

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

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

Dated: 25th May, 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.
2. **There are 2796** Registered Unrecognised Political Parties (**RUPP**) as in September 2021 (<https://eci.gov.in/files/file/13711-list-of-political-parties-symbol-main-notification-dated23092021/>) There were 694 RUPP in 2001. In two decades, the growth in registration of parties **has been ~300%**. Evidence suggests that there is a spurt in registration before general election of Lok Sabha/Vidhan Sabha.
3. 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 13A 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 there from. 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 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 UoI & 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 13A of the Income-tax Act. ..."

"... 5. *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 1 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 within 90 days, in case of Lok Sabha elections.
4. The above create '**birth' conditions, which** are a combination of mandated and self-acknowledged provisions by the respective party. These conditions assume a legal and moral obligation that all registered parties carry. They also provide a matrix for both self-regulation by a political party itself and, independently by the ECI.
5. **The Commission places these reports in public domain by way of placing it on its website**, and thus informs the citizens of the country about the affairs of the political parties, who are one of the most important stake holders in the democratic process.
6. **The Commission has noted with serious concern that out of the total 2796 RUPPs, a large number** is neither taking part in electoral process nor adhering to the 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 clean electoral ecosystem:**
- 6.1 **87 such RUPPs** are not found in existence at their notified addresses as per the field verification reports received from the concerned Chief Electoral Officers.
- 6.2 **Non-Contesting of Elections.** In General Elections 2019, out of total 2354 RUPPs parties at that time, only 623 RUPPs contested elections (details available at <https://eci.gov.in/files/category/1551-general-election-2019-including-vellore-pc/>). **At least ~70% registered unrecognised parties did not contest elections. Possibility of a large number 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.
- 6.3 **Non-filing of Contribution Report by many RUPP** at all or in time, hence violating statutory provisions. Reported details are as follows:

Year	Number of RUPP	Number of RUPPs which have filed on or before due date.	Number of RUPPs which have filed after due date.	Number of RUPPs which have NOT filed their contribution report. (in%)
2017	1983	57	79	1847 (93%)
2018	2143	65	81	1997 (93%)
2019	2354*	60	120	2174 (92%)

* (<https://eci.gov.in/files/file/9787-amendment-notificaiton-list-of-parties-and-symbols-english-dated-01042019/>)

6.4 Non filing of annual audit accounts by many RUPP at all or in time, hence violating ECI's instructions. Reported details are as follows:

Year	Number of RUPP	Number of RUPPs which have filed on or before due date.	Number of RUPPs which have filed after due date.	Number of RUPPs which have NOT yet filed,
2017	1983	117	111	1755
2018	2143	138	115	1890
2019	2354*	98	200	2056

* as above

6.5 The reported figures of non-filing of Election Expenditure Statement ,required to be filed within 75 days of completion of General assembly elections, in the five states where elections to Legislative Assembly were recently held, , are as following :

State	No. of RUPPs participated & with HQ in the election going state*	No. of RUPPs submitted Election Expenditure Statement	RUPPs that have not submitted Election Expenditure Statement
Assam	7	Nil	7
West Bengal	15	4	11
Tamil Nadu	75	10	65
Kerala	17	1	16
Puducherry	1	Nil	1

Total	115	15	100
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6.6 Further, there have been reports about a few RUPPs about their indulgence in serious financial impropriety such as incriminating documents related to bogus donation receipts, formation of shell entities, bogus and non-genuine purchases, facilitating accommodation entries, etc. It amounts to fraudulent use of privileges and public trust available to them. This necessitates an urgent need to crosscheck the compliance adherence, and legality of the activities of such parties.

6.7 As per data obtained **from CBDT**, 199 RUPPs claimed Rs 445 Cr exemption in 2018-19. In 2019-20, 219 such parties claimed **Rs 608 Cr exemption from Income Tax**. 66 RUPPs, which have claimed **Rs 385 Cr exemptions** in 2019-20, have not submitted contribution reports in Form 24A as mandated under section 29C of the Act. A few RUPPs have claimed **income tax exemption even to the tune of Rs 100 to 150 crores** each without complying with statutory compliances, including submission of contribution report in Form 24 A under Section 29 C of the R P Act 1951.

7. **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 Ors, 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]

8. In view of the foregoing, immediate corrective measures are warranted in larger public interest as well as for the purity of electoral democracy. **Therefore, the Commission, in discharge of its mandate** of ensuring just, free, fair & transparent electoral process hereby directs that:

- (1) **There are 87 RUPPs**, whose address of communication, was statutorily required as registration requirement under section 29A(4). Any change in address was required to be communicated to the ECI under section 29A(9), which they have not complied. These RUPPs have been found to be non-existent after a physical verification carried out by the respective Chief Electoral Officers. The names of such non-existent RUPPs shall be deleted from the list

of register of unrecognized registered political parties. 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). The segregated list of such RUPPs shall be sent to respective CEOs and CBDT for requisite action under extant legal framework.

- (2) **87 such RUPPs**, as in para 8.1 above, in absence of ensuring remedial measures listed above, render themselves liable to be not entitled to have benefits under the Symbols Order, 1968, including allocation of common symbol.
- (3) As in para 6.6 above, 3 RUPPs which have been reported, prima facie to be involved in serious financial impropriety such as incriminating documents related to bogus donation receipts, formation of shell entities, bogus and non-genuine purchases, facilitating accommodation entries, etc., shall be proceeded against under the extant legal/regulatory regime including entitlement to avail the benefits of Symbols Order, 1968. A reference shall be sent to the Department of Revenue, who have reported misuse, for taking all necessary legal and criminal actions against 3 RUPPs, as appropriate under the extant legal framework.
- (4) As in para 6.7 above, it has been reported that income tax exemptions have been taken to the tune of Rs 445 Cr in 2018-19 by 199 RUPPs and **Rs 608 cr** in 2019-20 by 219 RUPPs. Of these 66 RUPPs have claimed income tax exemption without submitting contribution reports in Form 24A as mandated under section 29C of the Act.

Section 29 C of the RP Act, specify that:

(3) The report for a financial year under sub-section (1) shall be submitted by the treasurer of a political party or any other person authorised by the political party in this behalf before the due date for furnishing a return of its income of that financial year under section 139 of the Income-tax Act, 1961 (43 of 1961) to the Election Commission.

(4) Where the treasurer of any political party or any other person authorised by the political party in this behalf fails to submit a report under sub-section (3), then, notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), such political party shall not be entitled to any tax relief under that Act.]

In view of the fact that there are 2174 RUPPs, which have not submitted contribution reports, the list shall be sent to the Department of Revenue for taking all consequential action as per the RP Act 1951 read with the relevant provisions of the Income Tax Act, 1961 and other statutory/regulatory regime including not granting exemption / withdrawing exemption, if already granted/ examining liability of wrongly claiming exemption as the case may be.

- (5) **2056 RUPPs**, which have failed to furnish Annual Audit Account of the concerned financial year, are indicative of gaps in vital financial information including bank account, PAN, authorized signatories pertaining to those RUPPs, statement of assets and liabilities, contributions received, details of donors, expenditure, etc. . Therefore, CEOs shall put the list of such RUPPs on their respective websites and afford an opportunity to such RUPPs to comply with extant legal and regulatory regime within 30 days. Non-compliance may make such RUPPs not entitled to have benefits under the Symbols Order, 1968, including allocation of common symbol.
- (6) **100 RUPPs, which** have failed to furnish Election Expenditure Statements after the contest of election(s), have violated the directions of Election Commission. They may approach concerned Chief Electoral Officer with full facts within 30 days of the issue of this direction for remedial action, if any, to avoid any consequential action.
- (7) All Chief Electoral Officers shall put this order on their websites for compliance and for affording an opportunity to anyone aggrieved by above action. Any RUPP aggrieved by any action under point 8.1 to 8.6 may approach concerned Chief Electoral Officer with full facts within 30 days of the issue of this direction with all evidences inter-alia including proof of existence, other legal and regulatory compliances made till now such as submission of year wise annual audited accounts, contribution report, expenditure report , if any, updation of office bearers including authorized signatories for financial transactions (including bank account) and operations under the Symbols Order 1968, etc.

By Order



(K.N.Bhar)

Sr Principal Secretary