



भारत निर्वाचन आयोग
Election Commission of India

निर्वाचन सदन
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No. 491/MM/2019/Comm.

Dated:-10th April, 2019

ORDER

Election Commission of India has announced General Elections to 17th Lok Sabha, 2019 on 10th March, 2019 and from the date of announcement of the elections, the Model Code of Conduct has come into operation. The Model Code of Conduct (MCC) is an umbrella code, developed in consultation with the political parties, facilitates level playing field to all the political parties and the candidates and it inter-alia seeks to ensure that the power of media is not used in such a manner which affects the general conduct and level playing field during the electoral process.

2. It has come to the notice of the Commission that certain political contents, which are not in conformity with the Model Code of Conduct, are being displayed or intended to be displayed to the public through electronic media including cinematograph in the public, which relates to either a candidate or a political party or a specific achievement of the party in power and these are displayed with the purpose of furtherance of electoral gains during the period of Model Code of Conduct. Also, it has come to the notice of the Commission that there are instances of displaying of such political contents on electronic media, which discredit or diminish the electoral prospect of candidate or a political party(ies). So far, the Commission has received complaints about certain cinemas namely 'NTR Laxmi', 'PM Narendra Modi', and 'Udyama Simham', which are claimed to either diminish or advance the electoral prospect of a candidate or a political party in the garb of creative freedom. It is claimed that such creative contents are a kind of surrogate publicity by the candidate or the political party during the period of MCC. Though the display materials claim to be part of creative content, it is contended that these

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“मजबूत लोकतंत्र – सबकी भागीदारी”
“Greater Participation for a Stronger Democracy”

have propensity and potentiality to affect the level playing field which is not in consonance with the provisions of the Model Code of Conduct.

3. As these contents are incorporated in the story line/scheme of the programs being shown and there would be difficulty in proving the payment of money, they may not fall under the category of “advertisement” strictly and may remain outside the purview of MCMC certification requirement, thereby evading the directive given by the Hon’ble Supreme Court in **Secretary, Ministry of Information and Broadcasting vs. M/s Gemini TV [(2004) 5 SCC 714]**. Such ‘political contents’ poses a serious threat to the level playing field as it may create an impression of truthfulness of such content being shown through Television/Cinema/Internet based entertainment programs/social media. And therefore, it is in the larger interest of ensuring the level playing field and conduct of free and fair elections that such political content ought to be regulated during the election period to prevent violation of Model Code of Conduct.

4. “Free and Fair Elections” has not only been held by the Hon’ble Supreme Court of India to be a part of the basic structure of the Indian Constitution (**People'S Union For Civil Liberties vs Union Of India & Anr, [2013]**) but is also sacrosanct right of every citizen in a democracy.

In **Mohinder Singh Gill & Anr vs The Chief Election Commissioner & Ors. (1978 AIR 851)**, Hon’ble Supreme Court held that

“Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324 (1) in the Election Commission the framers of the Constitution took care to leaving scope for exercise of residuary power by the Commission in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen, or anticipated with precision.”

Further at para 113 in the same Order, Hon'ble Supreme Court held that

“where these (laws) are absent, and yet a situation has to be tackled, the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situation.”

It also commented that

"An express statutory grant of power to the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually employed and that are necessary to the exercise of the power or the performance of the duty That which is clearly implied is as much a part of a law as that which is expressed."

5. The Commission is fully aware of the observation of Hon'ble Supreme Court in **Indibly Creative Pvt. Ltd and ORS vs. Government of West Bengal and ORS in WP (C) No. 306/2019**, wherein, on 15th March, 2019 the Hon'ble Supreme Court has held that 'once a film has been duly certified by CBFC, it is not open to any authority either of the State Government or otherwise to issue formal or informal directions preventing the producer from having the film screened'. This was further emphasised by the Apex Court on 25th March, 2019 in the same matter.

6. On 9th April, 2019, in **Aman Panwar vs UoI & Ors [WP(C) No. 450 of 2019]**, in the context of film titled PM Narendra Modi, Hon'ble Supreme Court held that

“whether the film will tilt the electoral balance in favour of any political party, is a question that can and should be addressed by the Election Commission of India.”

It also held in the context of the instant matter that

“If the film is to be so released on 11th April 2019, what conditions should govern such release thereafter is a matter that the Election Commission of India has to decide.”

7. Earlier on 25th March 2019, the Commission also asked the Central Board of Film Certification (CBFC) to take note of the operation of MCC.

8. Section 126 (1) of the Representative of the People Act, 1951 prescribes that

(1) No person shall—

(a) convene, hold, 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 hour fixed for the conclusion of the poll for any election in that polling area.

Even for Print Media, the Commission on previous occasion in 2015 (reiterated vide No. 491/MCMC/2019/Communications dated 6th April 2019), directed that only pre-certified political advertisements be allowed to be displayed to ensure a level playing field as the aggrieved person or party may not have the occasion to approach for the redressal of harm caused, if any.

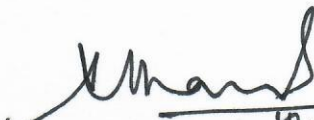
9. Under Article 324 of the Constitution, superintendence, directions and control of elections are bestowed upon the Commission and it is the duty of the Commission to take necessary measures to create a level playing field and provide a conducive electoral environment to all the stakeholders. In catena of judgements, Hon'ble Supreme Court has held and acknowledged that the Model Code of Conduct, which ensures free and fair electoral process, which is "*sin qua non*" for the electoral democracy. In this backdrop, the Commission is of the considered view that there is an emergent need for intervention in the matter of those 'political contents' which are intended (or purported to be) for benefitting or discrediting the electoral prospect of any candidate or/and any political party, for ensuring a level playing field.

10. Accordingly, the Commission hereby orders the following:

1. That any biopic material in the nature of biography/hagiography sub-serving the purposes of any political entity or any individual entity connected to it, which is intended to, or which has the potential to disturb the level playing field during the elections, **should not be displayed in electronic media including cinematograph** during the operation of MCC.
2. That any poster or publicity material concerning any such certified content, which either depicts a candidate (including prospective) for the furtherance (or purported to further) of electoral prospect, directly or indirectly, **shall not be put to display in electronic media** in the area where MCC is in operation.
3. That any poster or publicity material concerning any such certified content, which either depicts a candidate (including prospective) for the furtherance (or purported to further) of electoral prospect, directly or indirectly, **shall not be put to display in print media**, without the prescribed instructions of pre-certification (ECI's instruction No. 491/MCMC/2019/Communications dated 6th April 2019) in the area where MCC is in operation.

4. That in any cinematograph material, certified by the appropriate authority, if there exists such a violation or on receipt of a complains in this regard, a Committee, duly constituted by the Commission, shall examine the same and suggest appropriate action. This Committee shall be headed by a retired Justice of Hon'ble Supreme Court or retired Chief Justice of any Hon'ble High Court.

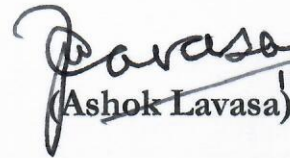
These instructions shall be brought to the notice of all concerned for compliance.


(Sushil Chandra) 10.4.19

Election Commissioner


(Sunil Arora)

10.04.2019
Chief Election Commissioner


(Ashok Lavasa) 10/4/19

Election Commissioner