

E A S Sarma
Former Secretary to Government of India

To

Shri Rajiv Kumar
Chief Election Commissioner

Shri A C Pandey
Election Commissioner

Shri A Goel
Election Commissioner

Dear S/Shri Rajiv Kumar/ Pandey and Goel,

I refer to my two letters of November 26 & 28, 2022
(http://eassarma.in/sites/default/files/public/MCC-Gujarat-Letter-dated_26-11-2022-to-CEC.pdf & http://eassarma.in/sites/default/files/public/Letter-to-ECI_28-11-2022.pdf) on possible violation of the Model Code of Conduct (MCC) in Gujarat by Shri Amit Shah, the Union Home Minister, in a statement reported to have been made by him on 25-11-2022, addressing a rally in Mahudha town of Kheda district, in support of BJP candidates ahead of the next month's Assembly elections (<https://www.ndtv.com/india-news/rioters-taught-lesson-in-2002-permanent-peace-in-gujarat-amit-shah-3552887>).

I have tried scanning the website of the Election Commission of India (ECI) to ascertain whether the Commission has received and registered my two letters and whether it has taken any action. To my utmost disappointment, the Commission's website makes no mention of the same, nor does it indicate the status of action.

It is equally disappointing that I should gather information from news reports (<https://indianexpress.com/elections/complaint-over-amit-shahs-2002-lesson-remark-under-process-in-poll-panel-8297092/>) on the action said to have been taken by the Commission, the response of the Gujarat election authorities and so on.

As a Constitutional body, the ECI is a "**public authority**" as defined in Section 2(h) of the Right to

Information Act, 2005 (RTIA) and is required to make *suo moto* disclosures of important matters of public interest, as required in Section 4 of the RTIA.

Section 4(1)(d) of the RTIA requires the Commission to "***provide reasons for its administrative or quasi-judicial decisions to affected persons***". MCC violations affect the integrity of elections and every citizen is an "affected" person.

Section 4(2) stipulates that "***it shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information***".

In other words, the Commission stands non-compliant with the mandatory provisions of the RTIA in terms of the public disclosures it is required to make.

I may remind the Commission that the genesis of the RTIA arises from Article 19 of the Constitution, as interpreted by the apex court of India. In other words, non-disclosure of important information of public interest, by a public authority, amounts to failing to comply with Article 19.

In their judgement of May, 6 2021 in CA No. 1767/2021, the apex court had made the following observation in a different matter, which, in principle, holds good in the case of any democratic institution:

“Public scrutiny is crucial to maintaining transparency and accountability. Transparency in the functioning of democratic institutions is crucial to establish the public’s faith in them”

Non-disclosure of important information by the Commission, in a matter such as this, concerning its action on an apparent violation of the MCC by a political party, certainly raises serious public concerns about the independence of the Commission vis-a-vis its role in conducting the ongoing elections in Gujarat and Himachal Pradesh, in a free and a fair manner.

In my view, had the Commission firmly believed in upholding the spirit of transparency, it would have pronounced a speaking order on my two letters, as is required in any quasi-judicial proceeding, and placed a copy of that order at its portal and at such other places, where the public could access it. If the decision in the matter is not unanimous among the three Commissioners, a

copy of the dissenting order ought to be placed similarly in the public domain.

Considering that the Commission has issued guidelines from time to time to political parties to ensure transparency in their functioning, it ought to have set an example by acting in a similar manner in its own functioning.

As I had said earlier, the Commission, as an authority owing its existence to Article 324, is expected to function in an independent manner, so as to elicit public trust in its role and authority. Several of your predecessors in the past had demonstrated the authority of the Commission in its full measure and demonstrated its role as the custodian of elections, conducted in a free and fair manner. The citizens expect the Commission to carry forward such a legacy, to be able to command public trust on a continuing basis and maintain its credibility as a Constitutional authority.

I hope and believe that each one of you will take note of the letter and the spirit of Article 19 of the Constitution, the provisions of the RTIA, the purpose and role of the Commission, as envisaged in Article 324, and its responsibilities under the Representation of the People Act, and conduct the affairs of the Commission in an appropriate manner, so as to remain fully accountable to the Parliament and the public.

Regards,

Yours sincerely,

E A S Sarma

Visakhapatnam

2-12-2022