

ELECTION COMMISSION OF INDIA
NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI – 110001.

No. ECI/PN/10/2005/MCPS

Dated 17th January, 2005.

PRESS NOTE

The Election Commission of India has issued an Order today on the violation of Model Code of Conduct by Shri Lalu Prasad Yadav, President, Rashtriya Janata Dal, by distributing money to the people in Patna District on December, 18, 2004. A copy of this order is enclosed.

(R.K. SRIVASTAVA)
SECRETARY

ORDER

The schedule of General Elections for constituting new Legislative Assemblies of the States of Bihar, Jharkhand and Haryana was announced by the Election Commission on 17th December 2004 and detailed Press Note was also issued on that day.

2. 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 15 of the above referred Press Note dated 17th December, 2004 that the Model Code of Conduct in relation to the aforesaid general elections announced vide the said Press Note would come into force from 17th December, 2004 itself.

3. The Model Code of Conduct, inter alia, specifically states that all parties and candidates shall 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.

4. It was complained to the Election Commission that Shri Lalu Prasad, President, Rashtriya Janata Dal, had violated the Model Code of Conduct by distributing money to the people in Patna District on December 18, 2004. This issue was widely covered by a section of print and electronic media, whereby Shri Lalu Prasad was shown, and seen, distributing hundred rupee notes to some ladies in a large gathering.

5. A 'Show Cause Notice' was issued on December 20, 2004 to Shri Lalu Prasad calling upon him to explain by 24th December, 2004 as to why he and his party

disregarded and failed to abide by the Model Code of Conduct and the lawful directions of Election Commission for ensuring the conduct of free and fair elections and why action should not be taken against his party under the Election Symbols (Reservation and Allotment) Order, 1968.

6. Shri Lalu Prasad filed his reply to the said notice on 24th December, 2004. Shri Lalu Prasad has denied that he has bribed the voters and thereby committed the violation of the Model Code of Conduct. Though he admits to have given four hundred-rupee notes to four ladies of Ebrahimpur village on 18 December 2004, his defence is that he paid that money to those ladies as they demanded '*mithai*' (sweets) on his becoming union minister of railways and the villagers were not allowing his *Garib Chetna Rath* to cross that village unless he gave them some mithai. His further defence is that the aforesaid ladies have also given statements before the judicial magistrate to the same effect under Section 164 of the Cr. PC when the police investigated the charge of bribery against him on the basis of an FIR lodged against him by the Chief Electoral Officer, Bihar.

7. The Commission has carefully noted his submissions on the allegation of distribution of money. The Model Code of Conduct states that all parties and candidates shall avoid scrupulously all activities those are offences under the election law, such as bribing of voters, for furtherance of the interest of the party. The electoral offence of bribery as defined in Section 171B of the IPC is committed when any person, inter alia, gives a 'gratification' to any person with an object of inducing him or any other person to exercise any electoral right, or of rewarding any person for having exercised any such right, commits the offence of bribery. A person who offers, or agrees to give, a gratification is also deemed to give a gratification. 'Electoral right' is defined in Section 171A(b) to mean the right of a person to vote or refrain from voting, or to stand or not to stand as a candidate, or to withdraw from being a candidate, at an election. Section 171E which provides for punishment for bribery has an explanation to the effect that 'treating' is also a form of bribery where the gratification consists in food, drink, entertainment, provision. Bribery is also an electoral corrupt practice under Section 123(1) of the Representation of the People Act

1951, apart from being an electoral offence under Section 171B of the IPC. While defining the corrupt practice of bribery in Section 123 of the RP Act 1951, which is almost in similar terms as under Section 171B of the IPC, an explanation has been inserted in the aforesaid Section 123(1) to the effect that ‘gratification’ is not restricted to pecuniary gratification or gratification estimable in money and it includes all forms of entertainment. The Supreme Court held in case of *C. Narayanaswamy Vs. C.K. Jaffer Sharief* (1994) Supp 3 SCC 170, “any gratification made to the elector ‘with the object directly or indirectly of inducing’ such an elector to vote, shall be deemed to be ‘bribery’. Section 123(1) (A) does not require the electors to express or convey their acceptance or assurance that they shall vote for such candidate.” Thus, to say that the money in the present case was paid to the ladies concerned for mithai and that no offence of bribery was committed is of no avail to Shri Lalu Prasad, as even the gratification in the form of treating, which would include giving of mithai or giving of money for mithai, would also fall within the ambit of the offence of bribery. Distribution of mithai when he became the union minister in May 2004 could have been construed as customary sharing of his happiness with others. But giving money after nearly seven months of his assumption of office in the Union Council of Ministers and that too when the election to the Bihar Legislative Assembly is so imminently close and the Model Code of Conduct in relation to that election is already in force, such distribution of money cannot but have only one inescapable inference that the same was for inducing the voters to vote for his party, if not directly definitely indirectly. In this context, the Commission finds no better words to express its concern than what the Supreme Court observed in *Ghasi Ram v Dal Singh* (AIR 1968 SC 1191) with regard to election-eve grants from discretionary funds by ministers:

“Election is something which must be conducted fairly. To arrange to spend money on the eve of elections in different constituencies, although for general public good, is when all is said and done an evil practice, even if it may not be corrupt practice. The dividing line between an evil practice and corrupt practice is a very thin one. It should be understood that energy to do public good should be used not on the eve of elections but much earlier and that even slight evidence might change this evil practice into corrupt practice.”

The Commission would not like to comment on the statements of the four ladies who received money from Shri Lalu Prasad which they made before the judicial magistrate under Section 164 Cr. PC as the same were made in a judicial proceeding, pending before a court of law and the matter being sub-judice. Nevertheless, the Commission would like to add that in the matter of violation of Model Code of Conduct, it is not the strict rules of evidence that apply; what matters is the general perception in the minds of public, particularly the electorate, political parties and rival candidates as to how they view the acts of commission and omission of other political parties, their leaders and their workers and supporters. It is an undeniable fact that the whole nation's conscience felt disturbed on seeing, in the print and electronic media, Shri Lalu Prasad openly holding a wad of currency notes in his hand and distributing them to several ladies, which he himself admits.

8. Shri Lalu Prasad Yadav is a senior political leader and president of Rashtriya Janata Dal. He has to set an example by his conduct for other leaders of the party and his followers and supporters to emulate him. In this context, the Commission would like to invite attention to the following observation of the Supreme Court in *Gadakh Yashwantrao Kankarrao v E V alias Balasaheb Vikhe Patil* (AIR 1994 SC 678): -

“The duty at the top echelons of leadership at the state and national level of all political parties is to set the trend for giving the needed information to the electorate by adopting desirable standards so that it percolates to the lower levels and provides a congenial atmosphere for a free and fair poll. A contrary trend of speeches by the top leaders tends to degenerate the election campaign as it descends to the lower levels and at times promotes even violence leading to criminalization of politics. The growth of this unhealthy trend is a cause for serious concern for the proper functioning of the democracy and it is the duty of the top leaders of all political parties to reverse this trend to enable movement of the functioning democracy in the proper direction.”

9. What has been said by the Supreme Court with regard to the speeches by the top leaders of a party so as to maintain a congenial environment for clean and fair

elections applies with greater force to the conduct of those top leaders in respect of other serious electoral malpractices, like bribing the voters.

10. Thus, there can be no two opinions that Shri Lalu Prasad did violate the Model Code of Conduct by distributing money to electors on the eve of elections and during the period when that Code was in force. The Commission severely condemns this serious violation of the Model Code by Shri Lalu Prasad.

11. Ordinarily, this serious violation of the Model Code of Conduct by Shri Lalu Prasad should invite exemplary punishment to the party which he heads as its President, apart from severe condemnation of Shri Lalu Prasad. The Commission has, however, taken note of the repeated assurances given by Shri Lalu Prasad to observe the Model Code, in his reply to the show cause notice. He has stated, inter alia, that “I respect the Model Code of Conduct and fully intend to carry out its provisions and abide by its provisions. There has never been any intention on my part to violate this Code in any material particular”. He has further stated that “I am fully aware of my responsibilities as a Leader of a Political Party. I am also aware of the fact that while the Model Code of Conduct is in operation, no political party including mine shall do any act which is violative of any offence under our electoral laws”. As evidence of his intention to abide by the Model Code of Conduct, he has stated that he refused to unveil the statue of a Kargil martyr Ganesh Yadav from Bihar at Lai Mor on 18.12.2004, voluntarily cancelled the programme of inauguration of two newly constructed railway platforms at Patna Junction on 17.12.2004 and that he even cancelled the rally which was proposed to be held by his party at Patna on 23.12.2004, in view of the Model Code of Conduct having come into force from 17.12.2004. In view of these solemn assurances given by Shri Lalu Prasad to respect the Model Code of Conduct and to observe its provisions, the Commission is inclined to take a lenient view in the matter on the present occasion. In these circumstances, the Commission would not like to pursue this matter further against the party headed by Shri Lalu Prasad. Nevertheless, the Commission severely reprimands Shri Lalu Prasad for his aforementioned violation of the Model Code of Conduct. The Commission would like to caution the party and all its leaders, workers and supporters that this is the last

opportunity to them to honour the Model Code of Conduct and abide by it, both in letter and spirit, and that it would not hesitate to take exemplary action against the party in case any further violation of the Model Code of Conduct or lawful directions of the Election Commission given from time to time for ensuring free and fair elections comes to notice of the Commission.

Sd/-

(B.B. Tandon)

Election Commissioner of India

Sd/-

(T.S. Krishna Murthy)

Chief Election Commissioner
of India

Sd/-

(N. Gopalaswami)

Election Commissioner of India

New Delhi

17th January 2005