

CRIMINALISATION OF POLITICS

STATE ELECTION COMMISSION, HARYANA
S.C.O. NO.16-17, SECTOR-20 D, CHANDIGARH.

ORDER

No.SEC/E-III/2003/8831

Dated:-06.10.2003

Subject:- Disclosure of information regarding Criminal Antecedents, Assets and Liabilities and Educational Qualifications by candidates contesting Panchayats and Local Body elections.

- Ref:-**
1. Judgement dated 2nd November, 2000 of the Hon'ble High Court of Delhi in Writ Petition No. 7257 of 1999 (Association for Democratic Reforms Versus Union of India & others)
 2. Judgement dated 02.05.2002 of the Hon'ble Supreme Court of India in Civil Appeal No.7178 pf 2002.
 3. Election Commission of India's order No.3/ER/2002/JS-II/Vol-III, dated 28th June, 2002.
 4. The Representation of People (Third Amendment) Act, 2002 (Central Act No.72) of 2002
 5. Judgement dated 13th March, 2003 of the Hon'ble Supreme Court of India in W.P. (Civil) Nos. 490, 509 and 515 of 2002.
 6. Election Commission of India's order No.31/ER/2003/JS-II, dated the 27th March, 2003.

Whereas, the superintendence, direction and control of the preparation of electoral rolls for, and conduct of, all elections to the Panchayats and Municipalities are vested in the State Election Commission as per provisions of Article 243K and Article 243ZA of the Constitution of India.

2. And whereas, the Hon'ble High Court of Delhi, in its judgement (Ist cited) dated 2nd November, 2000 in Writ Petition No.7257 of 1999 (Association for Democratic Reforms Versus Union of India and Others) held that for making a right choice by electors in regard to the candidate at the election, it was essential that the past of the candidate should not be kept in dark, as it was not in the interest of the democracy and well being of the country and directed the Election Commission of India to secure to voters the following information pertaining to each of the candidates seeking elections to Parliament and to the State Legislatures and the parties they represent :-

- (1) Whether the candidate is accused of any offence(s) punishable with imprisonment? If so, the details thereof;
- (2) Assets possessed by a candidate, his or her spouse and dependent relatives;
- (3) Facts giving insight to candidate's competence, capacity and suitability for acting as parliamentarian or legislators including details of his/her educational qualifications;
- (4) Information which the Election Commission considers necessary for judging the capacity and capability of the political party fielding the candidate for election to Parliament or the State Legislature;

3. And whereas, the Union of India filed an appeal before the Hon'ble Supreme Court of India (Civil Appeal No.7178 of 2001—Union of India Vs. Association for Democratic Reforms and Another) contending that the High Court ought to have directed the writ petitioners to approach the Parliament for appropriate amendments to the law instead of directing the Election Commission of India to implement the same;

4. And whereas, the Hon'ble Supreme Court of India, in its judgement (2nd cited) dated 2nd May, 2002, has held as follows :-

- i) The jurisdiction of the Election Commission is wide enough to include all powers necessary for smooth conduct of elections and the word 'elections' is used in a wide sense to include the entire process of election which consists of several stages and embraces many steps.
- ii) The limitation on plenary character of powers is when the Parliament or State Legislature has made a valid law relating to or in connection with elections, the Commission is required to act in conformity with the said provisions. In case where law is silent, Art 324 is a reservoir of power to act for the avowed purpose of having free and fair election. Constitution has taken care of leaving scope for exercise of residuary power by the Commission in its own right as a creature of the Constitution in the infinite variety of situations that may emerge from time to time in a large democracy, as every contingency could not be foreseen or anticipated by the enacted laws or the rules. By issuing necessary directions the Commission can fill the vacuum till there is a legislation on the subject. In Kanhiya Lal Omar's case (AIR 1986 SC 111) the court construed the expressions 'the superintendence, direction and control' in art 324(1) and held that a direction may mean an order issued to particular individual or a precept which may have to follow and it may be specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.
- iii) The word 'elections' includes the entire process of election which consists of several stages and it embraces many steps, some of which have an important bearing on the process of choosing a candidate. Fair election contemplates disclosure by the candidate of his past including the assets held by him so as to give a proper choice to the candidate (sic) (elector) according to his thinking and opinion. As stated earlier, in Common Cause case [(1986) 2 SCC 752], the court dealt with a contention that elections in the country are fought with the help of money power which is gathered from black sources and once elected to power, it becomes easy to collect tons of black money, which is used for retaining power and for re-election. If on affidavit a candidate is required to disclose the assets held by him at the time of election, voter can decide whether he could be re-elected even in case where he has collected tons of money.

- iv) To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.
- v) The right to get information in democracy is recognised all through out and it is natural right flowing from the concept of democracy. At this stage, we would refer to Art 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under :-
 - (i) Every one shall have the right to hold opinions without interference.
 - (ii) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- vi) From cumulative reading of plethora of decisions of this court as referred to, it is clear that if the field meant for legislature and executive is left unoccupied detrimental to the public interest, this court would have ample jurisdiction under Art 32 read with Arts 141 and 142 of the Constitution to issue necessary directions to the executive to subserve public interest.
- vii) Under our Constitution, Art 19(1) (a) provides for freedom of speech and expression. Voters' speech and expression in case of election would include casting of votes that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter's (little man-citizen's) right to know antecedents including criminal past of his candidate contesting election with MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers'.

5. And whereas, the Hon'ble Supreme Court, in its aforesaid judgement (2nd cited) dated 2nd May, 2002, has directed as follows :-

“The Election Commission is directed to call for information on sworn affidavit by issuing necessary order in exercise of its power under Art 324 of the Constitution of India from each candidate seeking election to Parliament or a State legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature :-

- 1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past; if any, whether he is punished with imprisonment or fine?

- 2) Prior to six months of filling of nomination, whether the candidate is accused in any pending case of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognisance is taken by the court of law, it so, the details thereof.
- 3) The assets (immovable, movable, bank balances etc) of a candidate and of his/her spouse and that of dependants.
- 4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.
- 5) The educational qualifications of the candidate."

6. And whereas, for implementation of the above-mentioned order of the Supreme Court dated 2nd May 2002 the Election of India has issued an Order No.3/ER/2002/JS-II/Vol-III, dated 28th June, 2002 (3rd cited) in exercise of its plenary powers under Article 324 of the Constitution of India directing the every candidate filing nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State of the Legislative Council of a State to furnish information required by the Supreme Court as stated above by means of a sworn affidavit in the format appended to the said order, as a necessary part of the nomination paper. Thereupon, the Government of India promulgated The Representation of People (Amendment) Ordinance, 2002 (Ordinance No.4 of 2002) which was subsequently replaced by the Representation of the People (Third amendment) Act, 2002 (4th cited) which brought about the following Legislative changes namely:-

- 1) Section 33A was inserted requiring every candidate to furnish information, apart from any information which he is required to furnish, under the Representation of the People Act, 1951 or the Rules made thereunder in his nomination paper delivered under sub-Section (1) of Section 33, as to whether:-
 - i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction;
 - (ii) he has been convicted of any offence (other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8) and sentenced to imprisonment for one year or more.
- 2) Section 33B has been inserted, stating that no candidate is liable to disclose or furnish any such, information in respect of his election which is not required to be disclosed or furnished under the Representation of the People Act, 1951 or the Rules made thereunder, notwithstanding anything contained in any judgement, decree or order of any Court or any direction, order or any other instruction issued by the Election Commission of India.
- 3) Section 75A has been inserted to provide for declaring the assets and liabilities to the Presiding Officer of the concerned House after election within ninety days from the date of taking oath or affirmation as Member.
- 4) No requirement for giving information on educational qualifications is provided.

- 5) Penalty has been provided for giving false information in the affidavit.

7. And whereas, the Representation of the People (Third Amendment Act) 2002 has been questioned in W.P.Nos.490,509 and 515 of 2002 before the Hon'ble Supreme Court. In its judgement dated 13th March, 2003 (5th cited), the Hon'ble Supreme Court of India held that :

- (i) Section 33B is unconstitutional;
- (ii) The information required to be provided in respect of criminal antecedents in the newly inserted section 33A is reasonably adequate to safeguard the right to information vested in the voter/citizen.
- (iii) The provisions made in newly inserted sections 75A regarding declaration of assets and liabilities of the elected candidate to the Speaker or Chairman of the House has failed to effectuate the right to information and freedom of expression of the voters/citizens and that Parliament ought to have made a provision for furnishing this information at the time of filing nomination;
- (iv) Failure to provide for disclosure of educational qualifications does not, in practicable terms, infringe the freedom of expression; and
- (v) The Election of India has to issue revised instructions to ensure implementation of the newly inserted section 33A and the earlier orders dated 28th June, 2002 of the Election Commission of India relating to disclosure of assets and liabilities which will still hold good and continue to be operate. However, in so far as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.

8. And whereas, following the Judgement of the Hon'ble Supreme Court dated 13.03.2003, the Election Commission of India issued revised No.31/ER/2003/JS-II, dated 27th March, 2003 (6th cited) orders, the substance of which is as follows:-

- (i) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a Council, shall furnish full and complete information in regard to the matters specified by the Hon'ble Supreme Court in an affidavit, the format of which is annexed to the order.
- (ii) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.
- (iii) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the Returning Officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.
- (iv) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective Returning Officers

by displaying a copy of the affidavit on the notice board of his office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

- (v) If any rival candidate furnishes information to the contrary by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.
- (vi) It is also clarified that the earlier direction contained in para 14(4) of its earlier order dated 28th June, 2002, in so far as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information is not enforceable in pursuance of the order dated 13th March, 2003 of the Apex Court.

9. And whereas, though the aforesaid two judgements of the Supreme Court were delivered in the context of securing to the voters the right to information with regard to the candidates seeking elections to the Legislative Assembly of a State or the Legislative Council of a State having such Council and the Parliament, the spirit thereof equally applies to the voters exercising their franchise in elections to Rural and Urban Local Bodies also, which have been conferred with Constitutional status. The democratic process should be common to all levels of electoral offices in the pyramid starting from the Gram Sabha to Lok Sabha. The Commonality of the powers between the State Election Commission and the Election Commission of India can be seen from the fact that Article 243K is exactly **Parametria** with Article 324 of the Constitution of India. In the interest of purity of elections to the Panchayats and Municipalities, the State Election Commissions of Uttaranchal, Maharashtra, Uttar Pradesh, Punjab, Karnataka, Andhra Pradesh States and Union Territories of Delhi and Chandigarh have already implemented the aforementioned orders of the Supreme Court of India for conduct the elections to Panchayats and Urban Local Bodies. In view of this, the State Election Commission, Haryana decided that the orders of the Supreme Court of India should be made applicable to the elections to rural and urban local bodies also in the State of Haryana.

10. And whereas, accordingly, the State Election Commission Haryana, in exercise of its powers under Articles 243K read with 243ZA of the Constitution of India and sections 175 and 212 of the Haryana Panchayati Raj Act, 1994 (Act 11 of 1994), sections 3A and 13A of the Haryana Municipal Act, 1973 (Act 24 of 1973) read with Rule 21 of the Haryana Municipal Election Rules, 1978 and Sections 8 and 9 of the Municipal Corporation Act, 1994 (Act 16 of 1994) read with Rule 23 of the Haryana Municipal Corporation Election Rules, 1994 and all powers hereunto enabling it in this behalf, hereby directs as follows:-

- (i) Every candidate seeking elections or bye-elections to the office of Member or Sarpanch of a Gram Panchayat or Member of Panchayat Samiti or Member of Zila Parishad or Member of a Municipality, shall along with the nomination paper furnish full and complete information, apart from any other information which he is required to furnish, in regard to all the five matters referred to in paragraph 5 above as also specified in the format of Affidavit, annexed hereto as Annexure to this Order.

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- (ii) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State or before the Sub-Divisional Officer (Civil)/Tehsildar/Naib Tehsil (conferred with the powers of Executive Magistrate) having jurisdiction to the area.
- (iii) Non furnishing of a declaration or affidavit as the case may be, by any candidate, shall be considered to be a violation of this order and the nomination of the candidate concerned shall be liable to be rejected by the Returning Officer, at the time of scrutiny of nomination papers of the concerned candidate.
- (iv) Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit or declaration, as the case may be, shall invite penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him.
- (v) The information so furnished by each candidate in the aforesaid declaration or affidavit, as the case may be, shall be disseminated by the concerned Returning Officer by displaying a copy of the declaration/affidavit on the notice board of his office and also by making copies thereof available to all other candidates on demand and to the representatives of the print and electronic media.
- (vi) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with declaration/affidavit of the candidate concerned in the manner directed above.
- (vii) The Returning Officer shall not verify by means of a summary enquiry or otherwise the correctness or otherwise of the information furnished in the declaration/affidavit and reject the nomination paper on the ground that in his opinion the information furnished is incorrect.
- (viii) All the Returning Officers shall ensure that the copies of the Affidavit/Declaration prescribed herein by the State Election Commission in the Annexure to this order, shall be delivered to the candidates along with the forms of nomination paper as part of the nomination papers.

This order shall come into force with effect from 6th October, 2003.

**Dated, Chandigarh,
the 06th October, 2003**

**(T.D.Jogpal)
State Election Commissioner,
Haryana.**

Note : ****¹ Proviso deleted by notification No.SEC/E-III/2003/10527, dated 30.10.2003.

Endst.No.SEC/E-III/2003/8832-9060

Dated:-06.10.2003

Copy to:-

1. The Financial Commissioner & Principal Secretary, to Government Haryana, Development & Panchayat Department.

2. The Commissioner & Secretary to Govt. Haryana, Urban Development Department.
3. All the Divisional Commissioners in the State of Haryana.
4. The Director, Panchayats, Haryana
5. The Director, Urban Development Department, Haryana.
6. All the Deputy Commissioners & District Election Officers (with the request to bring these instructions in the notice of the concerned for strict compliance).
7. All the Chief Executive Officers of Zila Parishads.
8. All the Block Development & Panchayat Officers and Executive Officers of Panchayat Samitis in the State of Haryana.
9. The Commissioner, Municipal Corporation, Faridabad.
10. All the Executive Officers of Municipal Councils and Secretaries of Municipal Committees in the State of Haryana.

ANNEXURE

(Order No.SEC/E-III/2003/8831, Dated 06.10.2003)

Affidavit/**² to be furnished by candidate along with nomination paper before the Returning Officer.**

Note:-

1. Affidavit shall be prepared on a non-judicial stamp paper/document paper (Pucca Paper) and sworn before the First Class Magistrate or a Notary Public or a Commissioner of Oath appointed by the High Court or before the Sub-Divisional Officer (Civil)/Tehsildar/Naib Tehsildar (conferred with the powers of Executive Magistrate) having jurisdiction to the area.

2. ****³

3. Please read the contents of the Annexure carefully and strike the contents not applicable to you.

***1. For the election to the office of Sarpanch of Gram Panchayat _____(name), Block _____(name)**

or

***2. For the election to the office of Member for Ward No. _____ of *Gram Panchayat _____(name) or *Panchayat Samiti _____(name) or *Zila Parishad _____(name)**

or

***3. For the election to the office of Member for Ward No. _____ of *Municipal Corporation _____(name) or *Municipal Council _____(name) or *Municipal Committee _____(name)**

I _____ S/o/ D/o/ W/o _____ aged _____ years, resident of _____ candidate at the above election, do hereby solemnly affirm and state on oath as under :-
(strike out whichever not applicable)

1) I have, in the past, been convicted of a criminal offence in the following case(s) and the details are as under :-

- i) Case No.
- ii) Section of the Act and description of the offence for which convicted
- iii) Date(s) of conviction
- iv) Court(s) by which convicted
- v) Punishment imposed (indicate period of imprisonment awarded and/or quantum of fine imposed)
- vi) Details of appeals/revision etc. filed against above conviction(s).

Note: **² Word Declaration has been deleted by notification No.SEC/E-III/2003/10527, dated 30.10.2003**

******³Head Note No.2 was deleted by notification No.SEC/E-III/2003/19527, dated 30.10.2003**

2) That I have in the past been discharged/acquitted in the following cases :-

- i) Section of the Act and description of the offence with which charged.
- ii) Case No.
- iii) Name of the Court by which acquitted/discharged
- iv) Date of acquittal/discharge
- v) Details of appeal(s)/application(s) for revision/review, if any, filed against above acquittal/discharge.

3) That I have, in period ending six months prior to the date of filing the present nomination, been accused of the following offences, punishable with imprisonment with two years or more, and in which a charge has been framed or cognisance taken by the Court as indicated hereunder :-

(Note:- This excludes the cases mentioned in (1) and (2) above)

- i) Section of the Act and description of the offence with which charged/cognisance taken:
- ii) The Court which has framed the charge/taken cognisance:
- iii) Case No.
- iv) Date of the order of the Court framing charge/taking cognisance.
- v) Details of appeal(s)/application(s) for revision etc. if any, filed against above order framing charge/taking cognisance.

* strike out which is not applicable

4) That I give herein below the details of the assets (immovable, movable, balance etc.) of myself, my spouse and dependents*:

A. Details of movable assets.

(Assets in joint name indicating the extent of joint ownership will also have to be given)

Sr. No.	Description	Self	Spouse(s) Name(s)	Dependent-1 Name	Dependent-2 Name	Dependent-3 Name
(i)	Cash					
(ii)	Deposits in Banks, Financial Institutions and Non-Banking Financial Companies					
(iii)	Bonds, Debentures and Shares in Companies					
(iv)	Other Financial instruments NSS, Postal Savings, LIC Policies etc.					
(v)	Motor Vehicles (details of make, etc.)					
(vi)	Jewellery (give details of weight and value)					
(vii)	Other assets, such as values of claims/interests					

Note: Value of Bonds/Shares/Debentures as per the latest market value in Stock Exchange in respect of listed companies and as per books in the case of non listed companies should be given.

*Dependent here means a person substantially depends on he income of the candidate.

B. Details of Immovable assets

[Note: Properties in joint ownership in indicating the extent of joint ownership will also be indicated]

Sr. No.	Description	Self	Spouse(s) Name(s)	Dependent-1 Name	Dependent-2 Name	Dependent-3 Name
(i)	Agricultural Land -Location(s) -Survey number(s) -Extent (Total measurement) -current market value					
(ii)	Non-Agricultural Land -Location(s) -Survey number(s) -Extent (Total measurement) -current market value					
(iii)	Buildings (commercial and residential) -Location(s) -Survey/door number(s) -Extent (Total measurement) -current market value					
(iv)	Houses/Apartments, etc. Buildings (commercial and residential) -Location(s) -Survey/door number(s) -Extent (Total measurement) -current market value					
(v)	Others (such as interest in property)					

5) I give here in below the details of my liabilities/overdues to public financial institutions and government dues :-

[Note: Please give separate details for each items]

Sr. No.	Description	Name and address of Bank/Financial Institution(s) /Department(s)	Amount outstanding as on _____
(a)(i)	Loans from Banks		
(ii)	Loans from financial institutions		
(iii)	Government dues (other than income tax and wealth tax) (No Due Certificate to be enclosed in case holding or having held any public office)		
(b)(i)	Income Tax including surcharge [Also indicating the assessment years upto which Income Tax Return filed. Give also Permanent Account Number (PAN)]		

(ii)	Wealth Tax [Also indicate the assessment year upto which Wealth Tax return filed.]		
(iii)	Sales Tax [only in case of proprietary business]		
(iv)	Property Tax		

6) My educational qualifications are as under :-

(GIVE DETAILS OF SCHOOL AND UNIVERSITY EDUCATION)

(Name of School/University and the year in which the course was completed should also be given)

PLACE

DATED

DEPONENT

Name in full _____.

Address _____

VERIFICATION

I, the deponent abovenamed, do hereby verify and declare that the contents of this affidavit are true and correct to the best of my knowledge and belief; no part of it is false and nothing material has been concealed therefrom.

Verified at _____ this the _____ day of _____, 200__.

PLACE

DATED

DEPONENT

Name in full _____.

Address _____

_____.