

Nomination of Candidates

Question256. Can a proposer of any candidate be also a candidate for the same constituency?

Answer. Yes, as per law there is no bar.

Question257. If information given by a candidate in affidavit is wrong, can RO reject the nomination of the candidate? Especially, if other candidates raise objection and give proof that information in affidavit is wrong?

Answer. No, the nomination of a candidate cannot be rejected for suppressing or giving false information in the affidavit. The copies of the nomination papers filed by each candidate along with copy of the affidavit accompanying the nomination should be displayed on the notice board in the office of RO on the day the nomination is filed. If anyone furnishes any information contradicting the statements in the nomination form or affidavits by means of a duly sworn affidavit, copies of such affidavits should also be displayed on the notice board. If the RO is satisfied that the information given by the candidate in the affidavit is wrong he is required to file a formal complaint before the appropriate Court under section 125A of the R.P. Act, 1951 and Section 177 of IPC (read with section 200 Cr PC).

Question258. If a complaint is received that a person who has filed nomination is of unsound mind, what course of action will be taken by RO?

Answer. The complainant has to prove by producing a declaration by the competent court under the Lunacy Act to the affect that the person concerned is of unsound mind. Disqualification is attracted only when there is a declaration by competent court.

Question259. What if 5 or more than 5 persons, who are proposers, happen to be illiterate & their thumb impressions are to be attested, can we allow more than 5 persons in the RO room in that case?

Answer. Thumb impressions on the nomination paper has to be attested for which thumb impressions have to be put before the RO or before an Administrative Officer not below the rank of SDO. To enable the proposers to put their thumb impressions before RO, they shall be called by the RO in batches of four for putting the thumb impression in his presence.

Question260. Should the affidavits in Form 26, be in both English & official language of the state concerned or in any one language?

Answer. It has to be given either in English or in one local language of the state which is the official language.

Question261. For an independent candidate 10 proposers are required to sign the nomination paper before RO. If during scrutiny one proposer says it was not signed by him, what will RO do?

Answer. The RO shall ask the person concerned to submit an affidavit to this affect. If affidavit is submitted then RO shall make a summary inquiry to satisfy himself as to the authenticity of the signature of the proposer. The candidate shall be given adequate opportunity to present his case. In case it is proved that the signature was forged, the nomination of the candidate will be rejected since the nomination with 9 proposers cannot be accepted as a valid nomination paper as

per law in the case of candidates sponsored by registered unrecognized party and independent candidates. The person who filed the nomination with forged signature/thumb impression will have to be prosecuted under the law.

Question262. Whether nomination papers of a candidate who was physically present just a minute before 3:00 PM on the last day of nomination, but without documents will be received or not?

Answer. Nomination paper if available with the candidate has to be received but no other document shall be permitted to be brought into his office after 3.00 PM. In the check list, the fact of not having submitted the relevant documents will be entered. Question of rejection of nomination paper will be decided at the time of scrutiny.

Question263. What is the time limit for filing Form 6, to include name in electoral rolls in case applicant wants to be candidate also?

Answer. Minimum 10 (Ten) days before the last date of making the nomination for an election. However, Form-6 filed thereafter upto the last date for filing nomination shall be received by the ERO but orders can be passed on each such Form only after completion of the election. Under the law, no order for inclusion of name in electoral roll can be made after the last date for making nomination. There is Court ruling clarifying that the cut-off time for passing orders in this regard would be 3.00 PM on the last day of filing of nomination. There is other statutory requirement of displaying the applications on the notice board by the ERO for 7 days, etc. before the ERO can pass orders on the claim application.

Question264. What document should be taken as proof of citizenship?

Answer. There is no requirement to submit any document to prove the citizenship, while making nomination. The presumption in normal course would be that such person is a citizen of India. In case somebody challenges the citizenship of a candidate, the onus is on the objector to produce sufficient proof before the RO in this regard. If this onus is discharged by the objector, the RO should prima-facie give reasonable opportunity to the intending candidate to rebut the complaint.

Question265. If illiterate proposer himself denies about his thumb impression, how RO can decide on thumb impression validity? Should he call finger print expert?

Answer. The illiterate person proposing a candidate has to put his thumb impression before the RO or an Administrative Officer not below the rank of SDO. Therefore, the question of denial would not arise. In case the proposer denies, the RO has to satisfy himself by making summary inquiry.

Question266. If major portion of affidavit is not filled at all, is it ground for rejection?

Answer. As per the latest instructions of the Commission, if any of the columns of the affidavit is left blank, the Retuning Officer, after making preliminary enquiry at the time of submission of nomination paper, will ask the candidate to file a fresh affidavit with all columns filled in. If, however, the candidate does not submit affidavit with all columns filled in, the nomination paper is liable to be rejected. The candidate, however, can write "NIL or Not Applicable", as the case may be, in the column.

Question267. If during scrutiny, a proposer says on affidavit that he has not signed on nomination papers, then what will RO do?

Answer. The RO has to satisfy himself about the signature of the proposers. In case he is satisfied after summary enquiry that the signature is not of the proposer as claimed by him then the nomination paper shall be rejected for want of required number of proposers and the person who filed the nomination paper with forged signature/thumb impression will have to be prosecuted under the law. However, the candidate concerned should be given adequate opportunity to present his case. If necessary, scrutiny proceedings in that candidates' case can be adjourned.

Question268. Is oath required every time? With every nomination filed at different intervals of time by same candidate?

Answer. No. The oath is required to be taken and subscribed only once for an election. Even if a candidate is contesting from two constituencies, one oath is sufficient. It should be noted that oath can be taken only after the nomination paper is filed. It would be for the candidate to produce before the RO, the certificate of taking of oath as per the requirement of law.

Question269. What if independent candidate submits nomination paper with more than 10 proposers? Will it be valid?

Answer. Yes, minimum 10 proposers are required for independent candidate under the law. Excess is not a problem.

Question270. Can the nomination papers be Photocopied & allowed to be examined by other candidate? Or only original papers are to be given for examination?

Answer. Copies of nomination filed by each candidate along with the affidavit accompanying the nomination should be displayed on the notice board in the office of RO on the same day of filing nomination. At the time of scrutiny, the other candidate may be given opportunity to examine the original nomination papers without being allowed to physically handling the paper.

Question271. If in case of an overseas elector, the nomination paper is delivered on the last date of nomination, then he takes an Oath before a consular representative and if he or the consular representative faxes or sends a scanned copy of that form of Oath or a written communication to the RO, can it be allowed? Or the RO should insist for an original document?

Answer. Yes, fax/scanned copy can be relied upon if the original is not received before the scrutiny of nomination. The consular representative should, however, send the original of the oath or affirmation made and signed by the candidate to the RO subsequently.

Question272. Can a candidate withdraw nomination immediately after scrutiny or has to wait till list of validly nominated candidates is prepared in Form-4?

Answer. He should wait till the RO prepares the list of validly nominated candidates in Form-4.

Question273. If a candidate has been issued SC/ST certificate from other state as she has been after marriage residing in other state & contesting election there, how RO should proceed further?

Answer. A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless in the case of a seat reserved for the Scheduled Castes or for the Schedule Tribes of that State, he should belong to any of those castes or of those tribes, as the case may be, in that state, and is an elector for any Assembly constituency in that State. In such cases, there should be a SC certificate issued by the competent authority of the State in which the person is contesting election.

Question274. How many persons are allowed to enter the RO's room when the nomination papers are being filed by independent/ unregistered party candidate? Is it 4+1 only? Also in case of illiterate proposers please?

Answer. Only 4 persons can enter the office of RO other than the candidate. Since, illiterate person has to put a thumb impression before the RO or an Administrative Officer not below the rank of SDO, all illiterate proposers who have not already appended their thumb impression before any other authorized officer, shall be called by the RO in batches of four, for putting the thumb impression in front of him.

Question275. Suppose, a candidate filing nomination papers is not a voter of that particular Assembly Constituency, then he will produce a certified extract from the electoral rolls. But as continuous revision is going on, which should be the latest date of that certificate?

Answer. The certified extract should be in respect of the electoral rolls in force. Such extract can be filed till the time of scrutiny of nomination.

Question276. If an independent candidate's nomination form has 12 proposers and proposer no. 3 and 4 is not valid. Total 10 are valid out of the 12, is that acceptable?

Answer. Yes, as the requirement is only of 10 proposers for candidates of registered unrecognized parties and independents.

Question277. Is a candidate needed to file in the affidavit all the particulars of only government dues or also dues of local self government like Municipality, Panchayat etc. and also dues pending for government contracts?

Answer. Details of dues to Departments dealing with the Government accommodation, supply of water and electricity, telephone/mobiles, transport (including aircraft and helicopters), income/wealth/service tax, municipality property tax will have to be shown in respective columns provided in Item (8)(ii) of Form-26. Any other Government dues will have to be shown in the last row of Item (8)(i).

Question278. Whether 1st Class Magistrate & Executive Magistrate are the same. Kindly elaborate with legal provisions?

Answer. It varies from State to State. Generally, Executive Magistrates cannot be equated with 1st Class Magistrate.

Question279. Whether the mentally retarded person or unsound mind person are to be treated as same or there is legally some difference? Kindly elaborate.

Answer. For contesting election, only if a person has been declared by the competent court as of unsound mind under the Lunacy Act, he/she cannot contest any election.

Question280. Whether the nomination paper filed by a candidate not signed at the time of submission or filing of nomination papers can be signed thereafter before scrutiny of nomination papers or not?

Answer. At the time of scrutiny, if any nomination paper of a candidate is found without the signature of the candidate, the RO should reject the nomination as it is a defect of substantial nature. Signature cannot be affixed subsequently.

Question281. In case of reserved constituency, the SC/ST certificate if objected to on the ground that the caste/ tribe do not figure in the list of the Constitution (Scheduled Castes) and (Scheduled Tribes), Order 1950, even though the certificate is proved to be issued by a competent authority, then what happens?

Answer. A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless in the case of a seat reserved for the Scheduled Castes or for the Schedule Tribes of that State, he should belong to any of those castes or of those tribes of that state, as the case may be, and is an elector of any Assembly constituency in that State. If the Caste/Tribe to which the candidate belongs is not one of the Castes/Tribes in the list of Scheduled Castes/Tribes for the State, then the candidate cannot be treated as qualified to contest from that reserved seat.

Question282. Does “Magistrate 1st Class” before whom the affidavit on Form 26 is to be sworn include “Executive Magistrate”?

Answer. Affidavit should be sworn before only the magistrate of 1st class, notary public and commissioner of oath appointed by the High Court of the state concerned. Executive Magistrates cannot be treated as 1st Class Magistrates for this purpose, unless they are also specified as 1st Class Magistrate in any State.

Question284. Suppose, I am a candidate of a recognized National or State party, how many proposers I require for my nomination?

Answer. Only one. (Refer: Sec. 33 (1) of Representation of People Act, 1951)

Question285. If I am an independent candidate or a candidate of registered unrecognized Political Party, how many proposers I require for nomination?

Answer. Ten. (Refer: Proviso to Sec. 33(1) of Representation of People Act, 1951)

Question286. Can a person contest election to Lok Sabha (House of People)/Vidhan Sabha (Legislative Assembly) from as many constituencies as he likes?

Answer. No. A person cannot contest from more than two constituencies at a general election for Lok Sabha (House of People) or the Vidhan Sabha (Legislative Assembly) (Refer: Section 33 (7) of Representation of People Act, 1951)

Question287. Whether same restriction applies in relation to bye-elections to any House held simultaneously?

Answer. Yes. You cannot contest more than two bye-elections to the same House, if called simultaneously by the Election Commission. (Refer: Section 33 (7) of Representation of People Act, 1951)

Question288. How many nomination papers can be filed by candidate in the same constituency?

Answer. A candidate can file maximum four nomination paper. (Refer: Proviso to section 33 (6) of Representation of People Act, 1951)

Question289. Can I go to the office of Returning Officer for filing a nomination with a procession?

Answer. No. The maximum number of vehicles that will be allowed to come within the periphery of 100 mtrs of Returning Officer's office has been restricted to 3 and maximum number of persons that will be allowed to enter the office of Returning Officer has been limited to 5 (including the candidate).

Question290. How many persons are allowed at the time of scrutiny of nominations by the Returning Officer?

Answer. The candidate, his election agent, one Proposer and one other person (who can be an advocate) duly authorized in writing by the candidate, but no other person, may attend at the time fixed for scrutiny of nominations by Returning Officer. (Refer: Sec. 36 (1) of Representation of People Act, 1951)

Question291. If a candidate, to whose nomination paper an objection has been raised, applies for time to rebut such objection, can Returning Officer grant time for such candidate?

Answer. Yes. The Returning Officer may adjourn the hearing of the objection till the next day or the day after that but not beyond 11.00 a.m. on that day. The hearing in any case should be completed by Returning Officer well before 3.00 p.m. on the last day fixed for withdrawal of candidatures.

Question292. Democratic Party, a recognized State Party in Himachal Pradesh, is setting up candidate for legislative assembly of Punjab. What is the minimum number of proposers needed for this candidate for a valid nomination?

Answer. It will require minimum 10 proposers for valid nomination of its candidate.

Question293. A woman candidate belonging to Scheduled Caste is contesting election to a Legislative Assembly from a general seat. What is the security deposit amount applicable in her case?

Answer. She will have to deposit half the amount of the security deposit prescribed for general candidates.

Question294. Who is competent to issue public notice of election in Form 1?

Answer. Returning officer concerned is competent to issue public notice in Form 1.

Question295. What is the cut-off time for filing Forms 'A' and 'B' for a candidate of a political party?

Answer. Forms 'A' and 'B' for a candidate of a political party can be filed by 3:00 PM on the last date of making nomination.

Question296: can any person become a proposer?

Answer: The proposer should be an elector from the same constituency where the candidate is filing nomination paper.

Question297: An engineer has submitted his resignation to the competent authority in his department. Can he contest election?

Answer: He can contest election only when his resignation is accepted by the competent authority before scrutiny of nomination papers.

Question298: If a candidate is contesting from two constituencies, does he require to submit security deposit in respect of both the ACs.

Answer: The candidate is required to submit security deposit in respect of both the ACs.

Question299: How you can get the list of persons who have been disqualified for not filing accounts of election expenditure at all or in the manner required by law?

Answer: The list of persons who have been disqualified for not filing accounts of election expenditure at all or in the manner required by law is provided to the Returning Officers by the Election Commission through the Chief Electoral Officers of the state.