



By Special Messenger/Email

भारत निर्वाचन आयोग सचिवालय

SECRETARIAT OF THE ELECTION COMMISSION OF INDIA

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

No. 437/6/INST/ECI/FUNCT/MCC/2024

Dated: 22nd May, 2024

To

Shri Mallikarjun Kharge,
President,
Indian National Congress,
24 Ashoka Road,
New Delhi - 110011

Subject: General Election to the House of People, 2024 – Model Code of Conduct violations – regarding.

Sir,

I am directed to refer to your email dated 06.05.2024 with which you have attached your “comment to the BJP representation (dt. 19.04.2024) enclosed with Notice no.437/6/INST/ECI/FUNCT/MCC/2024 from the ECI dated 25.04.2024”. That vide your reference dated 29.04.2024 you had sought extension of time to respond, which was so permitted.

2. The Response Memorandum (RM), relies on 3 broad axis of defense, namely, (a) denial of fact as alleged per se; (b) while not denying fact of the utterances, but arguing for their being non-violative of the MCC on the ground of (i) in the genre of rebuttal of previously made statements (ii) the utterances being isolated from the context in which they were made and; (c) that within the MCC, the space occupied by the principal opposition party has to be adjudicated on different footing.

3. In Part IV of RM, you make a counter allegation that BJP senior leaders for last 10 years are making scurrilous and motivated statements invoking “religious sentiments and trying to appeal to voters on ground of religion, caste and class”.

4. In Part V of your reply, you attempted to list out the “repeated and more egregious violations that the BJP and its leaders continue to commit with impunity”. You have attached a Chart which “the INC has collated as indicative list of malicious statements made despite the Show Cause Notice issued by the ECI. Through the specific citation in the Chart, you have alleged a “pattern planned by BJP” being “clear and apparent” to adopt a “false rhetoric by the Campaigners of the BJP to spread misinformation and fuel communal discord within the society without any regard for the Commission or electoral laws.”

5. Regarding the allegations against star campaigners and the alleged statements made in public campaign speeches, it is noted that there is no explicit denial of fact in your Response Memorandum. It is, inter-alia, stated in Part III and Part IV that:

“Each and every statement of “Star Campaigners” on behalf of the INC are well-justified substantiating the authenticity and genuineness of Speakers’ statements and discredits any malafide or ill-will on their part to create social tensions within the society as claimed by the BJP Party. Out of the 25-minute election speech delivered by the Star Campaigner, the complainant has deliberately and wilfully extracted only specific portions, devoid of context, to mislead this Hon’ble Commission.”

6. You have also not confirmed if you have brought the Commission’s directions to the notice of star campaigners as specifically mentioned in the said notice.

7. In summary, your replies dwell at length to stoutly defend the campaign methods and utterances of your star campaigner, while making a case for action against BJP, the political party that complained against you. The MCC already takes into account the unevenness of power and authority between Opposition and the Ruling Party and, has the primary purpose to control and regulate the tempo and the quality of the campaign speech and conduct, and however does not allow unlimited extra space to the opposition, bordering on an immunity from MCC provisions.

8. The Commission, however, is entirely in agreement with the wider arguments given on Fundamental Right to free speech and has always held the campaign space to be sacrosanct and, therefore, also to be rid of any contamination.

9. Vide the BJP complaint dated 19.04.2024 your party’s Star Campaigner allegedly made the following statement:

“.....They took away my lok Sabha membership within a week. I was thrown out of the Lok Sabha And when they spoke whole world listen because they knew there are not individuals speaking, this is the voice of the Tamil people speaking. And now the voice of the Tamil people is asking a few simple questions, it is asking Narendra Modi, Mr. Adani and the RSS these questions. The first question is, why are you attacking our language, our history, and our tradition. You come here and you say I like dosas, and then you go back to Delhi and you say one nation, one leader, one language. Why why one language, why not space for Tamil, why not space for Bengali, why not space for Kannada, why not space for Manipuri.....so, you come here you tell the people of Tamil Nadu you like dosa and then you insult them and you attack their culture, their history and their language. Today most vice chancellors who are defining the way we educate our children are from the RSS. The bureaucratic system, the Election Commission, the legal system are all being infiltrated by the RSS and the RSS is placing their people in all these institutions. This is the attack on the very idea of our nation. It is an attack on the Union of India. The BJP has clearly said that they are going to change the constitution if they win the elections.....”

10. The Commission in the backdrop had issued the notice on 25.04.2024 highlighting alleged violations and to communicate the Commission’s sincere views on refraining from making false and unverified statements, not indulging in personal attacks, desisting from stoking up divisive narrative and maintaining a respectable decorum in public discourse. It was specifically emphasized in the notice dated 25.04.2024 that:

“...the grant of the status of the ‘Star Campaigner’ statutorily lies entirely within the realm of the Political Parties under Section 77 of the Representation of the People Act, 1951 and the Star Campaigners are expected to contribute to a higher quality of discourse, inter alia, by way of providing an all-India perspective, which sometimes gets distorted in the heat of the contests at the local level. Thus, the expectation from Star Campaigners is to provide corrective action or a sort of healing touch, when intensity of local campaign disrupts or inadvertently crosses over such boundaries. The Star Campaigners are thus expected to utilize this privilege for “propagating the programme of the political parties” and, therefore, their speeches in the campaign space necessarily needs to be judged at a higher threshold of compliance.”

“...the Commission considers the political party as the fundamental stakeholder, in terms of regulation, consultation and facilitation within and about the election process; and whereas over the years through various instructions/ orders and advisories, the Commission has sought to make political parties more accountable, transparent and democratic in their functioning; and whereas the Commission is of the considered view that political parties will have to take primary and increasing responsibility for the conduct of their candidates in general and star campaigners in particular.”

11. It is, however, noted that even after this notice dated 25.04.2024, and even the extended time taken to reply i.e. 06.05.2024, rather than taking caution from the ECI notice, the INC star campaigners in different election meetings have further made following statements alleged to be violative of MCC:

i. Vide the BJP complaint dated 30.04.2024 your party Star Campaigner allegedly made the following statement:

“अगर चुनाव में जीत होगी कॉन्स्टिट्यूशन को बदल दिया जाएगा, रद्द कर दिया जाएगा और मैं आपको बताने आया हूँ ये हिंदुस्तान की करीब लोगों की आत्मा है इसको कोई नहीं छूने वाला है दुनिया में कोई शक्ति नहीं है जो इसको बदल सके ये बीजेपी वाले सपने देख रहे हैं कांग्रेस पार्टी ने अंबेडकर जी ने मिलकर हिंदुस्तान की जनता के साथ मिलकर अंग्रेजों से लड़ाई की और ये जो कॉन्स्टिट्यूशन है ये जो संविधान है ये जो हिंदुस्तान की आवाज है ये हमने बनाया इसको हम ऐसे नहीं बिकने देंगे और हिंदुस्तान की जनता हिंदुस्तान के गरीब लोग किसान मजदूर ये कभी नहीं होने देंगे पहली बात ये है अब ये काटें की हम आरक्षण के खिलाफ नहीं हैं अगर आप आरक्षण के खिलाफ नहीं हो तो फिर आप पब्लिक सेक्टर को क्यों कर रहे हैं आप रेलवे को क्यों कर रहे हो आप अगली बार योजनाएं क्यों लाएं”

ii. Vide BJP’s complaint dated 30.04.2024, it has been alleged that the Star campaigner made the following statement:

“आपने राम मंदिर का इनोवेशन देखा, धूमधाम से हुआ उधर आपने किसी एक गरीब किसान को देखा, आपको एक मजदूर दिखा। राष्ट्रपति आदिवासी है, पार्लियामेंट का उद्घाटन होता है, राम मंदिर का उद्घाटन होता है, वो हेड ऑफ स्टेट है मतलब प्रोटोकॉल में सबसे ऊंची है, उनको जाने तक नहीं दिया, शर्म की बात है अंदर जाने तक नहीं दिया राष्ट्रपति को क्योंकि वो आदिवासी है”

iii. Further, vide BJP complaint dated 15.05.2024, it has been alleged that the Star Campaigner made the following statement:

“नरेंद्र मोदी ने दो तरह के सैनिक बनाए हैं, एक गरीब का बेटा, दलित, आदिवासी, पिछड़े वर्ग का बेटा, सामान्य जाति के गरीब परिवारों का बेटा, अल्पसंख्यक का बेटा और दूसरा जो अमीर घर का बेटा होगा, गरीब परिवार का बेटा होगा, उन्होंने उसे एक नया नाम दिया है अग्निवीर और वे उससे कह रहे हैं कि देखो, अगर तुम शहीद हो जाओगे, तो तुम्हें नहीं मिलेगा शहीद का दर्जा, क्योंकि आप अग्निवीर हैं और आपका परिवार गरीब है, इसलिए आपको पेंशन भी नहीं मिलेगी, कैप्टन की सुविधा भी नहीं मिलेगी, अगर आप शहीद हैं। भारत सरकार आपके परिवार की रक्षा नहीं करेगी, लेकिन यदि आप अग्निवीर नहीं हैं, यदि आप एक वरिष्ठ अधिकारी हैं या चार में से एक हैं, तो आपका चयन कैसे किया जाएगा? क्या आप सब जानते हैं कि आपका चयन कैसे होगा? हां, तो आपको शहीद की पेंशन मिलेगी, आपको दर्जा मिलेगा, आपको पदक मिलेंगे, आपको कैप्टन मिलेगी और सरकार आखिरी समय तक आपकी और आपके परिवार की रक्षा करेगी।”

iv. Vide BJP’s complaint dated 15.05.2024, it has been alleged that yet another Star Campaigner made the following statement:

“आजादी से पहले गरीबों, दलितों और आदिवासियों के साथ गुलामों जैसा व्यवहार किया जाता था। अगर आप मोदी और शाह को तीसरा कार्यकाल देंगे तो वही स्थिति दोहराई जाएगी। हम फिर से गुलाम बन जाएंगे।” आपको अपने लिए और अपने लिए वोट करना है लोग। हमें संविधान बचाना है।

.....

..... कोई संविधान नहीं है, तुम्हें कोई बचाने वाला नहीं होगा”

12. You are aware that the Members of Parliament as well as the Members of State Legislatures take oath to bear true faith and allegiance to the Constitution of India before taking his/her seat in the House.

13. Therefore, making statements that anyone can either abolish or sell or tear apart the Constitution of India etc. is alleged to be instilling fear in the mind of voters about an uncertain future and an attempt to spread anarchy in the country. Such statements are in relation to a candidate / political party in election and perhaps prejudicially affect the prospects of certain candidates and thus may border as a corrupt practice under section 123(4) of the Representation of the People Act, 1951 which inter alia states that: The following shall be deemed to be corrupt practices for the purposes of this Act:

“(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate’s election.”

14. The Model Code of Conduct for the Guidance of Political Parties and Candidates, which has been in force throughout the country since the announcement of the ongoing Lok Sabha elections, 2024 on 16.03.2024, also states that “All parties and candidates shall avoid scrupulously all activities which are ‘corrupt practices’ ”.

15. Further, the MCC has a specific prohibition against use of armed forces for campaigning purposes.

16. The Commission takes note of the process which precedes the making of statement by the Star Campaigners within the INC as narrated at para-5 above and, acknowledges that the method and process as important to discharge the special responsibility placed on the Star Campaigner & thus the Political Party, under the R P Act, 1951. That is in fact the reasoning behind the Commission’s approach of the Show Cause Notice being issued to INC in the present instance.

17. The legal burden, apart from the MCC, which a Star Campaigner bears, is laid out in Section 77 of the R P Act, 1951. Section 77(1), Explanation(i)(a) underlies the nexus or the policy argument, for creating the ‘privileges’ for the category of Star Campaigners i.e. for “propagating programmes of the political party”. All political parties, by virtue of Section 29A(5) of the R P Act, 1951 have to be inter alia 24X7 compliant to bear “true faith and allegiance to the Constitution of India as by law established”.

18. Therefore, the Commission is committed to enforcing a higher burden of accountability on the political party and its Star Campaigners. In this regard ECI advisory dated 01.03.2024 may be referred.


19. The Response Memorandum dated 06.05.2024 submitted by you has been carefully examined by the Commission along with the citations contained therein and the Show Cause Notice served by the Commission on 25.04.2024. After such careful consideration and also in the context of the foregoing, the Commission is unable to accept the submissions made therein. Therefore, in totality of the material before it, the Commission finds that the defence offered on the admitted fact of alleged utterances by the Star Campaigners, not tenable. The continuation of utterances after 25.04.2024 indeed in the extended time sought by you and thereafter has also been noted with continued concern.

20. In view of the foregoing, the Commission therefore observes the following:
- I. The utterances of the concerned Star campaigners follow patterns and create narratives which can be damaging beyond the MCC period. Technical loopholes or extreme interpretations of other political party's utterances cannot discharge them from this core responsibility of their own content which ought to be corrective to the ongoing discourse and not further plummeting the quality of campaign discourse;
 - II. Elections are a process when political parties, not only contest to win, but also avails the opportunity to present themselves in their ideal best for the voting community to experience, emulate and build hopes on. The second part constitutes the more precious heritage of Indian elections and our electoral democracy and this should not be allowed to be weakened by anyone, including your party;
 - III. Elections are periodic exercises, they come and go, but political parties like yours endure; even more enduring preserve is India' socio-cultural milieu;
 - IV. Political parties are in the task of nurturing leaders for the country for present and future. They cannot afford to be lax in any manner in enforcing discipline and conduct among the cadre in the high stake electoral space, especially with reference to senior members;
 - V. It is expected of you to use the strength of your office and intra-party consultations to advise/ counsel/ oblige the listed star campaigners of your party be careful in their campaign utterances and correct their discourses.;
 - VI. Commission expects INC, fully align the campaign methods to the practical aspects of the composite and sensitive fabric of India.

Accordingly, the Commission directs INC and all concerned to follow MCC in general and the following in particular:

- VII. Directs all your star campaigners to refrain from making any statement which is prohibited in Clause (1) of General Conduct of MCC which provides that "No party or candidate shall include in any activity which may aggravate existing differences or create mutual hatred or cause tension between different castes and communities, religious or linguistic";
- VIII. Directs you as party president to also convey to all-star campaigners that they do not make statements which give false impression such as that the Constitution of India may be abolished or sold;
- IX. Directs to ensure full compliance of the advisory of the Commission dated 19.03.2019, which requires that "their campaigners/candidates should desist as part of the election campaigning from indulging in any political propaganda involving activities of the Defence forces and not to make potentially divisive statements regarding socio-economic composition of Defence forces";
- X. Directs you to remain dutiful towards the special responsibility of Star Campaigners of the party and issue formal notes of caution to them to maintain decorum in their utterances.

Yours faithfully,


(Narendra N. Butolia)
Sr. Principal Secretary