

## BEFORE THE ELECTION COMMISSION OF INDIA

### Coram:

H.S. Brahma Election Commissioner of India	Dr. S.Y. Quraishi Chief Election Commissioner of India	V.S. Sampath Election Commissioner of India
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**In re:** Petitions seeking freezing of the symbol “Elephant” allotted as the reserved symbol of Bahujan Samaj Party, a National Party

### ORDER

The Bahujan Samaj Party (hereinafter referred to as ‘the BSP) is a recognized National Party under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (for short ‘Symbols Order’), having the election symbol ‘Elephant’ reserved for it in all States and Union Territories, except in the State of Assam. In June-July 2009, the Election Commission received three petitions raising the issue that statues of “Elephant” (reserved symbol of BSP) and “Ms. Mayawati” (President of that party and Chief Minister of Uttar Pradesh) have been installed in various places, including public parks, in Uttar Pradesh at Government expense, and praying for freezing of the symbol “Elephant” as the reserved symbol of the BSP. These petitions were from (i) Shri Atul Kumar Singh, Secretary General of an organization named Rashtra Nirman, (ii) Shri Kamal Kant Jaswal, Director, Common Cause, and (iii) S/Sh. Ravi Kant and Sukumar, Advocates.

2. In their petition dated 15<sup>th</sup> July, 2009, S/Sh. Ravi Kant and Sukumar, Advocates, stated that the statues of ‘elephant’ and Ms. Mayawati were installed in public places in Lucknow and Noida, with the money spent from the State Exchequer. They stated that the Lucknow Development Authority and NOIDA Authority provided this information to them in reply to applications under the Right to Information Act.

The reliefs claimed in the petitions of S/Sh. Ravi Kant and Sukumar are as follows:-

- (a) the election symbol of BSP may be frozen and the party granted another symbol;
- (b) Ms. Mayawati may be disqualified from contesting elections as her several statues will always remain to continue to create an unequal playing ground for her opponents during elections and thus violate the very concept of free and fair elections;
- (c) since this jeopardizes the concept of free and fair elections, the Election Commission should call an all-party meeting to arrive at consensus on the above subject.

3. Similar relief for canceling the allotment of reserved symbol 'Elephant' to the BSP has been claimed in the petitions of Shri Kamal Kant Jaswal and Shri Atul Kumar Singh.

4. In the petitions of Shri Ravi Kant and Shri Jaswal, they have referred to the Commission's instructions in its letters No.437/6/INST/2008-CC&BE dated 28.03.2009 and 01.04.2009 issued before the General Election to the House of the People, 2009 directing, *inter alia*, that "photographs and images of the political functionaries, who have deep influence on the minds of electors and many of whom are still active in public life and may even be contesting the current general election, should not be displayed in the government buildings and premises."

5. Shri Ravi Kant had earlier filed a writ petition (WP No. 266/09) before the Hon'ble Supreme Court challenging the misuse of public money for construction of the said statues. The reliefs claimed in the petition before the Hon'ble Supreme Court were: -

- (i) To issue an appropriate writ, order or direction in the nature of Mandamus directing the respondent (State of Uttar Pradesh) to stop the further construction and expenditure of public funds for building and installing statues of the incumbent Chief Minister and party symbol of Bahujan Samaj Party in public land;
- (ii) To issue an appropriate writ, order or direction in the nature of Mandamus directing the respondent to remove the statues of the incumbent Chief Minister and the party symbol of Bahujan Samaj Party from public land;

- (iii) To issue direction directing the CBI to investigate the misuse of public funds;
- (iv) To issue direction directing the Bahujan Samaj Party and the Chief Minister to compensate the state exchequer for the misuse of public money by them;
- (v) To issue guidelines for building of memorials and installation of Statue of National Leaders at public places by the State.

6. The Commission vide its letter 3<sup>rd</sup> August, 2009 asked for the comments of the BSP on the three petitions submitted before it. The BSP submitted its reply (dated 12<sup>th</sup> August, 2009) making mainly the following submissions :-

- (a) The Petitioners (Sh. Ravi Kant and Others) have also filed a Writ Petition (Civil) (PIL) No. 266 of 2009 in the Supreme Court raising the same allegations. Therefore, the present petition deserves to be dismissed and in any case deserves to be deferred till the decision of the Court was pronounced.
- (b) The statues of elephants installed are not the replica of the party symbol as alleged. The election symbol of the party shows the elephant with its trunk lowered whereas the statues in question show the elephants with trunk raised in a welcome posture.
- (c) Statues of elephants in welcome posture are found in many public places, historical places, temples, etc.
- (d) The installation of statues of Ms. Mayawati are as per the will/desire of (late) Shri Kanshi Ram, founder of the party, that statues of Ms. Mayawati should also be installed wherever his statues are erected.
- (e) The Indian National Congress has named many programmes, projects and institutions after their leaders that have also distorted the level playing field in the electoral arena. The party is also propagating its symbol 'hand'.

7. The reply of the BSP was sent to the petitioners for their comments vide the Commission's letter dated 21.08.2009. In response, Shri Ravi Kant and Shri Kamal Kant Jaswal filed their rejoinders.

8. Shri Ravi Kant in his rejoinder made the following submissions:-
- (i) Their petition before the Commission relates to the directives concerning the conduct of free and fair elections whereas their petition before the Supreme Court was against misuse of public money and violation of Article 14 of the Constitution.
  - (ii) The reply of BSP has not addressed their main plea before the Commission that alleged construction of statues violates the Commission's guidelines dated 1.4.2009 with regard to conduct of free and fair elections.
  - (iii) The alleged constructions are not memorials because of the presence of statues of the incumbent Chief Minister and further the installation of statues of elephant in such a vast magnitude by the State Government ruled by BSP makes the intention very clear that it is for glorification and publicity of election symbol of the ruling party and its leader.
  - (iv) The examples of historical places, temples cited in the reply of BSP were whimsical and incorrect inasmuch as neither the temples nor the historical structures had been built by public money of the tax payers.
9. Shri Kamal Kant Jaswal in his rejoinder stated as follows :-
- (i) The image of an elephant, whether with its trunk raised or lowered, is evocative of the reserved symbol of Elephant allotted to the BSP. Moreover, there are some monuments erected by the BSP's Govt. where the statues of elephants have their trunks lowered, for example – the memorial opposite Sector 16-A, in Noida.
  - (ii) The contention in his petition is that the installation of statues of the Chief Minister and of the party symbol at public places and at state expense have the effect of permanently disturbing the level playing field vis-à-vis other Parties. There could have been no objection had the BSP honoured the will of Late Shri Kanshi Ram by installing the statues at its own premises and on its own expense.
  - (iii) The parallel drawn in the reply with the symbol of the Congress Party is totally misplaced. If the Congress Govt. were to erect a stand-alone image of a hand, then the objection raised in his application would have applied to such an installation with equal force.

- (iv) He is in agreement with the view that the practice of naming state-funded programmes and institutions after political personalities is highly objectionable.

10. In the meanwhile, Shri Ravi Kant also filed an I.A. before the Supreme Court in the pending writ petition in which he inter-alia sought direction against the State of U.P. not to announce public opening of the statues and not to spend public money on the glorification of the party symbol. In its Interim Order dated 22.02.2010, the Hon'ble Supreme Court directed as follows:-

“ As regards the alleged installation of election symbols of Bahujan Samaj Party, the petitioners have moved the Election Commission for certain reliefs. The petitioners have also made similar relief for removal of installation of these symbols from the public places. The Election Commission would be at liberty to pass appropriate orders in the petition filed by the petitioner(s) herein at the earliest at least within a period of three months.

As regards maintainability of the writ petition, list the matter after 8 weeks.”

11. The Commission fixed a hearing in the matter on 11<sup>th</sup> March, 2010; but it was postponed first to 29<sup>th</sup> March, 2010 and then to 7<sup>th</sup> April, 2010, at the requests of the BSP.

12. The BSP meanwhile filed a supplementary written statement on 29.3.2010, inter alia, making the following submissions:-

1. The matter has already been raised before the Supreme Court and the petitioner cannot initiate parallel proceedings before another forum.
2. The construction of statues is action taken by the State Government for implementing the decision of the State Legislature. Political party cannot be penalized for actions of the Government.
3. The earlier Government under the INC, and the coalition Govt. of BJP, BSP had also built statues of elephants in UP.
4. The jurisdiction of the Commission to superintend, direct and control elections becomes operative during the elections only and as such the Commission has nothing to do with the day to day

functioning of the government in a state during non-election period.

13. The Commission heard the matter on 07.04.2010 as scheduled. Shri Ravi Kant and Shri Jaswal, the petitioners appeared in person. The Respondent (Bahujan Samaj Party) was represented by Shri Satish Chandra Mishra. Both the petitioners and the respondent reiterated their submissions made earlier.

14. In the meantime, in order to get a more comprehensive and complete picture, the Commission addressed the State Govt. of Uttar Pradesh on 3<sup>rd</sup> March, 2010 to furnish the following details:-

- (i) In how many parks/public place (with details of names, location of parks, etc.) statues of elephant and statues of Ms. Mayawati have been erected/installed as alleged in the application.
- (ii) How many such statues have been constructed in each public place/park.
- (iii) The approximate cost of erection/installation of each statue
- (iv) Photographs and video recordings of such statues

15. It was requested that the above information may be furnished to the Commission by the State Government by 8<sup>th</sup> March, 2010. Initially, the State Government vide its letter dated 5<sup>th</sup> March, 2010, informed that the information was being collected from the department concerned but later on the State Government vide its letters dated 19<sup>th</sup> March, 2010 and 3<sup>rd</sup> April, 2010, refused to furnish the information asked for on the ground that the Commission has no jurisdiction to seek such information either under the Constitution or under the Representation of the People Act, 1951. More details of correspondence on this subject with the State Government have been given hereinafter in a subsequent portion of this Order.

16. Being dissatisfied with the stand of the State Government of Uttar Pradesh in relation to the jurisdiction of the Commission in the matter, and being of the view that the desired information was needed for passing appropriate order in the petitions before it, the Commission filed an Application before the Supreme Court seeking direction to the Govt. of Uttar Pradesh to supply the information called by the Commission. The Commission also sought extension of time-limit for passing the Order on the petitions before the Commission.

17. The Supreme Court in its Order dated 9<sup>th</sup> July, 2010 directed as under:-

*“Pursuant to order dated 22<sup>nd</sup> February, 2010, we make it clear that the Election Commission will give its decision on the preliminary point concerning maintainability of the complaint dated 15<sup>th</sup> July, 2009, relating to symbols and statues. We are informed that the matter has been argued threadbare on the aspect of maintainability on 7<sup>th</sup> April, 2010. If, on the question of maintainability, the Election Commission wants further hearing, notice may be given. However, the decision shall be given by the Election Commission within a period of three months.*

*Place the writ petition on receipt of the decision of the Election Commission.”*

18. Thereupon, the Commission asked the petitioners and the respondent (Bahujan Samaj Party) vide its letter dated 2<sup>nd</sup> August, 2010 to submit further documents, if any, on the question of maintainability of the petitions by 17<sup>th</sup> August, 2010. Shri Shail Kumar Dwivedi, on behalf of the BSP and Shri Ravi Kant, the petitioner furnished their replies more or less reiterating the submissions made earlier by them.

19. The Commission then further heard the matter on 24<sup>th</sup> September, 2010. Shri Ravi Kant and Shri Kamal Kant Jaswal, the petitioners appeared in person. On behalf of the BSP, Shri Satish Chandra Mishra, Senior Advocate, appeared along with Shri Shail Kumar Dwivedi, Advocate, Shri Ambeth Rajan, Shri Sasi, Shri Parthiban and Shri Ravi Saini.

20. Shri Ravi Kant submitted that the BSP had admitted the fact of construction of statues of Ms. Mayawati and statues of elephants, at the expense of public exchequer. He stated that the statues of elephants installed in temples are symbolic, whereas the intention behind installing large number of statues of elephants in the present case is clearly to draw political mileage for the Party. According to him, it is unheard of that the State Government installs statues of a living political leader, its incumbent Chief Minister, at the expense of the public exchequer, whereby ruling party gets undue political advantage out of this.

21. The petitioner Sh. Ravi Kant also submitted photographs of two statues of Ms. Mayawati installed in Gautam Budh University in Greater Noida and reiterated his

submissions that the permanent statues of elephant being installed would be violation of model code of conduct at the time of election which is sufficient ground to freeze the symbol `elephant' allotted to the BSP. In support of his contention that the petition is maintainable he made the following further submissions before the Commission:-

- With the commencement of bye-election from 83-Malihabad(SC) assembly constituency in the State of Uttar Pradesh on 16<sup>th</sup> July, 2010, the Model Code of Conduct was in operation from 16-07-2009 to 23-08-2009 in the district Lucknow. The statues will result in violation of the Model Code of Conduct for all time to come at the time of elections.
- The alleged construction of statues of party symbol and incumbent Chief Minister is an offence of a new kind which has no mention in the Representation of the People, Act, 1951 and 'Symbols Order', and such new surprise situations can be dealt with by the Commission in exercise of its inherent powers under Article 324, as held by the Supreme Court of India in *M S Gill Vs Chief Election Commissioner (AIR 1978 Supreme Court 851)* and *A.C.Jose v. Sivan Pillai (AIR 1984 SC 921)*.
- If such massive structures and statues benefiting a single political party in power in a State is allowed by the Election Commission it will open the gates for huge memorials and millions of statues of politicians and election symbols to be built across the country with thousand of crores of public funds being spent. The ramifications of allowing such statues and memorials of the incumbent Chief Minister is dangerous for the democracy and conduct of free and fair elections.
- The Commission should use its plenary powers in Article 324(1) in the instant case before it.

22. Shri Jaswal submitted that installation of permanent statues of the living leader of the BSP and statues of elephant, the reserved election symbol of the party, in public places was a clear violation of the Commission's instructions in its circular letter No. 437/6/INST/2008-CC&BE, dated 28.03.2009, prohibiting display of pictures of political leaders in government premises during election period. He stated that installing of these

statues amounted to misuse of governmental authority that would permanently disturb level playing field in favour of the BSP and its candidates *vis- a-vis* other Parties and candidates. Shri Jaswal submitted that if the statues had been installed at private places on private expense, it would not have been objectionable; but, the present case was just the opposite. Regarding the contention made by the BSP in its reply about elephant statue having been built long back in the 'Hathi Park' in Lucknow, Shri Jaswal submitted that 'elephant' was not election symbol at that point of time. Winding up his arguments, Shri Jaswal submitted that the emerging trend of misusing public money for political game has to be dealt with firmly. Shri Jaswal added that he would welcome any action to curb the naming of schemes after political leaders.

23. Shri Satish Chandra Mishra, appearing for the BSP, made the following submissions, mainly reiterating his earlier submissions in his reply dated 12<sup>th</sup> August, 2009 and supplementary reply dated 29<sup>th</sup> March, 2010:-

- Shri Ravi Kant filed a writ petition before the Supreme Court raising the issue of the statues, in June, 2009. In July, 2009, he filed the petition before the Commission on the same issue. Multi-forum proceedings on connected issues amount to forum-hunting and is not permissible. The petition before the Commission should, therefore, be disposed of as not maintainable.
- The relief claimed for disqualification of Ms. Mayawati from contesting election is totally frivolous. The Commission has to function within the limits of the powers vested in it under the law. There is no provision of law enabling the Commission to disqualify a person on the ground given in the petition of Shri Ravi Kant.
- The instructions contained in the Commission's circular letter No. 437/6/INST/2008-CC&BE dated 28.03.2009, are not applicable at this point of time when there is no election. Alleged violation of the instructions cannot create rights and obligations unknown to the election law.
- Model Code of Conduct applies only during the period of election.
- The elephant has special significance and place in the Indian tradition and history. The Commission's decision allotting the symbol to the BSP was a conscious decision fully knowing the significance of elephant symbol.

- The statue of elephant is found in several public places and buildings including the Parliament House. Even the Indian currency notes have the elephant printed on it.
- The statues in question are not the replica, as alleged, of the BSP symbol. The trunk of the elephants in the statues is raised in welcome posture whereas the trunk of the election symbol elephant is lowered. The election symbol of BSP has nothing to do with the statues of elephants installed by the government or its agencies.
- The petitions before the Commission do not make out any case of violation of the Model Code of Conduct or any lawful direction of the Commission at a time when election was notified in the State. Hence, the petitions are not maintainable. There is no direction or order issued by the Commission regarding construction of statues of political leaders or 'replica' of a political party's election symbol, which may be taken as having been violated in this case.
- There are several government schemes and programmes named after leaders of Indian National Congress, which would also influence the electors.
- No violation of any statutory or fundamental rights of the petitioners have been pleaded in the complaints.
- The statues, monuments are just symbolic and the electorate is not influenced in any manner by such statues. The result of the Lok Sabha election in 2009 from Lucknow Parliamentary Constituency which went against the BSP, disproves the claim of petitioners that the statue of 'elephants, and the Chief Minister or any other leader would be creating an uneven ground for other candidates.
- There was no cause of action to file the complaint. Hence, the complaints were liable to be rejected under Order 7 Rule 11 CPC read with Section 87 of the Representation of the People Act. Illusory cause of action cannot be taken cognizance of.
- The Commission has taken the view that in matters related to governmental issues, during non-election period, the Commission has no jurisdiction to interfere, as is evident from its letters dated 18<sup>th</sup> March, 2010 and 5<sup>th</sup> April, 2010 to Shri Manoj Agnihotiri and Shri Surya Prakash

raising the issue of naming of various government schemes and programmes after the political leaders.

- The decision to install the statues of elephants and statues of Ms. Mayawati was taken by the State Legislature to honour the wish of the electorate, and the State Government implemented this decision. The budget for installation of these statues has been approved by the State Legislature. The Government and political party are two different entities. The BSP as a political party had no role to play in installing the statues referred to in the petitions. The Commission or Court has no power of judicial review or scrutiny of expenditure incurred by the Government pursuant to Appropriation Act passed by the State Legislature.
- The Commission will not have jurisdiction in exercise of its power under Article 324 of the Constitution of India to go into the issue as to whether action of the Government is not wise or that the extent of expenditure is not for the good of the State. All such questions must be debated and decided in the legislature and not before the Election Commission.

24. On conclusion of the hearing, the Commission permitted the petitioners and the BSP to submit written synopsis of their arguments, if they so desired, within one week. Only the BSP filed its written synopsis.

25. The question that needs to be determined first by the Commission in terms of the Hon'ble Supreme Court's direction dated 9<sup>th</sup> July, 2010, is whether the petition dated 15<sup>th</sup> July, 2009 of Shri Ravi Kant and Others seeking, *inter alia*, freezing of the symbol 'elephant' of BSP and allotting another symbol on the grounds mentioned therein is maintainable before the Commission.

26. The Commission has considered the contentions of the petitioners and the submissions made on behalf of the BSP. For determining the question of maintainability of the abovementioned petition of Shri Ravi Kant and others and the petitions of Shri Kamal Kant Jaswal and others, the Commission has to look into the reliefs sought and prayers made therein.

27. One of the reliefs prayed for by Shri Ravi Kant in his petition is that Ms. Mayawati may be disqualified from contesting elections for the alleged misuse of Govt.

funds for installing her statues, in addition to his prayer for freezing the election symbol 'elephant' of the BSP. As regards this prayer for disqualification of Ms. Mayawati, it is to be noted that grounds for disqualification for being chosen as, and for being, a Member of Parliament and State Legislature have been expressly laid down in the Constitution (Articles 102 and 191) and in the Representation of the People Act, 1951 (Sections 8, 8A, 9, 9A, 10 and 10A). The grounds pleaded in the petition of Shri Ravi Kant seeking disqualification of Ms. Mayawati do not fall within the ambit of any of the disqualifications laid down in the law. The Commission cannot add or lay down any new grounds for disqualification. Therefore, the prayer for disqualification of Ms. Mayawati for the reasons given in the petition is not tenable, and the same has to be rejected.

28. Another relief prayed for is that the statues of elephant and Ms. Mayawati jeopardize the concept of free and fair elections and the Commission should call an all party meeting to arrive at a consensus on the subject. **Hardly anything needs to be said with regard to this prayer, as the Commission itself would be able to take appropriate decision if it feels that the concept of free and fair elections has been jeopardized by the above statues and there is no need to call for an all party meeting for arriving at any consensus, as prayed for.**

29. The only other prayer made by the petitioners is that the symbol 'elephant' of BSP may be frozen and another symbol may be allotted to the party. For considering this prayer, what needs to be seen is whether the petitioners have made out a case justifying the Commission's intervention. The reference to 'freezing' here obviously means withdrawing the symbol 'elephant' from the BSP and allotting an alternative symbol to the party, so that the party does not get an undue advantage of its symbol which is stated to have been propagated at the state cost. As has been held by the Hon'ble Supreme Court in the case of *Subramanian Swamy Vs. Election Commission of India 2008 (14) SCC 318*, symbols are reserved for political parties on their recognition as National or State parties. Recognition of political parties as National or State Parties and allotment and reservation of election symbols to them is governed by the provisions of the Election Symbols (Reservation and Allotment) Order, 1968, as amended from time to time. The BSP, as already stated, is presently a recognized National Party under the said Symbols Order, and the symbol 'elephant' is reserved for it in all States and UTs, except in Assam. Allotment and reservation of symbol to a recognized political party or withdrawal of such allotment or reservation has to be traceable to specific provisions under the said Symbols

Order. Grant of recognition to a party which entitles it to a reserved symbol under the Symbols Order is dependent on the poll performance of the party in terms of the percentage of votes polled and the number of seats won as per the criteria laid down in paragraphs-6A and 6B of the Symbols Order. One contingency that can result in withdrawal of recognition and the consequent withdrawal of the reserved symbol is the failure of the party to come up with the poll performance as required under the said paragraphs. It is nobody's case that the BSP has failed in its poll performance to measure upto the prescribed standards for continued recognition as a National party.

30. The other provision dealing with withdrawal or suspension of recognition and consequent withdrawal of reserved symbol in the case of a recognized political party is laid down in paragraph-16A of the Symbols Order. The said paragraph is reproduced below for ease of reference:-

**“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.”

31. Thus, the factors that can lead to withdrawal or suspension of recognition and consequent withdrawal or freezing of the symbol of a recognized party under the Symbols Order are attributable either to the poll performance of the Party or its conduct and actions amounting to violations of the Model Code of Conduct or any lawful directions or instructions issued by the Commission. As already noted above, it is no one's case that the BSP has failed to fulfill the conditions laid down in Paras 6A or 6B of the Symbols Order for its continued recognition as a National party. In so far as the question of violation of any lawful direction or instruction of the Commission is concerned, the petitioners have not pointed out any direction or instruction of the Commission which the BSP is alleged to have violated within the meaning of para 16A of the Symbols Order.

32. The question that now remains to be considered is whether any provision of the Model Code of Conduct has been violated in the erection and installation of statues of 'elephant' and Ms. Mayawati. It is well settled that the Model Code of Conduct comes into play when the Election Commission announces any schedule for an election and it ceases to be effective on the completion of election by the declaration of the result. Shri Ravi Kant took the plea at the hearing on 24<sup>th</sup> September, 2010 that they had filed the petition under reference before the Commission on 15<sup>th</sup> July, 2009 and that the Commission announced certain bye-elections, including a bye-election from 83-Malihanbad Assembly Constituency in Lucknow District, on 16<sup>th</sup> July, 2009. He thus contended that their petition should be deemed to have been filed before the Commission when the Model Code of Conduct was in force. This is obviously an after-thought, as this plea was not taken either in their original petition or in any of their rejoinders and it was only on 24<sup>th</sup> September, 2010, that such a plea was advanced for the first time by Shri Ravi Kant. In any event, it is not the case of the petitioners that the erection or installation of statues of 'elephant' and Ms. Mayawati commenced after 16<sup>th</sup> July, 2009 when the Model Code of Conduct became effective in relation to the abovementioned bye-election. In their petition dated 15<sup>th</sup> July, 2009 itself, the petitioners have given some instances of certain statues having already been installed in Lucknow and Noida.

33. Notwithstanding the above, the question is whether the Model Code of Conduct can be said to be attracted in the matter of erection and installation of the abovementioned statues of 'elephant' and Ms. Mayawati. The symbol 'elephant' has been allotted to, and reserved for, the BSP by the Commission under the provisions of the

Symbols Order. Every party has the right to propagate its symbol by erection of statues of the symbol and also of its leaders. But it hardly needs to be stressed that such propagation of the party's symbol should be undertaken by the party by spending its own funds and resources and should not undertake such propagation by misusing its official position being the ruling party in the State, and using public funds for the purpose. The Model Code of Conduct provides, *inter alia*, that "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". Propagating a party's symbol is the main object of the party's election campaign. **But if a party, whether ruling or in the opposition, by misusing public funds for its own partisan ends, erects or installs statues of its party symbol, even during non-election period, the party cannot absolve itself of the accusation that it has acted in breach of salutary principles underlying the objects of the Model Code of Conduct – maybe, not in letter but undoubtedly in spirit.**

34. The petitions of Shri Ravi Kant and others are mainly based on two communications, dated 28<sup>th</sup> March, 2009 and 1<sup>st</sup> April, 2009, of the Commission. In the context of the general election to the Lok Sabha, 2009, the Commission by its letter dated 28<sup>th</sup> March, 2009, instructed that the photographs and images of the political functionaries, who have deep influence on the minds of electors and many of whom are still active in public life and may even be contesting the current general elections, should not be displayed in the government buildings and premises as that would have the effect of disturbing the level playing field vis-à-vis political functionaries of other parties and candidates. Subsequently, the Commission vide its letter dated 1<sup>st</sup> April, 2009 clarified that while the photographs of Prime Minister, Chief Ministers, Ministers and other political functionaries should not be displayed, the above instruction, however, is not applicable with regard to the images of national leaders, poets, and prominent historical personalities of the past, and the President of India and the Governors. **If it is felt that even the display of photographs of leaders of a political party which go on changing from time to time in the confines of government offices, etc., can vitiate the level playing field, a permanent statute of a living leader and the symbol of the party will undoubtedly result in the said vitiation of the level playing field.**

35. Further, if the display of a photograph inside an office room can have the effect of vitiating the level playing field, the installation of a permanent statute, which is visible at

all times to every person passing through that public place can be said to have more vitiating effect on the mind of the electorate. It is not in dispute that all the statues under reference have been erected and installed at the public places which are visited and frequented by the public at large more or less on daily basis. The photographs of leaders may be removed during the election period, but what would happen to such statues of symbols and leaders permanently erected and installed in public places during the election period. This may amount to disturbing the level playing field almost on daily basis and not merely during the election period.

36. To counter the above allegations, the plea of the party is that the statues of elephant are not the replica of the party's symbol 'elephant' as the statues of elephant installed have their trunks raised upwards in welcome posture whereas the trunk of elephant in the party's symbol is lowered downwards. This plea hardly carries any weight. When a common man sees the statue of an elephant, he sees an elephant in it and that would remind him of the symbol elephant of BSP. The trunk of elephant being raised upwards or lowered downwards would hardly be a distinguishing feature in the mind of a common elector. The slogans coined by the BSP soliciting votes for it in its election campaign are : *Mohar Lagao Haathi Par ..... Button Dabao Haathi Par*. In these slogans, there is no appeal that the vote should be cast for 'elephant with the trunk lowered'; the appeal simplicitor is to vote for the symbol 'elephant'. Here, it may also be relevant to point out that when the question of reservation of symbol for the BSP on all India basis arose on its gaining the status of National party in 1996, the party insisted for reservation of the symbol 'elephant' and did not agree for any modification by addition of 'howda' or 'mahout' as the party pleaded that it is identified with the symbol 'elephant' simplicitor. **Will there be no objection to the allotment of a symbol 'elephant with trunk raised in welcome posture' to some other party, if so asked for by any other political party, on the ground that the two symbols are different or distinct from each other?**

37. But the undisputed fact is that the statues in question have been installed by the State Government at the State expense. This is accepted both by the petitioners and by the BSP. The question for determination now boils down to is whether this act of the State Government should invite action against the BSP, as sought in the petitions. In the written and oral submissions made on behalf of the BSP, the main plank of the defence of BSP is that the statues of elephant and leaders of BSP have been erected by the State

Government and not by the party. In the erection of such statues, the State Government has acted with the specific sanction of the State Legislature and the expenditure on these statues has been duly approved by the State Legislature by passing valid Appropriation Acts. The BSP contends that the Commission cannot, therefore, go into the question of installation of these statues, and the expenditure incurred thereon, by the State Government. Reliance in support of the above contention has been placed on the decisions of the Hon'ble Supreme Court in *Ram Jawaya Kapoor Vs. State of Punjab [1955 (2) SCR 225]* and *Bhim Singh v. Union Of India, 2010 (5) SCC 538* to the effect that "Judicial interference is permissible when the action of the government is unconstitutional and not when such action is not wise or that the extent of expenditure is not for the good of the State. We are of the view that all such questions must be debated and decided in the legislature and not in court." It was contended that when even the Apex Court of the land cannot go into the propriety or otherwise of any government action or expenditure, *a fortiori*, the Commission cannot sit in judgement over the decisions taken by the State Legislature and the executive act performed by the State Government in pursuance of such decisions of the State Legislature.

38. The Commission sees quite a force in the above contention of the BSP and it cannot be lightly brushed aside. The question whether the BSP has misused its position as the ruling party in getting the statues of Ms. Mayawati and elephant installed with public funds, during the non-election period, is not for the Commission to go into. It is common knowledge that Shri Ravi Kant and several others have already approached the Hon'ble Supreme Court and Hon'ble Allahabad High Court with their grievances to that effect. The Hon'ble Courts are examining those matters and decisions rendered by them would be binding on all authorities.

39. It will be observed from the above that the facts regarding construction of the statues by the State Government are not in any dispute. However, the extent of the constructions is not clear although Shri Ravi Kant submitted some details based on the information he was able to obtain from the State Government under the RTI Act. As mentioned earlier, the Commission desired to get the correct and complete picture so as to see that appropriate orders could be passed or appropriate measures taken, if any, to redress the grievance of the petitioners. With that end in view, the Commission wrote to the State Government of Uttar Pradesh to furnish details regarding the number of statues installed in various places in the State on government expense, and the total expenditure

incurred in connection therewith. In its first letter dated 3<sup>rd</sup> March, 2010, to the State Government, while referring to the petitions filed before the Commission, the Commission requested the State Government to furnish by 8<sup>th</sup> March, 2010, the above information, including the photographs and video-recording of such statues. Initially, the State Government vide its letter dated 5<sup>th</sup> March, 2010, informed that the information was being collected from the departments concerned, and that they needed 15 days more time to furnish the information. The Commission then informed the State Govt. that the information be furnished by 23<sup>rd</sup> March, 2010. Later, the State Govt. vide their letter dated 19<sup>th</sup> March, 2010, instead of furnishing the information asked for, stated that no exact replica of the design of election symbol “Elephant” had been constructed by the Govt. from their budget as mentioned in the complaint. In so far as construction of statues of Ms. Mayawati was concerned, the letter stated that the reference to the statues of Ms. Mayawati was made only as a passing statement in the complaint of Shri Ravi Kant and no specific complaint was made on that ground. The Commission vide its letter dated 23<sup>rd</sup> March, 2010, again wrote to the State Govt. to furnish by 3<sup>rd</sup> April, 2010, factual information regarding the number of all statues of elephants and Ms. Mayawati installed at public/private places from Govt. funds between 2007 and 2010, and photographs and video recordings of such statues. However, the State Government this time took the position that the Commission had no jurisdiction to seek such information. The Chief Secretary to the State Government, in his letter dated 3<sup>rd</sup> April, 2010, stated that neither in Article 324 of the Constitution nor in the Representation of the People Act, 1951, is there any provision empowering the Commission to seek such information from the State Govt. **Curiously, the issue of jurisdiction was raised after the State Government had initially sought additional time to furnish the desired information/video recordings. It is apparent that the State Govt. did not wish to give details of the matter, for reasons known to it. It is incongruous that a constitutional authority should choose to deny basic factual information of the nature sought in the present case, which can be accessed even by a common citizen under the Right to Information Act, to another constitutional authority to enable the latter to have the benefit of full and correct factual information to decide petitions filed before it.** The Commission wrote back to the State Government on 21<sup>st</sup> April, 2010, that the Commission had been expressly given liberty by the Hon’ble Supreme Court to pass appropriate orders in the petitions filed by the petitioners at the earliest and it was in the context of the above direction of the Apex Court that the Commission considered it

necessary and relevant to obtain factual information from the State Government on the issues raised in the petitions before it for passing appropriate orders thereon. The facts on which information had been sought were the facts within the special knowledge of the State Government and it was but fair and in accordance with the principles of natural justice that the requisite information should have been given by the State Government. In the Commission's view, instead of assisting the Commission in arriving at the just and fair conclusion and enabling it to pass appropriate orders on the basis of all relevant facts, as directed by the Hon'ble Supreme Court, the State Government raised the issue of the Commission's jurisdiction and refused to furnish the basic factual information sought. The Commission wrote to the State Government expressing its disagreement with the State Government's view with regard to the Commission's jurisdiction and stated that the stand taken by the State Government was thwarting the just and fair process of ascertaining the facts by the Commission for passing appropriate orders as directed by the Hon'ble Supreme Court. Yet, the State Government did not give any information as asked for by the Commission.

40. Pertinent to mention here that the BSP, in its supplementary written statement filed on 29-03-2010, also took a similar stand that there was no legal obligation on the State Govt. to furnish information to the Election Commission regarding the installation of statues. This was inconsistent with the stand taken by the party that the State Govt. and political party are different entities and by raising this objection, the party apparently obliterated any distinction between the government and the party.

41. The BSP has contended that the jurisdiction of the Commission to superintend, direct and control elections becomes operative during the elections only and it has nothing to do with the day-to-day functioning of the government in a State during non-election period. The Commission is a little surprised at the above contention of the BSP. Under Article 324 of the Constitution, the Commission has been vested with the superintendence, direction and control of, *inter alia*, preparation of electoral rolls and conduct of elections to both Houses of Parliament and State Legislatures. The activities relating to above functions of the Commission under the Constitution go on throughout the year and are not confined only to the election period, as contended by the BSP. For instance, the electoral rolls have to be revised before the elections and remain in the state of continuous updation throughout the year even during non-election period. Polling stations are identified and lists thereof are revised from time to time, not during the

election period alone, but much before the actual process of elections. Again, the polling staff has to be identified and trained during the non-election period. Election materials have to be procured and the electronic voting machines checked for their fool proof functioning, well before the elections. Election records have to be safely preserved after the elections are over. It is the State machinery which is involved in all these day-to-day activities. Further, it is common knowledge that election symbols are allotted to, and reserved for, recognized political parties during the non-election period. All disputes relating to such allotment and reservation of election symbols of recognized political parties which the Commission has to adjudicate under the Symbols Order also arise substantially during the non-election period. Thus, for adjudicating a dispute relating to an election symbol of a party, it is not a condition precedent that the election process should be on and the Model Code of Conduct in force.

42. Be that as it may, the position emerging from the facts and circumstances narrated above is that the Commission is in the dark as to the places where the statues, particularly of the party's symbol 'elephant', have been installed and what is the number of such statues installed in different places in Uttar Pradesh. The petitioners have stated that some statues of 'elephant' and Ms. Mayawati have been installed in Lucknow and Noida. But at the last hearing on 24<sup>th</sup> September, 2010, Shri Ravi Kant alleged that some such statues have been further installed in Gautam Budh Nagar District also. As mentioned above, the State Government has refused to furnish even the basic information as to where and how many of these statues have been erected and installed. In fact, the Commission even does not know whether all the elephant statues which have been installed with public funds have their trunks raised in welcome posture, as averred by BSP, or lowered downwards. Shri Kamal Kant Jaswal pointed out that some statues installed in some part of Noida have even their trunks lowered downwards as in BSP's symbol 'elephant'. Thus, on the facts available to the Commission and the records adduced by the parties, the Commission is not in a position to gauge the impact of the above statues, and the extent of such impact, on the minds of the electors. It has to be borne in mind that the BSP is a National party and the symbol 'elephant' is reserved for it in the whole of the country, except Assam. Before taking any decision with regard to the withdrawal of the above symbol from the party, as prayed for by the petitioners, the Commission has to carefully weigh the implications which such withdrawal of symbol may have and cause confusion in the minds of millions of electors, apart from members,

supporters and workers of the party, across the country, who identify the party with its symbol 'elephant', on account of some action taken by one of the State Governments.

43. In view of the above and taking into account the totality of the facts and circumstances available to the Commission, the reliefs prayed for by Shri Ravi Kant and others in their petitions under reference are not capable of being granted on the grounds urged therein and thus the said petitions are **not maintainable**.

**44. However, at the time of elections, the Commission would, no doubt, take appropriate steps and measures to see that the statutes of Ms. Mayawati and BSP's symbol 'elephant' do not disturb the level playing field and give undue advantage to BSP vis-à-vis other political parties.**

45. These steps and measures would, however, be subject to any directions that may be passed by the Hon'ble Supreme Court or Hon'ble Allahabad High Court in the matters pending before them.

Sd/-  
(H.S. Brahma)  
Election Commissioner of India

Sd/-  
(Dr. S.Y. Quraishi)  
Chief Election Commissioner  
of India

Sd/-  
(V.S. Sampath)  
Election Commissioner of India

**New Delhi**  
**11<sup>th</sup> October, 2010**