

No. 464/UP-HP/2009

Dated : 22nd March, 2009.

In re : **Notice to Shri Feroze Varun Gandhi and Bharatiya Janata Party for violation of the Model Code of Conduct on his offensive speeches on 7th and 8th March, 2009 in Pilibhit District, Uttar Pradesh.**

Order

Two incidents of speeches given by Shri Feroze Varun Gandhi, a member of the Bhartiya Janta Party, and who, as per media reports, is a likely candidate for the current general election to the Lok Sabha, from Pilibhit Parliamentary Constituency in Uttar Pradesh, at two public meetings in Mohalla Dalchand, Kotwali Pilibhit and at Kasba Barkheda on 7th March, 2009 and 08.03.2009, respectively, were brought to the notice of the Commission on 17.03.2009, by the District Election Officer, Pilibhit. A copy of a communication dated 09.03.2009 sent by the Police Superintendent to the District Election Officer, Pilibhit, containing reference to the aforesaid speeches and a video CD containing the recording of the speeches were also furnished to the Commission.

2. The Commission went through the reports and viewed the video CD of the two speeches. The two speeches contained highly derogatory references and seriously provocative language of a wholly unacceptable nature against a certain community. The Commission considered the speeches as a grave violation of the provisions of clauses (1) and (3) of Item 1 (General Conduct) of the Model Code of Conduct, apart from amounting to promoting feelings of enmity and hatred between different classes on the ground of religion, outraging the religious feeling of a particular community, and promoting hatred and ill-will between two classes of citizens and provoking a section of the citizens to indulge in violence.

3. The Commission, taking *suo motu* cognizance of the incidents, on 18.03.2009, issued a notice to Shri Varun Gandhi, asking him to furnish his reply in the matter by 20.03.09. Simultaneously, notices were also issued to the Bharatiya Janata Party, both at the central level as well as at the State level, asking the Party to submit its reply. The Commission also directed the Chief Electoral Officer, Uttar Pradesh, to file criminal cases against Shri Varun Gandhi under the provisions of Sections 153A (promoting enmity between different groups on grounds of religion), Section 295A (deliberate and malicious acts intended to outrage religious feelings of any class of Indian citizens by insulting its religion or religious beliefs), Section 505 (2)

(statements creating or promoting enmity, hatred or ill-will between classes) and under Section 125 of the Representation of the People Act, 1951(promoting enmity between classes in connection with elections).

4. In reply to the Commission's notice, the Bharatiya Janata Party, submitted that the party was not aware of the speeches made by Shri Varun Gandhi, and that the party completely disagrees, disassociates, and disapproves the contents of the CD and that these do not represent the views of the party. The party also added that it had already disapproved and disassociated from the contents (of the speeches) even before the notice from the Commission. They further submitted that the party stands by the Model Code of Conduct in its entirety, and that the party is independently looking into the matter. The Uttar Pradesh state unit of the Bharatiya Janata Party submitted a reply stating that the state unit adopts the reply given by the Central Office of the Party.

5. Shri Varun Gandhi, in his reply submitted on 20.03.2009, stated as follows:-

- He may be given access to the report of the DEO and the material on the basis of which the report was prepared and the name and details of the complainant, the number of persons and institutions who handled the CD before it reached the Commission, and those who allegedly photographed the event.

- Alleged speeches were made on 7th & 8th March, 09 but the controversy erupted 10 days later on the basis of some private unofficial tape, which could have been put together for private and political motives.
- What is happening appears to be a trial by the media to provide a platform for political opponents and others to create an atmosphere of hostility against him. It seemed that political opponents provided the tapes to the media and for public circulation. The entire initiative was politically tainted, technically deficient and manipulated.
- Given the time in and during which the undisclosed report of the incident was received by the Commission it was not possible that there was due application of mind after examining all the materials.
- Any notice issued to him, inter alia affects his rights under Articles 19 and 21 of the Constitution of India, thereby requiring rigorous scrutiny.
- The CD received by the Commission is not the original one but is allegedly an edited copy of the original. Without having access to the original unedited recording of the speeches in their entirety, the CD cannot be relied upon for any action against him.
- He firmly believes in all constitutional values and respect for all religions and fully subscribes to the law of the land.

Shri Varun Gandhi submitted that all allegations in the notice dated 18.03.2009, which are wholly unsubstantiated, are denied. However, he has neither specifically accepted nor rejected the contents of the speeches and the inflammatory and derogatory tone, tenor and language used in the two speeches.

6. The Commission has carefully perused and duly examined the explanation furnished by Shri Varun Gandhi (hereinafter, for short, the respondent). The Commission is not at all convinced with the explanation which the respondent has tried to take recourse to for wriggling out of the situation which he has created by making the inflammatory and highly derogatory speeches. The main plank of his defence is that the CD containing the recording of his impugned speeches is morphed and doctored so as to politically malign him. The Commission is far from convinced with such bald assertions. He has not denied anywhere in his explanation that he held the meetings covered and recorded in the CD and that he addressed the audience at those meetings and made speeches thereat. The Commission has seen the CD, not once but several times repeatedly, and is fully convinced and satisfied that the CD has not been tampered with, doctored or morphed, as alleged by the respondent. The copy of the CD in question was duly furnished to him with the Commission's notice and the onus lay on him to

prove his allegation that the CD is not genuine or authentic as is alleged by him.

7. In regard to the stand taken by respondent that he should be shown the complaint received by the Commission and furnished with the information as to how and through whom the CD reached the Commission, the Commission would like to clarify that the Commission took *suo motu* notice of the impugned speeches of the respondent which were also widely shown on several national TV channels. It is immaterial to know the source from which the CD reached the Commission or has been obtained by it. What is material and relevant are the contents of the impugned speeches made by him and as recorded in the said CD. The said CD is only a piece of evidence to prove that he made those speeches. As already observed above, the respondent has not denied having held the meetings under reference and made speeches thereat. Nor has he shown or even indicated as to which portions of his impugned speeches were morphed, doctored, manipulated or interpolated. He was asked to explain his position with regard to the genuineness or authenticity of the offensive statements made by him in his speeches and not with regard to the genuineness or authenticity of the CD.

8. The respondent's next explanation is that the CD in question surfaced after a gap of about ten days after his meetings held on 7th and 8th

March, 2009. This explanation too cuts no ice. Any delay in the surfacing of the CD does not lessen the gravity of the offensive statements made by him. Also, the late surfacing of the CD does not by itself lead to any conclusion that the CD was morphed or doctored meanwhile, unless proved otherwise by the respondent to the satisfaction of the Commission.

9. The Commission also sees no force in his contention that he is being tried by the media because exposure by media does not amount to trial by media. The Commission, in fact, viewed a more comprehensive CD, a copy of which was given to the respondent, than what was shown on some of the electronic media. The Commission monitors all inputs, including media reports, and whenever it observes any serious violation of the Model Code of Conduct or commission of any electoral offences being indulged in by any party or a person, the Commission is obliged under the Constitution to take note of such violations and to initiate and take appropriate actions to bring such violators of the Model Code of Conduct and electoral laws to book.

10. Now coming to the offensive statements made by the respondent in his impugned speeches, the Commission deliberately does not intend to repeat or quote here those offensive portions of his impugned speeches. The same have been seen very widely on the electronic media and

read equally widely in the print media right across the whole country, which have stirred the nation's conscience and aroused nation wide condemnation.

11. In this context, the Commission would like to remind the respondent of the sane advice given by the Hon'ble Supreme Court in *Ziauddin Burhanuddin Bukhari v Brijmohan Ramdass Mehra* (AIR 1975 SC 1788) that:

“Our Constitution makers certainly intended to set up a Secular Democratic Republic the binding spirit of which is summed up by the objectives set forth in the preamble to the Constitution. No democratic political and social order, in which the conditions of freedom and their progressive expansion for all make some regulation of all activities imperative, could endure without an agreement on the basic essentials which could unite and hold citizens together despite all the differences of religion, race, caste, community, culture, creed, and language. Our political history made it particularly necessary that these differences, which can generate powerful emotions, depriving people of their powers of rational thought and action, should not be permitted to be exploited lest the imperative conditions for the preservation of democratic freedoms are disturbed.

..... Due respect for the religious beliefs and practices, race, creed, culture, and language of other citizens is one of the basic postulates of our democratic system. Under the guise of protecting your own religion, culture, or creed you cannot embark on personal attacks on

those of others or whip up low herd instincts and animosities or irrational fears between groups to secure electoral victories.”

12. The Hon’ble Supreme Court had further observed in *Abdul Hussain Mir Vs. Shamsul Huda* (AIR 1975 SC 1612) that ‘religious appeal or communal appetite is stronger in a bigoted and backward population than in an enlightened or indifferent or other area with a long tradition of peaceful co-existence of variegated religious groups or cosmopolitan people. It all depends on the socio-political pathology or sensibility of each province or constituency.’ It is well known that the area in which the impugned speeches were made by the respondent is highly communally sensitive and surcharged with religious tensions.

13. Again, in the case of *Dr. Ramesh Yeshwant Prabhuo Vs. Prabhakar Kashinath Kunte and Others* [(1996) 1 SCC 130], the Hon’ble Supreme Court held that the speeches made by Shri Bal Thackeray, wherein he appealed to the voters belonging to his religion to vote for the candidate of his party because he also belonged to the same religion and wherein he also made some derogatory references to the members of another community, were highly offensive and amounted to promoting or attempting to promote feelings of enmity and hatred between different classes of citizens on the ground of religion and were of very serious and grave nature.

14. While tendering its opinion to the Hon'ble President of India under section 8A of the Representation of the People Act, 1951, in the above referred case of Dr. Ramesh Yeshwant Prabhoo on the question as to whether Shri Prabhoo should be disqualified and, if so, for what period, the Commission observed in its opinion dated 15th October, 1997 that :

“There cannot be two opinions that such pernicious practices which are highly dangerous and can threaten the very survival of democracy must be viewed with utmost concern and put down with a heavy hand without any leniency. Persons indulging in such nefarious practices must be visited with the severest penalty permissible under the law, as any leniency shown to them would mean compromising with those corrupt practices which sully the purity of elections.”

The same view was reiterated by the Commission in its opinion dated 22nd September, 1998, to the Hon'ble President of India in the case of *Shri Bal Thackeray* and both Dr. Ramesh Yeshwant Prabhoo and Shri Bal Thackeray were disqualified for the period of six years, i.e., the maximum period for which they could be disqualified by the President under the said section 8A of the Representation of the People Act, 1951.

15. The above sane advice of the Hon'ble Supreme Court in the above referred cases of *Ziauddin Burhanuddin Bukhari* and *Abdul Hussain*

Mir (supra) has obviously been thrown to the winds and the impugned speeches by the respondent have been made by him in utter disregard of the same and in blatant violation of the provisions and spirit of the Model Code of Conduct and the law on the subject. The Commission would also like to reiterate its above quoted observations in its opinion dated 15th October, 1997 and 22nd December, 1998 in the cases of *Dr. Ramesh Yeshwant Prabhoo and Shri Bal Thackeray* (supra) and to emphatically state that the impugned speeches of the respondent are also highly dangerous, threatening the very survival of democracy and the communal harmony – the basic tenets enshrined in the Constitution of India – and deserve to be condemned in the severest terms.

16. In the considered opinion of the Commission, the respondent does not deserve to be a candidate at the present general elections since every candidate must solemnly make and subscribe an oath under the Constitution that he will bear true faith and allegiance to the Constitution and that he will uphold the sovereignty and integrity of India. However, the Commission is conscious of its limitations under the law, as it stands at present, that it cannot impose such disqualification on the respondent and debar him from contesting elections unless he is convicted or held guilty by a competent court of law in an appropriate legal proceeding. In the

circumstances, the Commission **strongly condemns and censures** the respondent, Shri Feroze Varun Gandhi.

17. Here, it is pertinent to add that, **on the initiative of the Commission, two criminal cases have already been registered against Shri Feroze Varun Gandhi, under sections 153A, 295A and 505(2) of the Indian Penal Code and section 125 of the Representation of the People Act, 1951**, in the concerned Police Stations – Kotwali Police Station, Pilibhit, and Police Station of Kasba Barkheda, Pilibhit, Uttar Pradesh. **The Commission hereby directs the State Government authorities concerned of Uttar Pradesh to expeditiously investigate the matter with utmost alacrity and the speed with which this matter deserves to be dealt with at all levels.** The Commission would be keeping a close watch on the progress in the investigation and would also be taking all legally permissible steps for the expeditious trial of the matter till it reaches its logical conclusion. It is pertinent to add here that the Commission has directed the Chief Electoral Officer, Uttar Pradesh to keep a close track of all programmes of Shri Feroze Varun Gandhi, and whenever and wherever public meetings and rallies involving his speeches are held a proper a continuous video tracking would be done and the cameraman for such video

tracking would be accompanied by a Magistrate to ensure proper video coverage.

18. As regards the notice to Bharatiya Janata Party, as already observed in para 4 above, the party in its reply has stated that the party was not aware of the speeches made by Shri Varun Gandhi, and that the party completely disagrees, disassociates, and disapproves the contents of the CD and that these do not represent the views of the party. The party also added that it had already disapproved and disassociated from the contents (of the speeches) even before the notice from the Commission. The party further submitted that the party stands by the Model Code of Conduct in its entirety, and that the party is independently looking into the matter. In view of the above stand of the party, the Commission expects that the least that the party must do is to deny the party nomination to Shri Feroze Varun Gandhi as its candidate at the present general election to the Lok Sabha. This will be fully in keeping with the assertion of the party that it completely disagrees, disassociates, and disapproves the views of Shri Feroze Varun Gandhi and that the party stands by the Model Code of Conduct in its entirety. Any sponsorship of his candidature by the Bharatiya Janata Party, or any other Political Party at this election would be perceived as endorsing his unpardonable acts of inciting violence and creating feelings of enmity and

hatred between different classes of citizens of India, destroying the social, democratic and plural fabric of the country, as enshrined in the Constitution of India which all the political parties have undertaken to uphold, at the time of their registration with the Election Commission under section 29A of the Representation of the People Act, 1951.

(S.Y. Quraishi)
Election Commissioner

(N. Gopalaswami)
Chief Election Commissioner

(Navin B. Chawla)
Election Commissioner