

Theme 3 - Scrutiny of Nominations

Guidance Plan:

1. Scrutiny of nomination is a ***quasi-judicial*** function of RO, which means the RO has to maintain the standards expected for quasi-judicial decision making. The slides and the various other supporting material bring out all relevant legal provisions, judicial pronouncements and the Commission's instructions.
2. At the time of nomination filing, RO is required to give to each candidate, the notice regarding the date, time and venue for scrutiny. Accordingly, the scrutiny has to commence as per the notice already given.
3. The legal provisions regarding the category of persons who can be admitted in the scrutiny hall, the manner of summary enquiry into objections, provision of *suo-motu* objection by RO, grounds for rejection of nomination, recording order in case of rejection, adjournment of scrutiny for rebutting objection, are all important points to remember for the RO. As per the proviso to **sub-section (5) of S 36 RPA 1951**, r/w **ECI Instructions** in certain cases, RO can allow time to decide an objection up to 11 AM on the second day after the date fixed for scrutiny.
4. RO should note that while he may informally obtain inputs from other sources, the decision of accepting/rejecting nomination has to be that of the RO alone.
5. As noted in the RO Handbook 2023, Chapter VI, if there is scope for benefit of doubt, the same should go in favour of accepting nomination, rather than rejecting.
6. The RO is expected to familiarize with the prescribed Forms and formats and strictly follow them.
7. Consequent to the direction of the Kerala High Court (a dedicated slide in the PPT), an expected take-away of this training module will be an overall congruous framework of accepting and rejecting nominations by the team of ROs so that similar situations are treated alike.



Scrutiny of Nominations: Authority (S 36, RPA 1951)

Returning Officer is the only authorized person who can do the scrutiny of nomination papers.

Exception:

- *Only under extremely rare unavoidable circumstances which prevent RO from undertaking this function one of the Assistant Returning Officers can be authorized by RO in this behalf who can do the scrutiny. RO to give intimation to the CEO and the DEO about it immediately.*
- *If such situation occurs, record immediately the unavoidable reasons for such delegation as also written authority by RO in favour of one of the Assistant Returning Officers by name.*



Date, Time and Place of Scrutiny



- ✓ Date of scrutiny specified by the Commission in its programme notification and the **RO has no discretion to change it;**
- ✓ However, he **has a discretion** under the law (**S 35, RPA 1951**) to fix the **time and place** of scrutiny.
- ✓ The RO has to give notice about scrutiny both in public notice in **Form-1 (COER, 1961)** and also in the receipt which he has to give to each candidate in acknowledgement of receipt of nomination.



Scrutiny: A Quasi-Judicial Process (**Apex Court ruling**) – guiding principles Contd.



- ✓ Scrutiny of nominations is a **quasi-judicial function** of the RO but that does not give him the status of a Court. The enquiry into the question of validity or otherwise of a nomination paper is a **summary enquiry**.
- ✓ If any candidate, election agent, his proposer or the person authorized by him desires to examine any of the nomination papers or the accompanying documents during scrutiny, he should be given **reasonable facility for** the same. They should **not**, however, be **permitted to handle** those papers.
- ✓ All nomination papers should be **scrutinized one by one** and **decision** accepting or rejecting should be **recorded on each** nomination paper **separately**.

Contd...



Scrutiny - Contd.

- ✓ Even if one of the nomination papers of a candidate is accepted, his **remaining nomination papers** must also be scrutinized individually.
- ✓ Where **any objection is made** against any nomination paper, RO must record his decision giving reasons for accepting or rejecting the objection.
- ✓ RO can raise objection to any nomination **suo motu** also.
- ✓ Even if no objection has been raised with regard to a nomination paper, RO has to satisfy himself/herself that it is valid in law.
- ✓ Presumption of validity unless the contrary is prima facie obvious or has been made out.



Persons who can be present for the Scrutiny Of Nominations – **S 36, RPA 1951**

Candidate himself.

His election agent.

One of his proposers

One other person authorized by
the candidate..

NB 1: Presence of a candidate or his representative not mandatory at the time of scrutiny.

NB 2: Even if none is present on behalf of a candidate, the nomination paper shall be scrutinized on merits and appropriate decision shall be taken.



Scrutiny: How to Conduct – checklist – 7 items

1. The whole process of scrutiny of nominations should be covered by videography in all cases for ensuring more transparency in the scrutiny
2. All nomination papers should be scrutinized **one by one** and decision accepting or rejecting should be recorded on each nomination paper separately.
3. Even if one of the nomination papers of a candidate is accepted, his remaining nomination papers must also be scrutinized individually and decision thereon be recorded accordingly.
4. Where any **objection is made against any nomination paper**, RO must record his decision giving reasons for accepting or rejecting the objection.

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Scrutiny: How to Conduct – contd.



5. If the nomination of a candidate has been objected to, he should be given reasonable opportunity of rebutting the same and, where necessary, scrutiny proceedings in relation to his nomination may be adjourned. ***Scrutiny proceedings in relation to other candidates should, however, continue.***
6. Adjournment of scrutiny can be done till the 2nd day after the day of scrutiny, which is normally the last date of withdrawal for candidatures. Scrutiny in such case has to be completed by 11 am on that day.
7. If the nomination of any candidate is rejected, reasons for rejection should be recorded in brief and copy of the order should be furnished to the candidate urgently.



6 Grounds for Rejection of Nomination Papers (S 36(2) RPA, 1951)

1. Either clearly not qualified in law or is clearly disqualified in law on the date fixed for scrutiny of nominations;
2. Nomination paper not signed by candidate or subscribed by requisite number of proposers;
3. Requisite security deposit has not been made;
4. Certified extract of entry in the electoral roll not submitted, if candidate is contesting election from a different constituency;

Contd...



6 Grounds for Rejection of Nomination Papers – contd.



5. If even after notice by RO to file Affidavit or fresh affidavit with all columns filled in, the same is not submitted by the candidate.
6. Any of the provisions of **S 33, RPA 1951** not complied

Points to Note:

NB 1: Nomination paper shall not be rejected on ground of defect which is not of substantial character, like, defect in declaration relating to symbols, or any other insignificant ground.

NB 2: Any wrong information in candidate's affidavit, ipso facto, is not defect of substantial character. However, failure to furnish affidavit, even after notice by RO, is defect of substantial character entailing rejection of nomination.

NB 3: If any column is left blank in affidavit even after notice, nomination shall be rejected.



Preparation of list of validly nominated candidates S 36 (8), RPA 1951)

- ✓ After the completion of scrutiny proceedings, RO should prepare a list of validly nominated candidates, i.e., candidates whose nominations have been found valid on scrutiny in **FORM 4**.
- ✓ Arrangement of names in **Form 4** should be on the same lines as given **S 38(2) RPA, 1951**, classifying the candidates in 3 groups as mentioned below –

List of validly nominated candidates:

STEP 1: Classification of Candidates as:

- i. Recognized National and State political parties (belonging to the State)
- ii. Registered un-recognized political parties including state parties of other States.
- iii. Independent candidates.

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Preparation of list of validly nominated candidates – cont



STEP 2: Arrangement of names in alphabetical order in each category separately.

OTHER CLARIFICATIONS:

Addition of titles:

- ✓ *No objection to the addition of any honorific, academic, hereditary, professional or any other title to the name of a candidate,*
- ✓ *However, such title should on no account be taken into consideration in the arrangement of names in alphabetical order.*

Correction/alteration in the name of the candidate:

Names of candidates will be shown as mentioned in their nomination papers.

However, a candidate may make a request to modify/alter the name if (i) the name is incorrectly spelt, or (ii) is incorrectly shown or (iii) is different from the name by which he is popularly known. Such request has to be made before the list in [Form 7A](#) is prepared. RO, on satisfaction that the request is a genuine one, shall permit such modification/alteration

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Preparation of list of validly nominated candidates – contd.



Language(s):

- ✓ ***List is to be prepared in the language(s) specified in the Commission's direction dated 16-09-2008 for Assembly Constituencies and direction dated 06-02-2009 for Parliamentary Elections***
- ✓ ***Category headings should not appear on the ballot papers.***



FORM 4, R 8, COER 1961



FORM 4
(See rule 8)

LIST OF VALIDLY NOMINATED CANDIDATES

Election to the*

*

Sl. No.	Name of candidate	Name of **father/ mother/ husband	Address of candidates	@Party affiliation	Photograph of the candidate
1	2	3	4	5	6

- (i) Candidates of recognised National and State Political Parties.
- (ii) Candidates of registered political parties (other than recognised National and State Political Parties).
- (iii) Other candidates.

Place

Date

Returning Officer

*Appropriate particulars of the Election to be inserted here.

**Strike off the inappropriate alternative.

@Applicable in the case of candidates mentioned under categories (i) and (ii) above.

N.B. - Under Col. 1 above, the serial numbers of candidates of all the three categories shall be given consecutively and not separately for each category.

*This is as per RO Handbook 2023. However **Form 4** has not been amended to this effect so far.

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Follow Up Steps After Scrutiny – ECI Instructions



Important Points to note:

- Two copies of the list of validly nominated candidates should be sent to the CEO by the next available post or by Fax/E-mail or by special messenger.
- One copy of the list along with an English translation should be forwarded to the Election Commission.
- The list of validly nominated candidates should be sent by RO immediately on the same day on which scrutiny of all nomination papers is completed, so that it may reach the Commission before the last date for the withdrawal of candidatures.



Do's during Scrutiny of Nominations

Do's

- The RO has to be guided by his/her own judgement, based on the position of law and applicable rulings, without any apparent outside influence.
- Give reasonable opportunity and time for resolving a particular objection or deficiency. If specifically requested by a candidate/ agent, time may be granted for replying to objection, by adjourning scrutiny.
- Clarify all doubts through Legal Division of the Election Commission much before the start of scrutiny.
- Give benefit of doubt to the candidate in case of doubt.



Don'ts during Scrutiny of Nominations

Don'ts

- ✓ Under no circumstances should the RO be in telephonic consultation during the scrutiny.
- ✓ Not giving reasonable opportunity to the candidate.
- ✓ Perceived non- application of mind by RO.
- ✓ No special treatment for any candidate.



Risks in regard to rejection/acceptance during Scrutiny cutting across Constituencies and decisions of separate ROs – inconsistencies taken adverse note of in judicial forums



- Lack of understanding of legal provisions/Commission's guidelines have created situations in the past where different ROs have taken mutually contradictory stand in similar facts and circumstances in accepting/rejecting nominations
- Therefore, most imperative for each RO to read the grounds for rejection along with ECI Instructions; FAQs, Dos & Don'ts, Judicial Precedents.
- ROs should clear all their doubts regarding scrutiny well in advance.

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Risks in regard to rejection/acceptance during Scrutiny cutting across Constituencies and decisions of separate ROs – inconsistencies taken adverse note of in judicial forums - contd.



Some instances of contradictory rulings, on similar facts -

1. Affidavit in **Form 26** – there are instances where candidates use an old/outdated **Form 26** for the affidavit. Therefore, RO should take proper care to ensure that the affidavits filed by candidates are in the current/existing format. In case of affidavit being filed in old format, RO shall mention the same in the checklist and give a notice to the candidate to file affidavit in the current format, within the specified time (latest by 3:00 PM on the last date of nomination). In some cases ROs have failed to notice that the **Form 26** used by Candidate was an outdated format and thus ended up accepting them, while other ROs rightly pointed out the defect in the checklist.
2. **Form A & B** – as per **para 13 of Symbols Order, Form A & B**, duly filled up and bearing original signature of authorised authorities have to be filed by 3:00 PM on the last date nomination. In cases of defective **Forms A & B**, (on account of non-signing, not bearing signature in original, particulars not filled up, etc., the fact should be brought out in the checklist and necessary notice given to the candidate. There are past instances of ROs wrongly giving notice to candidates allowing filing **Forms A & B**, till the time of scrutiny of nomination, despite the deadline for filing these Forms being 3:00 PM on the last date of nomination
3. This matter went to the Kerala High Court and the Court directed that it should be ensured that ROs do not take contradictory decisions in similar factual situations



THANK YOU