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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