

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi – 110001

No.61/DL-LA/2003

Dated: 6th February, 2004.

In re: **Show Cause Notice to the Bhartiya Janata Party and Smt. Poonam Azad, candidate from 2-Gole Market Assembly Constituency of NCT of Delhi for violation of the Model Code of Conduct.**

O R D E R

The schedule for the recently concluded general elections to the Legislative Assemblies of the States of Chhattisgarh, Madhya Pradesh, Mizoram, Rajasthan and National Capital Territory of Delhi was announced by the Election Commission in a Press Conference held on 6th October, 2003, and it was followed by a Press Note of the same date. It is now conclusively settled by the Hon'ble Supreme Court in *Union of India Vs. Harbans Singh Jalal & Others* (SLP No. 22724 of 1997 decided on 26.4.2001) that the Model Code of Conduct for political parties and candidates comes into operation from the date of announcement of the election schedule by the Election Commission and, accordingly, it was stated in para 18 of the above referred Press Note that the Model Code of Conduct in relation to the aforesaid general elections announced vide the said Press Note would come into force from 6th October, 2003 itself.

2. The Model Code of Conduct, *inter alia*, specifically provides in Para VII that the party in power, whether at the centre or in the State or States concerned, shall ensure that no cause is given for any complaint that it had used its official position for the purposes of its election campaign. Para VII (iv) of the said Model Code of Conduct further specifies that issue of

advertisements at the cost of public exchequer in the newspapers and other media and misuse of official mass media during the election period for partisan coverage of political news and publicity regarding achievements with a view to furthering the prospects of the party in power shall be scrupulously avoided.

3. A complaint was received alleging *inter-alia* that the official publicity material of the Ministry of Tourism, Government of India, entitled “Regenerated India, New Destination, Kurukshetra” and “Red Fort, Delhi, Rebirth of a Fort ” in a fancy paper bag inscribed “ Incredible India” had been distributed to the electors of 2-Gole Market Assembly Constituency by the Bhartiya Janata Party along with an appeal dated 26-11-2003 made by Shri Jagmohan, Union Minister for Tourism and an election pamphlet issued in the name of Shri Kirti Azad, MP, urging the electors of the said constituency to elect Smt. Poonam Azad, the BJP candidate from that constituency.

4. An inquiry was conducted by the Commission into the matter and it was confirmed that certain Tourism Ministry materials and bags were distributed in the Constituency which contained leaflets printed in favour of Smt. Poonam Azad and an appeal in writing made by Shri Jagmohan to the voters of the Constituency to vote in favour of Smt. Poonam Azad.

5. The Election Commission issued show cause notices dated 30-11-2003 to the President, Bharatiya Janata Party and Smt. Poonam Azad, calling upon to show cause as to why action may not be taken against them for the above said violation of model code of conduct.

6. In response to the said Notice, the Bharatiya Janata Party has stated that it has not distributed the publicity material of the Ministry of Tourism, but admitted that an appeal was made by Shri Jagmohan, Union Minister for Tourism asking the voters of 2-Gole Market assembly constituency to elect

Smt. Poonam Azad. The Party has maintained silence in the matter of the distribution of publicity material by along with an election pamphlet by Shri Kirti Azad, its MP.

7. Smt. Poonam Azad, in her response to the notice, has clarified that she has not authorized anybody to distribute any publicity material for her election prospect. She added that whatever expenditure was taking place in her election campaign, she was regularly presenting it to the concerned authorities.

8. Section 171H of Indian Panel Code provides that whoever without the general or special authority in writing of a candidate incurs or authorizes expenses on account of holding of any public meeting or upon any advertisement, circular or publications or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate shall be punished with fine which may extend to Rupees five hundred.

9. The Election Commission after taking into account all the documentary evidence and all other material aspects in the matter, is convinced that the above mentioned official publicity materials of the Ministry of Tourism were distributed by or on behalf of the Bharatiya Janata Party and its leaders Shri Jag Mohan and Shri Kirti Azad and thus the party misused the said government publicity materials, to promote the election prospects of Smt Poonam Azad, its candidate at the election from the said assembly constituency, and thereby violated Para VII of the **Model Code of Conduct for the Guidance of Political Parties and Candidates** which was in force w.e.f. 6th October, 2003 .

10. The Commission, therefore expresses its displeasure on the aforesaid conduct of the Bharatiya Janata Party and the Union Minister of Tourism, Shri Jagmohan, violative of Model Code of Conduct, for the furtherance of the prospects of a candidate of the party.

11. The Commission has also noticed that Shri Kirti Azad, MP has issued an election pamphlet, published in his own name, urging the electors of the said 2-Gole Market Assembly Constituency to vote in favour of the Bharatiya Janata Party candidate, Smt. Poonam Azad. The said pamphlet, a four-page multi-coloured document containing the photographs of Shri Kirti Azad and Smt. Poonam Azad and the symbol of the Bharatiya Janata Party, has been printed at the Times Press Pvt. Ltd. A mere look at the pamphlet shows that it must have cost a considerable amount to Shri Kirti Azad. Smt. Poonam Azad, in her above mentioned reply to the Commission, has categorically stated that she had not authorized any one or had any idea about anyone printing or distributing any election material. Thus, it is evident that Shri Kirti Azad published the said pamphlet containing an appeal to the electors to vote for Smt. Poonam Azad and incurred the expenditure thereon without any authorisation from Smt. Poonam Azad. He has thereby violated the provisions of section 171H of the Indian Penal Code.

12. The Commission, therefore, directs the Chief Electoral Officer, Delhi to initiate, through the District Election Officer-cum-Deputy Commissioner, New Delhi, appropriate legal proceedings against Shri Kirti Azad, MP under section 171H of the Indian Penal Code.

By order and in the name of
Election Commission of India,

(K.AJAYA KUMAR)
SECRETARY

Chief Electoral Officer,
NCT of Delhi,
Old St. Stephen's College Building,
Kashmere Gate,
Delhi.

By Special Messenger

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi – 110001

No.61/DL-LA/2003

Dated: 6th February, 2004.

To

The President,
Bharatiya Janata Party,
11, Ashoka Road,
New Delhi.

Subject:- Violation of Model Code of Conduct- reg.

Sir,

I am directed to forward herewith Commission's order No. 61/DL-LA/2004 dated 6th February 2004 on the subject cited for your information and necessary action.

The receipt of this letter along with its enclosure may kindly be acknowledged.

Yours faithfully,

(Standhope Yuhlung)
Under Secretary

By Special Messenger

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Nirvachan Sadan, Ashoka Road, New Delhi – 110001

No.61/DL-LA/2003

Dated: 6th February, 2004.

To

Smt. Poonam Azad,
25, Canning Lane,
New Delhi.

Subject:- Violation of Model Code of Conduct- reg.

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