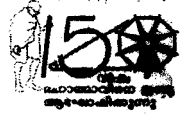


EXCISE

30 SEP 2019

RECEIVED

GOVERNMENT OF KERALA



No. Cdn.1/190/2019/GAD

General Administration (Co-ordination) Department,
Dated, Thiruvananthapuram, 26/09/2019.

CIRCULAR

Sub :- General Administration Department - Bye Election to Five Legislative Assembly Constituencies (01-Manjeshwar, 82-Ernakulam, 102-Aroor, 114-Konni, 133-Vattiyoorkavu) -Application of Model Code of Conduct - Guidelines from Election Commission of India - Instructions issued-Regarding.
Ref:- Note No. 7487/EL3/2019/Elec., dated, 21/09/2019 from Chief Electoral Officer, Kerala.

The Election Commission of India has announced Bye- Election to Five Legislative Assembly Constituencies (01-Manjeshwar, 82-Ernakulam, 102-Aroor, 114- Konni, 133-Vattiyoorkavu) and the Model Code of Conduct has come into force with immediate effect from 21/09/2019 in the entire districts of Kasaragod, Ernakulam, Alappuzha and Pathanamthitta, in which whole the Legislative Assembly Constituency going to poll is included. In Thiruvananthapuram District, Model Code of Conduct will be applicable in Vattiyoorkavu LAC only in accordance with the Commission instruction No.437/6/INST/2016-CCS, dated, 29.06.2017. Detailed guidelines in this regard is appended herewith for strict compliance.

By Order of the Governor,


BISHWANATH SINHA IAS
Principal Secretary

To

- The Principal Secretary, Election Commission of India, Nirvachan Sadan,
Asoka Road, New Delhi-110 001 (With CL)
- The Chief Electoral Officer and Principal Secretary to Government, Election Department,
Thiruvananthapuram (With CL)
- All Additional Chief Secretaries/Principal Secretaries/Secretaries
- The Secretary to Governor (with CL)
- The Secretary, Kerala Legislative Assembly, Thiruvananthapuram (With CL)
- The Advocate General, Ernakulam (With CL)
- The Registrar, High Court of Kerala, Ernakulam (With CL)
- The Secretary, Kerala Public Service Commission, Thiruvananthapuram (With CL)
- All District Collectors
- All Heads of Departments.
- The Chief Executives of all Public Sector Undertakings.
- The Government owned Industrial Concerns } Through District Collectors
- All Government Commercial Undertakings } concerned
- All Departments in Government Secretariat including Law and Finance (They may be requested to give necessary directions to the offices under their administrative control)
- The Station Director, All India Radio, Thiruvananthapuram
- The Labour Commissioner, Thiruvananthapuram.
- The Registrar, Kerala/Cochin/Calicut/Mahatma Gandhi/Kannur University
- The Registrar, Kerala Agriculture University, Mannuthi, Thrissur
- The Registrar, Sree Sankaracharya Sanskrit University, Kalady, Aluva
- The Registrar, Kerala University of Health and Allied Sciences, Thrissur-680 596

The Registrar, Kerala Veterinary & Animal Sciences University, Pookodu, Wayanad
The Registrar, Kerala University of Fisheries and Ocean Studies, Panangad, Kochi
The Director, Information & Public Relations Department (for giving wide publicity through
media and Govt. Website)
Web & New Media (for publishing in Government Website)
Stock File/Office copy

Forwarded/by Order,



Section Officer

MODEL CODE DURING BYE-ELECTIONS

In the case of a bye-election, Model Code is applied in the district or districts in which the constituency concerned falls. The Election Commission has noticed a disturbing trend during certain bye-elections, when political functionaries of various ruling parties, including their Ministers, try to circumvent the spirit behind Model Code. It is seen that Ministers frequently hold official meetings in neighbouring districts, categorizing their visits for official work and, while stationed there, carried out political activities for the bye-elections. Officials from the district(s) where bye-elections take place are also called for such meetings. Sometimes it is observed that more than half the cabinet stations itself in neighbouring districts on official work, and carries out the political activities relating to the bye-elections there. Keeping all this in view, the Election Commission has laid down specific guidelines to be observed on ground, in case of bye-elections.

Applicability of Model Code

As soon as the program of a bye-election is announced by the Election Commission, Model Code is enforced in the entire district, in which the Assembly/Parliamentary Constituency is located. Certain State Governments have requested the Election Commission to suitably modify the instruction as application of Model Code in the entire district during bye-election affects the developmental work in the whole of the district whereas only a part of the district may be involved in the election process. The Election Commission has considered the issue and in partial modification directed that in case the constituency going to bye-election is comprised in the state capital/metropolitan city/municipal corporation, Model Code would be applicable in the particular assembly constituency segment only and not in the whole of the district. In all other cases, Model Code would be enforced in the entire district(s) covering the constituency going for bye-election(s).

In case of bye-elections to the Lok Sabha/State Legislative Assemblies, Model Code will cease to be in operation immediately after the formal declaration of the result of the bye-election by the Returning Officer concerned.

Tours of Ministers

No Ministers belonging whether to Central Govt. or State Govt., shall combine in any manner their official tours with election work after the announcement of the bye-elections. They shall return to their headquarters on completion of their official tours. All and any visits to the district (s) where bye-election is being held and Model Code is in force have to be completely private in nature and such private visits should begin and end at the Minister's headquarters. Further, it is clarified that if a Minister or person holding equivalent rank/status combines his official visit with campaign by en routing his journey for official purposes to a place where Model Code is not in force and then proceeding from that place to the area where Model Code is in force for election campaign, expenses on the entire journey shall be treated as election expenditure.

In case where a Minister travelling on official work transits through the district(s) where the bye-election is being held en route to any other district on official visit, he shall not halt and attend to any political work in the district (s) where Model Code is in force.

No official of any rank of the district (s) where the bye-election is being held shall be called to attend any meeting by any Minister in any district, that is to say, even in the other districts where election is not being held.

Any official who meets the Minister on his private visit to the constituency where elections are being held shall be guilty of misconduct under the relevant service rules; and if he happens to be an official mentioned in Section 129(1) of the Representation of the People Act, 1951, he shall also be additionally considered to have violated the statutory provisions of that section and liable to penal action provided thereunder.

No pilot car(s) or car(s) with beacon lights of any colour or car(s) affixed with sirens of any kind making his presence conspicuous shall be used by any Minister during his private visit to the constituency even if the state administration has granted him a security cover requiring presence of armed guards accompanying him on tour.

The ministers have been permitted to take one non-gazetted official to accompany them during their private visits to attend to urgent official work.

The Election Commission has further laid down that the Chief Electoral Officer of the state shall be kept informed, in advance, of visits proposed to be undertaken by any minister(s) of the State or Central government to the district where bye-election is being held, by the District Election Officer. The Chief Electoral Officer shall forthwith communicate the same to the Election Commission.

Announcement of New Schemes/Projects

No work shall start, in respect of which, work orders may have been issued but the work has actually not started in the field. These works can start only after completion of election process. However, if a work has actually started, that can continue.

The schemes which have been cleared and funds provided/released and materials procured and reached the site, may be executed as per programme.

There shall be no bar to release of payments for completed work(s) subject to the full satisfaction of the concerned officials.

No fresh release of funds for any schemes, in operation under MPLAD (including Rajya Sabha members)/MLALAD/MLCLAD shall be made, till the completion of election process.

Announcement of Dearness Allowance

There is no instruction during the bye-elections prohibiting State Governments to take decisions which have State wide effect. In this context the Election Commission, after taking into consideration all relevant factors in this regard, has decided that announcement of Dearness Allowance by the State Governments may be done as a routine affair and it should not be publicized as the Government's achievement.

Publication of Advertisements

It is observed that the governments of the day publish advertisements of various kinds, including advertisements on their accomplishments and achievements. Such advertisements are often released on special occasions such as Republic Day, Independence Day, birthdays of prominent leaders, anniversary of government etc. On such occasions, if bye-elections are in progress, the issue of Model Code comes into question. It is not technically possible to block such advertisements, especially in the print media, in the specific areas covered under Model Code, while publishing it in the other places.

The Election Commission has considered the issue and taking into account all aspects of the matter, directed that release/publishing of advertisements at the cost of public exchequer during the period of operation of Model Code in bye-elections will be regulated as follows:-

- i) An advertisement of general nature in connection with specific occasions of importance may be published, however, the same shall be restricted to the dates coinciding with the said occasion only, and it shall not be published on other days. The advertisement shall not bear photograph of any Minister or other political functionaries.
- ii) No advertisement having a specific/pointed reference or connotation to the areas covered by the constituencies going to bye-election shall be released/published on any date during the period.
- iii) Further, it is clarified that no new schemes should be advertised in the districts where the bye election is being conducted.

Removal of References of Ministers from Official Websites

The Election Commission's existing instructions relating to general election provide that during the period when Model Code is in force, all references to ministers/politicians/political parties on concerned state/central government's official websites, shall be taken off/ purged of. During bye-elections, these instructions may be confined to only those politicians/ministers who themselves are contesting such bye- elections.

Restriction on Promises/Statements on Religious/Communal Ground

It has come to the notice of the Election Commission that during the bye-elections, the party in power or the sitting MPs/MLAs tend to make promises/appeals on religious/communal grounds in those parts of the districts/areas in their State where Model Code is not in operation so as to avoid the violation of Model Code. This has, however, indeed far reaching implications as it would certainly influence the minds of electors of the Assembly Constituency/Parliamentary Constituency where the bye election(s) is going on and, thus, vitiate the free and fair elections in that constituency(ies).

The Election Commission has directed that as soon as bye- election(s) to any Assembly Constituency/Parliamentary Constituency is announced in a State, the Chief Electoral Officer concerned shall issue an advisory to all the recognized political parties in the State/UT to request their Ministers and sitting MPs/MLAs not to make promises/statements on religious or communal ground, even in those areas where Model Code is not in force so that the purity of election process is maintained and no ill feeling is generated among the general public.

Transfer/Postings of Government Officials

The Election Commission, in its task of conducting free and fair elections has followed the consistent policy to ensure that government officials, who are connected with the conduct of bye-election in the States, are not posted in their home constituency and the areas falling in the Assembly/ Parliamentary Constituency(ies) where they have served for long.

A) No officer connected directly with the conduct of Bye- elections, should be allowed to continue in the present posting within the Assembly Constituency limits:-

- a) If she/he is posted in her/his home Assembly Constituency limit;
- b) If she/he has completed three years during last four years or would be completing 3 years on or before the last day of the sixth month from the date of occurrence of the casual vacancy.

B) Such officers shall be shifted out of the Assembly Constituency limit.

a) These instructions cover Returning Officers and Assistant Returning Officers of the Assembly Constituencies going for bye-elections. These instructions will also cover other officers viz. Deputy/ Assistant Collectors, Sub-Divisional Magistrates, Tehsildars and Block Development Officers located in Assembly Constituency limits. It is however clarified that officers appointed as Sector Officers, though directly involved in election duties will not be covered under these instructions as they are deployed in field duties where their knowledge of the area/ terrain is crucial to effective performance of their duties. The Chief Electoral Officer, District Election Officer and Returning Officer should however, keep a close watch on them during the election period to ensure that their performance is strictly impartial.

b) As far as officers in the **Police Department** are concerned, these instructions shall be applicable to the Sub-Divisional Head of Police, Dy.SP/ Circle Officers, Inspectors, Sub-Inspectors or equivalent ranks posted in the field within the Assembly Constituency limit.

c) Accordingly, a detailed review may, be undertaken and all such officers be posted out of their home constituency limits where they have completed or will complete, on the aforesaid date, tenure of three years in Assembly Constituency limit out of the last four years, immediately. Further, for uniformity, the three year period shall be reckoned backwards from the last day of the sixth month as mentioned from the date of occurrence of the casual vacancy.

Normally, bye-election is held to fill up a casual vacancy within a period of six months from the date of occurrence of vacancy (excepting a situation beyond control of the Election Commission). Hence, it would be advisable if the State Government initiates steps for implementation of these guideline immediately after occurrence of a casual vacancy in a constituency so that last moment dislocation of officers can be avoided.

The Election Commission has in the past received complaints that while the State Government transfers officials in the above categories, in pursuance of the direction issued by the Election Commission, the individuals try to circumvent the objective by proceeding on leave and physically not moving out of the district from which they stand transferred. The Election Commission has viewed this seriously and desired that all such officials who stand transferred in pursuance of the instructions referred to above shall be asked to move physically out of the district from which they stand transferred immediately on receipt of the transfer orders.

Any officer, who is due to retire within the next six months, will be exempted from the purview of the above-mentioned directions of the Election Commission. Further, officers falling in category (home/3+ criteria) shall not be engaged for performing election duties during the elections, if they are due to retire within 6 months.

The officers/officials against whom Election Commission has recommended disciplinary action or who have been charged for any lapse in any election or elections related work, in the past, shall not be assigned any election related duty.

No officer/official against whom a criminal case is pending in any Court of Law will be associated with the election work or election related duty.

Applicability of the instructions: The above instructions will be applied within the area falling under the concerned Assembly/Parliament Constituency. The District Election Officer/Returning Officer should ensure that deployment of any officer from outside the constituency for any election related duty, is done in conformation to the transfer policy of the Election Commission.
