
UNDERSTANDING THE ELECTORAL IMPACT: REJECTION OF NOMINATION PAPERS DUE TO NON- FURNISHING OF NO DUES CERTIFICATE BY CANDIDATES

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A. INTRODUCTION:

The Election Commission of India (ECI) is conducting the largest democratic exercise in the world in the form of Lok Sabha Elections, 2024. Around one billion registered voters are going to elect their representative for 543 Parliamentary Constituencies¹. While the conduct of safe elections in a free and fair manner remains the top priority for ECI, the conduct of each Lok Sabha Election presents its own unique challenge.

Recently, a peculiar case of rejection of nomination paper by the Returning Officer on the grounds of non- furnishing of “No Dues Certificate” from government drew the attention of the ECI and was made subject matter of a litigation before the Hon’ble Supreme Court². This paper will attempt to analyse the impact of rejection of nomination paper of a candidate on the aforesaid ground by examining the relevant statutory framework, instructions issued by ECI as well as judicial pronouncements of the Hon’ble Court.

B. STATUTORY FRAMEWORK:

From the date of notification of election and till the last date for filing nomination, a person wishing to contest the election has to submit a nomination paper enclosed with an affidavit before the Returning Officer³. Further, the Returning Officer of the constituency is the statutory authority entrusted with the responsibility of scrutinizing the nomination paper which results in

¹ <https://www.forbes.com/sites/siladityaray/2024/04/19/nearly-1-billion-voters-head-to-the-polls-in-india-what-to-know-about-the-worlds-largest-ever-election/?sh=4ca9defb7ffc>

² <https://economictimes.indiatimes.com/news/elections/lok-sabha/west-bengal/ec-cancels-nomination-of-bjp-birbhum-candidate-and-former-ips-debasish-dhar/articleshow/109632996.cms?from=mdr>

³ Section 33 of the Representation of the People Act, 1951

acceptance or rejection of the candidature. Section 36(4) of the Representation of the People Act, 1951 (RP Act, 1951) states as follows:

“36. Scrutiny of nominations.—

(4) The returning officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.”

Moreover, the only statutory remedy available for a person aggrieved by the rejection of his/her nomination paper is to file an election petition after the declaration of the results of the election. It is pertinent to mention that Section 100(1)(c) of the RP Act, 1951 provides that improper rejection of nomination paper is a ground for setting aside an election by way of an election petition.

C. INTRODUCTION OF THE ‘NO DUES CERTIFICATE’ IN NOMINATION:

In the landmark judgment of the Hon’ble Supreme Court in *Union of India vs. Association for Democratic Reforms*⁴, the Hon’ble Supreme Court had held that for the voters to make an informed choice and freely exercise his franchise, a candidate could be directed to disclose on an affidavit the details of his assets and liabilities. The Hon’ble Court gave the following direction to the ECI:

“48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 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

⁴ Union of India v. Association for Democratic Reforms, (2002) 5 SCC 294

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 balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.

(5) The educational qualifications of the candidate.”

(Emphasis supplied)

It is apposite to note that in the above judgment, the Hon'ble Court did not specify that non-furnishing of the information of government dues would be a defect of substantial character so as to become a ground for rejection of nomination paper.

After the passage of the above-mentioned, ECI issued an instruction⁵ wherein it was mentioned that a “No Dues Certificate” was to be enclosed with Form 26 affidavit in case of person holding or having been held a public office. However, soon after the aforesaid change was made, ECI received representations from various individuals and departments regarding difficulty in obtaining the said certificate which affected the acceptance of the nomination paper. Subsequently, ECI issued another instruction⁶ stating that the “No Dues Certificate” is not to be submitted alongside the affidavit.

Later, the issue of non- payment of government dues by former legislators was dealt with by the Hon'ble Delhi High Court in *Krishak Bharat vs. Union of India & Ors*⁷ [WP(C) No. 4912/1998]. Herein, the Hon'ble Court *vide* judgment dated 07.08.2015 held as follows:

“13. We accordingly issue the following directions:-

H. The ECI to, as directed in the earlier orders in this petition, continue to insist upon the candidates desirous of contesting an election to Parliament or to

⁵ Instruction No. 3/ER/2003/JS-II dated 27.03.2003 issued by ECI

⁶ Instruction No. 3/ER/2004/JS-II dated 09.03.2004 issued by ECI

⁷ 2015 SCC Online Del 10815

Legislative Assembly, along with their nomination form furnishing an affidavit of their being not in arrears of any public dues and if such candidate is in occupation of or in the past ten years been in occupation of any government accommodation to furnish a No Dues Certificate from the agency providing electricity, water and telephone to the said accommodation.

I. The ECI to also within six months consider the possibility if any of putting any impediment to a defaulter of public dues contesting election, to ensure quick recovery of the said dues.

J. The ECI to within six months hereof also consider the possibility of requiring political parties fielding candidates in any election to also furnish an affidavit that they are not in arrears of any electricity, water, telephone or other public dues, as a pre-condition to their fielding candidates in any election.”

Here again, it is pertinent to mention that while the Hon’ble High Court only directed the ECI to again ‘insist’ upon the candidates holding or having been held public office to furnish ‘no dues certificate’ from the government departments, it did not state as to whether non-furnishing of such certificate was to be treated as a “defect of substantial character” in filing of nomination paper for the purpose of Section 36(4) of the RP Act, 1951.

The ECI, after passing of the aforesaid judgment by Hon’ble Delhi High Court, issued an order⁸ whereby the above direction of the High Court was quoted and it was further directed that:

“Now, therefore, in pursuance of the above mentioned direction of the Hon’ble Delhi High Court, the Commission hereby directs that at every election to either House of Parliament and to the State Legislature, every candidate at the time of filing nomination paper, shall also file an additional affidavit in the format attached as Annexure to this order along with the ‘No Demand Certificate’ from the agencies providing electricity, water and telephone with also rent, in case he had been in occupation of any Govt. accommodation during the last 10 years. This affidavit would be in addition to the affidavit required to be filed in Form- 26, and shall be got attested by an Oath Commissioner, or Notary Public, or Magistrate of the First Class. The outer limit for

⁸ Order No. 509/11/2004-JS.I dated 03.02.2016

filing this affidavit would be 3:00 P.M. on the last date of filing nomination paper. Failure to file the affidavit alongwith the 'No Demand Certificates' would be treated as a defect of substantial nature for the purposes of Section-36 of the Representation of the People Act, 1951."

(Emphasis supplied)

Thus, though the judgments from which the direction for furnishing the no dues certificate again flowed did not state that non-furnishing of such certificates would constitute a defect of substantial character for the purpose of Section 36(4) of the RP Act, 1951, however, they were made so by way of the order issued above.

D. SUBSEQUENT JUDGEMENTS OF THE HON'BLE SUPREME COURT:

In *Kisan Shankar Kathore v. Arun Dattatray Sawant*⁹, the Hon'ble Supreme Court dealt with an appeal made against the judgment of the Hon'ble Bombay High Court whereby an election petition was allowed and the election was set aside *inter alia* on the grounds that the Returned Candidate had failed to disclose certain dues owed to the electricity department. The Hon'ble Supreme Court rejected the appeal and upheld the aforesaid judgment of the Hon'ble High Court. In doing so, the Hon'ble Supreme Court held that the Returned Candidate had failed to disclose complete details of immovable property, vehicles, interest in a partnership firm, etc. However, with respect to the non-disclosure of government dues, the Hon'ble Supreme Court had held as follows:

"38. [...] Insofar as non-disclosure of the electricity dues is concerned, in the given facts of the case, we are of the opinion that it may not be a serious lapse. No doubt, the dues were outstanding, at the same time, there was a bona fide dispute about the outstanding dues in respect of the first electricity meter. It would have been better on the part of the appellant to give the information along with a note about the dispute, as suggested by the High Court, we still feel that when the appellant nurtured belief in a bona fide manner that because of the said dispute he is not to give the information about the outstanding amount, as it had not become "payable", this should not be treated as a material lapse. Likewise, as far as the second electricity meter is concerned, it was in

⁹ (2014) 14 SCC 162

the premises which was rented out to the tenants and the dues were payable by the tenants in the first instance. Again, in such circumstances, one can bona fide believe that the tenants would pay the outstanding amount. No doubt, if the tenants do not pay the amount the liability would have been that of the owner i.e. the appellant. However, at the time of filing the nomination, the appellant could not presume that the tenants would not pay the amount and, therefore, it had become his liability. Same is the position with regard to non-payment of a sum of Rs 1783 as outstanding municipal dues, where there was a genuine dispute as to revaluation and reassessment for the purpose of assessing the taxes was yet to be undertaken. Having said so, we may clarify that it would depend on the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not.”

(Emphasis supplied)

Recently, the Hon’ble Supreme Court in the matter of **Karikho Kri vs. Nuney Tayang & Ors**¹⁰. [Civil Appeal No. 4615/2023] overturned the judgment of the Hon’ble Gauhati High Court (Itanagar Bench) whereby the High Court had allowed an election petition *inter alia* on the ground that the Returned Candidate had not disclosed government dues. Disagreeing with the observation of the Hon’ble High Court, the Hon’ble Supreme Court held as follows:

*“34. In **Kisan Shankar Kathore (supra)**, the issue before this Court was whether non-disclosure of certain government dues in the nomination would amount to a material lapse impacting the election of the returned candidate. On facts, this Court found that the non-disclosure of electricity and municipal dues was not a serious lapse as there was a dispute raised in the context thereof. Having said so, this Court clarified that it would depend upon the facts and circumstances of each case as to whether such non-disclosure would amount to a material lapse or not [...]*”

*“41. The decision of this Court in **Kisan Shankar Kathore (supra)**, also demonstrates this principle, as this Court undertook examination of several individual defects in the nomination of the returned candidate and found that some of them were actually insubstantial in character. This Court noted that two facets required consideration – Whether there is substantial compliance in disclosing requisite information in the*

¹⁰ 2024 SCC OnLine SC 519

affidavits filed along with the nomination and whether non-disclosure of information on identified aspects materially affected the result of the election. This Court observed, on facts, that non-disclosure of the electricity dues in that case was not a serious lapse, despite the fact that there were dues outstanding, as there was a bonafide dispute about the same. Similar was the observation in relation to non-disclosure of municipal dues, where there was a genuine dispute as to re-valuation and re-assessment for the purpose of tax assessment [...]”

“42. In the case on hand, it is not in dispute that there were no actual outstanding dues payable by Karikho Kri in relation to the government accommodation occupied by him earlier. His failure in disclosing the fact that he had occupied such accommodation and in filing the ‘No Dues Certificate’ in that regard, with his nomination form, cannot be said to be a defect of any real import. More so, as he did submit the relevant documents of 2014 after Nuney Tayang raised an objection before the Returning Officer. His explanation that he submitted such Certificates in the year 2014 when he stood for re-election as an MLA is logical and worthy of acceptance. The most important aspect to be noted is that there were no actual dues and the failure of Karikho Kri to disclose that he had been in occupation of government accommodation during the years 2009 to 2014 cannot be treated as a defect that is of substantial character so as to taint his nomination and render its acceptance improper.”

(Emphasis supplied)

E. RECENT DEVELOPMENTS:

During the ongoing Lok Sabha Elections, 2024, ECI faced a peculiar situation where an Indian Police Service (IPS), Sh. Debasish Dhar, took a voluntary retirement from service on 20th March, 2024 to contest the election from Birbhum Parliamentary Constituency of West Bengal on the ticket of Bharatiya Janata Party, a National Party which is heading the Central Government since 2014. As per the schedule of aforesaid election, the time- period for filing nomination was from 18th April, 2024 to 25th April, 2024. However, Sh. Debasish Dhar was not able to obtain a “No Dues Certificate” from the Government of West Bengal, which is ruled by another political party. Consequently, his nomination paper was rejected by the RO of the aforesaid constituency on the grounds that non- furnishing of no dues certificate from the

Government was a defect of substantial character as per the instruction issued by ECI. Being aggrieved by the decision of the RO, the said candidate approached the Hon'ble Supreme Court by way of a writ petition titled *Debasish Dhar vs. Election Commission of India* with the prayer to quash the order of the RO and to direct him to accept his nomination paper. However, due to the bar of Article 329(b) of the Constitution which bars any judicial interference in electoral process, the said petition was dismissed¹¹. The Hon'ble Court, nonetheless, granted liberty to the candidate to make a representation to the ECI.

A representation was subsequently submitted before the ECI where the aggrieved candidate brought to the Commission's record the judgment of the Hon'ble Supreme Court in *Karikho Kri (supra)* whereby the Hon'ble Court had held when there was no pending dues at the end of the contesting candidate, then, non- furnishing of a no dues certificate would not constitute a defect of substantial character for the purpose of rejection of a nomination paper.

Although ECI did not interfere with the order of the RO since the aggrieved candidate had the remedy of filing an election petition after the conclusion of election whereby "improper acceptance of nomination paper" is a ground for setting aside the election, it did issue an instruction¹² to all the Chief Secretaries which stated as follows:

"5. During ongoing elections to the Lok Sabha, 2024, it has come to the notice of the Election Commission that an intending candidate could not obtain "No Dues Certificate" from concerned authorities and therefore could not file the same with respect to the (a) rent, (b) electricity charges, (c) water charges and (d) telephone charges, even after the candidate had supposedly cleared all such dues. Such instances may cause significant loss not only to the aspiring candidates but also to the political parties and electorate of the constituency concerned and undermines the principles of participatory electoral democracy."

"6. Having considered the possibility of serious implications on account of inaction or delayed action by the agencies/authorities/departments concerned and to protect statutory right of the candidate to contest the election, the Commission directs that

¹¹ Order dated 30.04.2024 in Diary No. 19634/2024

¹² Instruction No. 3/ER/2023/SDR/Vol.IV dated 03.05.2024 issued by ECI

suitable instructions may be issued to these agencies/authorities/departments to immediately provide/ensure the following, if approached by any intending candidate: -

(a) Issue “No Dues Certificate” by all the concerned agencies/authorities/departments to such person within 48 hours of the receipt of the request letter in case where dues are not pending or are not due by law.

(b) Provide details of dues accrued to such persons within 48 hours of submitting of application to the agencies/authorities/departments.

(c) Issue ‘No Dues Certificate’ by the agencies/authorities/departments within 24 hours of clearing of dues, if any, as communicated as per (b) above, by such persons on submitting of application.”

“7. An institutionalized mechanism shall be put in place immediately after promulgation of Modal Code of Conduct and a nodal officer shall be appointed to receive and handle such requests from prospective candidate(s) and work as a single window system to dispose off applications as per timelines provided in para 6 above.”

Thus, the ECI took cognizance of the adverse effect of inability of the contesting candidates to furnish no dues certificate for no fault of theirs and made it obligatory on the part of the concerned State Government, through its Chief Secretary, to furnish such certificates within 48 hours of the receipt of the request letter from the candidate.

The aforesaid incident from West Bengal showed that due to political motives, the State Governments may create difficulties in providing such certificates to those persons who were contesting elections on the tickets of rival political parties. Even though ECI has made a course correction by making it obligatory on the part of the State Government to provide the certificates within a fixed time- frame, it is still possible that a politically motivated State Government may refuse to comply with the above direction of ECI. In such situations, the candidate will suffer and the only remedy available to him/ her would be to file an election petition after the declaration of results.

F. CONCLUSION:

As discussed above, the ECI through its instructions has made it mandatory on the part of the

contesting candidate to furnish a no dues certificate from the government departments if he or she has held a public office in the preceding 10 years, failing which the RO would be entitled to reject the nomination on grounds of the nomination paper having defect of substantial character. Resultantly, this instruction, which creates a ground of disqualification to contest election, is neither backed by a law made by the Parliament nor any judicial pronouncement of the Hon'ble Supreme Court.

Therefore, it is high time that ECI re-visits the above instruction issued by it. It would be more appropriate that the question of rejecting the nomination paper on grounds of non- furnishing of the above-mentioned certificate should be left to the quasi- judicial role of the RO, who should take a decision based on the facts and circumstances of the case in hand. This legal position has also been affirmed by the Hon'ble Supreme Court in the judgments of *Kisan Shankar Kathore (supra)* and *Karikho Kri (supra)*.