



STATE ELECTION COMMISSION
N C T OF DELHI & U.T. CHANDIGARH
NIGAM BHAWAN, KASHMERE GATE, DELHI-110006
Phone :23990915, 23914156, 23952340, Fax : 23921236
E-mail : stateelectioncomm.delhi@gmail.com

No. F 4(350)/OSD-I/SEC/2022/3286

Dated 24.01.2022

ORDER

WHEREAS the superintendence, direction and control of conduct of elections to the three Municipal Corporations of the National Capital Territory of Delhi are vested in the State Election Commission, NCT of Delhi in accordance the provisions of Articles 243-K and 243-ZA of the Constitution of India read with section 7 of the Delhi Municipal Corporation Act, 1957 (as amended).

2. **AND WHEREAS**, following judgment of the Hon'ble Supreme Court in the WP(Civil) No. 161/2004 in People's Union for Civil Liberties v/s Union of India dated 27.09.2013, the State Election Commission, NCT of Delhi, introduced NOTA (NONE OF THE ABOVE) option in the elections to the three Municipal Corporations of Delhi vide its order No. F.4(17)/OSD-I/Legal/SEC/2015/3368 dated 28.03.2016.

3. **AND WHEREAS**, various political parties, research organizations, NGOs, thinkers etc. have time and again brought to the notice of the State Election Commission since 2016 that, implementation of NOTA in the present format has not given full effect to the above judgment of the Hon'ble Supreme Court dated 27.09.2013.

4. **AND WHEREAS**, after getting the above feedback, State Election Commission has examined the following Judgment, Act etc. in detail:-

4.1 The judgment of the Hon'ble Supreme Court in W.P. (Civil) 161/ 2004 dated 27.09.2013 in People's Union for Civil Liberties v/s Union of India.

4.2 All the Acts and Rules governing the elections to the three Municipal Corporations in NCT of Delhi,

4.3. the principle that "a candidate who secures the highest number of valid votes polled should be declared as elected", and is followed in all the elections in India.

5. Hon'ble Supreme Court by its above judgment dated 27.09.2013 had wished that introduction of NOTA will improve the electoral process *through* -

(a) increased voter participation,

- (b) compulsion on political parties to field good candidate, and
- (c) reflection of negative votes in election result.

Paragraphs 51, 52, 53, 54 & 55 of the above judgment are reproduced below for ready reference.

Para 51 *'For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. This situation palpably tells us the dire need of negative voting.'*

Para 52 *'No doubt, the right to vote is a statutory right but it is equally vital to recollect that this statutory right is the essence of democracy. Without this, democracy will fail to thrive. Therefore, even if the right to vote is statutory, the significance attached with the right is massive. Thus, it is necessary to keep in mind these facets while deciding then issue at hand.'*

Para 53 *'By providing NOTA button in the EVMs, it will accelerate the effective political participation in the present state of democratic system and the voters in fact will be empowered. We are of the considered view that in bringing out this right to cast negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and also fulfill one of its objective, namely, wide participation of people.'*

Para 54 *'Free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress of coercion. Protection of elector's identity and affording secrecy is therefore integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14. Thus, secrecy is required to be maintained for both categories of persons'.*

Para 55 *'Such an option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties. When the political parties will realize that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systematic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity'.*

6. On examination of the above judgment, Acts etc. State Election Commission NCT of Delhi finds that implementation of NOTA as per order issued earlier on 28.03.2016 ;



does not give effect to the judgment of the Hon'ble Supreme Court in W.P.161 (2004) dated 27.09.2013 in People's Union for Civil Liberties v/s Union of India since it –

- (i) has not led to increased voter participation,
- (ii) has not compelled Political Parties to field good candidates,
- (iii) does not reflect negative votes in election result and
- (iv) does not honour and respect the majority will/opinion of the people expressed through NOTA.

6.1 Violates the accepted principle by declaring a candidate as elected even though he/she has secured lesser votes than NOTA.

6.2 allows a candidate found unworthy by the majority voters to become their public representative;

6.3 Local Body Acts and Rules being silent on NOTA do not prohibit State Election Commission from using plenary powers to fill this vacuous areas. There is no provision of NOTA in any of the State Acts or rules made thereunder. They only provide that "the returning officer shall declare such candidate as elected who has secured largest number of valid votes."

7. AND WHEREAS, after examining all the issues and facts, State Election Commission, NCT of Delhi, feels that there is a strong case to (i) consider NOTA as a "fictional electoral candidate", and (ii) to issue a fresh order for giving effect to the judgment of Hon'ble Supreme Court in the true sense superseding its earlier order No.F.4(17)/OSD/Legal/SEC/2015/3368 dated 28.03.2016 ;

8. AND WHEREAS State Election Commission Delhi has also examined the following orders of the Hon'ble Supreme Court :-

8.1 Civil Appeal 3839 of 1982 Petitioner A.C. Jose Vs. Sivan Pillai & Others, dated 5.3.1984, wherein Supreme Court has laid down rule about the plenary powers of the Election Commissions;

"To sum up, therefore, the legal and constitutional position is as follows:

- (a) When there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass an order in respect of the conduct of elections.*
- (b) Where there is an Act and express Rules made thereunder it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and*



Rules) in the matter of superintendence, direction and control as provided by Art.324 (Articles 243K and 243ZA of the Constitution in case of State Election Commissions).

- (c) Where the Act or the Rules are silent, the Commission has no doubt plenary powers under Art. 324 (Art. 243K and 243ZA applicable to SECs) to give any direction in respect of the conduct of election, and

8.2 Civil Appeal 7178 of 2001 Union of India Vs ADR and others, dated 2nd May, 2002, wherein Apex Court while clearly laying down ratio decided about the source and ambit of the power of the Election Commission, has observed that,

"It is settled that the power of the Commission is plenary in character in exercise thereof. In a statutory provisions or rules, it is known that every contingency could not be foreseen or anticipated with precision, therefore, Commission can cope with situation where the field is unoccupied by issuing necessary orders.

'One has also to remember that the source of power in this case is the Constitution, the highest law of the land, which is the repository and source of all legal powers and any power granted by the Constitution for a specific purpose should be construed liberally so that the object for which the power is granted is effectively achieved.'

'Thereafter, the Court observed that under Article 324, the Commission can issue suitable directions to maintain the purity of election and in particular to bring transparency in the process of election.'

'The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wise sense to include the entire process of election which consists of several stages and embraces many steps.'

'By issuing necessary directions, Commission can fill the vacuum till there is legislation on the subject.'

'The word "elections" includes the entire process of election which consists of several stages and it embraces many steps, some of which may have an important bearing on the process of choosing a candidate.'

8.3 Appeal (Civil) 5756 of 2005 Petitioner Kishan Singh Tomar Vs Municipal Corporation of the City of Ahmadabad & Ors., dated 19.10.2006, wherein Supreme Court has observed that the State Election Commission has the same powers (including inherent plenary powers) like that of Election Commission of India in the domain of local body elections. It lays down that, *'in terms of Article 243 K and 243ZA(1) the same powers are vested in the State Election Commission as the*

Election Commission of India under Article 324. The words in the former provisions are in pari materia with the latter provisions'.

8.4 Writ Petition (Civil) No.784/2015 filed by Lok Prahari through its General Secretary S.N. Shukla Vs Union of India & Others, dated 16.02.2018, wherein the Hon'ble Supreme Court has expressed deep concern about the undue accretion of assets by legislators in following words:

Para 22. *'Various bodies such as the Law Commission of India and a Committee popularly known as the Vohra Committee constituted by the Government of India etc. point out various shortcomings in the working of the democracy and the need to address those concerns.'*

Para 30, UNDUE ACCRETION OF ASSETS OF LEGISLATORS AND THEIR ASSOCIATES IS CERTAINLY a matter which should alarm the citizens and voters of any truly democratic society. *Such phenomenon is a sure indicator of the beginning of a failing democracy. If left unattended It would inevitably lead to the destruction of democracy and pave the way for the rule of mafia. Democracies with higher levels of energy have already taken note of the problem and addressed it. **Unfortunately, in our country, neither the Parliament nor the Election Commission of India paid any attention to the problem so far.***

Para 31. *The increasingly role of money power in elections is too well known and is one of the malafidies which sometimes reduces the process of election into a mere farce by placing some privileged candidates with financial resources in a distinctly advantageous position as compared to other candidates. The result of such an election cannot reflect the true choice of the people. The system also sometimes deprives qualified and able persons of the prerogative to represent masses.'*

The Apex Court in this judgment **has expressed displeasure against the Parliament and Election Commission** for not paying attention to such problems. Thus there is a need to pay attention to all such issues (including utility of NOTA) without any further delay so as to make elections pure, free, fair and transparent.

9. AND WHEREAS various political parties during the workshop on the subject of "Role of Political Parties towards Healthier Democracy" conducted by State Election Commission, Maharashtra on 7th May, 2018, expressed the opinion that NOTA should be treated as "Fictional Electoral Candidate' and re-election should be held whenever NOTA gets highest votes as compared to other contesting candidates;

10. **AND WHEREAS** the issue of NOTA was also discussed in the meeting held on 12th January 2022 in the State Election Commission, Delhi with the national and State political parties and a general consensus emerged that NOTA should be treated as "Fictional Electoral Candidate".

11. **AND WHEREAS** in view of above, the State Election Commission has come to the conclusion that –

- (i) Implementation of NOTA in terms of the Directions issued by the Commission vide No.F.4(17)/OSD.I/Legal/SEC/2015/3368 dated 28.03.16 does not give complete effect to the judgment of Hon'ble Supreme Court dated 27.09.2013 fully in letter and spirit.
- (ii) There is no provision in the local body Acts /Rules regarding NOTA and / or how to treat the votes polled by NOTA while declaring the results. Thus, there is vacuous area.
- (iii) State Election Commission has the requisite authority to fill the above vacuous area by treating the NOTA as 'Fictional Electoral Candidate'.

12. **NOW, THEREFORE**, in exercise of the powers conferred by Articles 243K and 243 ZA of the Constitution of India read with provisions of Section 7 of the Delhi Municipal Corporation Act, 1957 and Rule 54 of the Delhi Municipal Corporation (Election of Councillors) Rules, 2012 and all other enabling powers of the State Election Commission in this behalf, the following new order is hereby issued with immediate effect superseding its earlier order No. F.4(17)/ OSD.I/Legal/SEC/2015/3368 dated 28.03.2016:-

ORDER

13.1 (1) In the judgment of the Hon'ble Supreme Court of India on Writ Petition (C) No.161 of 2004 dated 27th September, 2013 in People's Union for Civil Liberties v/s Union of India, it has been directed that there should be a 'NONE OF THE ABOVE' (NOTA) option on the ballot papers and Electronic Voting Machines,

(2) Accordingly, I, S.K. Srivastava, State Election Commissioner of N.C.T. of Delhi, hereby direct as follows :-

(i) In the ballot papers to be printed for affixation on the Electronic Voting Machines, for issue as Postal Ballot Papers and Tendered ballot papers for election of a Councillor from a ward of any of the three Municipal Corporations of Delhi viz. North Delhi, South Delhi and East Delhi Municipal Corporations to be held hereafter, the number of panels showing names



of contesting candidates and symbol allotted to each shall be equal to the number of contesting candidates. There shall be printed an additional panel below the last name of the candidate as under:-

None of the above (NOTA)

The voter who declines to vote to any of the above contesting candidates may press the last button meant for the above additional panel indicating that he/she does not wish to vote to any of the above candidates.

(ii) The Returning Officer of a ward of a Municipal Corporation of N.C.T. of Delhi, shall take note of above directions and provide an additional panel on the ballot papers to be affixed on the EVMs and on the ballot papers meant for 'postal ballot papers' and for 'tendered ballot papers'. He shall make the button active, of EVMs of a ward opposite to the additional panel, indicated above so that choice of the voter is well recorded in the prescribed panel.

(iii) Besides, the Returning Officer of a ward shall provide an additional panel in Part II (Result of Counting) of Form 11 C appended to the Delhi Municipal Corporation (Election of Councillors) Rules, 2012, **after the last name of the contesting candidates for showing total number of votes recorded as NOTA in respect of each polling station.** He shall also provide in Form 17 appended to the aforesaid Rules, an additional column before the column meant for "REMARKS", for indicating "No. of voters who have opted for NOTA polling station-wise and for the entire Ward. In the same Form No.17, below the line "Total votes polled", another line shall be added as "Total number of votes recorded as NOTA for the entire ward." In Form No.18 appended to the aforesaid Rules, after the words "Total number of tendered votes" a new line shall be added to read as "Total number of votes recorded as "NOTA"....."

13.2 (i) NOTA is to be treated as a '**Fictional Electoral Candidate**' while declaring the election result.

(ii) If in any election, all the contesting candidates individually receive lesser votes than the '**Fictional Electoral Candidate**' i.e. NOTA, then none of the contesting candidate will be declared as elected and fresh election shall be held for that seat.

(iii) In case, a contesting candidate and the '**Fictional Electoral Candidate**' i.e. NOTA receives equal valid votes, then the contesting candidate (not NOTA) shall be declared as elected.

(iv) If a fresh election is held as per No.(ii) above, it will start from nomination stage itself.



(v) However, if in re-election, NOTA again gets highest votes, then re-election will not be taken for second time and contesting candidate with highest votes (excluding NOTA) shall be declared as elected.

13.3 The following procedure shall be followed in such circumstances,

I. If a returning officer, upon completion of counting but before declaration of result, finds that NOTA has received higher valid votes than all other contesting candidates individually; then he (i.e. returning officer) shall not declare the result for that particular seat(s) and shall immediately send his Report to the State Election Commission (in the prescribed format).

II. Upon receipt of such report, the State Election Commission shall after satisfaction, declare the fresh election programme for the said seat(s).

III. These orders shall be applicable to the general and bye- election(s) to the ward or wards of all the three Municipal Corporations of Delhi viz. North Delhi, South Delhi and East Delhi, to be held hereafter.

BY ORDER,
S.K. Srivastava
24.01.2022
(S.K.SRIVASTAVA)
State Election Commissioner,

No. F 4(350)/OSD-I/SEC/2022/3286

Dated 24.01.2022

A copy of the above ORDER is forwarded to the following for information and necessary action :-

1. The Chief Secretary, Govt. of NCT of Delhi
2. The Pr. Secretary, Urban Dev. Deptt. of Govt. of NCT of Delhi
3. All the DEOs/ DMs/Election Observers/ROs in NCT of Delhi
4. All the Commissioners of three Municipal Corporations of Delhi
5. Secretary / President of National and State political parties as recognized by the Election Commission of India.

P.K. Goel
(P.K.Goel)
Dy. Secretary