

# ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001

No. 576/3/2013-SDR

Dated: 30<sup>th</sup> 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

## 5.16 Check List of documents in connection with filing of nomination

Name of constituency ..... 1  
 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/short coming 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	Forms A and B (applicable in the case of candidates set up by political parties.)	
4	Copy of caste certificate from competent authority (if the candidate claims to belong to SC/ST)	
5	Security deposit (whether made)	
6	Oath/affirmation (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 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

(Signature)  
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.
6. If the columns in the affidavit are blank and incomplete the candidate should file an affidavit complete in all respects instead of filing an affidavit in respect of only the blank columns and the second affidavit

which would be the complete one will be disseminated through the web site.

**Note**

- A) Consequent on the modification of the format of affidavit filed in Form 26 with effect from 1.8.2012 candidates are required to file only one affidavit in the revised Form 26 with the nomination paper and hence check list was revised. Based on the direction of a division bench of the Hon'ble Supreme court in order dated 9.12.2011 in Civil Appeal No 4956 of 2010 the commission directed that the RO/ARO while checking the documents filed with nomination paper and filling up of the check list, should also make an endorsement about defect, if any, noticed in the documents filed with the nomination papers. The check list was modified incorporating the above details. (Letter No.576/2013/SDR dated 21.01.2013)
- B) The Hon'ble Supreme court of India in judgment dated 13-09-2013 in WP(C) No121 of 2008 observed that another clause may be inserted in the standard 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. 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 are very vital for giving effect to the "right to know" of the citizens and that 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. The check list was further amended to comply with the direction of Apex court to insert another clause for reminding the candidates to fill in the blank columns, if any, in the revised affidavit. (Letter No 576/3/213/SDR dated 30-09-2013)
- C) Para 5.33 provides that in order to facilitate monitoring of election expenditure, each candidate is required to open a separate bank account exclusively for the purpose of election expenditure. This account shall be opened at least one day before the date on which the candidate files his nomination papers. The Account Number of this bank account shall be communicated by the candidate in writing to the RO at the time of filing of his nomination. All election expenditure shall be made by the candidate only from this bank account.

D) The Commission in letter No 576/3/2013/SDR dated 13-11-2013 has issued clarification regarding the filing of subsequent affidavit complete in all respects if the columns are left blank in the original affidavit.

5.16.1 In order to bring in more transparency, and to prevent cases of any mischief at any level, with regard to the documents, the Commission has decided to streamline the procedure as follows:

(a) In respect of each candidate, the RO should maintain, in duplicate, the check list of the documents/requirements to be fulfilled by the candidates, as per the list given above.

(b) When a candidate files nomination paper, the RO/ARO shall indicate in the second column of the check list whether the documents concerned have been filed or the other/requirements fulfilled. If there is any defect or short coming in the documents, the same should be specified.

(c) If the affidavit in Form-26, extract/copy of electoral roll wherever required has not been filed, and if the oath is not taken, the same should be clearly mentioned in the bottom of the check list, indicating the time limit by which this can be submitted.

Once the returning officer records in the CHECK LIST prepared by him at the time of presentation of the nomination paper that a particular document/requirement has been filed/fulfilled he cannot later take the stand that the document was not in order (Civil Appeal No.4956 of 2010-- Ramesh Rout Vs. RavindraNath Rout [2012 (1) SC] 567]). The Commission has directed that henceforth the R.O/A.R.O. while checking the documents filed with nomination paper and filling up the Check List, should also make an endorsement about defect, if any, noticed in the documents filed with the nomination papers ..In cases where a candidate put up by a political party has either not filed Forms "A" and "B", or the Forms filed are not as per the requirements ( not properly filled up or are not signed in original, etc.) while preparing Form 3A ( Notice of Nominations-**ANNEXRE 10**) a mention to this effect shall be made under Column 6 with respect to such candidate. (Instruction No 576/3/2013 /SDR dated 21.1.2013)

(d) Both the copies of the check list with all requirements indicated therein as in (b) & (c) above shall be signed by the RO as well as the candidate. The duplicate copy of the check list shall be handed over to the candidate/proposer who files nomination

paper, while retaining the original with the nomination paper filed by the candidate.

- (e) The copy of the check list handed over as above, will serve the dual purpose of acknowledging the receipt of the documents submitted as well as of notices for submitting the relevant documents. Therefore, no separate notice is required to be given to the candidates in respect of the items mentioned in this check list. However, acknowledgements of nomination paper will continue to be given as per the format in the last part of the prescribed nomination paper.
- (f) If and when a document is filed subsequent to filing of nomination, an acknowledgement to that effect should be issued to the candidates, clearly mentioning the date and time at which it is filed. This should also be indicated in the appropriate place in the original check list retained by the Returning Officer as mentioned in item (d) above.