

कार्यालय मुख्य निर्वाचन अधिकारी उत्तर प्रदेश

ई-मेल / स्वीड पोस्ट

वर्तुथ तल, विकास भवन, जनपथ मार्केट, लखनऊ-226001
संख्या-327/सी0ई0आ0-2-67/2-2007 लखनऊ: दिनांक: 28 जून, 2021

सेवा में
समस्त जिला निर्वाचन अधिकारी,
उ0प0।

विषय: **Scrutiny of Nominations by Returning Officers-instructions-regarding.**

महोदय,

उपयुक्त विषय पर कृपया भारत निर्वाचन आयोग के पत्र सं0-3/ER/2021/SDR/Vol.III, दिनांक-23 जून, 2021 का अवलोकन करने का कष्ट करें।

2- मा0- उच्च न्यायालय, केरल द्वारा हाल में ही संपन्न केरल विधानसभा सामान्य निर्वाचन में कतिपय रिटर्निंग ऑफिसर्स द्वारा नामांकन, संवीक्षा एवं विभिन्न प्रकरणों के स्वीकार किए जाने के संबंध में विभिन्न मापदण्ड अपनाए जाने पर चिन्ता व्यक्त की गई है। उक्त के दृष्टिगत भारत निर्वाचन आयोग ने नामांकन एवं संवीक्षा से संबंधित पत्र पुनः उपलब्ध कराते हुए आगामी निर्वाचनों में उक्त पत्रों में उल्लिखित निर्देशों का कड़ाई से अनुपालन सुनिश्चित कराए जाने के निर्देश दिए हैं।

अतः अनुरोध है कि कृपया आयोग द्वारा प्रेषित संलग्न निर्देशों को रिटर्निंग ऑफिसर्स/सहायक रिटर्निंग ऑफिसर्स को उपलब्ध कराते हुए प्रशिक्षण के माध्यम से भी उक्त निर्देशों को संज्ञान में लाते हुए आवश्यक कार्यवाही सुनिश्चित करने का कष्ट करें।
संलग्नक:यथापति

शुभदीय,

(अवनीश सक्सेना)

संयुक्त मुख्य निर्वाचन अधिकारी।

संख्या:-327(1)सी0ई0आ0-2-तददिनांक-

1. साविद, भारत निर्वाचन आयोग, निर्वाचन सदन, अशोक रोड, नई दिल्ली को पत्र सं0-3/ER/2021/SDR/Vol.III, दिनांक-23 जून, 2021 के सन्दर्भ में।
2. समस्त उप/सहायक जिला निर्वाचन अधिकारी, उत्तर प्रदेश।
3. प्रभारी, कम्यूटर कक्ष को कार्यालय की वेबसाइट पर अपलोड करने हेतु।

(अवनीश सक्सेना)
संयुक्त मुख्य निर्वाचन अधिकारी।

1/26

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI -110001

No. 3/ER/2021/SDR/Vol.III

Dated: 23rd June, 2021

To,
The Chief Electoral Officers,
of all the States/UTs.

Subject - Scrutiny of Nominations by Returning Officers - Instructions-regarding

Reference:

1. 576/3/2007/JS.II dated 08.08.2007
2. 4/3/2008/JS-II/Vol.III dated 02.07.2008
3. 509/442/2009-RCC dated 17.02.2010
4. 3/ER/2013/SDR Vol.II dated 06.09.2013
5. 4/2014/SDR-Vol.I dated 17.09.2014
6. 4/ECI/LET/FUNC/JUD/SDR/Vol.I/2016 dated 29.12.2016; and
7. 576/3/ECI/LET/FUNC/JUD/SDR/2013 dated 07.02.2019

Sir/Madam,

During conduct of elections, scrutiny of nomination papers presented by the representing candidates to the Returning Officers is the most important activity. Section 32 to 39A of the Representation of People Act, 1951 provide for detailed legal provisions on scrutiny of nominations.

Under these provisions, the Commission has issued detailed guidelines from time to time on every aspect of scrutiny of nominations. These instructions are compiled and available in the Handbook for Returning Officer, 2019. Besides, before every election, the Commission generally issues instructions to the Chief Electoral Officers in this regard.

2. Despite these provisions and instructions, it has come to notice of the Commission that Returning Officers sometimes conduct themselves in such a manner that it appears to all concerned that they are not following this code of conduct. During the recently concluded general election to Kerala state assembly, High Court of Kerala, while disposing writ petitions W.P.(C) Nos. 7358, 7359, 7369, 7374 and 7372 of 2021 challenging the decisions of Returning Officers of certain assembly constituencies, noted with the concern that Returning Officers in different constituencies were resorting to different parameters in the matter of acceptance of nominations, scrutiny of nominations

By e-mail

500/CS 01/21
ACED

23-06-2021

उत्तर प्रदेश निर्वाचन आयोग
पर साविद निर्वाचन
उत्तर प्रदेश सरकार।

(चन्द्रशेखर)

विचार करने के लिए प्रेषित
उपरोक्त पत्र

Hand instructions
Folder

23/6/21

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ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi - 110 001.

No. 5763/2007/IS-II

Dated:- 8th August, 2007.

To

✓ The Chief Electoral Officers of
all States & Union Territories.

Subject:- Filing of nomination as candidate set up by more than one party-
instructions.

Sir/Madam,

Allotment of symbols to candidates is governed by the provisions of Election Symbols (Reservation & Allotment) Order 1968. Paras 13 and 13A of the Election Symbols (Reservation & Allotment) Order, 1968 provide the conditions as to when a candidate shall be deemed to be set up by a political party. There are express provisions to deal with cases where Form B (the form for communicating the name of a party's candidate to the Returning Officer), is filed by one political party in favour of more than one candidate (Second proviso to para 13A of the Order).

2. Clarification has been sought regarding cases where a candidate files nomination as candidate set up by more than one political party and both/all such parties send Forms A and B in his favour. To deal with such situations, it may be noted that in Form 'B', the political party concerned is required to make a declaration that the candidate who is being set up as the party's candidate is a member of that party. One person cannot be member of two different parties at the same time. Therefore, it follows that if a candidate is seen to be set up by two different parties, the Returning Officer, at the time of scrutiny, will have to look into the facts and decide which of the two parties, the candidate is a member at the time of scrutiny and whether the candidate has ceased to be a member of the other political party/parties mentioned in his nomination papers, and take a decision based on these factual findings.

and acceptance of various forms, when some candidates got the benefit of liberal approach of the Returning Officers, some other were put to disadvantageous position affecting their statutory right under the RP Act to contest in the election. The Hon'ble High Court further observed that the Election Commission shall take necessary steps so that such differential treatment is excluded and the purity of election process is preserved.

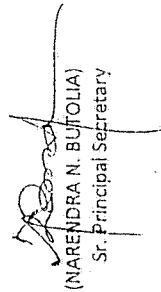
3. Scrutiny of nomination papers is a quasi-judicial function. Returning Officer therefore, has to discharge his duty strictly as per guidelines and in accordance with highest judicial standards. He should be fair, impartial and treat all candidates equally. It is the bounden duty of the Returning Officer to receive the nomination, peruse it, point out the defects, if any and allow the candidate to rectify the defects and when the defects are not removed then alone question of rejection of nomination would arise. Section 36(4) clearly mentions that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

4. Considering the concern raised by the Kerala High Court, the Commission hereby reiterates its instructions related to the nomination and scrutiny of nomination papers contained in the letters referred to above. (a copy of each of the letters is enclosed herewith for ready reference)

5. The above instructions shall be brought to the notice of all the Returning Officers through trainings also for strict compliance, in future elections.

6. Kindly acknowledge receipt.

Yours faithfully,


(NARENDRA N. BUJOLIA)
Sr. Principal Secretary

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

No.4/3/2008/JS-IV/Vol.III

Dated: 2nd July 2008

To

The Chief Electoral Officer of
All States/Union Territories.

Sub: Scrutiny of nomination papers - regarding.

Sir,

3. Accordingly, the following may be incorporated in the Handbook for Returning Officers in 'Chapter-VIII - Allotment of Symbols' in para 4.2 after item (i), and this new insertion may be numbered as '(ii)'.
“(ii) If a candidate claims in his nomination papers to be set up by two or more political parties and both/all such parties have submitted Forms A and B in his favour, the Returning Officer will, at the time of scrutiny, examine the facts as to which of the political parties the candidate belongs to as its member and whether the candidate has ceased to be a member of the other political party/parties mentioned in his nomination papers, and decide the party affiliation of the candidate accordingly”.

4. The instructions of para 3 above may be brought to the notice of all Returning Officers/District Election Officers and other election authorities for information and reference.

5. Receipt of this letter may please be acknowledged.

Yours faithfully,



(S.R. KAR)
UNDER SECRETARY

The qualifications for contesting election to the House of the People and State Legislative Assemblies are given in Articles 84 and 173 of the Constitution and in Part II of the Representation of the People Act, 1951. Under Sections 4,5 and 5A of the Representation of the People Act, 1951 as the said Part II, for contesting election from a constituency reserved for SCs/STs, a candidate must belong to SC or ST, as the case may be. Under the law, the Returning Officer is the authority to determine whether a candidate fulfils the requisite qualifications:

2. There have been complainis that in certain cases candidates who do not belong to SC/ST have managed to contest elections from reserved seats by giving false declaration, or on the basis of false documents, etc. There have also been several cases of Election Petitions on the issue of Caste/Tribe status of candidate elected from reserved constituencies.

3. In order to prevent cases of non-SC/ST persons contesting election from reserved constituencies, the Returning Officers at the time of scrutiny of nominations should satisfy themselves that the candidates contesting from reserved constituencies belong to SC or ST, as the case may be. Wherever in doubt, the Returning Officer must insist on

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ELECTION COMMISSION OF INDIA

Dated: 17th February, 2010

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

No. 509/442/2009-RCC / 7&8-762

To, The Chief Electoral Officers of all States/ Union Territories.

Subject: In the Supreme Court of India - Civil Appeal No. ... of 2009 (arising out of SLP (C) No. 24327 of 2005) - Subhash Chandra and anr. Vs. Delhi Subordinate Services Selection Board and ors with Writ Petition (Civil) No. 507 of 2006 - Sarv Rural & Urban Welfare Society, through its President Vs. Union of India and ors.

Sir/Madam, I am directed to forward herewith a copy of the judgment dated 4.8.2009, passed by the Hon'ble Supreme Court of India in Civil Appeal No. ... of 2009 (arising out of SLP (C) No. 24327 of 2005- Subhash Chandra & anr Vs. Delhi Subordinate Services Selection Board & Ors) with WP (C) no 507 of 2006 (Sarv Rural & Urban Welfare Society through its President Vs Union of India & ors) on the issue of eligibility of persons belonging to Scheduled Castes/Scheduled Tribes in one State to avail of the benefit of reservation for SCs/STs in a different State on their migration. In the aforesaid judgment, the Hon'ble Supreme Court has relied on earlier decisions given in Marri Chandra Shekhar Rao Vs. Dena, Selh G S Medical College & ors. [(1990) 3 SCC 130] and Action Committee or Issue of Caste Certificate to Scheduled Castes and Scheduled Tribes in the State of Maharashtra & anr. Vs. Union of India & ors. [(1994) 5 SCC 244]. The following portion from the judgment in Marri Chandra Shekhar Rao (Supra) have been quoted, with approval, in paragraph 29 of the present judgment:

"We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Scheduled Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non-existent in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also that degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State for the purposes of this Constitution. This is an aspect which has to be kept in mind and which runs very much in the minds of the Constitution makers as is evident from the choice of language of Articles 341 and 342 of Constitution."

A copy of the said judgment may be circulated to the Returning Officers of the constituencies reserved for Scheduled Caste/Scheduled Tribe in the Legislative Assembly in the State, for reference and guidance.

Kindly acknowledge receipt of this letter.

Yours faithfully,

(K F WILFRED) SECRETARY

production of SC/ST certificate issued by competent authorities. Where, however, the certificate produced by the candidate is also challenged, the Returning Officer need not go into that question, except where it is alleged that the certificate produced is forged or is not issued by competent authority. In the case of any allegation/suspicion about the genuineness of the certificate, the Returning Officer should get the position cross-checked with the authority which purportedly issued the SC/ST certificate in question, before deciding the validity of the nomination paper of the candidate concerned. If on such cross-checking/verification, the Returning Officer is satisfied that the certificate in question is not genuine, he should not only reject the nomination of the candidate concerned, but should also initiate criminal proceedings against the candidate for adorning forged documentary evidence before him.

4. The above instructions may be brought to the notice of all the Returning Officers, District Election Officers and also all political parties in your State, both recognized and un-recognized.

Yours faithfully,

(NARENDRA N BUTOLIA) UNDER SECRETARY

Copy to:

- Shri P. Rajanna Dora, MLA-Salur, Shri L. Raja Rao, MLA-Paderu, Shri Podem Veeraiyah, MLA-Mulugu, Shri S. Babu Rao, MLA, Boath-241 Ch Babu Ramesh, MLA- Allavaram, Andhra Pradesh Legislative Assembly, Hyderabad.

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Handwritten notes and signatures at the top right of the page.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

No. 509/442/2009-RCC / 763-797

Dated: 17th February, 2010.

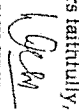
To,
The Chief Secretaries
of all States / Union Territories.

Subject: In the Supreme Court of India - Civil Appeal No. ... of 2009 arising out of SLP (C) No. 24327 of 2005 - Subhash Chandra and anr. Vs. Delhi Subordinate Services Selection Board and ors with Writ Petition (Civil) No. 507 of 2006 - Sarv Rural & Urban Welfare Society, through its President Vs. Union of India and ors.

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The copy of the judgment may be circulated among all State authorities who are entrusted with the responsibility of issue of SC/ST certificates in the State, for guidance and compliance with the observations of the Hon'ble Supreme Court. The certificate issued by them should clearly specify on the face of it that it has been issued keeping in view the decision of the Hon'ble Supreme Court in the above-referred case. It should also clearly specify the geographical division/area of the State in relation to which that certificate has been issued, as in some States certain castes have been specified for some specific areas.

Kindly acknowledge receipt of this letter.

Yours faithfully,

(K F WILFRED)
SECRETARY

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ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001

No. 31/R-2013/SDR Vol-II

Dated: 6th September 2010.

To,
The Chief Electoral Officer of
all the States/Union Territories.
Subject: Disqualification for conviction under Section 8 of Representation of the People Act, 1951 - Clarification-re-purposing.

Sir/Madam,
I am directed to invite your reference to the Commission's two letters bearing No. 4/2003/S-11 dated 6th February, 2005 and No. 509/22008-1 dated 14.01.2005 (copy enclosed) whereby clarifications were issued in connection with disqualification on the ground of conviction under section 8 of the Representation of the People Act 1951.


2. It has come to the notice of the Commission that some Returning Officers and District Election Officers are not aware of the correct legal position about the impact of stay order of the Appellate Court execution of sentence passed by the Trial Court for the purpose of disqualification of the convicted person. In this regard, it is once again clarified that

(i) In cases where a person is convicted and the conviction along with sentence awarded results in disqualification, under sub section (1), (2) or (3) of Section 8, and if the Higher Court, on appeal, stays the operation of only the execution of sentence and imprisonment passed by the Trial Court, then the stay on the execution of sentence is granted by Higher Court and release of the convicted person on bail will not have the effect of suspension of disqualification. In other words, the disqualification will continue to be applicable in such cases.

(ii) In cases where not just the operation of the sentence but, the conviction is also specifically stayed, then the disqualification will also remain suspended.

3. These clarifications may be brought to the notice of all the Returning Officers and the Assistant Returning Officers and all other election authorities concerned in your States/Territories as to avoid cases of wrong interpretation of law at the time of scrutiny of nominations.

4. Kindly acknowledge receipt.

Yours faithfully,

(N.T. Bhunia)
Under Secretary

Standard distribution

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INSTRUCTION SL. NO. 9

Election Commission's letter No. 509/5/2005-JS-I, dated 14.01.2005 addressed to the Chief Secretaries/Chief Electoral Officers of all States and Union Territories
Subject: Representation of the People Act, 1951- Sections 8(3) and 8(4) Interpretation thereof by the Supreme Court of India - C.A No. 8213 of 2001 with Civil Appeal No. 6691 of 2002 - Forwarding of Judgment dated 11.1.2005 of the Hon'ble Supreme Court regarding

I am directed to forward herewith a copy of the judgment of the Hon'ble Supreme Court of India dated 11.1.2005 in the matter cited above.

2. It may be noted that the Hon'ble Supreme Court in the above judgment has inter-alia held that:
1) in the case of conviction of a person for more than one offence, in a common trial and with the sentences of imprisonment to run consecutively, for the purposes of Section 8(3) of the Representation of the People Act, 1951, the period of sentences of imprisonment for each offence should be added and if the total length of time for which a person has been ordered to remain in prison consequent upon such conviction and sentences is two years or more, the convicted person shall be disqualified under the said Section 8(3) of the Representation of the People Act, 1951;

(ii) the protection given under sub-section (4) of Section 8 of RP Act, 1951 to a sitting member of Parliament or State Legislature from incurring disqualification will be available only so long as the House to which he belongs continues to exist and the person continues to be a member of that House.

3. You are requested to bring the above order of the Hon'ble Supreme Court to the notice of all returning officers and other authorities concerned for strict compliance in future. Where elections are in progress now, this should be brought to the notice of all Returning Officers immediately and in any case before the date of scrutiny of nominations.

4. In this context, it may be clarified that the interpretation placed by the Hon'ble Supreme Court on the provision of Section 8(3) of the Representation of the People Act, 1951 would be equally applicable to the provision of Section 8(2) of the said Act.

5. Further, to remove any ambiguity, it is also clarified in conformity with the above decision of the Hon'ble Supreme Court, that if any sitting MLA or MP, who is presently protected under Section 8(4) of the said Act till the dissolution of the existing House to which he belongs, files his nomination for any election held subsequent to his conviction, either for constituting a new House or the dissolution of the existing House or even for a bye-election to an existing House, he shall

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ITEM NO. 121

Election Commission's letter No. 4/2003/JS-II dated 06.02.2003, addressed to the Chief Electoral Officer, Himachal Pradesh and copy forwarded to CEOs of remaining States/UTs
Subject: Disqualification for conviction under Section 8 of Representation of the People Act, 1951 - Clarification

You are directed to refer to your message No. 3-42/96-11N dated 27.1.2003, on the above subject.

2. Your attention, in this connection, is invited to the Commission's Order No. 509/5/2005-JS-I dated 28.8.1997, clarifying that a person convicted of an offence under Section 8 of the Representation of the People Act, 1951, who is sentenced to be treated as disqualified even if he has filed an appeal or application for revision and has been granted bail during the pendency of such appeal/revision. Such person will, however, not attract the disqualification in view of the exemption under sub-section (4) of Section 8 of the Representation of the People Act, 1951 if he was a sitting member of Parliament or a State Legislature on the date of his conviction and if he has filed an appeal or application for revision against the order of conviction/sentence within three months of his date of conviction and the same is pending disposal by the Court in such cases, subsequent dissolution of the House/Assembly will not have any adverse effect on the benefit available to the said person under the exemption clause under the said Section 8(4) and the person concerned will not be disqualified under Section 8 till the disposal of the appeal or application for revision.

3. It may be noted that the information which was earlier required to be obtained from the candidates regarding cases of conviction for offences under Section 8 through a separate affidavit, prescribed vide the Commission's letter No. 509/5/2005-JS-I, dated 28.8.97, is now covered in the nomination paper itself, by a recent amendment of the Conduct of Elections Rules, 1961. A copy of the amendment notification has already been sent with the Commission's letter No. 34/2002/JS-II, dated 25th October, 2002, and the above position has also been clarified to you. The candidates will now be required to file only an affidavit prescribed in Form 7B appended to the Conduct of Elections Rules, 1961

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not get the protection of the said Section 8(4) and he shall be deemed to be disqualified under Section 8(1), 8(2) or 8(3) of the Act, as may be applicable to him

5. The receipt of this letter may kindly be acknowledged and copy of instruction issued in this behalf to the Returning Officers, etc. may be endorsed to the Commission for its information and record.

ELECTION COMMISSION OF INDIA

Nityachan Sadan, Ashok Road, New Delhi-110 001

No. 4/2014/SDR-Vol.I

Dated: 17th September, 2014

To,
The Chief Electoral Officers
of all States and Union Territories.

Subj: - Order passed by the Hon'ble High Court of Andhra Pradesh in the matter of Durbhaka Narasimha Reddy Vs Election Commission of India & Ors. - WP No. 12066/2014 regarding filing of false affidavit.

Sir/Madam,

I am directed to forward herewith a copy of the Order dated 9th July, 2014 passed by the Hon'ble High Court of Andhra Pradesh in the aforesaid matter.

2. In this writ petition, the petitioner has sought a clarification to the election machinery with regard to make an enquiry about the filing of false information by the returned candidate educational qualification, and to take appropriate action by the election officials under Section 125A of the R. P. Act 1951. While disposing of the petition the Hon'ble High Court has observed as under:

"14. From a reading of the aforesaid Section (Section 125A of the Representation of the People Act, 1951), it does not appear that Election Officer has to take any step for initiating any criminal proceedings. The aforesaid provision nowhere says that it is the duty coupled with power or power coupled with duty or power to take any action. It merely provides penal measure for filing affidavit giving false information or concealing information.

15. Further more, there is a Circular issued by the Election Commission of India to all the Chief Electoral Officers of all States and Union territories with regard to filing of false affidavits in Form-26(Commissioner's letter No. 4/2014/SDR-Vol.I dated 26th April 2014). Paragraph 3 of the aforesaid Circular, reads as follows:

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"3..... Under Section 125A, there is no stipulation that complaints under that section have to be made by the public servant concerned (in this case the R.O.). Therefore, it would be open to any aggrieved person to move petition before the appropriate Court of competent jurisdiction with petition for action under section 125A in the case of any false declaration or concealing of information in the affidavit in Form 26."

When the guidelines have been issued that have got statutory force also, have to be followed by all the concerned officials unless Statute requires expressly an officer appointed thereunder has duty or power coupled with duty to act. The Court of law cannot mandate, for concept of rule of law does not permit so."

3. The above order of the High Court may be brought to the notice of all District Election Officer and Returning Officers for elections to both the Houses of Parliament and State Legislature for their guidances.

Yours faithfully,

(N.T. Bhutia)
Under Secretary

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HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO. 12066 OF 2014

DATED: 9.7.2014

Between:

Dubbaka Narsimha Reddy

... Petitioner

And

Election Commission of India

Nirvachan Sadan

New Delhi and others

... Respondents

THE HONBLE THE CHIEF JUSTICE SHIKALYAN JYOTI
SENGUPTA
AND
THE HONBLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO. 12066 OF 2014

ORDER: (per the Honble the Chief Justice Sri Kalayan Jyoti Sengupta)

As it appears from the writ petition, the summary of facts is as under. The writ petitioner and fifth respondent filed nomination to contest Elections for 92. Nalgonda Assembly Constituency. As required under the law, the fifth respondent was to and did file an affidavit disclosing his personal information in Form -26. In the affidavit filed with the Election Officer, the fifth respondent stated, amongst others, his educational qualification as follows:

Name of the School/University	Year	Course completed
Chaitanya Bharati Institute of Technology, Hyderabad	1986	(B.E.)

He also mentioned in the form regarding Highest Educational qualification as under:

Highest Educational qualification:	Year	Course completed
Name of the School/University Chaitanya Bharati Institute of Technology, Hyderabad	1986	(B.E.)

The footnote at the place of educational qualifications in the form requires as follows:

"(Give details of highest School/University education with full form of the certificate/diploma/degree course, Name of the School/ College/ University and the year in which the course was completed)."

2. Contention of the writ petitioner is that the aforesaid affidavit is not in accordance with law as prescribed. To be precise, it we have understood correctly, the complaint of the writ petitioner is that information supplied by the fifth respondent in the affidavit with regard to his educational qualification is false. He has not acquired Educational Qualification as disclosed. According to the writ petitioner, supply of incorrect information regarding educational qualification also amounts to concealment and suppression of real fact and this invites not only appropriate civil action, but also criminal action.

3. At the time of filing of the writ petition, the election was not over. Taking note of the fact, we did not pass any interim order at all, though prayed for. After the election was over, it was found that the fifth respondent was elected, defeating the petitioner. In view of the changed circumstances, the prayer of the writ petitioner has been allowed to be amended. The prayer amended reads as follows:

"...and consequently direct the respondents 2 and 3 to enquire about the educational qualification of the 5th respondent in pursuance of the representation dated 12-04-2014 and take appropriate steps in accordance with law."

Now relief sought for by the writ petitioner is for making enquiry about educational qualification of the fifth respondent and taking appropriate steps by the Election Officials.

4. Counter affidavits have been filed before the matter is taken up for final hearing.

The election officials have stated that under the provisions of Section 125A of the Representation of the People Act, 1951 (hereinafter referred to as 'Act 1951'), the Election Officer has not been given any power or duty to enquire into falsity of the statements made in the affidavit in order to initiate criminal action grievance of which is primarily focused right now. It is also stated that remedy of this

Reddy, learned *amicus curiae*, says that Section 125A of Act 1951 is very clear that any person including the petitioner himself can make a complaint about false statement on Oath before appropriate authority. He is fair enough to inform us that law also enables the Election Officer to do so. The Supreme Court has recorded that at the time of filing nomination, it is simply impossible to take action.

11. Learned Counsel for the Election Commission of India adopted and supported the argument of Sri D. Prakash Reddy. In addition thereto, he has produced a Circular dt.26.4.2014 issued by the Election Commission of India, giving guidelines as to what is to be done with regard to false declaration or concealment of information or furnishing incorrect information in the affidavit under Section 125A of Act 1951.

12. Learned counsel for the fifth respondent reiterating the statements in the counter affidavit, submits that complaint can be lodged by any person and it is not necessary the election officer must lodge. Therefore, there is no question of considering the representation made by the petitioner for enquiring into the alleged criminal action. As far as the civil consequence is concerned, it is for the petitioner to approach appropriate forum.

13. We have heard all of them and we have considered everything before us, including the Supreme Court pronouncement in aforementioned cases. We are of the view that when Section 125A of Act 1951 is incorporated, obviously with the intervention of the Court by above decisions of the Hon'ble Supreme Court of India, it would be suffice to read the section to know what is meant and we set out the said Section hereunder:

"125-A. Penalty for filing false affidavit, etc.-- A candidate who himself or through his proposer, with intent to be elected in an election, --
(i) fails to furnish information relating to sub-section (1) of section 33A, or
(ii) gives false information which he knows or has reason to believe to be false; or
(iii) conceals any information.

grievance lies elsewhere. It is further stated that at the time of filing of the nomination, neither the law nor any pronouncement of the Supreme Court has mandated to enquire into as asked for.

5. The fifth respondent has filed counter affidavit stating that there is no false nor inaccurate information in the affidavit filed by him and he has explained the same in the affidavit and we have heard it miserly.

6. We are not making any comment nor rendering any decision on this issue for the reasons which would be explained later on.

7. In this matter, we requested Sri D. Prakash Reddy, learned Senior Advocate, to assist us. He has accepted our request and assisted us very ably.

8. Sri V. Venkataramana, learned Senior Counsel appearing for the petitioner, submits that when a representation has been made for taking an action, action should have been taken by the election officials not doing so it resulted inaction. Hence, a direction should be given to enquire into at this stage now. According to him irrespective of provision of Section 125A of the Act 1951 does not prohibit from taking action on the question of falsity.

9. Sri D. Prakash Reddy, learned *amicus curiae*, has brought to our attention to the several decisions of the Supreme Court, which are quoted hereunder, to inform this Court about the historical background of insertion of Section 125A in the Act 1951.

(i) Union of India v. Association for Democratic Reforms and

Another [1]

(ii) People's Union for Civil Liberties v. Union of India [2]

(iii) Resurgence India v. Election Commission of India [3]

10. Even after the amendment, the Hon'ble supreme Court, while taking note of the said amendment to aforesaid Section, has explained what would be the duty of the Election Officer to work with the complaint of false information or inaccurate information or concealment of information in the affidavits and at what stage. Sri D. Prakash

in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33-A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

9.7.2014

lwr

Note: L.R. copy to be marked. Yes.

SANJAY KUMAR, J

14. From a reading of the aforesaid Section, it does not appear that Election Officer has to take any step for initiating any criminal proceedings. The aforesaid provision nowhere says that it is the duty coupled with power or power coupled with duty or power to take any action. It merely provides penal measure for filing affidavit giving false information or concealing information.

15. Further more, there is a Circular issued by the Election Commission of India to all the Chief Electoral Officers of all States and Union Territories with regard to filing of false affidavits in Form-26.

Paragraph 3 of the aforesaid Circular, reads as follows:

3. Under Section 125A, there is no stipulation that complaints under that section have to be made by the public servant concerned (in this case the R.O.). Therefore, it would be open to any aggrieved person to move petition before the appropriate Court of competent jurisdiction with petition for action under Section 125A in the case of any false declaration or concealing of information in the affidavit in Form-26.

When the guidelines have been issued that have got statutory force also, have to be followed by all the concerned officials unless Statute requires expressly an officer appointed thereunder has duty or power coupled with duty to act. The Court of law cannot mandate, for concept of rule of law does not permit so.

16. Thus we are unable to grant any relief as asked for, however, we give liberty to take steps in accordance with law. This writ petition is disposed of accordingly. There will be no order as to costs.

K.J. SENGUPTA, CJ

[1] (2002) 5 SCC 294
[2] (2003) 4 SCC 399
[3] AIR 2014 SC 344

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S.E. No 21 (II)

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashok Road, New Delhi-110 001
No. 4/EC/LET/FUNC/JUD/SDR/VOL.17/2016

Dated: 29th December, 2016

975-1030

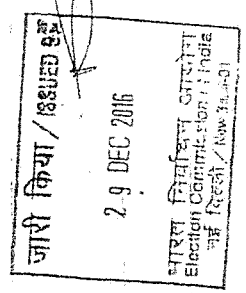
To, The Chief Electoral Officer of all States and Union Territories.

Subject: Receiving of nomination forms-holidays-regarding.

Sir/Madam, I am directed to state that second proviso under Section 33(1) of the Representation of the People Act, 1951 provides that no nomination paper shall be delivered to Returning Officer on a day which is a public holiday. Under Section 2(4) of the Representation of the People Act, 1951, "Public Holiday" is defined as any day which is a public holiday for the purposes of Section 25 of Negotiable Instruments Act, 1881.

- The M/o Finance, Government of India vide their Notification dated 20-08-2015 have declared holidays for Banks on second and forth Saturdays, under the Negotiable Instruments Act, 1881.
- In view of the above legal position, it is informed that Returning Officers should not receive any nomination papers on 2nd and 4th Saturdays, which have been declared as holidays under the Negotiable Instrument Act, 1881 by the Finance Ministry.
- This may be brought to the notice of all Returning Officers and other election officials and also to the political parties based in your State/Union Territory.

Yours faithfully,
(N.T. Bhutia)
Under Secretary



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ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashok Road, New Delhi-110 001
No. 576/3/EC/LET/FUNC/JUD/SDR/2013

Dated: 7th February, 2019

To, The Chief Electoral Officers of All states and Union Territories

Subject: The CHECK LIST of documents required to be filed by a candidate along with the nomination paper-regarding

Sir/Madam,

I am directed to refer to the Commission's letter of even No. dated 12th January 2017, on the subject cited, circulating therewith the Check-list-of-documents in connection with filing of nomination by candidates. Reference is also invited to the Commission's letter No. 3/4/2017/SDR/Vol.II, dated 10.10.2018, with which the amended format of Form 25 was circulated. It would be seen that the provisions of the additional affidavit regarding dues in respect of Government accommodation have now been incorporated in the amended Form 26, and therefore, the said additional affidavit is not required to be filed by candidates.

- In view of the amendment in Form 26, the Checklist of documents has been amended. A format of amended Check list is enclosed herewith.
- Please replace the existing format of Check List in the ROs Handbook as well as in other relevant records by this amended Check List.
- The revised format of the CHECK LIST should be brought to the notice of the all Returning Officers for all elections conducted by the Commission, including elections to Rajya Sabha and Legislative Councils (in the States having Legislative Council). You may kindly ensure that all the Returning Officers, receive a copy of this letter along with the revised CHECK LIST and acknowledgement of receipt be obtained from all to ensure that they have received the same.

Kindly acknowledge receipt.

Yours faithfully,
(Binod Kumar)
Under Secretary

Original/Duplicate (Original to be kept with nomination paper and duplicate to be handed over to candidate)

Check list of documents in connection with filing of nomination

Name of constituency
 Name of the candidate
 Date and time of filing nomination paper
 Sl. No. of nomination paper

Sl. no.	Documents	Whether filed (Write Yes/No) if there is any defect/shortcoming in the documents, the same should be specified!
1.	Affidavit in Form 26 - (a) Whether all columns filled up. (b) If not, which are blank column(s) (Please specify) (c) Whether the affidavit is sworn before an Oath Commissioner or Magistrate of First Class or before a Notary Public.	
2.	Certified extract of electoral roll (when candidate is an elector of a different constituency)	
3.	Form A and B (applicable in the case of candidates set up by political parties)	
4.	Copy of caste certificates (if the candidate claims to belong to SC/ST)	
5.	Security deposit (whether made)	
6.	Oath and affirmation (whether taken)	

Contd.

The following documents which have not been filed should be filed as indicated below:-

- (a) _____ should be filed latest by _____
- (b) Above mentioned columns in the Affidavit in Form 26 have been left blank. You must submit a revised Affidavit with columns duly filled up before the commencement of scrutiny of nominations, failing which the nomination paper will be liable to be rejected.
- (c) _____ should be filed latest by _____

Received

(Signature of candidate) _____ (Signature of RO/ARO)

Date & time: _____
 Place: _____

N.B.

1. The Affidavit in Form 26 and Form A & B have to be filed latest by 3.00 P.M. on the last date of filing nominations.
2. If columns have been left blank in the affidavit in Form 26, this should be specified against item 1, and candidate should be asked to submit an affidavit complete in all respect, latest by the time fixed for commencement of scrutiny of nominations. Failure to submit revised affidavit complete in all respects, even after reminder by RO will be a ground for rejection of the nomination paper.
3. Oath has to be taken after filing nomination paper and before the date fixed for scrutiny.
4. Certified extract of electoral roll can be filed up to the time of scrutiny.

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