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भारत निर्वाचन आयोग सचिवालय
SECRETARIAT OF
ELECTION COMMISSION OF INDIA

निर्वाचन सदन,
अशोक रोड, नई दिल्ली-110001

Nirvachan Sadan,
Ashoka Road, New Delhi-110001

No. 100/ES-1/JKD-LA/01/2021

Dated: 6th, December, 2021

To

The Chief Secretary,
Government of Jharkhand,
Ranchi,
Jharkhand.

Subject: Bye Elections to 13- Madhupur Assembly Constituency, (April, 2021)- Disciplinary action against Shri Manjunath Bhajantari, DC-cum-DEO, Deoghar – reg.

Sir,

I am to state that the Commission had announced the schedule of the Bye-election to 13-Madhupur Assembly Constituency vide ECI Press Note dated 16.03.2021. As per schedule, the date of poll was 17.04.2021 and counting of votes was scheduled on 02.05.2021. During the course of bye-election, a report dated 15.04.2021 was received from Shri Manjunath Bhajantri, IAS, DC-cum-DEO, Deoghar, (vide CEO Jharkhand's letter dated 18.04.2021) regarding adverse actions of **Dr. Nishikant Dubey**, Hon'ble Member of Parliament, during the Bye-election to 13-Madhupur AC. In the said letter, DEO, Deoghar informed that the legal process for violation of Model Code of Conduct, for intimidating voters etc. against Dr. Nishikant Dubey is under process. And no further information was received from the DEO, Deoghar in the matter. However, after a gap of over six months since lifting of MCC on 03.05.2021, the CEO, Jharkhand, vide his letter dated 26.10.2021 intimated that five different FIRs have been filed against Dr. Nishikant Dubey on the directions of DEO, Deoghar, without any instructions/intimation of the Commission/CEO, Jharkhand.

2. The Commission also received representation from Dr. Nishikant Dubey in this regard, for which the CEO, Jharkhand, submitted his report vide letter No. 2472 dated 26.10.2021. Further, vide his Letter No. 2497 dated 27.10.2021, the CEO, Jharkhand, forwarded the report dated 26.10.2021 received from Shri Manjunath Bhajantri, DC-cum-DEO, Deoghar on the following four points:

- a) Why no FIR was filed in April, 2021 itself, for the matters related to bye-election to 13-Madhupur AC which was concluded in April, 2021?
- b) What are the special circumstances to file FIRs on 23.10.2021 after 6 months from completion of poll process of the said bye-election? Reason to file FIR by such delay.
- c) Reason for filing 5 FIRs in 4 different police stations on 23.10.2021 in one single matter. Reason for filing FIR in Chitra PS which is out of 13-Madhupur AC.
- d) Reason for not giving any intimation/report to CEO/ECI before/after filing the FIRs.

3. On examination of the reports/documents submitted with above letters, the Commission considered that the reasons given by Shri Manjunath Bhajantri, DC-cum-DEO, Deoghar, for delayed lodging of FIRs lack credence, and warrant further explanation from the said DEO. Therefore, the Commission vide its letter dated 03.11.2021 sought detailed explanation from the said DEO for delayed lodging of FIRs.

4. The explanation dated 11.11.2021 submitted by Shri Manjunath Bhajantri, DC-cum-DEO, Deoghar was forwarded to the Commission by the CEO, Jharkhand, vide his letter dated 12.11.2021. On scrutinizing the explanation of DEO dated 11.11.2021, the Commission has made the following observations:

- (i) With reference to the explanation given by the DEO for delay in lodging of FIRs, appears to be unsatisfactory. The judgments cited by the DEO in support of his contention that delay in lodging of FIRs could not fatal for the prosecution of the case is not legally sustainable. For instance, in the first judgment cited by the DEO, i.e., ***Japani Sahoo vs. Chandra Sekhar Mohanty*** [2007 7 SCC 394], the Hon'ble Court observed that "*mere delay in approaching a Court of Law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict.*"

In the second judgment cited by the DEO in his reply i.e., ***Ravinder Kumar vs. State of Punjab*** [AIR 2001 SC 3570], it is stated that "*it is a recurring feature in most of the criminal cases that there should be some delay in furnishing the first information to the police.*" However, in the facts of the present matter, a delay of more than 6 months cannot be said to merely some delay for registering FIR.

Further, the DEO has stated that words "crime never dies" to justify the delay in lodging the complaint. In this regard, the aforesaid judgment of *Japani Sahoo case*

cited by the DEO, the court had mentioned the said words to hold that there was no bar on initiating proceedings after the limitation period **when there was a delay in taking cognizance of a criminal complaint by a Court after the complainant had made the complaint promptly after the incident.** In that case the complaint was filed promptly however delay occurred in taking cognizance by the court however, in the present case, there is delay in lodging of complaint itself and not in taking cognizance of the same by the Court. Moreover, the Hon'ble Court in the said judgment had in fact referred to the Law Commission Report wherein it was stated that:

“At present there is no period of limitation for criminal prosecution and a Court cannot throw out a complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story.”

The DEO has also stated that due to the onset of the second wave of Covid- 19 pandemic, he was involved in various preventive measures and that there was no unintentional delay. In this regard, it is stated that the second wave of pandemic had seen a drastic decline in the month of June and by July 2021, normalcy had returned. Yet, the complaints were lodged in third week of October 2021. Therefore, the DEO has neither given nor attempted to give any satisfactory explanation for delay in lodging the complaint with the police. Further, the judgments cited by him do not provide any credence to his justification.

- (ii) The DEO has further stated that “there is no limitation prescribed for lodging the FIR”. In this regard it is stated that all the 5 FIRs have been registered *inter alia* under Section 171F & 188 of IPC. These offenses provide a punishment of fine alongwith maximum period of imprisonment of one year and 6 months respectively. Moreover, Section 468 of CrPC provides a period of limitation for taking cognizance of offenses wherein clause (b) of Sub-Section 2 specifically states that the period of limitation for offenses with punishment of imprisonment not exceeding one year shall be one year. Therefore, any delay in lodging complaint will result in delay in taking cognizance by the court which has the potential to defeat the purpose and intention of Section 468 of CrPC.
- (iii) With reference to the allegation of conducting investigation/ collecting evidence before lodging the said complaints, the DEO has stated that he did not conduct any

such act himself but directed concerned officers to submit a report about the alleged offenses along with evidences which were in possession of the said officers. The DEO has further stated that he had called for such a report in May, 2021 which was never furnished to him.

In regard to the above submission, it is observed that again no explanation has been given by the DEO for a delay of more than 5 months between calling of such reports from concerned officers and lodging of FIRs. Further, the DEO has admitted himself that he directed his subordinate officials to send a report/ collect evidences before registering the FIRs and therefore, he cannot be allowed to state that no investigation/ collection of evidence was being done on his part as the subordinate officials were working at his directions only. Instead, the DEO should have lodged the complaint with the concerned police stations without delay and should have let the police officers do the act of investigation and collecting evidence. Furthermore, if the reports and evidences sought by the DEO from the concerned officials was *sine qua non* for registering the FIRs, then how come the direction for registering the FIR was done at the later stage without receiving the same. Therefore, there was no justification for delay in registering of the FIRs on that account.

- (iv) Similarly, if the report/ evidences sought from the concerned officials were so essential for lodging of complaint, then the act of DEO for directing registration of FIRs against him, without receiving such reports/ evidences, is unexplained.
- (v) It is also pertinent to note that out of the 5 FIRs registered, one, i.e., FIR No. 527 in the Deoghar PS, pertains to making personal remarks against the DEO on Twitter. It is alleged that Dr. Nishikant Dubey wrote in the aforesaid post that Sh. Manjunath Bhajantari was working as an agent of JMM during the election period.

The aforesaid incident was in the nature of criticism of the DEO with regard to his work during the election period and the same does not violate any provision of the Model Code of Conduct as the same only places restriction on criticism of political parties with regard to their policies and programmes. The said provision is reproduced here below for ease of reference:

"1. General Conduct

2. Criticism of other political parties, when made, shall be confined to their policies and programme, past record and work. Parties and Candidates shall refrain from criticism of all aspects of private life, not connected with the public activities of the leaders or workers of other parties. Criticism of other parties or their workers based on unverified allegations or distortion shall be avoided."

It is pertinent to note that in the said twitter post, Dr. Nishikant Dubey had only appealed to the Commission to take action against the DEO. Moreover, with regard to this FIR, it can be said without doubt that no investigation/ collection of evidence was required in relating to this particular incident as the same related to the DEO himself. Therefore, the DEO should have registered the FIR promptly for this incident, if at all be considered the tweet as violation of any law or MCC. If seen in larger context, this act shows that the act of registering FIRs after 6 months was done without sufficient reasons.

- (vi) Moreover, with regard to FIR No. 179 filed in the Devipur PS, it is found that the same relates to the allegation of Dr. Nishikant Dubey for not taking necessary action against the JMM workers during the MCC period. The DEO has attached a copy of the twitter post to justify the filing of this FIR but the said post is the same as that annexed with FIR No. 527 (mentioned at point no. iv). With regard to this, it stated that the DEO was previously asked to explain the reasons for filing of multiple FIRs. However, justifying the registration of two distinct FIRs, alleging two different incidents, based on the same tweet is not only an attempt to mislead the Commission but also suggests malafide intention. It is pertinent to note that the said justification has been given when an explanation has been called for from the DEO for his actions and therefore, it was expected that the DEO should have provided justification for his actions after thorough inspection and not in such a callous manner.
- (vii) With regard to the issue of giving 'oral instruction' to subordinate officers to register the complaint, instead of written direction, the DEO has stated that the words 'oral instruction' have been wrongly mentioned in the FIRs. In regard to the above submission, it is observed that while such inadvertent error may have happened on the part of the concerned police officer who was registering the FIR, such errors on two separate FIRs, lodged with two different police stations cannot be errors. Therefore, the explanation given by the concerned DEO is unsatisfactory.

The DEO has further referred to his letters dated 23.10.2021 (*Annexure F of DEO's letter dated 11.11.2021*) and has claimed that FIRs were registered on the basis of the said letters. However, a perusal of the said letters shows that no direction to lodge an FIR was made in these letters. Instead, a report regarding the alleged incidents of MCC violation was sought from the concerned officials. Therefore, this explanation offered by the DEO is not only unacceptable but furthermore, is highly misleading which is not expected from an officer of the seniority of DEO.

- (viii) The DEO has also stated that he had informed the Commission as well as the CEO about the alleged incidents *vide* letter dated 15.04.2021 and therefore, no separate permission was required from the Commission.

In this regard, it is stated that the said letter at the end states that the information about the alleged incidents of MCC violation by the concerned MP was 'information at first instance' being submitted before the Commission/CEO. Therefore, it was expected from the DEO that further reports will also be sent with regard to alleged incidents. However, giving directions to lodge the FIRs before sending any further information by the DEO also suggests his malafide intention.

- (ix) Further, in the documents annexed with his reply, some of the papers (*viz., letter dated 25.06.2021 received by the DEO from Dr. Nishikant Dubey which has been placed between pages 95 and 96 of the annexures*) appear to be irrelevant and not connected with the facts of the present matter. It is not understood as to why the same have been annexed by the DEO while sending his reply to the Commission. This also indicates how the reply has been furnished by the DEO in a callous manner.

5. In view of the aforesaid observations, it is stated that the concerned officer – **Shri Manjunath Bhajantri, DC-cum-DEO, Deoghar**, has been given ample opportunity, both by the CEO as well as the Commission, to submit the rationale and justification for registering FIRs after inordinate delay against Dr. Nishikant Dubey, however, no satisfactory reply has been tendered.

6. Accordingly, the Election Commission hereby directs the State Government under Section 20A of the Representation of the People Act, 1951, and as per Election Commission's Order No. 4/2001/JS.II dated 07.02.2001 and Ministry of Personnel, Public Grievances &

Pension (Department of Personnel and Training), Government of India's Office Memoranda No. 11012/7/98-Estt.(A) dated 7th November, 2000 & dated 8th November, 2000 (copies enclosed) and ECI letter No. 23/2021-ERS (Vol.-II) dated 11th October, 2021 to initiate disciplinary proceedings for major penalty against **Shri Manjunath Bhajantri, IAS, DC-cum-DEO, Deoghar**, by issuing charge memo to him within 15 days from receipt of this Order, under intimation to the Commission, and further directs that **Shri Manjunath Bhajantri, IAS**, be removed from the post of DC-cum-DEO, Deoghar, immediately and should not be posted as DC/DEO or on any other election duty without prior permission of the Commission.

7. Kindly acknowledge the receipt of the letter.

Yours faithfully,

QV

(RAHUL SHARMA)
PRINCIPAL SECRETARY

Enclosures:

1. DC-cum-DEO, Deoghar letter No. 388 dated 15.04.2021
2. CEO, Jharkhand letter No. 1240 dated 18.04.2021
3. CEO, Jharkhand letter No. 2472 dated 26.10.2021
4. CEO, Jharkhand letter No. 2497 dated 27.10.2021
5. Commission's letter No. 100/ES-1/JKD-LA/01/2021/1894 dated 03.11.2021
6. DC-cum-DEO, Deoghar letter No. 1131 dated 11.11.2021
7. CEO, Jharkhand letter No. 2578 dated 12.11.2021
8. Commission's Order No. 4/2001/JS.II dated 07.02.2001
9. Ministry of Personnel, Public Grievances & Pension (Department of Personnel & Training), Government of India's Office Memoranda No. 11012/7/98-Estt.(A) dated 7th November, 2000 & dated 8th November, 2000

No. 100/ES-1/JKD-LA/01/2021

Dated: 6 December, 2021

Copy to-

The Chief Electoral Officer, **Jharkhand, Ranchi** – *for information and follow up action.*

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(RAHUL SHARMA)
PRINCIPAL SECRETARY