

FAQ on the Supreme Court Judgment on the issue of blank affidavits

Petitioner: Resurgence India

Respondents: Election Commission of India, Union of India

Bench: CJI, P. Sathasivam, Justice Ranjan Prakash Desi and Justice Rajan Gogai

Date of Judgment: 13th September, 2013

The Supreme Court on the 13th September, 2013 delivered a judgment on a Writ Petition filed by Resurgence India making it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants should be complete in all respects and to reject those nomination papers which are accompanied by incomplete/blank affidavit. Below are a few frequently asked questions about the judgment and its effect.

1. What is the rationale behind the judgment?

The rationale behind the judgment was to issue specific directions to effectuate meaningful implementation of the judgments rendered by the Supreme Court in *Union of India vs. Association for Democratic Reforms and Another* (2002) 5 SCC 294 and *People's Union for Civil Liberties (PUCL) and Another vs. Union of India & Anr.* (2003) 4 SCC 399 and to make it compulsory for the Returning Officers to ensure that the affidavits filed by the contestants are complete in all respects and to reject the affidavits having blank particulars as it was necessary in order to maintain purity of elections and to bring transparency in the process of elections.

2. What was the stand of the Election Commission of India?

According to the judgment, the Election Commission of India had sought for a clarification in regard of blank affidavits. ECI had put forth the argument that they do not have any latitude for rejecting the nomination papers in view of the above mentioned judgment. However, Election Commission of India made an assertion that it is also of the opinion that incomplete nomination papers must be rejected.

3. What was the stand of the Union of India?

The contention raised by Union of India, was that the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank should be treated at par and to prosecute such candidates under Section 125A of the Representation of the People Act, 1951.

4. Why is it necessary to fill every content of the affidavit?

It is necessary to fill every content of the form because;

1. Leaving the affidavit blank will in fact make it impossible for the Returning Officer to verify whether the candidate is qualified or disqualified which indeed will frustrate the object behind filing the same.
2. If there was a disclosure by a candidate with regard to his criminal antecedents, assets and liabilities and educational qualification, then it would strengthen the voters in taking appropriate decision of casting their votes.
3. To maintain the sanctity of elections and in particular to bring transparency in the process of election.
4. A voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament and such right to get information is universally recognized natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.
5. The voter's speech or 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 a must.

5. What is the ultimate purpose behind filing of an affidavit?

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.

6. How leaving the contents of the affidavit blank , a clear denial of citizen's "Right to know" ?

In a democracy, citizen's participation in an electoral process is majorly fulfilled by casting vote, thereby forming an opinion. Filing of an affidavit by candidate with all the information about his criminal, financial and educational details effectuates the fundamental right of the citizen under Article 19(1)(a) of the Constitution of India. The citizens are required to have the necessary information at the time of filing of the nomination paper in order to make a choice of their voting. When a candidate files an affidavit with blank particulars, it renders the affidavit itself invalid.

7. What is the power and duty of a Returning officer in case of a blank affidavit?

As per the judgment, the Supreme Court observed following powers and duties to be rendered by the Returning Office. They are;

1. 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.
2. There should be a clause 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.
3. 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.

4. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected.

8. What is the stand of the Supreme Court with regard to the “Power of rejection” under a Returning Officer?

As per the judgment, 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. The bar raised by the Supreme Court in 2003 judgment shall not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars. The observation made by the court in case of PUCL and Anr. vs. Union of India and Anr (2003) 4 SCC 399 is of no consequence in this judgment. A returning officer can very well reject a nomination paper of a candidate with a blank affidavit after a reasonable time and warning has been accorded to him. According to the judgment, if a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected.

The court also went on to say that 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, if he desires that his nomination paper be accepted by the Returning Officer.

9. Can such a candidate on account of filing blank affidavits be prosecuted?

As per the judgment, the act of failure on the part of the candidate to furnish relevant information, as mandated by Section 33A of the RP Act, will result in prosecution of the candidate. Hence, filing of affidavit with blank space will be in contravention of Section 125A (i) of the Representation of People Act, 1951. However, the court made another observation stating that when the nomination paper itself is rejected by the Returning officer in case of a blank affidavit, then there can be no reason why such a candidate must again be penalized for the same act by prosecuting him/her.

10. Should a candidate who has filed an affidavit with false information and a candidate who has filed an affidavit with particulars left blank be treated at par?

No, both the situations cannot be treated at par as it will result in breach of fundamental right guaranteed under Article 19(1)(a) of the Constitution, viz., ‘right to know’, which is inclusive of freedom of speech and expression as interpreted in *Association for Democratic Reforms and others vs. Union of India and other* (2002) 5 SCC 294.