

ANDHRA PRADESH STATE ELECTION COMMISSION
L-Block, Secretariat, Hyderabad – 500 022.

C I R C U L A R

No.212/SEC-B2/2017

Date: 29.11.2017

Sub:- APSEC - Ordinary elections to Rural Local Bodies – Prevention of disfigurement of public and private places during elections – Instructions issued – Reg.

* * *

Private and public places are disfigured during the election time by way of pasting election advertisements and writings on the walls in violation of the Model Code of Conduct.

Needless to say that this spoils the beauty of the settlements and causes loss to the private house owners who keep their houses and walls painted. In order to prevent such disfigurement, the A.P State Legislature has enacted A.P. Prevention of Disfigurement of Open Places and Prohibition of Obscene and Objectionable posters and Advertisements Act, 1997 (Act 28 of 1997).

Section 4 of the said Act makes the disfigurement of any public or private place an offence punishable with imprisonment which may extend upto 3 months or with fine which shall not be less than one thousand rupees but which may extend upto 2,000 rupees or with both. Abetment of such disfigurement is also made punishable under section 5 of that Act. Under section 6 thereof, the police officers are empowered to remove, erase, pull down and destroy objectionable advertisements.

The State Election Commission is of the firm view that this unhealthy practice of disfigurement / defacement of private and public properties during the election campaign should be curbed with a heavy hand by invoking the provisions of law referred above. The State Election Commission, therefore, directs that measures shall be taken, wherever necessary, for restoration to original position of the defaced public / private properties by directing the contesting candidates and political parties to remove their posters/slogans and repaint the walls of public/private property at their own expenses. In case of failure to comply with the instructions, prosecution should be lodged against the concerned under the provisions of law referred above. Strict vigilance should be maintained to prevent such defacement of public/private property particularly during election campaign and appropriate legal action should be taken against the violators.

The State Election Commission, hereby, directs the District Collectors and the Superintendents of Police to strictly enforce the implementation of Item 7 in Part-I (General Conduct) of Model Code of Conduct by taking recourse to sections 4 and 5 of Act 28 of 1997 referred above by issuing suitable instructions to their subordinate officers and also by launching inspection teams from time to time during the campaign period. Prompt prosecution of offenders in the early stages of campaigning will act as great deterrent to others. They are also requested to give wide publicity to the provisions of the said Act and Item 7 of Part-I of the Model Code of Conduct among the general public, political parties and contesting candidates. The said item of Model Code of Conduct is reproduced below:

Contd...2..

:: 2 ::

No party or candidate shall permit their followers for using any private property/ public property for erecting flag staffs, pasting notices, posters or slogans etc., or suspending banners without written permission from the owner / competent authority of the property concerned. Further, a copy of such written permission shall forthwith be sent to the Election Officer / District Election Authority.

The Commission also directs that action taken in this regard and the prosecutions launched under the above Act during the period of election to Panchayat Raj Bodies should be informed to the Commission from time to time.

A copy of the said Act is enclosed for ready reference.

**Sd/- Dr. N. Ramesh Kumar
State Election Commissioner**

To

The District Collectors.

The Superintendents of Police.

The Chief Executive Officers of Zilla Praja Parishad.

The District Panchayat Officers.

The Mandal Parishad Development Officers (through CEOs of ZPPs concerned).

The Commissioner of Panchayat Raj, A.P.

Copy to:

The Principal Secretary to Government, PR & RD Department, A.P.

The Director General of Police, A.P.

// Forwarded :: By Order //



Secretary

THE ANDHRA PRADESH GAZETTE

PART – IV.B EXTRAORDINARY

PUBLISHED BY AUTHORITY

No.44 HYDERABAD, TUESDAY, NOVEMBER 25, 1997.

ANDHRA PRADESH ACTS, ORDINANCES AND REGULATIONS Etc.

The following Act of the Andhra Pradesh Legislative Assembly which was reserved by the Governor on the 20th January, 1993 for the consideration and assent of the President, received the assent of the President on the 17th November, 1997 and the said assent is hereby first published on the 25th November, 1997 in the Andhra Pradesh Gazette for general information:

ACT NO. 28 OF 1997

AN ACT TO PROVIDE FOR THE PREVENTION OF DISFIGUREMENT BY OBJECTIONABLE OR UNAUTHORISED ADVERTISEMENTS OF PLACES OPEN TO PUBLIC VIEW AND FOR THE PROHIBITION OF PRINTING, PUBLISHING AND DISPLAY OF OBSCENE POSTERS RELATING TO CINEMAS AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Be it enacted by the Legislative Assembly of the State of Andhra Pradesh in the Forty – eighth Year of the Republic of India as follows.:-

CHAPTER - I **PRELIMINARY**

1. (1) This Act may be called the Andhra Pradesh Prevention of the Disfigurements of Open Places and Prohibition of obscene and objectionable posters and Advertisements Act, 1997. *Short title, extent and Commencement.*
- (2) It extends to the whole of the State of Andhra Pradesh
- (3) It shall come into force on such date as the State Government may by notification in the Andhra Pradesh Gazette, appoint.

Definitions:

2. In this Act, unless the context otherwise requires-

(a) "advertisement" includes any notice, circular, hand-bill label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas;

"authority" means an authority constituted under section 9;

(c) "government" means the State Government of Andhra Pradesh;

(d) "notification" means a notification published in the Andhra Pradesh Gazette and the word "notified" shall be construed accordingly;

(e) "objectionable advertisement" means any advertisement:-

(i) Which is likely to incite any person to commit murder, sabotage or any offence involving violence; or

(ii) Which is likely to seduce any member of the armed forces of the Union or of the Police forces from allegiance or his duty, or prejudice the recruiting of persons to serve in any such force or prejudice the discipline of any such force: or

(iii) Which is likely to incite any section of the citizens of India to commit an act of violence against any other section of the citizens of India: or

(iv) Which is deliberately intended to outrage the religious feelings of any class of the citizens of India by insulting or blaspheming or profaning the religion or the religious beliefs of that else: or

(v) Which is grossly indecent, or scurrilous or obscene or is intended to black - mail;

Explanation :-An advertisement shall not be deemed to be objectionable merely because words or signs or visible representations are used;

(1) expressing disapprobation or criticism of any law or of any policy or administrative action of the Government with a view to obtain its alteration or redress by lawful means.

(2) criticising any social or religious practice without malicious intentions and with an honest view to promote social or religious reform or social Justice;

(f) "Place open to public view" includes any private place or building, monument, statue, post - wall, fence, tree or other thing or contrivance visible to a person being in, or passing along, any public place;

(g) "poster" means any printed, typed, hand written, cyclostyled or Xeroxed matter or design or pictorial representation usually meant to be displayed as a play card or pasted on any wall, building, hoarding or other place open to public view whether by cinematography exhibition or otherwise but does not include the exhibition of a cinematograph film inside the auditorium of a cinema theatre;

(h)"prescribed" means prescribed by rules made under this Act;

(i)"Public place" means any place (including a road, street or way, whether a thoroughfare or not and a landing place) to which the public are granted access of have a right to resort, or ever which they have a right to pass.

CHAPTER - II **Prevention of disfigurement of open places**

3. Whoever affixes to, or inscribes or exhibits on any place open to public view any objectionable advertisement, shall be punished with imprisonment of either description for a term which may extend to one year or with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both. Penalty for disfigurement by objectionable advertisements

4. Whoever affixes to, or inscribes or exhibits on any place open to public view any advertisement without the written consent of the owner or occupier or person in management of the property in which such place is situated shall be punished with imprisonment of either description for a term which may extend to three months or with fine which shall not be less than one thousand rupees but which may extend to two thousand rupees, or with both. Penalty for unauthorized disfigurement by advertisement;

5. Whoever in any manner whatsoever punishment causes, procures, counsels, aids, abets or is accessory to, the Commission of any offence under section 3 or section 4 shall be punished with the punishment 4 shall be punished with the punishment provided for the offence. Punishment of abettors

Power to remove, erase, pull down and destroy objectionable advertisements.

Central Act 2 of 1974

6. (1) Any police officer not below the power to rank of a Sub-- Inspector or any other officer, empowered in this behalf by the Government may remove, erase, or otherwise pull down any objectionable advertisement.

(2) Any advertisement removed or pulled down under sub-section (1) or a photograph of any advertisement erased under that sub-section shall be produced before a Magistrate of the First Class and if, in the opinion of the Magistrate, such advertisement is an objectionable advertisement, the Magistrate may cause the advertisement or the photograph thereof to be destroyed after giving an opportunity of hearing to the advertiser wherever he is known and where he is not known after recording that fact, but if in the opinion of the Magistrate such advertisement is not an objectionable advertisement the Magistrate shall dispose it of in the manner provided in sections 457, 458 and 459 of the Code of Criminal Procedure, 1973 or in the case of an advertisement which is erased make an order that it shall be restored at the cost of the Government.

CHAPTER – III

Prohibition of obscene posters etc.

Obscene poster.

7. A poster shall be deemed to be obscene if –

(a) its effect is to tend debase and corrupt persons who are likely, having regard to all relevant circumstances, to read or see the matter contained or embodied in it;

(b) it holds out or recommends to the public anything to be used as, or suggestive of, a sexual stimulant;

(c) it undermines the accepted canons of decency or encourages vicious or immoral acts;

(d) it lowers the sacredness of the institution of marriage or depicts scenes of rape, criminal assault on women or other immoralities;

(e) it exhibits the human form in a state of nudity or indecorous or sensual posture; or

(f) it encourages lasciviousness or arouses impure and lecherous thoughts.

8. Notwithstanding anything contained in any law or contract to the contrary, but subject to the provisions of this Act, no person shall print, publish, distribute or display or cause to be printed, published, distributed or displayed any obscene poster relating to a cinema in any public place.

Prohibiting of printing, publishing or displaying obscene posters.

9. The Government may, as soon as may be after the commencement of this Act, by notification constitute an authority or authorities for the purpose of determining all question relating to obscenity of a poster.

Constitution of Authority for determination of questions relating to obscenity of poster.

10. Every person who contravenes the provision of section 8 shall, on conviction, be punishable with imprisonment which may extend to six months or with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees or with both.

Penalty.

11. (1) The Commissioner of Police in the twin cities of Hyderabad and Secunderabad, Visakhapatnam and Vijayawada and the District Collector elsewhere may, -

Power to make search and seizure.

(a) enter and search at all reasonable times with such assistance, if any, as he considers necessary any place in which he has reason to believe that an offence punishable under this chapter, has been or is being committed;

(b) seize, and detain any material which has reason to believe contravenes any of the provisions of this chapter;

(c) examine any record, register, document or any other material or object found in any place mentioned in Clause (a) and seize the same if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this chapter.

(2) Where any property is seized under sub-section (1), such seizure shall be reported to a Magistrate forthwith, and the provisions of Chapter XXXIV of the Code of Criminal Procedure, 1973, shall apply to the custody and disposal thereof as they apply to property referred to therein.

Central Act 2 of 1974.

(3) The Commissioner of Police or the District Collector may, by order, delegate the powers under this section to an officer not below the rank of an Inspector of Police or a Mandal Revenue Officer (Gazetted).

Forfeiture

12. Where a person has been convicted by any Court for contravening any provision of this chapter or any rule relating thereto, the court may direct that, any poster or other document (including all copies thereof), articles or things in respect of which the contravention is made, shall be forfeited) to the Government.

Compounding of offences.

13. (1) The Commissioner of Police, in the twin cities of Hyderabad and Secunderabad, Visakhapatnam and Vijayawada and the District Collector elsewhere may accept, from any person against whom a reasonable suspicion exists that he has committed any offence punishable under this chapter, such sum of money as may be prescribed by way of composition for the offence which such person is suspected to have committed.

(2) On the payment of such sum of money to the Commissioner of Police or the District Collector, as the case may be the suspected person, if in custody, shall be discharged and no other proceedings shall be taken against him.

CHAPTER - IV
MISCELLANEOUS

Offences by companies

14. (1) Where an offence has been committed by a company, every person who, at the time when the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purpose of this section, -

(a) 'Company' means any body corporate and included a firm or other association of individuals; and

(b) 'Director' in relation to a firm means a partner in the firm.

15. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 the offences punishable under sections 3 and 4 shall be deemed to be cognizable offences within the meaning of that Code.

*Certain offences to be cognizable.
Central Act 2 of 1974*

16. No court shall take cognizance of any offence punishable under this Act except on a complaint filed, in the twin cities of Hyderabad and Secunderabad, Visakhapatnam and Vijayawada by the Commissioner of Police or by any Police Officer not below the rank of an Inspector of Police authorized by him in this behalf and elsewhere by the District Collector or any Officer not below the rank of a Mandal Revenue Officer authorized by him in this behalf.

Cognizance of offences.

17. No suit, prosecution or other legal proceeding shall lie against the Government the authority any local authority or any public servant or person, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rule made thereunder.

Protection of action taken in good faith

18. Where a person is prosecuted for committing an offence under section 4, the burden of proving that he has the written consent referred to in that section shall be on him.

Burden of proof in certain cases.

19. The Government may, from time to time, issue such directions not inconsistent with the provisions of this Act or the rules made thereunder as they may think fit, setting out the principles which shall guide the authority in discharging its duties under this Act.

Power to issue directions.

20. The provisions of this Act and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom, usage or contract or decree or order of a Court or other authority.

Act to override other laws.

21. (1) The Government may for the purposes of removing any difficulty, by order published in the Andhra Pradesh Gazette, direct that the provisions of this Act shall, during such period as may be specified in the order, have effect subject to such adaptations whether by way of modification, addition or omission as they may deem necessary or expedient :

Power to remove difficulties.

Provided that no such order shall be made after two years from the commencement of this Act.

(2) Every order made under sub-section (1) shall be laid before the Legislative Assembly of the State.

(3) No order under sub-section (1) shall be called in question in any court on the ground that no difficulty as is referred to in sub-section (1) existed or was required to be removed.

*Power to
make rules.*

22. (1) The Government may by notification, make rules for carrying out all or any of the purposes of this Act.

(2) Every rule made under this Act shall, immediately after it is made, be laid before the Legislative Assembly of the State if it is in session and if it is not in session, in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiration of the session in which it is so laid or the session immediately following, the Legislative Assembly agrees in making any modification in the rule or in the annulment of the rule, the rule shall from the date on which the modification or annulment is notified, have effect only in such modified form or shall stand annulled, as the case may be, so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

G BHAVANI PRASAD,
Secretary to Government,
Legislative Affairs & Justice Law Department