

## **Changes to Form 26 - Making Election Candidates Accountable**

### **Why in news?**

The Law Ministry recently amended Form 26 to make election candidates more accountable, after the Election Commission of India wrote to the Ministry.

### **What is Form 26?**

- A candidate in an election is required to file an affidavit called Form 26.
- It furnishes information on candidate's assets, liabilities, educational qualifications, criminal antecedents (convictions and all pending cases) and public dues, if any.
- The affidavit has to be filed along with the nomination papers.
- It should be sworn before an Oath Commissioner or Magistrate of the First Class or before a Notary Public.

### **What are the changes made now?**

- Earlier, an election candidate had to only declare the last I-T return (for self, spouse and dependents).
- The recent changes make it mandatory for candidates to reveal their income-tax returns of the last 5 years (for self, spouse and dependents).
- Also they now have to furnish details of their offshore assets, which were not sought earlier.
- This means “details of all deposits or investments in foreign banks and any other body or institution abroad and details of all assets and liabilities in foreign countries”.

### **What is the objective?**

- The objective behind introducing Form 26 was that it would help voters make an informed decision.
- The affidavit would make them aware of the criminal activities of a candidate.
- This could help prevent people with questionable backgrounds from being elected to an Assembly or Parliament.
- With the recent amendment, voters will know the extent to which a serving

MP's income grew during his/her 5 years in power.

## How did Form 26 evolve?

- The 170th Report of the Law Commission, submitted in 1999 suggested steps for preventing criminals from entering electoral politics.
- One of the suggestions was to disclose the criminal antecedents as well as the assets of a candidate before accepting her nomination.
- The then government did not act on the recommendation, leading to public interest litigation in Delhi High Court.
- The HC directed the EC to secure -
  - i. information on whether a candidate is accused of any offence(s) punishable by imprisonment
  - ii. information on her assets as well as those of her spouse and dependents
  - iii. any other information the EC considers necessary
- The Union government appealed in the Supreme Court which agreed with the Delhi HC.
- The SC also went a step ahead and directed the EC in its May 2002 order to -
  - i. ask candidates if they have been convicted/acquitted/discharged of any criminal offence in the past or accused in any pending cases 6 months before the filing of nomination
  - ii. seek details of assets and liabilities of a candidate, her spouse and dependents, and the educational qualifications of the candidate
- The EC soon issued an order to implement the verdict.
- But the Union government promulgated an Ordinance diluting the EC's order - Representation of the People (Amendment) Ordinance, 2002 (subsequently replaced by an Act in December, 2002).
- Accordingly, a candidate was only expected to disclose -
  - i. whether she was accused of any offence punishable with imprisonment for 2 years or more in a pending case in which charges had been framed by a court
  - ii. whether she had been convicted of an offence and sentenced to a year's imprisonment or more
- The government subsequently also amended the Election Conduct Rules of 1961 in September, 2002.
- It prescribed Form 26 in which a candidate had to disclose the above information.
- However, the SC declared the amendment null and void.
- The EC then issued a fresh order in March, 2003, seeking information on all

5 points mentioned in the SC order of May, 2002.

### **What happens if a candidate lies in an affidavit?**

- A candidate is expected to file a complete affidavit; leaving a few columns blank can render the affidavit invalid.
- It is the responsibility of the Returning Officer (RO) to check whether Form 26 has been completed.
- The nomination paper can be rejected if the candidate fails to fill it in full.
- If it is alleged that a candidate has suppressed information or lied in her affidavit, the complainant can seek an inquiry through an election petition.
- If the court finds the affidavit false, the candidate's election can be declared void.
- E.g. in 2016, Patna High Court annulled the Lok Sabha membership of Chhedi Paswan, a BJP member, for not declaring a criminal case pending against him
- The current penalty for lying in an affidavit is imprisonment up to 6 months, or fine, or both.
- The EC had recently asked the government to make the filing of a false affidavit a "corrupt practice" under the election law.
- This would make the candidate liable for disqualification for up to 6 years. But nothing has been done by the government on this front.

**Source: Indian Express**

