

March 10, 2022

To,

1. Sushil Chandra
Chief Election Commissioner
Email id: schandra@eci.gov.in

2. Rajiv Kumar
Election Commissioner
Email id: ecrk@eci.gov.in

Subject: Complaint political advertisement in the newspaper during 'silent period' violating Model Code of Conduct

Respected Sirs,

We, at Citizens for Justice and Peace (CJP) are writing to you as we are extremely concerned about the issuance of an advertisement on the front page of a daily Hindi newspaper on the last day of assembly polls by the party in power, Bhartiya Janta Party (BJP) in the state of Uttar Pradesh for the purpose of its election campaign, which is in gross violation of the Model Code of Conduct issued by the Election Commission of India.

The said front page advertisement issued in 'Dainik Jaagran' on March 7, 2022 blatantly seeks out people's support for the BJP and promotes the party by listing out their future development plans and potential schemes for the state of Uttar Pradesh. Such announcements or promotions made during the election period, even at the last moment, plays a major role in altering people's perceptions and their voting behaviour. It is important that voters are given time to reflect upon their political choice instead of unduly influencing their minds on the day of polling.

The said advertisement was pointed out by many social media users and the BJP was heavily criticized for violation of the MCC in such manner.

A picture of the said advertisement has been annexed and marked hereto as Annexure A

Violation

Model Code of Conduct

The above-mentioned advertisement made by the BJP stands in violation of the following section of the Code of Conduct:

VII. Party in Power: *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 has used its official position for the purposes of its election campaign and in particular –*

4. *Issue of advertisement at the cost of public exchequer in the newspapers and other media and the 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.*

Representation of People's Act, 1951

The party in power, BJP also stands in violation of the following sections of the Representation of People's Act, 1951:

123. Corrupt practices. — *The following shall be deemed to be corrupt practices for the purposes of this Act:—*

[(1) "Bribery", that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or 4 [to withdraw or not to withdraw] from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for 5 [having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from voting;

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right

Section 126 Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll.—*(1) No person shall—*

(a) convene, hold or attend, join or address any public meeting or procession in connection with an election; or

(b) display to the public any election matter by means of cinematograph, television or other similar apparatus; or

(c) propagate any election matter to the public by holding, or by arranging the holding of, any musical concert or any theatrical performance or any other entertainment or amusement with a view to attracting the members of the public thereto, in any polling area during the period of forty-eight hours ending with the fixed for the conclusion of the poll for any election in the polling area.

(2) Any person who contravenes the provisions of sub-section (1) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(3) In this section, the expression "election matter" means any matter intended or calculated to influence or affect the result of an election.].

[126A. Restriction on publication and dissemination of result of exit polls, etc. —(1) No person shall conduct any exit poll and publish or publicise by means of the print or electronic media or disseminate in any other manner, whatsoever, the result of any exit poll during such period, as may be notified by the Election Commission in this regard.

Under Section 123 (1) and (2), the BJP is deemed to have undertaken corrupt practice of bribing the voters on the poll day by promising the voters through the advertisement, a list of rewards/ benefits that they would receive if they voted for BJP. Further, by publishing the advertisement on the polling day, the BJP has also unduly influenced the voters by interfering with the free exercise of their electoral right. Moreover, as per section 126, the BJP should have maintained a 48 hour silent period until the end of polls and not displayed or propagated to the public any election matter. As per the definition of 'election matter' under section 126, the contents of the said front page advertisement issued on the poll day is clearly intended or calculated to influence or affect the result of an election. While Section 126 prevents electronic media from airing political advertisements in the silent period, it is of utmost importance to take into consideration the equal impact of campaign material in print media during the same period. Moreover, if Section 126A can restrict the publication and dissemination of exit polls by means of print media then the same can be extended to include political advertisements published during the polls. It cannot be denied that the publishing of a front-page advertisement promoting a political party on the poll day can interfere with the free exercise of any electoral right in the same manner as the publication and dissemination of result of exit polls on the poll day.

Press Council of India's Guidelines

We would also like to bring to your notice the Press Council of India's Guidelines on Election Reporting 1996 wherein it considers the crucial position occupied by the electoral process in a representative democracy and clearly states that the newspapers should not allow their forum to be used or exploited for distortions and manipulations of the elections by the interested parties in a way that misguides and misleads the unwary voters.

The Guidelines prohibit the Press from accepting/ publishing any advertisement at the cost of public exchequer regarding achievements of a party/government in power. Further, it mandates the Press to observe all the direction/order/instructions of the Election Commission/ Returning Officers or Chief Electoral Officer issued from time to time. By virtue of this particular guideline, it can be interpreted that it is not just the party in power but also the Press who is obliged to scrupulously avoid the issuance of advertisement in the

newspaper during the election period for publicity regarding achievements with a view to furthering the prospects of the party in power. The Guidelines also recognize the influence of exit poll surveys on voters and prohibits its publication till the last poll is held, in order to keep the electoral process pure and avoid voter's mind being influenced from external factors. We would like to reiterate that this Hon'ble Commission realize the similar impact a front-page political advertisement in a local newspaper, on poll day, could have on the minds of the voters.

Realising the dangers of 'paid news', the Press Council of India has rightly stated that "*when the distinction between news and advertisements starts blurring, the readers can hardly distinguish between the two and such malpractices continue to undermine the democracy in India*". Above all else, one must not forget how in all likelihood, the expense of election-time paid news might not even make it to the election expenses which violates the Conduct of Election Rules, 1961 framed by the Election Commission of India under the Representation of the People Act, 1951.

The Press Council of India's Guidelines on Election Reporting-1996 is marked and annexed hereto as Annexure B

The Press Council of India Report on Paid News dated July 30, 2010 is marked and annexed hereto as Annexure C

There have been repeated violations of the Model Code of Conduct during the elections in the State of Uttar Pradesh, which taken cumulatively, have a grave impact on people's electoral democracy. As suggested by the Press Council of India such practices are corrupt or an "electoral malpractice" and should be made a punishable offence. During the 2019 assembly polls, the Election Commission of India had strictly barred the political parties and their candidates from publishing advertisement in newspapers on polling day in Maharashtra and Haryana. There is no valid reason why an exception should be made in this case.

It is in this light that we urge, this Hon'ble Commission to take cognisance of this serious violation of the Model Code of Conduct and we pray that you take strict action against the BJP for compromising the free and fair electoral process as well as violating the Model Code of Conduct.



Yours sincerely,

Nandan Maluste, President

Teesta Setalvad, Secretary

Annexures:

Annexure A: Picture of the advertisement in Dainik Jagran

Annexure B: Press Council of India's Guidelines on Election Reporting-1996

Annexure C: The Press Council of India Report on Paid News dated July 30, 2010