

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi 110 001

No. 56/pol.parties/2021/PPS-III (Part)/Conf-2022

Dated: 13th September 2022

ORDER

1. India is a multi-party democracy and Election Commission facilitates and regulates registration of political parties u/s 29A of the Representation of the People Act, 1951. Consequent upon registration, a political party gets several entitlements, inter-alia, party can collect donations, which is fully exempted from income tax. In elections, they are entitled for privileges of common symbol, preference over independents on ballot, vehicles, star campaigners etc. After detailed review, Commission on 25.05.2022 and subsequently, issued detailed directions to RUPP's as briefly recapped below.
2. Every RUPP so registered is required to comply with certain rules / instructions and directions, as conditions of registration and it also gives a categorical undertaking to this effect in its application. Relying on the same ECI grants registration. These, inter alia, include:
 - i. Section 29 C of RP Act 1951 requires a RUPP to furnish a contribution report as prescribed in Form 24 A under Rule 85 B of Conduct of Election Rules 1961. Such contributions are exempted from the provisions of Income Tax as an incentive to the parties for strengthening the electoral democracy. Form 24 A requires the signatories (Treasurer/Authorised person) of a party to inter- alia provide details such as-
 - Address of the headquarters of the Political Party including any changes;
 - Permanent Account Number and Income-tax Ward/Circle where return of the political party is filed;
 - Contributions received in excess of Rs.20,000 including particulars of donors;
 - in case of payment by cheque/demand draft, name of the bank and branch of the bank;
 - in case the contributor is a company, whether the conditions laid down under section 293A of the Companies Act, 1956 (as amended) have been complied with.
 - ii. The political parties are mandated to furnish Audited Annual Statements, flowing from ECI's transparency guidelines dated 29/08/2014 as amended, inter-alia, requiring the party to adhere to the following:
 - “ (i) Provision (a) to Section 13/1 of Income Tax Act 1961, inter-alia, provides that political party shall keep and maintain such books of accounts and other documents

as would enable proper deduction of its income therefrom. Accordingly, it is required that

- (a) the treasurer of the political party or such person as authorized by the party, besides ensuring maintenance of the accounts at all State and lower levels, shall maintain consolidated accounts at the central party Head Quarters as required under the aforesaid provision,
- (b) the accounts so maintained by him/her shall conform to the guidance note on Accounting and Auditing of political parties, issued by the Institute of Chartered Accountants of India (ICAI), and
- (c) the Annual Accounts shall be audited and certified by the qualified practicing Chartered Accountants.”.

The Commission in its instructions dated 19/11/2014 has further clarified,

“The instruction to political parties to file Annual Audited Accounts with the Commission is essential for maintaining transparency in the functioning of political parties, which is an essential ingredient for conduct of free and fair election. The direction to maintain the name and address of the individuals, companies and entities making donations to the political parties is intended to ensure that no funds are received by the political parties from prohibited sources as stipulated in section 29B of the R.P. Act 1951.

While emphasizing upon transparency in election funds, following has been held by Hon'ble Supreme Court in *People's Union for Civil Liberties (PUCL) and Anr. v. Union of India and Anr.* [(2003) 4 SCC 399]: -

“...Transparency in the context of election means both the sources of finance as well as their utilization as are listed out in an audited statement. If the candidates are required to list the sources of their income, this can be checked back by the Income Tax Authorities. The (Law) Commission recommends that the political parties as well as individual candidates be made subject to a proper statutory audit of the amounts they spend. These accounts should be monitored through a system of checking and cross-checking through the income tax returns filed by the candidates, parties and their well-wishers...

Furthermore, echoing the same, Delhi High Court in *Commissioner of Income Tax Delhi- Vs. Indian National Congress (I)/ All India Congress Committee* ITA 145 and 180/2001 has held that –

“Considering that political parties are an essential part of our democracy and are dealing in large sums of public money, much of which is unaccounted, the proper auditing of the accounts of the political parties is both imperative critical to the conduct of free and fair elections. The above recommendations of the 255th LCI report should receive serious and urgent attention at the hands of the executive and the legislature if money power should not be allowed to distort the conduct of free and fair elections. This will in turn infuse transparency and accountability

into the functioning of the political parties thereby strengthening and deepening democracy.".

Hon'ble Supreme Court in Common Cause vs Uol & Others (AIR 1996 SC 3081) has held,

16. "It is obvious that there has been total inaction on the part of the Government to enforce the provisions of the Income Tax Act relating to the filing of a return of income by a political party. The provisions of Section 13-A of the Income Tax Act read with Section 293-A of the Companies Act clearly indicate the legislative scheme the object of which is to ensure that there is transparency in the process of fund-collecting and incurring expenditure by the political parties. The requirement of maintaining audited accounts by the political parties is mandatory and has to be strictly enforced. It was obligatory for the income tax authorities to have strictly enforced the statutory provisions of the Income Tax Act..

The political parties, therefore, are under a statutory obligation to furnish a return of income for each assessment year. To be eligible for exemption from income-tax they have to maintain audited accounts and comply with the other conditions envisaged under Section 13M of the Income-tax Act.... "

"A political party which is not maintaining, audited and authenticated, accounts and has not filed the return of income for the relevant period, cannot, ordinarily, be permitted to say that it has incurred or authorised expenditure in connection with the election of its candidates in terms of Explanation I to Section 77 of the R.P. Act. (1951) ."

[emphasis supplied]

- iii. Every Political Party, for being registered, as a condition precedent prescribed by ECI under its power under section 29 A (6), undertakes to include in its constitution that it must contest an election conducted by the Election Commission within 5 years of its registration
- iv. Sec 29 A (9) mandates every political party to communicate any change in its name. head office. office bearers, address or in any other material matters to the commission without delay.
- v. Further, upon participation in an election, political parties are required to furnish their election expenditure statement within 75 days, in case of Assembly elections. and 90 days. in case of Lok Sabha elections,
3 (a) Vide Commission's order dated 25.05.2022, 2056 RUPPs were asked to furnish annual audit account of the concerned financial year, details of bank account, PAN, contribution receipt etc and 100 RUPPs were asked to furnish election expenditure statements after the contest of election (S). The concerned CEOs of respective states were also asked to put the list of these RUPPs on their respective websites. Individual notices had also been served to these RUPPs through respective CEOs.

(b) Some CEOs reports are now available (Bihar, Delhi, Karnataka, Maharashtra, Tamil Nadu, Telangana & Uttar Pradesh) whereby the CEO's have forwarded the list of those RUPPs to whom the letter/notice has been delivered. However, no response has been received from them within the stipulated time period and they choose to remain inactive despite service of notice. Accordingly, the Commission noted its serious concern that many RUPPs who had been served notices by the respective CEOs to comply with the statutory requirements mentioned in the para 2, have not submitted any of the required reports for the last 8 years namely: -

- (i) Annual Audit report
- (ii) Annual Contribution report
- (iii) Election expenditure details

Thus going by the frequency of submission required, cumulatively they are, in the least, in 16 events of defaults and continuing.

4. Further, 253 of these RUPPs have not contested a single election either to the General Assembly of a State or the Parliament Election 2014 & 2019. This implies that despite a large number of General Elections held no electoral participation is reflected.
5. The Commission notes that the primary purpose of registration of political parties is contained in Section 29A which lists out privileges and advantages which accrue to an association once it gets registered as a political party and all such advantages and privileges are directly relatable to the said participation in the electoral processes. Accordingly, in the 13 (ii) (e) guidelines for registration of political parties issued by the Commission for condition of registration, reads as follows:

"Declares that party must contest an election conducted by the Election Commission within five years of its registration and thereafter should continue to contest. (If the Party does not contest elections continuously for six years, the Party shall be taken off the list of registered parties)."

6. It is also noted that of the above 253 parties, 66 RUPPs actually applied for a common symbol as per under para 10 B of the Symbol's Order and, did not contest the respective elections. The para 10 B (A) 5 of the symbol order is very categorical that the privilege of a common symbol is given based upon an undertaking by the RUPP that the said RUPP will put up at least 5 percent of total candidates with regard to said legislative assembly election of a State. Taking of common symbol and then not contesting elections is also a matter of grave concern specially when some of these parties have also reflected transactions in their income tax returns. Possibility of such parties occupying the available pre- election political space by taking benefits of admissible entitlements without contesting elections, cannot be ruled out. This also tends to crowd out the political parties actually contesting elections and also creating confusing situation for the voters.
7. Therefore, the Commission's previously expressed concern with respect to those RUPPs, which are neither taking part in the electoral process nor adhering to one or many of the above requirements including submission of Contribution Reports; Annual Audit Statement; Election Expenditure Statement; and Contesting Elections, etc

which is not only violative of statutory requirements and extant guidelines in the following manner but also defeats the purpose of a clean electoral ecosystem, stands.

- 8 The Commission is cognizant that compliances of the birth conditions, which are a combination of mandated and self-acknowledged provisions, are sine qua non for maintaining financial discipline, propriety, public accountability, transparency. The compliances work as the building blocks of a transparency mechanism for informing the voters of the affairs of the political parties necessary for making informed choices. In the absence of required compliances, the electorate and the Election Commission get blindsided. Further all these stated regulatory requirements have direct nexus with Commission's constitutional mandate of conducting free, fair and transparent elections. SC in Union of India v. Association for Democratic Reforms and others, AIR 2002 SC 2112) has held that:

4. "In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted".

[emphasis supplied]

9. In view of the foregoing, immediate corrective measures are warranted in larger public interest as well as for the purity of electoral democracy. 253 RUPPs (registered prior to 2015) who have not submitted any contribution/ expenditure report in specified time line, have not responded to the Notices delivered by CEO's to remedy the situation and have not contested any election since 2014, are cumulatively in violation of; (a) the specific provision of their constitution to contest election within 6 years of registration and, (b) In violation of the statutory responsibility to file the 3 reports as mentioned in para 3 above.

10. Therefore, the Commission, in discharge of its mandate of ensuring just, free, fair & transparent electoral process hereby directs that:

- i) As a consequence of default for not contesting elections for 6 years as stated and agreed to by the RUPP at the time of registration i.e. "the Party shall be taken off the list of registered parties", these 253 RUPPs are hereby marked as 'Inactive RUPPs' in the register of RUPPs maintained by the commission under the section 29A of Representation of People act, 1951
- ii) These 253 RUPPs shall not be eligible to avail any benefit of the Election Symbols (Reservation and Allotment) Order, 1968 .

- iii) Any party aggrieved from this, may approach the concerned Chief Electoral Officer/Election Commission within 30 days of the issue of this direction along with all evidences of existence, other legal and regulatory compliances including year wise annual audited accounts, contribution report, expenditure report, updation of office bearers including authorized signatories for financial transactions (including bank account).
- iv) Of these 253 RUPPS, 66 RUPPs which sought a common symbol under para 10B in various elections (as detailed in para 4 and 6), but didn't set up any candidates for the respective general elections, shall need to further explain to the Commission, in addition to point iii above, as to why further action as mandated in "para 10 b of the Symbols Order making them liable for such punitive action as the Commission may consider appropriate" should not be taken.
11. Commission further directs that both lists may be shared with CBDT for further necessary action under its extant statutory instructions.

By Order


DILIP K VARMA
(Pr. Secretary)