

MINUTES OF THE DECISION OF THE ELECTION COMMITTEE ON THE OUTCOME OF THE RECOUNTING OF THE VOTES HELD ON 19.04.2024

1. Pursuant to the Representations dated 9.4.2024 and 10.4.2024 received from Ms. Nina Gupta, (Ballot No.5), the Election Committee, after detailed deliberations and after obtaining the consent of Ms. Sakshi Banga, Ballot No.1, (previously declared elected) decided to have a recount on 19.04.2024 limited to the above two candidates.
2. To ensure fairness and transparency in the recounting process and to obviate any misgivings, the Committee unanimously appointed Ms. Vibha Datta Makhija, Senior Advocate and Mohd. Shoeb Alam, Senior Advocate, as Special Observers to oversee the recounting. The Special Observers graciously consented to the same.
3. The sealed box containing the ballot papers, was opened in the presence of both candidates and the Special Observers, after recording their due satisfaction. The recounting process commenced at 1:15 PM on 19.04.2024 and ended at about 4:45 PM. After the recounting, the ballot papers have again been returned to the ballot box which has been locked and sealed in the presence of the two candidates. The recounting was under video recording and the entire footage has been duly preserved.
4. During the recount, it was observed that in one of the ballot papers, bearing Sl. No. 0136 (part of bundle No.10) there was a smudging of ink and as a result of folding of the ballot paper, there was a faint ink impression on Ballot No.5. This was clearly a smudging of ink and not a vote cast in favour of Ballot No.5 and this is clearly visible to the naked eye. In this view of the matter, the Committee decided to record the said vote only in favour of Ballot No.1 and not in favour of Ballot No.5.
5. Similarly, at the end of recount, the Committee while re-examining the votes declared invalid on 09.04.2024, discovered that there was a similar ink smudge in ballot paper bearing Sl.No.0087 wherein the vote cast in favour of Ballot No.5 has left a faint impression on Ballot No.1 while folding of the ballot paper. Therefore, the Committee decided to record this vote only in favour of ballot No.5 and not in favour of Ballot No.1.
6. At the conclusion of recounting for Ballot Nos.1 and 5, both secured 408 votes each and there is a tie. There is no provision or procedure prescribed under the Rules and Regulations of the Supreme Court Bar Association or under the Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013 to deal with the case of a 'tie'. Under Regulation 4(2) of the Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013, it is essential to have an elected woman representative in the Gender Sensitization Internal Complaint Committee. The Committee had considered the option of draw of lots to determine the winner, provided both the candidates consented in writing to the said procedure. However, both the candidates declined to accept the option of draw of lots.

7. In the absence of any prescription under the SCBA Rules and the Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013 to deal with a situation of a 'tie' in the election to a post, the Committee delved into past precedents in the case of a 'tie'. In the SCBA Elections held in May 1998, there was a tie for the post of Secretary SCBA between Mr. Ranjit Kumar and Mr. Ranji Thomas. SCBA then had directed a re-election between the two tied candidates which was held in August 1998. In the said re-election, Mr. Ranji Thomas got elected as the Secretary SCBA.
8. Moreover, considering the mandatory requirement of having an elected woman representative in the Gender Sensitization Internal Complaint Committee under Regulation 4(2)(c) of the Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013, the Election Committee is of the firm view that it is desirable to have a re-election limited to these two candidates alone, i.e. Ms. Sakshi Banga (Ballot No.1) and Ms. Nina Gupta (Ballot No.5). Examination of past precedents show, that in a similar situation of a tie of votes in the past, the impasse continued for the entire term of the GSICC, and hence, the GSICC in that term failed to have a Woman SCBA representative at all under Regulation 4(2)(c) of the Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013.

Considering the past precedent (as noted in paragraph 7 above) coupled with the fact that an elected woman representative under Regulation 4 (2) (c) of the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013, is an essential Member in the Gender Sensitization Internal Complaint Committee, the Committee recommends for conducting a re-election for the post of elected woman representative under Regulation 4 (2) (c) of the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013 between Ms. Sakshi Banga (Ballot No.1) and Ms. Nina Gupta (Ballot No.5). The re-election shall be confined only to the two candidates namely Ms. Sakshi Banga (Ballot No.1) and Ms. Nina Gupta (Ballot No.5).

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