

## **Recording Dissenting Opinion in EC**

### **Why in news?**

The Election Commission has decided by majority that dissenting opinions in Model Code of Conduct (MCC) disputes will not be made part of any final order.

### **What was the dispute?**

- Election Commissioner Ashok Lavasa had given dissenting opinion in at least four cases.
- These related to cases where the ECI (2:1 majority) did not find any violation in the speeches of PM Narendra Modi and BJP chief Amit Shah.
- Election Commissioner Ashok Lavasa had written thrice to the Chief Election Commissioner Sunil Arora in this regard.
- He had conveyed his decision to stay away from proceedings related to the MCC if the dissenting views were not incorporated in the orders.
- With ECI's recent decision, the dissenting opinions will only be included in internal files, as per previous practice.

### **What does the law say?**

- Article 324 of the Constitution vests the superintendence, direction and control of elections in an Election Commission of India.
- It consists of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix.
- At present the Election Commission is a multi-member body, with a Chief Election Commissioner and two other members.
- The law requires the multi-member EC to transact business unanimously as far as possible.
- All three Commissioners now have equal decision-making powers.

### **What is the procedure in case of dissent?**

- Where there is a difference of opinion, decision is taken by majority.
- All opinions carry equal weight, which means the CEC can be overruled by the two ECs.
- If some difference of opinion persists even after oral deliberations and discussions, such dissent is recorded in the file.
- In normal practice, while communicating the decision of the Commission in

executive matters, the majority view is conveyed to the parties concerned.

- The dissent remains recorded in the file.
- In case dissent is to be recorded in a case of judicative nature, the dissenting member may like to record a separate opinion/order.
- However, despite the existence of the provision to take decisions by majority since 1993, very rarely has dissent been recorded.
- When a matter is deliberated upon by the 3 Commissioners, they normally agree to a common course of action.
- This does not, however, mean that there is no disagreement between the Commissioners.

### **Is the rejection of the demand justified?**

- The recent rejection of the demand of Mr. Lavasa on recording dissenting opinions in the orders may be technically and legally right.
- However, there was indeed a strong case for acceding to his demand.
- This is especially true at least in regard to complaints against high functionaries such as the Prime Minister.
- The EC has been widely criticised for giving a series of 'clean chits' to the PM.
- This was despite some questionable remarks that appeared to solicit votes in the name of the armed forces.
- Added to the dispute was the unexplained delay of several weeks in disposing of complaints against Mr. Modi.
- It is in this context that Mr. Lavasa's dissenting opinion may have been relevant enough to merit inclusion in the EC's orders.
- People are entitled to know whether or not the poll panel's key decisions are unanimous.
- In the present case, Mr. Lavasa has taken up the issue through as many as three letters.
- So it is reasonable to infer that there is some basis for his grievance.
- The onus on EC to maintain a level-playing field and enforce the election code is quite high, especially when its credibility is under question.
- It would be unfortunate if the majority in the EC were to be afraid of any public reaction that may result from disclosure of a split opinion.

**Source: The Hindu, Indian Express**



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