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

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