

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi – 110 001.

No. ECI/PN/24/2002

Dated : 28th June, 2002

PRESS NOTE

Subject: Supreme Court's order dated 2nd May, 2002 relating to right to information of electors regarding criminal antecedents, assets and liabilities and educational qualifications of candidates – implementation of the order.

The Hon'ble Supreme Court of India, by its order dated 2nd May, 2002 in Civil Appeal No.7178 of 2001 (*Union of India v Association for Democratic reforms and another*), has directed as follows: -

“The Election Commission is directed to call for information on 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 filing 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 cognizance is taken by the court of law. If 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.”

2. The Hon'ble Supreme Court has also observed in its aforesaid order dated 2nd May, 2002 that ‘the Election Commission has from time to time issued instructions in order to meet with the situation where the field is unoccupied by the legislation’ and has further directed that ‘the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case **within two months**’.

3. The Election Commission, on detailed consideration of the matter, was of the view that the most efficacious manner of implementing the above judgment and order of the Hon'ble Supreme Court would be by amending Forms 2A to 2E appended to the Conduct of Elections Rules 1961 (forms of nomination papers to be filed at elections to Parliament and State Legislatures), and accordingly approached the Government of India in the Ministry of Law, Justice and Company Affairs by the Commission's letter dated 14th May, 2002 for suitably amending the said forms.

4. The Government of India in the Ministry of Law, Justice and Company Affairs has informed the Commission by its letter dated 19th June, 2002 that the matter of amending the forms of

nomination papers is receiving consideration of the Government and that the Government has convened a meeting of political parties for consideration of the matter on 8th July, 2002.

5. The Commission feels duty bound to implement the above referred order dated 2nd May 2002 of the Hon'ble Supreme Court within two months from the date of pronouncement of that order, that is to say, by 1st July 2002, as the said order has the force of law within the meaning of Article 141 of the Constitution and is enforceable throughout the territory of India under Article 142 of the Constitution

6. Therefore, in pursuance of the said order dated 2nd May, 2002 of the Hon'ble Supreme Court, the Commission has made a detailed Order on 28th June, 2002 under Article 324 of the Constitution, containing the norms and modalities to carry out and give effect to the directions of the Hon'ble Supreme Court reproduced in para 1 above. A copy of the said Order bearing No.3/ER/2002/ JS-II/Vol.III dated 28th June, 2002 is annexed hereto.

7. A perusal of the Commission's Order will show that the Commission has prescribed, in para 14(1) of the Order, an affidavit (**Annexure-1** to the said Order) which will have to be filed by each 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 Legislative Council of a State. The consequences of failure on the part of the candidate to furnish the said affidavit or to furnish wrong or incomplete information or suppression of any material information have also been spelt out clearly in paras 14(3) and 14(4) of the Order. The manner of dissemination of the information furnished by the candidate in the said affidavit has also been specified in paras 14(5) and 14(6) of the Order.

(C.R. BRAHMAM)

SECRETARY

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi – 110 001.

No. 3/ER/2002/JS-II/Vol-III

Dated : 28th June, 2002

O R D E R

1. Whereas, the superintendence, direction and control, *inter alia*, of all elections to Parliament and to the Legislature of every State are vested in the Election Commission by Article 324 (1) of the Constitution of India;

2. And whereas, the Hon'ble High Court of Delhi, by its order dated 2nd November, 2000 in Writ Petition No. 7257 of 1999 (*Association for Democratic Reforms v 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 the dark as it was not in the interest of the democracy and well-being of the country, and directed the Election Commission to secure to voters the following information pertaining to each of the candidates contesting 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 relations;
- (3) Facts giving insight to candidate's competence, capacity and suitability for acting as parliamentarian or legislator 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 v 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 has, by its order dated 2nd May, 2002, held as follows: -

- “(1) 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.
- (2) The limitation on plenary character of power 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 Commission can fill the vacuum till there is legislation on the subject. In *Kanhiya*

Lal Omar's case (AIR 1986 SC 111), the court construed the expressions 'superintendence, direction and control' in art 324(1) and held that a direction may mean an order issued to a particular individual or a precept which may have to follow and it may be a specific or a general order and such phrase should be construed liberally empowering the Election Commission to issue such orders.

- (3) 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 [(1996) 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.

XXX XXX

- (4) 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.
- (5) The right to get information in democracy is recognised all throughout 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:-
- (1) Everyone shall have the right to hold opinions without interference.
- (2) 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.
- (6) 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.
- (7) Under our Constitution, art 19(1)(a) provides for freedom of speech and expression. Voters' 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 must. Voter's (little man-citizen's) right to know antecedents including criminal past of his candidate contesting election for 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, by its aforesaid order dated 2nd May, 2002, has directed as follows: -

“The Election Commission is directed to call for information on 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 filing 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 cognizance is taken by the court of law. If 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, the Hon'ble Supreme Court, in its aforesaid order dated 2nd May, 2002, further observed that ‘the Election Commission has from time to time issued instructions in order to meet with the situation where the field is unoccupied by the legislation’ and has further directed that ‘the norms and modalities to carry out and give effect to the aforesaid directions should be drawn up properly by the Election Commission as early as possible and in any case within two months’;

7. And whereas, the Election Commission, on detailed consideration of the matter, was of the view that the most efficacious manner of implementing the above judgment and order of the Hon'ble Supreme Court would be by amending Forms 2A to 2E appended to the Conduct of Elections Rules 1961 (forms of nomination papers to be filed at elections to Parliament and State Legislatures), and accordingly approached the Government of India in the Ministry of Law, Justice and Company Affairs by the Commission's letter dated 14th May, 2002 for suitably amending the said forms;

8. And whereas, the Commission also furnished to the Ministry of Law, Justice and Company Affairs the drafts of the forms of nomination papers (Forms 2A to 2E) as sought to be revised;

9. And whereas, the Government of India in the Ministry of Law, Justice and Company Affairs has, by their letter dated 19th June, 2002, informed the Commission that the matter of amending the forms of nomination papers is receiving consideration of the Government and that the Government has convened a meeting of the political parties for consideration of the matter on 8th July, 2002;

10. And whereas, the Government of India has, by its aforesaid letter dated 19th June, 2002, requested the Commission to approach the Hon'ble Supreme Court to give further two months time beyond 1st July, 2002 for the implementation of the Hon'ble Court's order dated 2nd May, 2002;

11. And whereas, the Commission has, by its letter dated 21st June, 2002, informed the Government of India that it is for the Union of India to request the Hon'ble Supreme Court for time, if it considers this necessary;

12. And whereas, the Hon'ble Supreme Court has not so far granted any extension of time for the implementation of its aforesaid order dated 2nd May, 2002;

13. And whereas, in the absence any direction to the contrary by the Hon'ble Supreme Court or extension of time by it, the Commission feels duty bound to implement the above referred order dated 2nd May 2002 of the Hon'ble Supreme Court within two months from the date of pronouncement of that order, that is to say, by 1st July 2002, as the said order has the force of law within the meaning of Article 141 of the Constitution and is enforceable throughout the territory of India under Article 142 of the Constitution;

14. Now, therefore, the Election Commission, in pursuance of the above referred order dated 2nd May, 2002 of the Hon'ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, of superintendence, direction and control, *inter alia*, of conduct of elections to Parliament and State Legislatures, hereby direct as follows: -

- (1) 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 all the five matters, specified by the Hon'ble Supreme Court and quoted in para 5 above, in an affidavit, the format whereof is annexed hereto as **Annexure-1** to this order.
- (2) 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.
- (3) 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.

- (4) Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the returning officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:

Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the returning officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations under section 36 (2) of the Representation of the People Act 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character.

- (5) 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.
- (6) 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.

15. For the removal of doubt, it is hereby clarified that, apart from the affidavit in Annexure-1 hereto referred to in para 14 (1) above, the candidate shall not be required to file any additional affidavit which was earlier required to be filed in pursuance of the Commission's order No.509/disqIn./97-JS-I dated 28th August, 1997, as the information furnished in the earlier affidavit will now form part of the information required to be furnished in the present affidavit (Annexure-1).

16. In so far as elections to the Legislative Assembly and Legislative Council of the State of Jammu and Kashmir are concerned, the directions of the Election Commission contained in the preceding para 14 shall be deemed to have been issued under the provisions of section 138 of the Constitution of Jammu and Kashmir which are akin to Article 324 (1) of the Constitution of India and vest the superintendence, direction and control of the conduct of all elections to either House of the Legislature of that State in the Election Commission.

By order,
A.K.MAJUMDAR
Secretary,
Election Commission of India

Annexure-I

Affidavit to be furnished by candidate alongwith nomination paper

Before the Returning Officer

for election to _____ (name of the House)

from _____ constituency

(name of the constituency)

I, _____, son/daughter/wife of _____ 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) :

(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 the 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 cognizance 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 / cognizance taken :
- (ii) The Court which has framed the charge / taken cognizance :
- (iii) Case No.
- (iv) Date of the order of the Court framing charge / taking cognizance :
- (v) Details of appeal(s) / application(s) for revision, etc., if any, filed against above order framing charge / taking cognizance :

(4) That I give hereinbelow the details of the assets (immovable, movable, bank 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)

| S. No. | Description | Self | Spouse(s) Name(s): | Dependent -1 Name: | Dependent -2 Name: | Dependent -3, etc. Name: |
|--------|---|------|--------------------|--------------------|--------------------|--------------------------|
| (i) | Cash | | | | | |
| (ii) | Deposits in Banks, Financial Institutions and Non-Banking Financial Companies | | | | | |
| (iii) | Bonds, Debentures and Shares in companies | | | | | |

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

| | | | | | | |
|-------|--|--|--|--|--|--|
| (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.

B. Details of Immovable assets

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

| S. No | Description | Self | Spouse (s) Name(s): | Dependent-1 Name: | Dependent-2 Name: | Dependent-3, etc. Name: |
|-------|--------------------------|------|------------------------|----------------------|----------------------|-------------------------------|
| (i) | Agricultural Land | | | | | |

| | | | | | | |
|------|---|--|--|--|--|--|
| | <ul style="list-style-type: none"> - Location(s) - Survey number(s) - Extent (Total measurement) - current market value | | | | | |
| (ii) | <p>Non-Agricultural Land</p> <ul style="list-style-type: none"> - Location(s) - Survey number(s) - Extent (Total measurement) - current market value | | | | | |

| | | | | | | |
|-------|---|--|--|--|--|--|
| (iii) | <p>Buildings (commercial and residential)</p> <ul style="list-style-type: none"> - Location(s) - Survey / door number(s) - Extent (Total measurement) - current market value | | | | | |
| (iv) | <p>Houses / Apartments, etc.</p> <ul style="list-style-type: none"> - Location(s) - Survey / door | | | | | |

| | | | | | | |
|-----|---|--|--|--|--|--|
| | number(s) - Extent (Total measurement) - current market value | | | | | |
| (v) | Others (such as interest in property) | | | | | |

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

[Note : Please give separate details for each item]

| S.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) | | |

| S.N o. | Description | Details of Assessment | Amount outstanding as on |
|------------|---|-----------------------|--------------------------------------|
| (b) (i) | Income Tax including surcharge [Also indicate the assessment year 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.)

DEPONENT

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__.

DEPONENT