

In re: Violation of model code of conduct by Shri Salman Khurshid, Union Minister for Law and Justice and Minorities Affairs.

ORDER

The Commission received on 10th January, 2012 a complaint from the Bharatiya Janata Party (BJP) that the newspapers of 10th January, 2012 carried a report that Shri Salman Khurshid, Union Law Minister, made an announcement at an election rally at Farrukhabad to the effect that the Congress would provide a quota of 9% reservation to the minorities within the existing quota of 27% for OBCs and that he also indicated that Muslims having a sizeable population will be benefited from this move.

2. The BJP also mentioned that “this direct appeal on religious, caste and communal basis was a direct and blatant violation of the Model Code of Conduct”.

3. After considering the complaint, the Election Commission issued a show cause notice to Shri Salman Khurshid, on 10th January 2012, asking him to furnish his written reply by 12th January 2012, as to why action should not be taken against him for violation of the Model Code of Conduct.

4. Shri Salman Khurshid, on 12th January, 2012, filed a reply reserving his right to file a more detailed response and also requested for a personal hearing with/or through counsel. The broad submissions in the reply submitted by Sh. Khurshid were as follows:

- There was no appeal or intent to secure votes on the basis of religion, caste or creed. The statement in question was part of an existing assurance that the Congress Party would take all possible steps, within the bounds of the law, to address existing social inequalities. There was no reference to any particular religion. It related to backward class minorities, which include communities of different religions.
- The Supreme Court has held that affirmative actions provided in Articles 15(4) and 16(4) of the Constitution are facets of the concept of real equality.
- Sub- Quotas amongst OBCs have been specifically approved by the Supreme Court in Indra Sawhney Vs. Union of India. Therefore, the State has the obligation to reduce inequalities in income and status in the society. Consequently, any measure meant to fulfill the Constitutional mandate of removing inequality cannot be traded as appeal on caste or communal lines.
- The statements were only reiteration of commitment in the manifestos of the Congress Party for the Lok Sabha election 2009. This was not any new policy that was announced.

- The statement did not violate any of the provisions of MCC.

5. The Commission considered the above representation made by Shri Salman Khurshid and decided to grant him a personal hearing on 20th January, 2012 and also allowed him to file his detailed response, if he so desired, by 19th January, 2012.

6. Dr. Abhishek Manu Singhvi, Sr. Advocate, appeared on behalf of Shri Salman Khurshid before the Commission on 20th January, 2012 and submitted that the remarks promising job quota for minorities were only a conditional declaration of intent in the event of the Congress coming to power in Uttar Pradesh and not a policy announcement, that he had not referred to any particular minority community and had only reiterated a pre-declared government policy, and that he was speaking as a Congressman and not in any manner as a Union Minister. He further submitted that reservation for minorities was included in the manifestos of Congress party issued during general elections to Uttar Pradesh Legislative Assembly in 2002 and 2007 and general election to Lok Sabha 2009. He also invited reference to various pronouncements of the Apex Court and presented a paperbook of the documents before the Commission in relation to his submissions about approval by the Supreme Court of affirmative action by the State to reduce inequalities among different classes of citizens.

7. The Commission, after hearing Dr. Singhvi, appearing on behalf of Shri Salman Khurshid, decided to hold another hearing involving both the parties in the matter before taking any final decision on the complaint and accordingly fixed 3rd February, 2012 (Friday) at 4.30 p.m. as the date for further hearing.

8. On 3rd February 2012, Shri Ravi Shankar Prasad, Sr. Advocate and Sh. Ramakrishna, Convener, Election Cell, Bharatiya Janata Party (“complainant”, hereinafter) appeared on behalf on the complainant and Dr. Abhishek Manu Shingvi, Sr. Advocate appeared on behalf of Sh. Salman Khurshid (“respondent”, hereinafter).

9. Dr. Singhvi reiterated the written submissions made by the respondent in his letter dated 12.01.2012 in response to the Commission’s notice dated 10.01.2012 and the above mentioned oral submissions made by him at the earlier hearing on 20.01.2012. He further submitted that the declaration made by the respondent at an election rally at Farrukhabad for providing 9% reservation applied to all minorities and was not a *carte blanche* in favour of only those who were professing a particular religion within the existing quota of 27% for OBCs, and that such declaration was nothing new but reiteration of Govt. of India’s policy in the matter. The declaration made during election was a conditional promise that if Congress Party comes to power in Uttar Pradesh, it would then give sub-quota to the minorities in proportion to their population in the State. He denied that there

was any appeal to vote on the ground of religion. He further submitted that the respondents' reply is consistent with the stand of the party given in its Manifesto and vision document released by the Congress Party on 31.01.2012. As a counter, he referred to the approach by some other parties which have made pointed promises of benefits for people of particular religion. He cited the instance of the President of Bahujan Samaj Party writing to the Prime Minister to provide specific quota for Muslims and also including it as one of the items in their election manifesto issued at the time of general election to Lok Sabha 2009. He also referred to the latest manifesto of the Bhartiya Janta Party promising construction of temple at Ayodhya.

10. Sh. Ravi Shankar Prasad, appearing on behalf of the complainant, made the following submissions:

- That it is an undisputed fact that the MCC came into force from 24.12.2011; that Sh. Khurshid made an announcement about creation of sub-quota for minorities at an election rally at Farrukhabad and that it was a direct inducement to a particular religion to vote for his wife, Mrs. Louise Khurshid, who is contesting election as Congress candidate from Farrukhabad constituency.
- That the reports published on 10.01.2012 in the Dailies 'The Indian Express', 'Times of India' and 'Economic Times' mentioned that Sh. Khurshid had

promised reservation for Muslims in particular and that these reports had not been categorically denied by Sh. Khurshid.

- That the statement by Sh. Salman Khurshid should be viewed in the background of the fact that he is the Union Minister for Minorities Affairs and Law.
- That in none of the manifestos of the Congress Party, any specific quota for minorities is mentioned; that the quota of 9% is not mentioned even in the latest manifesto of the Congress Party.
- That the complaint made by the BJP is against a Union Minister and not against the Congress Party as the announcement made by the Minister has upset the level playing field.

11. Shri Ravishankar Prashad also drew the Commission's attention to two of its earlier decisions of 2004 in the matter of violation of MCC, i.e., prohibiting reintroduction of subsidy for Haj Travel and indictment of the Central Govt. for setting up of National Commission for the Welfare of Socially and Economically Backward among Religious and Linguistic Minorities before completion of the then ongoing elections in Maharashtra.

12. The Commission has carefully considered and analyzed the above submissions of the learned counsel on behalf of the complainant, Bharatiya Janata Party, and the respondent, Shri Salman Khurshid. The Commission has also

perused the documents brought on record by both the parties in support of their respective averments, contentions and counter contentions.

13. The issue for determination before the Commission is whether the respondent has violated the provisions of the model code of conduct by making a new promise at an election rally that 9% seats would be reserved for minorities in government jobs out of 27% quota of seats reserved for other backward classes (OBCs). But, unfortunately, by their above submissions and the documents adduced by them in support of their respective contentions and counter contentions, the learned counsel for both the parties have, however, sought to give this simple issue a political twist and convert it into a contentious political fight on grounds of their ideologies and policies. Needless to say, it is not for the Commission to sit in judgment over the policies and programmes of political parties so long as they do not transgress the framework of the Constitution of India. Therefore, in the Commission's opinion, most of their contentions and counter contentions are not germane to the simple issue before the Commission hinging upon the alleged violation of model code of conduct. In that view of the matter, it is not necessary for the Commission to go into the various pronouncements of the Hon'ble Supreme Court on which both the parties have sought to place reliance.

14. Thus, the simple question which arises for the Commission's consideration in the present case is whether the respondent has violated the model code of

conduct by making a new promise. The consideration of the above submissions and perusal of the relevant records show that the respondent has not denied that he made a statement at an election rally that 9% seats would be reserved in Government jobs for the minorities out of the 27% quota for the other backward classes (OBCs). His plea is that his above statement is a reiteration of the policy of his party as announced in the party manifestos of his party. He, however, failed to show to the Commission any manifesto of his party where the party has made any announcement to the effect that 9% seats would be reserved for minorities out of the abovementioned 27% quota for OBCs either as on that day or later. Even in the latest manifesto of the party released on 30.01.2012 by it in the context of the current ongoing general election in the State of Uttar Pradesh, there is no mention of any specific sub-quota for minorities out of the 27% quota for the OBCs. Nor is there any mention of such sub-quota for minorities in the vision paper issued by the party alongwith the release of its manifesto on 30.01.2012. In the earlier manifestos as well released by the party on the eve of general election to the House of the People in 2009, or the general elections to the Legislative Assembly of Uttar Pradesh in 2007 or to the Legislative Assemblies of Bihar, Assam, Kerala, Puducherry, Tamil Nadu and West Bengal held last year, or for the recent general elections to the Legislative Assemblies of Manipur, Punjab and Uttarakhand also, the party has not spoken, nor made any promise, about any specific sub-quota to be

created for minorities out of the overall quota of 27% for the OBCs or reserving any specific seats for such minorities. The experience also shows that the political parties often vary or amend their manifestos from election to election and it is not necessary that a certain policy or programme projected in one manifesto would be repeated in the subsequent manifestos also. In view of the above, the Commission is unable to accept the above plea of reiteration of a policy of the party being taken by the respondent to justify his impugned statement. The dictionary meaning of the word 'reiterate' is to 'say or do over again or several times or repeat'. When something has not been said at all in the past, and is being said for the first time, the Commission wonders how it can be said that it is being 'reiterated'.

15. The Commission has seen an office memorandum dated 22nd December, 2011 issued by the Department of Personnel and Training of the Government of India whereby the government has proposed to reserve 4.5% seats for the minorities out of the said 27% quota. A statement by the respondent promising reservation of 9% seats, instead of 4.5% seats as announced by the Government of India, is undoubtedly a new promise during election period when the Model Code of Conduct (MCC) is in operation.

16. The underlying object and the avowed purpose of the model code of conduct is to ensure that a level playing field is provided to all political parties and other stakeholders in the electoral process, the basic philosophy of the model code of

conduct and that the party in power, whether at the centre or in the state, gives no cause for any complaint that it has used its official position for the purpose of its election campaign. The Hon'ble High Court for Punjab and Haryana has held by its decision dated 27th May, 1997 in *Harbans Singh Jalal Vs. Union of India and Others* (Civil Writ Petition No.270 of 1997), that the model code of conduct has been evolved by the political parties, in their collective wisdom, and 'can certainly be adopted by the Election Commission for the conduct of free and fair election which should be pure as well.' The court also observed that 'on the eve of election, political parties or candidates may come forward with tempting offers to the electorate to win their favour. If such a course is allowed to be resorted to by the party or the candidates contesting the elections, it will certainly undermine the purity of election.' The Hon'ble Supreme Court of India in the SLP (Civil) No.22724 of 1997 (*Union of India Vs. Harbans Singh Jalal and others*) filed by the Union of India against the above order of the Punjab and Haryana High Court also put its stamp of approval on the model code of conduct as well as on its enforceability from the date of announcement of elections and on the principles embodied therein. In fact, the above decision of the Hon'ble Supreme Court was rendered by the Apex Court on the agreement of the Union of India itself that the model code of conduct may be enforced from the date of announcement of the election.

17. The model code of conduct lays down, inter alia, that the Ministers shall not announce any financial grants in any form or promises thereof. In the Commission's considered opinion, the promise of jobs to a distinct section of the electorate would also tantamount to special financial grant to the members of that section in the form of government jobs and the remuneration that goes with the jobs. Further, the model code of conduct also prohibits, inter alia, appeals on the ground of caste or communal feelings. Here also, the Commission is of the considered view that the promise of reserving 9% seats for minorities amounts to an appeal to particular sections of the electorate with a view to influencing their minds to vote for the party in power. The press reports which appeared on the 10th January, 2012, in various national dailies and local news papers of important standing, mention that the respondent while making the above promise of reservation of seats for minorities specifically added that the benefits of such reservation in Uttar Pradesh would go to Muslims. Copies of relevant extracts from the news papers, namely, Economic Times (New Delhi), Times of India (New Delhi), Indian Express (New Delhi), and Navbharat Times (New Delhi), containing reports to the above effect formed annexures to the complaint of the Bharatiya Janata Party which was sent, alongwith its annexures, to the respondent with the Commission's notice dated 10th January, 2012 to him. Shri Ravi Shankar Prasad pointed out at the hearing on 3rd February, 2012, that there was no denial of

the respondent to the above reports referred to him. Dr. Singhvi's response to the above submission of Shri Ravi Shankar Prasad was that it was not necessary for the respondent to issue denials to news reports which appear in various papers on daily basis. But the Commission has observed that even in his reply dated 12th January, 2012 in response to the Commission's notice, the respondent has not denied that he made reference to Muslims while speaking about the sub-quota for minorities, though he confirmed in that reply that 'I have also carefully read the Memorandum submitted by the members of the Bharatiya Janata Party annexed to the same and the articles in the various publications relied on them in support of their complaint'. His denial is only a general statement that he has not made any appeal to secure votes on the basis of religion, caste or creed and that such declarations are common place and are made by all parties across the political spectrum.

18. The next contention on behalf of the respondent by Dr. Singhvi is that the impugned statement even if it contained any promise was made by the respondent in his capacity as a Congress man and not as the Union Minister for Law or Minorities Affairs. This contention of Dr. Singhvi, though quite ingenious, does not hold water in view of the factual ground position. The official records of the authorities concerned show that Shri Alok Singh, IAS, Private Secretary to the Minister of Law and Justice, Government of India sent an official intimation on 7th

January, 2012 to all the concerned District Magistrates, Senior Superintendents of Police, etc., that Shri Salman Khurshid, Union Minister of Law and Justice and Minorities Affairs would visit Fatehpur Sikri, Kayamganj and Farukhabad in Uttar Pradesh on 8th and 9th January, 2012 and that necessary arrangements be made for his reception, escort party, security, etc., so that no inconvenience is caused to the Minister. Further, Shri Aftab Hussain, President, District Congress Committee, Farukhabad also intimated the Returning Officer, Farukhabad, in writing on 07.01.2012, that Shri Salman Khurshid, Minister of Law and Minorities Affairs would be visiting Farukhabad on 8th January, 2012, for election campaign. In his order dated 8th January, 2012, Deputy District Officer, Sadar-cum-Returning Officer for 194-Farukhabad Assembly Constituency, on the basis of above intimation received from Shri Aftab Hussain, President of the District Congress Committee, Farukhabad, informed all police and other concerned authorities that Shri Salman Khurshid, Union Minister for Law and Minorities Affairs would tour the constituency and address corner meetings, etc., at various places to carryout election campaign in favour of his wife Smt. Louise Khurshid, Congress candidate from the said constituency. Furthermore, the local Congress leaders also issued statements, which appeared in several local newspapers on 8th January, 2012, that Shri Salman Khurshid, Union Minister for Law and Minorities Affairs, would undertake a two days election tour of Farukhabad and adjoining areas. In the face

of these official records, it cannot be validly contended by Dr. Singhvi that the respondent visited Farukhabad on 8th and 9th January, 2012, and addressed public meetings as a Congress man/leader and not as Union Minister for Law and Minorities Affairs. The above contention is also not tenable for the reason that in the perception of common man, which is of paramount consideration, the respondent addressed them at public meetings as Union Minister for Law and Minorities Affairs and not as mere leader of the Congress party.

19. Having regard to the above, the Commission has come to the inescapable conclusion that the respondent, Shri Salman Khurshid, made a new promise to a distinct targeted group of the electorate among the minorities that 9% seats would be reserved for them from out of the overall quota of 27% for the other backward classes. The Commission is also satisfied that the above promise was made by Shri Salman Khurshid as a Union Minister for Law and Minorities Affairs. Thus, Shri Salman Khurshid has violated the model code of conduct by making the abovesaid promise. The Commission, therefore, cannot help expressing its deep anguish and disappointment over his violation of model code of conduct. As a Union Minister for Law and Minorities Affairs, he has an added responsibility of ensuring that the model code of conduct is observed in letter and spirit so that elections are conducted in a free and fair manner and all political parties enjoy a level playing field in the matter of their election campaigns.

20. In the above circumstances, the Commission hereby censures Shri Salman Khurshid and hopes and expects that such violations of model code of conduct would not be repeated by him in future.

Sd/- (V.S.SAMPATH) ELECTION COMMISSIONER	Sd/- (DR. S.Y.QURAIHI) CHIEF ELECTION COMMISSIONER	Sd/- (H.S. BRAHMA) ELECTION COMMISSIONER
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New Delhi the 9th February, 2012

No.509/MCC/2012-RCC