returning Officer of every Parliamentary constituency in the country has been declared the Designated Officer for the purpose of entertaining applications for certification of advertisements proposed to be issued on a cable network or television channel by individual candidates contesting the election from the Parliamentary constituency of which the Designated Officer is the Returning Officer, as well as candidates contesting in Assembly constituencies falling within that Parliamentary constituency. The said Returning Officer can co-opt any of the Assistant Returning Officers, not below the rank of a Sub-divisional Magistrate belonging to the State Provincial Civil Service, to assist him or her in the task of certification of applications.
- vi) The Chief Electoral Officer of every State/Union Territory will constitute the following Committee to entertain any complaints/grievances of any political party or candidate or any other person with regard to the decision to grant or refuse certification of an advertisement:
- (a) The Chief Electoral Officer -- Chairperson.
 - (b) Any Observer appointed by the Election Commission of India
 - (c) One expert to be co-opted by the Committee

The applications for certification of any advertisements need to be made at least three days prior to the commencement date of the telecast of such advertisements. In cases where an application for certification of advertisement is by any other person or unregistered political parties, it will have to be made not later than seven days prior to the date of telecast.⁴

Reference by the Chief Electoral Officer, Gujarat

In October 2007 the Chief Electoral Officer, Gujarat has made a reference to the Supreme Court (vide letter NoELC-1007-769-(Cell)-CHH, dated 24.10.2007) stating that certain political parties have submitted applications for certification with CDs containing various programmes telecast earlier on various TV channels/cable networks, asking whether the Committee is required to consider such applications for certification. In this connection, the Supreme Court clarified that, keeping in view the objective sought to be achieved by the apex court's order of 13 April 2004, the word 'advertisement' will have to be given a broader meaning to cover 'programmes' which any political party/organization intends to use as campaign material on cable networks or similar apparatus. Accordingly, the Committee will have to preview all such material given by the party for certification.⁵

Proposals for electoral reforms

The Election Commission has proposed that where any general election is due on the expiration of the term of the House, advertisements showcasing the achievements of governments, either Central or State, in any manner, should be prohibited for a period of six months prior to the date of expiry of the term of the House and, in case of premature dissolution, the date of dissolution of the House. However, advertisements/dissemination of information on poverty alleviation and health-related schemes could be exempted from such a ban.

Elections to the State Legislative Assemblies of Gujarat and Himachal Pradesh, 2007

In a recent order (Order No.437/TVs/2007/MCPS), the Election Commission dealt with the issue of allotment of broadcast/telecast time to political parties in the assembly elections to the State Legislative Assemblies of Gujarat and Himachal Pradesh in 2007. Earlier the Commission, in an order dated 16 January 1998, had ordered the free use of state-funded television and radio to recognized and national political parties. This was subsequently extended to all elections to State Assemblies held after 1998, and general elections to the Lok Sabha in 1999 and 2004. These orders were given statutory basis by amendments to the Representation of People Act, wherein the Central Government has said that the broadcasting media in question are those that are owned or controlled or financed wholly or substantially by funds provided to them by the Central Government.

⁴ http://www.eci.gov.in/CurrentElections/ECI_Instructions/Adv_Order.pdf

⁵ http://www.eci.gov.in/CurrentElections/ECI_Instructions/ins_021107.pdf

The Commission, in an order dated 23 October 2007, decided to extend its previous orders to the assembly elections in Gujarat and Himachal Pradesh in 2007 but determined that the use of broadcast/telecast time will be available only to national parties and recognized state parties in the States of Gujarat and Himachal Pradesh. The main features of the scheme were:

1. Facilities would be available from the Regional Kendra of All India Radio and Doordarshan and in the State headquarters of Gujarat and Himachal Pradesh and relayed by other stations within the respective States.
2. A uniform base time of 45 minutes to be given to each national party and recognized state party (recognized in the State) by the Regional Kendra of Doordarshan and All India Radio networks in the two States.
3. National and state parties to be treated on par for Assembly elections.
4. The additional time to be allotted to political parties was decided on the basis of the poll performance of the various parties in the last Lok Sabha and Assembly elections in Gujarat and Himachal Pradesh.
5. In a single session of broadcast, no party would be allocated more than 15 minutes.
6. The period of broadcast and telecast was between the last date for filing nominations and ended two days before the poll dates in the two states. However, the order disallowed telecast or broadcast during the 48 hours preceding the close of polls, in accordance with specific provisions of Representation of the People Act, 1951.⁶

Compiled by Nikhila Reddy
(ALF, Bangalore)

NB Last updated in July 2008.

FOR MORE RECENT DEVELOPMENTS SEE THE FOLLOWING ARTICLE:

“Political ads on FM, but no news”

By Sajan Venniyoor on The Hoot

<http://www.thehoot.org/web/home/story.php?storyid=3456&pg=1&mod=1§ionId=7&valid=true>

⁶ http://www.eci.gov.in/press/current/PN_23102007.pdf