

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi – 110001.

No.56/38/2011/PPS-2

Dated 6th November, 2012.

To

Dr Subrmanian Swamy,
President, Janata Party,
A-77, Nizamuddin (East),
New Delhi 110013.

Subject:- Petition seeking de-recognition of the All India Congress Party headed by Ms. Sonia Gandhi, as President – regarding

Sir,

I am directed to refer to your letters dated 3rd November, 2012 and 5th November, 2012, in the above matter.

2. In your letter dated 3rd November, 2012, you have prayed for de-recognition of the 'All India Congress Party, headed by Ms. Sonia Gandhi, as President' (presumably, you mean the 'Indian National Congress', as there is no recognized party by the name of All India Congress Party), under paragraph 16A of the Election Symbols (Reservation and Allotment Order), 1968 on the ground that the party had loaned more than Rupees 90 crores to a company, named Associated Journals Private Limited, incorporated under the Companies Act, 1956, in violation of the guidelines and rules for registration as well as recognition of political parties.

3. For convenience of reference, paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968, on which you have placed reliance in support of above prayer, is reproduced below:-

"16A. Power of Commission to suspend or withdraw recognition of a recognised political party for its failure to observe Model Code of

Conduct or follow lawful directions and instructions of the Commission—

Notwithstanding anything in this Order, if the Commission is satisfied on information in its possession that a political party, recognised either as a National party or as a State party under the provisions of this Order, has failed or has refused or is refusing or has shown or is showing defiance by its conduct or otherwise (a) to observe the provisions of the 'Model Code of Conduct for Guidance of Political Parties and Candidates' as issued by the Commission in January, 1991 or as amended by it from time to time, or (b) to follow or carry out the lawful directions and instructions of the Commission given from time to time with a view to furthering the conduct of free, fair and peaceful elections or safeguarding the interests of the general public and the electorate in particular, the Commission may, after taking into account all the available facts and circumstances of the case and after giving the party reasonable opportunity of showing cause in relation to the action proposed to be taken against it, either suspend, subject to such terms as the Commission may deem appropriate, or withdraw the recognition of such party as the National Party or, as the case may be, the State Party."

4. From a perusal of the above quoted paragraph 16A of the Symbols Order, it would be observed that a recognized National or State party can be derecognized, or its recognition suspended, if the party "has failed or has refused or is refusing or has shown or is showing defiance by its conduct or otherwise (a) to observe the provisions of the 'Model Code of Conduct for Guidance of Political Parties and Candidates' as issued by the Commission in January, 1991 or as amended by it from time to time, or (b) to follow or carry out the lawful directions and instructions of the Commission given from time to time with a view to furthering the conduct of free, fair and peaceful elections or safeguarding the interests of the general public and the electorate in particular".

5. As you know well, it is well settled that the Model Code of Conduct comes into force from the date of announcement of the election schedule by the Commission and remains operative till the completion of the election process.

There is nothing in your letter to show as to which provision of the Model Code of Conduct has been violated by the Congress party by their aforesaid act of loaning the money to the above named company, nor is there any averment that the violation, if any, of the Model Code of Conduct took place when that Code was in force in any State or States. Further, there is no direction or instruction of the Election Commission regulating the manner in which the party in question recognized by it may spend the funds raised by them.

6. In this connection, it is stated that sections 29B and 29C of the Representation of the People Act, 1951 provide for the manner in which the political parties registered under section 29A of the said Act may raise their funds. There is, however, no provision whatsoever in that Act prescribing the manner in which the political parties may use those funds.

7. In view of the above, the provisions of the said paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968 are not attracted in the instant case.

8. With reference to your letter dated 5th November, 2012, I am directed to categorically state that the Commission does not have anything to do with newspapers reports referred to by you. The Commission had not taken any decision in the matter on the 3rd or 4th November, 2012 and, therefore, leaking of the decision by anyone does not arise. The Commission takes serious exception to your allegation questioning the impartiality of the Commission which the Commission rejects as completely baseless.

9. The reliance placed by you on section 146 of the Representation of the People Act, 1951 and the General Clauses Act, 1897, in support of your prayer for a hearing by the Commission in the matter, is also misplaced. Section 146 of the Representation of the People Act, 1951 provides that 'Where in connection with the tendering of any opinion to the President under article 103 or, as the case may

be, under sub-section (4) of section 14 of the Government of Union Territories Act, 1963, or to the Governor under article 192, the Election Commission considers it necessary or proper to make an inquiry, and the Commission is satisfied that on the basis of the affidavits filed and the documents produced in such inquiry by the parties concerned of their own accord, it cannot come to a decisive opinion on the matter which is being inquired into, the Commission shall have, for the purposes of such inquiry, the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908.....'. The present case is not the case of one such inquiry as contemplated under the said section 146 of the Representation of the People Act, 1951.

10. Furthermore, the General Clauses Act has also no applicability in the present matter as the Election Symbols (Reservation and Allotment) Order, 1968 makes specific provisions and lays down specific grounds under paragraph 16A thereof on which a recognized National or State party may be de-recognized, or its recognition suspended. As pointed out above, the ground urged by you seeking de-recognition of the party under reference in the present case does not fall under any of the grounds specified under the said paragraph 16A for such de-recognition.

11. Thus, your letters dated 3rd and 5th November, 2012 are not maintainable under the above referred paragraph 16A of the Election Symbols (Reservation and Allotment) Order, 1968. If the party has not complied with any of the provisions of the Income Tax Act, 1961, as alleged by you, that matter does not fall within the jurisdiction of the Commission.

Yours faithfully,



(VARINDER KUMAR)
SECRETARY