

MOST IMMEDIATE
BY FAX / BY SPECIAL MESSENGER

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi – 110 001

No.437/Pond./6/2004

Dated: May 1, 2004

To

**General Secretary,
AIADMK,
Pondicherry.**

SHOW CAUSE NOTICE

Whereas, the General Election to constitute the fourteenth Lok Sabha is currently in progress, and the election from 1- Pondicherry Parliamentary Constituency in the Union Territory of Pondicherry is currently in progress; and

2. Whereas, the schedule for the said general elections was announced by the Election Commission of India on 29th February 2004 and it was followed by a Press Note of the same date; and

3. Whereas, 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 16 of the above referred Press Note dated 29th February 2004 that the Model Code of Conduct in relation to the aforesaid general election announced vide the said Press Note would come into force from 29th February, 2004 itself; and

4. Whereas, the Model Code of Conduct, inter alia, specifically states that if permission or license is to be obtained for the use of loudspeakers or any other facilities in connection with any proposed meeting, the party or any candidate shall

apply to the authority concerned well in advance and obtain such permission or license; and

5. Whereas, the Election Commission of India has in exercise of its plenary powers under Article 324 of the Constitution of India issued directions and instructions for regulating the conduct of elections in order to ensure that the provisions of the Model Code of Conduct are observed faithfully by all political parties in power and others so as to ensure a level playing field for all political parties in electoral fray; and

6. Whereas, the Election Commission of India vide its letter no. 3/10/2001/JS.II dated 23rd March 2001 had interalia directed that:

- (i) there shall be no cut-outs, flags, hoardings of political parties and their supporters,
- (ii) writing of slogans, posting of posters, campaigning materials etc. on public and private walls shall be strictly enforced as per local law that is prevalent.; and

7. Whereas, the Election Commission of India vide its letters No. 3/7/94/JS-II, dated 5.1.1994 and 28.1.1994, letter No. 3/7/94/JS-II/Vol.II, dated 30.3.1994, letter No. 3/7/94/JS-II/Vol.IV, dated 16.5.1994, 26.9.1994, 11.7.94 and 7.3.1994 has issued comprehensive directions to prevent defacement of public and private property; and

8. Whereas, the Election Commission has been informed by the Chief Electoral Officer, Pondicherry that the Returning Officer of 1-Pondicherry Constituency after the announcement of elections, had directed that all parties and candidates to abide by the instructions of the Commission towards defacement of property and the political parties were specifically informed to remove all cut-outs, banners, hoardings and objectionable defacements by 9.3.2004 and avoid scrupulously all activities which are corrupt practices and offences under the Election Law such as bribing of voters, for furtherance of the interest of the party; and

9. Whereas, the Returning Officer has further informed that Thiru A. Anbalagan, MLA belonging to AIADMK party had on 29.3.2004 requested the Returning Officer, Pondicherry Parliamentary Constituency for permission to erect flags, banners, welcoming the Tamil Nadu Chief Minister and that permission was denied by the Returning Officer vide letter no. 7/RO-PPC/2004 dated 30/3/2004 which was served to the individual on 1/4/2004 and that in the meantime, Thiru. Anbalagan had sought similar permission from PWD on 27/3/2004 and was granted permission by the Executive Engineer, National Highways Division, PWD on 2.4.2004 to erect banners etc., along the East Coast Road & NH 45A from Kanagachettikulam to Kaniakoil and that when this was brought to notice, the Returning Officer, Pondicherry Parliamentary Constituency directed the Chief Engineer to cancel the order and the cancellation order was served on Thiru. Anbalagan, MLA on 6.4.2004 and that apart from this Thiru. Natarajan, former MLA (AIADMK), also, had sought permission from PWD and the permission was not granted to him; and

10. Whereas, both Thiru Anbalagan and Thiru Natarajan went ahead with the erection of cut-outs, banners, flag posts etc., defacing the public property, and that since these activities were carried out during the night of 6/4/2004 and completed by the early hours of 7/4/2004, immediate steps could not be taken to prevent the defacement; and

11. Whereas, on the morning of the 7/4/2004, the Deputy Collector Revenue (North) & (South) were directed to remove the defacements with the assistance of PWD, Local bodies and Police personnel, and that only some of the defacements could be removed due to stiff resistance from the cadres of AIADMK; and

12. Whereas, the Election Commission has been informed by the Chief Electoral Officer, Pondicherry that the Returning Officer cum District Magistrate issued a show-cause notice on 16/4/2004 to Thiru Anbalagan, MLA and convenor of Pondicherry unit and that he avoided the service of the same, and that the same was sent to him through registered post with acknowledgement on 17/4/2004 and was received by him on 19/4/2004 and that in the reply on 20/4/2004, he had sought time

for one week for furnishing the reply and the Returning Officer had given time till 23/4/2004 till 3 p.m. to furnish the reply; and

13. Whereas, in response to the show cause notice of the Returning Officer, Thiru Anbalagan, MLA has raised the following objections: -

- (i) The show cause notice issued by the Returning Officer is with malafide intention and exhibits political vengeance.
- (ii) The time given for reply is very short.
- (iii) There are no instructions of the Election Commission, which prohibit erection of road-side flags etc. and there are no specific laws in this regard.
- (iv) Principles of natural justice are not followed in canceling the permission given by P.W.D. as no opportunity was given to the individual before cancellation of permission and further cancellation was done in the eleventh hour, by which time the party had made the necessary arrangements on the basis of the permission.
- (v) The individual has not received the cancellation letter from P.W.D. till date.
- (vi) Delivery/service of the cancellation order was improper as the General Clauses Act, 1897 requires service/delivery by post and not in person.
- (vii) In the show cause notice no specific clauses of the Model Code of Conduct had been cited to have been violated.
- (viii) The Returning Officer is neither specifically empowered nor has any right to recommend to the Election Commission of India on the action to be taken against the party.
- (ix) Nine cases against the party for defacement of public property have already been filed on false complaints of opposition parties and two actions for single incident amount to “double jeopardy” in law.
- (x) The individual and the party are not bound to inform the Returning Officer regarding grant of permission. It is for the P.W.D. authorities to keep the Returning Officer informed of the same.

14. Whereas, the Election Commission, after taking into consideration the reports of the Chief Electoral Officer, Pondicherry, Returning Officer, Pondicherry and the reply of Thiru Anbalagan, is of the opinion that Thiru Anbalagan, MLA, AIADMK and Others belonging to AIADMK party have willfully violated the Model Code of Conduct and the lawful direction of the Election Commission in force at the relevant time, by erecting cut-outs, banners, flag posts etc., defacing the public property in the Union Territory of Pondicherry in total violation of lawful directions given by the concerned authorities in the matter; and

15. Whereas, paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968, provides as follows:-

“16A. Power of Commission to suspend or withdraw recognition of a recognised political party for its failure to observe Model Code of Conduct or follow lawful directions and instructions of the Commission - Notwithstanding anything in this Order, if the Commission is satisfied on information in its possession that a political party, recognised either as a National party or as a State party under the provisions of this Order, has failed or has refused or is refusing or has shown or is showing defiance by its conduct or otherwise (a) to observe the provisions of the ‘Model Code of Conduct for Guidance of Political Parties and Candidates’ as issued by the Commission in January, 1991 or as amended by it from time to time, or (b) to follow or carry out the lawful directions and instructions of the Commission given from time to time with a view to furthering the conduct of free, fair and peaceful elections or safeguarding the interests of the general public and the electorate in particular, the Commission may, after taking into account all the available facts and circumstances of the case and after giving the party reasonable opportunity of showing cause in relation to the action proposed to be taken against it, either suspend, subject to such terms as the Commission may deem appropriate, or withdraw the recognition of such party as the National Party or, as the case may be, the State Party.”.....; and

16. Whereas, in view of the facts stated above, the Commission is prima facie of the view that the provisions of the said Para 16A of the Election Symbols (Reservations and Allotment) Order, 1968 are squarely attracted in the present case of willful violation of the Model Code of Conduct and lawful directions of the Election Commission of India.

17. Now, therefore, the AIADMK which is a recognized state party under the provisions of the said Election Symbols (Reservation and Allotment) Order, 1968 in the state of Pondicherry is hereby called upon to show cause within a period of seven days from the date of receipt of the present notice as to why its recognition as a state party may not be suspended or withdrawn in the Union Territory of Pondicherry for the aforesaid violation of the Model Code of Conduct and the lawful instructions of the Commission for ensuring conduct of free and fair elections.

18. Take notice that in the event of no response from your side within the time limit stipulated, it will be presumed that you have nothing to say in the matter and the Election Commission will take appropriate action or decision in the matter without making any further reference to you.

By order,

(Tapas Kumar)
Secretary