

ELECTION COMMISSION OF INDIA

NirvachanSadan, Ashoka Road, New Delhi-110001

In re: General Election to the Legislative Assembly of Karnataka, 2018- Election from 154-Rajarajeswari Assembly Constituency -Postponement of date of poll.

ORDER

The General election to the Legislative Assembly of Karnataka was called by the Governor of Karnataka on 17th April, 2018, by his notification of the said date under section 15 of the Representation of the People Act, 1951. On the same date, the Election Commission also issued notification under sections 30 and 56 of the said Act fixing, inter alia, 12th May, 2018, as the date on which a poll shall be taken in 154-Rajarajeswari Nagar (RR Nagar) Assembly Constituency, among others.

2. After announcement of the said election, many complaints were being received in this constituency with regard to distribution of money, gift items and other materials. Several such items were seized by the flying squads and the static surveillance teams on different dates. However, two incidents reported were serious in nature: One, concerning seizure of a truck carrying goods worth about Rs. 95 Lakh by a flying squad on 6th May, 2018 and another, concerning seizure of thousands of EPIC (Voter I Cards), Photo Voter Slips, Laptops, Survey forms of Voters and few items (carrying photograph and name of a particular candidate) in flat No. 115 SLV Park Apartment, Jalahalli on 8th May, 2018.

3. Considering the seriousness of the matter, the Commission directed Chief Electoral Officer to visit the spot along with the Police Commissioner of Bengaluru

and other officials, ensure taking appropriate action and submit a report to the Commission. The Chief Electoral Officer (CEO), after the preliminary assessment, released a press note stating that the materials seized from the said flat are huge in volume. Prima facie, the EPIC cards, as per the CEO, after random verification, seemed genuine.

4. The observers also visited the spot and gave their report. The combined report of General, Police and Expenditure Observers for the said 154-Rajarajeshwari Nagar assembly constituency has stated that all the three Observers visited the spot/flat and found that District Election Officer (DEO), Deputy Commissioner of Police (DCP), Additional DEO, Returning Officer (RO) other officials were present at the site and had already started the process of accounting of the seized materials.

The document showed that the concerned party/candidate had used a survey firm to carry out a detailed survey of the voters in the area which included photograph of the house of the particular voters along with his details of caste, gender, contact number, along with their passport size photographs.

5. About the matter of incidence and seizure in the flat, allegations and counter allegations were made to the Election Commission by Bharatiya Janata Party (BJP) and the Indian National Congress (INC) soon after the incident. The delegation of INC and BJP met the Election Commission on 9.5.2018 and submitted their memoranda for detailed inquiry.

6. After getting memoranda from the two major parties, assessing the preliminary reports of the CEO and the three Observers, and considering seriousness of the case, the Commission decided immediately to send a Deputy Election Commissioner (DEC) from the Commission for examining the matter and submitting his report within 24 hours. The Deputy Election Commissioner, Mr. Chandra Bhushan Kumar visited Bengaluru on 9th May, 2018 and after examination of the matter submitted his report on 10th May, 2018 late in the evening.

In his report, the DEC has mentioned about a number of cases lodged against various accused persons including candidate(s) concerning seizures of materials related to the ongoing election in 154- Raja Rajeshwari Nagar assembly constituency. He has described two specific cases in detail. In one such case, a consignment with 5018 T-Shirts (with photo and name of candidate) in ten plastic bags and 23393 half pants in 503 cotton boxes seized on 06-05-2018. Cr. No. 80/2018 u/s/ 123 of the R.P. Act, 1951 and u/s 171B and 171E was registered by the Flying Squad against that candidate and five others. Preliminary inquiry revealed that the consignment was loaded from Tirupur for Tumkur, outskirts of Bengaluru. It was also found the consignment was having the documents only for half pants in favour of one Reliance Retail Limited. The Police has issued notice to the Agency concerned for more information. As per the investigation, the boxes containing T-shirts were kept below the marked boxes of half pants. Investigation is on. Subsequently, the Returning Officer issued a notice on 8/5/2018 to the Indian National Congress candidate to

show cause within 48 hours for 5018 T-shirts as the candidate on 5/5/2018 took the permission of 500 T-shirts. The investigation is still continuing.

The DEC in his report has assessed the available chronology of the incident related to seizure of large number of EPIC cards and other related materials on 8/5/2018. It mentions when the first police team of three constables arrived at the spot on receipt of telephonic information in the local police station Jalahalli, the door of the flat was already found broken and about 50-60 people were fighting against each other. They also found EPIC cards and other materials scattered around. They informed their superiors who arrived and took the control of the situation. Election Officials also arrived and assessed the materials including EPIC cards found in the premise.

The DEC in his report has taken note of the seized materials and submitted that as per the report of the DEO, 9,564 EPIC cards were found and out of this they were able to verify 801 EPICs. Out of this 801 EPICs, 688 were found to be from the mother roll and remaining 113 were from the supplementary 1 and supplementary 2. The DEO also reported that in thirty such cases, the field verification was carried out and it revealed that these were collected earlier by some unknown persons from the concerned voters; however, they were reluctant to disclose the reasons. Simultaneously, the DEC mentions, the Police also carried out field verification in eight EPICs. Police recorded the statements of the concerned voters, which revealed that the EPICs were taken a month before in exchange of water cans and promised cookers etc. at a later stage. Water cans were seized from those houses. Seized water

cans bear the photo and texts of the INC candidate from 154- Rajarajeswari Nagar assembly constituency.

The DEC in his report has mentioned that as the door of the flat was broken before the arrival of the police, it is a matter of investigation that in what circumstances or who broke open the door. Commission also took note that the names and other details of the occupant (s) of the flat and the details of the person(s), who collected these items in the flat from where these were seized are yet to be ascertained. Police is still trying to find out all these details and further investigate the matter. However, this may require more time and resources, which is difficult at this time as the whole machinery is engaged in the poll process.

The DEC in his report has submitted that the available materials including EPICs, survey reports (household wise) in large scale do suggest a design to induce the voters in a particular manner at the level of parties. As per the available information till this time, it can be inferred that the process of inducement is a planned strategy, started much before the dates of notification, which is a serious cause for concern.

The DEC has concluded that from the available facts and circumstances, in the instant Assembly Constituency, there appears to be a planned design to induce the voters, thus attempt to vitiate the poll process.

7. CEO, Karnataka in his report submitted that 9564 EPIC cards of voters in 154- RR Nagar were found kept in bundles. Each bundle was labelled with specific name and mobile number. Quoting the Additional DEO report of 9/9/2018, he

mentions the seizure of five laptops, ten mobiles, 20700 slips with details of voters with photographs, and details of caste and in some cases with names, ward details, mobile numbers, detailed survey papers, 60 plus voter slips of part No. 23 bundled/stapled family wise, Xerox of genuine EPIC cards bundles/Stapled collected with names, ward and mobile numbers of collectors, all giving an indication of a conspiracy and planned work over some time to locate the electors and induce and bribe them in exchange of vote.

The report also mentions that the DEO, BBMP has further said that the verification of all the cards require time and sufficient resources however, from the material seized and the scale at which EPIC cards have been collected from voters and systematic way in which the detailed assessment of the voters was done it can be inferred that there has been systematic effort to survey and identify vulnerable voters with a view to induce them to vote for specific candidate.

8. The Commission has very carefully analyzed and examined the whole situation. Now from the facts narrated above there is a definite inference that all the above seized gift items and collection of EPIC cards were likely for large scale inducement of the Voters. It may be worthwhile to mention that “bribery” at elections to any person with the object of inducing him or any other person to exercise any electoral right or, even inducing or attempting to induce any person to exercise any such right, is an electoral offence u/s 171B of the Indian Penal Code, and is punishable with imprisonment of either description for a term extending up to one year or, with fine, or with both. Such “bribery” at elections is also a corrupt

practice under section 123(1) of the Representation of the People Act, 1951 which can result in the election of the returned candidate being declared void and the candidate found guilty of commission of such corrupt practice can also be disqualified by the President on the recommendation of the Commission for a further period of six years. The above provisions in the law, making "bribery" an electoral offence and a corrupt practice, have been made with the manifest object of ensuring purity of the election process.

9. Apart from the above, the law of the country also frowns on the role and influence of big money in the electoral process. Therefore, the law has prescribed limits of election expenses which the candidates may incur or authorize in their election campaigns. The incurring or authorizing expenditure in excess of the prescribed limits is a corrupt practice under section 123(6) of the Representation of the People Act, 1951, the Commission whereof would result in the election of the returned candidate being void and also attracting a disqualification for a period of upto six years. The law further requires each contesting candidate to maintain a true and separate account of his election expenses under section 77 of the said Act and failure to render a true and correct account of the election expenditure may invite disqualification for three years under section 10A of the said Act. The Supreme Court has observed in *Kanwar Lal Gupta Vs Amar Nath Chawla and others* (AIR 1975 SC 308) that the "object of limiting expenditure is to eliminate, as far as possible, the influence of the money in the electoral process". The Supreme Court also observed in that case that the object of the provision limiting the expenditure is

that “it should be opened to any individual or any political party, howsoever small, to be able to contest an election on footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength”. The distribution of money and other gift items to electors by the candidates and political parties as illegal inducement to electors defeats not only the provisions of electoral offence and corrupt practice relating to “bribery”, but also the provisions of corrupt practice of section 123(6) of the said Act relating to the prescription of limits of election expenses and requiring the candidates to maintain true and correct accounts of their election expenses under section 77 and section 10A, as obviously the expenditure on illegal gratification and bribery of electors would be concealed and not shown by the candidates in their accounts of election expenses.

10. The seizure of 9,564 Electoral Photo Identity Cards, Photo Voters Slips, Laptops and other materials at Flat No. 115 SLV Park Apartment, Jalahalli under 154-Rajarajeswari Assembly Constituency is clearly an attempt to induce voters in a systematic and planned manner and thereby vitiate the process of election in the said assembly constituency which itself is a corrupt practice and attracted provisions u/s 120B, 171E, 171F, 188 R/w section 34 of the IPC and u/s 123, 125, 127A, 135A-1C of the R.P.Act, 1951. The very act of illegal collection of thousands of Electoral Photo Identity Cards from voters in the vulnerable community seem to be a deliberate and systematic attempt to make large scale voters captive to the collecting

persons and/or candidate (s) either to vote with inducement for them or coerce them not to vote at all. Thus, this illegal collection of EPIC cards is likely to significantly affect the conduct of free and fair election in this constituency. It is important that in this case, the electoral machinery ensures distribution of EPIC cards/Photo Voter Slips to all such voters whose cards have been taken away either forcibly or otherwise before the conduct of poll. Since, it seems impossible for electoral machinery to ensure distribution of cards to genuine card holders in less than 24 hours left before poll, it is necessary for the Election Commission to take an extra-ordinary step.

11. Viewed in the light of above principles of purity of elections and to save the elections from the pernicious effect of money power and also from anti-social elements so as to maintain the sanctity of elections envisaged under the Constitution and as upheld by the Hon'ble Supreme Court, it becomes imperative on the part of the Commission to ensure that the above principles and the sanctity of the electoral process must be maintained and preserved by the Commission at all cost. The very object underlying the constitution of the Election Commission as an independent constitutional authority under Article 324 of the constitutions is to ensure that the elections to Parliament and State Legislatures are conducted in a free and fair manner where the purity of elections receives the highest priority.

The Hon'ble Supreme Court, in case of Mohinder Singh Gill Vs Chief Election Commissioner and others (AIR 1978 SC 851), has also laid great stressed on the conduct of free and fair elections and has observed that Article 324 of the

Constitution is a reservoir of power for the Election Commission to act for the avowed purpose of pushing forward a free and fair election and “ where these (enacted 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 any external authority for the grant of power to deal with the situation”.

12. Having regard to the above Constitutional and legal position enjoining upon the Commission, the duty of conducting free and fair election and upholding the purity of election and after taking into account all relevant facts and circumstances of the present case, the Commission is satisfied that the current electoral process in said 154-Rajarajeswari Nagar Assembly Constituency in Karnataka has been vitiated on account of unlawful activities of the candidates and political parties and their workers in planning to allure voters through distribution of freebies and illegal collection of EPICs, Photo Voters Slips and other materials to woo them in their favour and also attempting to keep them away from the right of franchise if they don't obey such persons.

13. The voting is a sacred and secret activity. Every voter has the freedom to cast his/her vote in free and fair manner without facing any inducement. Section 123 of the RP Act, 1951 infers voting as “free exercise of electoral rights”. The instant case is a glaring instance, where this has been compromised on a large scale in a systemic manner beginning much before the poll date.

14. Thus, the Commission is of the considered opinion that conduct of free & fair poll in said 154-Rajarajeswari Nagar Assembly Constituency will not be possible if the ongoing electoral process is allowed to proceed and poll is taken on 12th May, 2018 as scheduled. Commission further considers it imperative to defer the poll for the time being so that the vitiating effect of the distribution of money and gift items to the electors of the constituency loses its intensity, seized EPIC Cards are returned to voters to infuse confidence among them and a more congenial atmosphere conducive to the conduct of free and fair elections is created.

15. Accordingly, the Commission exercising powers under Article 324 of the Constitution and sections 30 and 153 of the Representation of the People Act, 1951 read with section 21 of the General Clauses Act, 1897 and all other powers enabling it in its behalf, hereby directs that the poll scheduled to be taken on 12th May, 2018 in the said 154-Rajarajeswari Nagar Assembly Constituency in Karnataka shall be deferred, for the time being.

In this light, the Commission further directs that the poll in the constituency shall now be taken on 28th May, 2018 (Monday) and counting of the votes will take place on 31st May, 2018 (Thursday).

16. The Chief Electoral Officer, the DEO concerned and the RO of 154-Rajarajeswari Nagar and other electoral machinery will make a detailed list of voters whose EPIC cards have been collected illegally in the said case and ensure distribution of EPICs to them seven days before the date of poll. Police

Commissioner of Bengaluru will ensure strict action against the culprits. A special team of observers will be sent by the Commission to monitor the election expenses of the candidates and conduct of the poll in this constituency. Special confidence building measures will be taken up to ensure that no intimidation takes place in the Constituency. Effective and intensive ethical voting campaign will be taken up by the District Election Team in the Constituency amongst the voters.

Sd/-

Sd/-

Sd/-

(SUNIL ARORA)

(O.P.RAWAT)

(ASHOK LAVASA)

Election Commissioner

Chief Election Commissioner

Election Commissioner