

ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001

No. 576/3/2013-SDR

Dated: 30th September, 2013

To

The Chief Electoral Officers of
all States and Union Territories.

Sub: Judgment dated 13-09-13 of the Hon'ble Supreme Court in WP (C) No. 121 of 2008-Resurgence India vs. Election Commission of India and other, regarding filing of incomplete affidavit of candidates.

Sir/ Madam,

I am directed to enclose herewith a copy of the abovementioned judgment of the Hon'ble Supreme Court. It would be seen that by this judgment, the Hon'ble Supreme Court has held that the voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/ Assemblies and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Art. 19 (1) (a) of the Constitution.

2. The Hon'ble Court has accordingly held that in the affidavits filed by candidates along with their nomination paper, the candidates are required to fill up all columns therein and no column can be left blank. Therefore, at the time of filing of affidavit, RO has to check whether all columns of the affidavit filed with the nomination paper are filled up. If not, the RO shall give a reminder to the candidate to furnish information against blank columns. The Hon'ble Court has held that if there is no information to be furnished against any item, appropriate remarks such as 'NIL' or 'Not Applicable' or 'Not Known' as may be applicable shall be indicated in such column. They should not leave any column blank. If a candidate fails to fill the blanks even after reminder, the nomination paper will be liable to be rejected by the RO at the time of scrutiny of nomination papers.

3. The Hon'ble Court has observed that another clause may therefore be inserted in the standard draft format already prescribed by the Commission for reminding the candidates to fill the blanks with the relevant information thereby conveying the message that no affidavit with blank particulars will be entertained. The Hon'ble Court has categorically mentioned that it is the duty of the Returning Officer to check whatever the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill in the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected.

4. The relevant extracts from the judgment are reproduced below:-

- (i) *The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognized. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1) (a) of the Constitution.*
- (ii) *The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.*
- (iii) *Filing of affidavit with blank particulars will render the affidavit nugatory.*
- (iv) *It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the 'right to know' of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.*
- (v) *We clarify to the extent that Para 73 of People's Union for Civil Liberties case (supra) will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars.*
- (vi) *The candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank.*
- (i) *Filing of affidavit with blanks will be directly hit by Section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalized for the same act by prosecuting him/her.*

5. The CHECK LIST of documents required to be filed by a candidate along with the nomination paper was prescribed by the Commission vide letter No.576/3/2009/SDR dated 10-02-2009 in order to ensure transparency and accountability and to streamline the procedure of filing of nomination and scrutiny of nomination papers. The CHECK LIST was modified in pursuance of Hon'ble Supreme Court judgment dated 09-12-2011 in CA No.4956 of 2010 – Ramesh Rout Vs. RavindraNath Rout and circulated vide letter No.576/3/2013/SDR dated 21-01-2013. The same CHECK LIST is now further amended to comply with the direction of the Apex Court in the instant case to insert another clause for reminding the candidates to fill in the blank columns, if any, in the affidavit. A revised format of the CHECK LIST is enclosed herewith. Please replace the existing Format of Check List in the ROs Handbook as well in other records where the Check List is kept.

6. The Commission has directed that 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, including Returning Officers for elections to Council of States and Legislative Councils (in States where Legislative Council is in existence), receive a copy of this letter along with the revised CHECK LIST and acknowledgement of receipt be obtained from every Returning Officer in the State. A consolidated certificate that all the Returning Officers have received the instructions may be forwarded to the Commission within one month of receipt of this letter.

Kindly acknowledge receipt.

Yours faithfully

(Ashish Chakraborty)
SECRETARY

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) <i>{if there is any defect/ shortcoming in the documents, the same should be specified}</i>
1	Affidavit in Form 26 --- (a) Whether all columns are 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 cast certificates (if the candidate claims to belong to SC/ ST)	
5	Security deposit (whether made)	
6	Oath and affirmations (whether taken)	

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 fresh Affidavit will 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 Forms A& B have to be filed latest by 3.00 P.M on the last date of filing nominations.
2. The nomination paper will be rejected if a candidate fails to fill the blanks in Form 26 even after reminder by RO by the hour fixed for scrutiny of 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.
5. Security deposit should be made either before filing of nomination paper or at the time of filing of nomination paper. Therefore, there is no question of issuing notice for making the security deposit.