



State Election Commission, Haryana

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ORDER

Whereas the superintendence, direction and control of conduct of elections to the Panchayats and the Municipalities in the State of Haryana are vested in the State Election Commission, Haryana in accordance with provisions of Article 243-K and 243-ZA of the Constitution of India.

2. And whereas, the State Election Commission, Haryana in compliance with the order dated 27.09.2013 passed by the Hon'ble Supreme Court in the Writ Petition (Civil) No. 161 of 2004 in People's Union for Civil Liberties Vs Union of India, has issued an order No. SEC/1ME/2016/3653-3659, dated 14.12.2016 regarding application of NOTA (none of the above) option in the local body elections. Para 4 of the said order reads as follows :

“NOTA has the same effect as not voting for any candidate under the earlier provisions of rule 69M of the Haryana Municipal Elections Rules, 1978 and 70M of the Haryana Municipal Corporation Election Rules, 1994 as the case may be. Therefore, even if, in any extreme case, the number of votes against NOTA is more than the number of valid votes secured by the candidates, the candidate who secures the largest number of valid votes among the contesting candidates shall be declared to be elected.”

3. And whereas, State Election Commission has considered the above mentioned order, Acts & Rules governing the elections to the local bodies in Haryana and the principle that “a candidate who secures the highest number of valid votes polled should be declared as elected” and it is observed that the Hon'ble Supreme Court by its judgement had observed that introduction of NOTA will improve the electoral process through –

- a) increased voter participation,
- b) compulsion on political parties to field good candidates; and
- c) reflection of negative votes in election result.

4. And whereas, State Election Commission Haryana has also considered the order of the Hon'ble Supreme Court passed in Civil Appeal No. 3839 of 1982 Petitioner A.C. Jose Vs Sivan Pillai & Others, dated 05.03.1984 where in Hon'ble Supreme Court has laid down rule about the plenary powers of the Election Commissions;

(a) *When there is no Parliamentary legislation or rule made under the said legislation, the Commission is free to pass any orders 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,

(c) where the Act or the Rules are silent, the Commission has no doubt plenary powers under Art. 324 to give any direction in respect of the conduct of election”

And

In Civil Appeal No. 7178 of 2001 Union of India Vs ADR and others, dated 2nd May, 2002, wherein Apex Court while clearly laying down *ratio decidendi* about the source and ambit of the power of the Election Commission, has observed that,

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

*The limitation on plenary character of power is when the Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Article 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions, Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya Lal Omar’s* case, the Court construed the expressions “superintendence, direction and control” in Article 324(1) and held that direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.’*

And

In Appeal (Civil) No. 5756 of 2005 Petitioner Kishansing 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 243K & 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’.*

And

In 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 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. pointed 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.'

The Apex Court judgements mentioned above have expressed displeasure to the concerned bodies 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.

5. And Whereas, State Election Commission has come to the conclusion that –

i) Implementation of NOTA in terms of order issued by State Election Commission Haryana on 14.12.2016 does not give absolute effect to the judgements of Hon'ble Supreme Court 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 a vacuous area; and

iii) State Election Commission has the requisite authority to fill the above vacuous area by treating the NOTA as 'Fictitious Electoral Candidate' and amend the para 4 of its order dated 14.12.2016 in order to implement the judgements of Hon'ble Supreme Court in its true sense.

6. Now therefore, in exercise of the powers conferred under clause (1) of Article 243-ZA of the Constitution of India and Section 3A of the Haryana Municipal Act, 1973 and Section 9 of the Haryana Municipal Corporation Act, 1994, and all other powers enabling it in this behalf, para 4 of the Order dated 14.12.2016 passed by the State Election Commission is hereby amended with immediate effect as below :

Order

7. (i) NOTA shall be treated as a 'Fictional Electoral Candidate' while declaring the election results,

(ii) In case, a contesting candidate and the "Fictional Electoral Candidate" i.e. NOTA receive highest equal number valid votes then the contesting candidate (not NOTA) shall be declared as elected.

(iii) 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 candidates will be declared as elected.

(iv) In case of situation arising under sub-section (iii) above, re-election shall be held for the seat. Further all such contesting candidates who secured less votes than NOTA shall not be eligible to re-file the nomination/contest the re-election.

v) In re-election, if NOTA again gets highest votes then further election will not be conducted and contesting candidate with highest votes (excluding NOTA) shall be declared as elected.

8. 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 Returning Officer shall not declare the result for that particular seat/s and shall immediately send his report to State Election Commission in this regard.

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

9. These orders shall be applicable to the general and bye-elections to all the Urban Local Bodies (Municipal Corporations, Municipal Councils and Municipal Committees) in Haryana with immediate effect.

**Dated: Panchkula
22nd November, 2018**

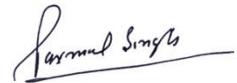
**DR. DALIP SINGH
State Election Commissioner, Haryana**

Endst. No.SEC/1ME/2018/ 5833-5880

Dated : 22nd November, 2018

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

1. Chief Secretary to Government, Haryana, Chandigarh.
2. Principal Secretary to Government, Haryana, Urban Local Bodies Department, Chandigarh.
3. Director, Urban Local Bodies, Haryana, Panchkula.
4. All the Divisional Commissioners in the State of Haryana.
5. All the Deputy Commissioners in the State of Haryana.
6. All the Commissioners of Municipal Corporations, in the State of Haryana.
7. Secretary/President of all the recognized Political Parties.



(Parmal Singh)

Assistant State Election Commissioner, Haryana