

4. SCRUTINY OF NOMINATIONS

4.1. BY WHOM SCRUTINY OF NOMINATION PAPERS IS HELD

- 4.1.1. The next stage in the election process is the scrutiny of nomination papers by the Returning Officer. The Returning Officer is required by law to hold the scrutiny of all nomination papers received by him on the date fixed for scrutiny in the election time table issued under section 30 of the Representation of the People Act, 1951.
- 4.1.2. The scrutiny of nomination papers takes place on the day immediately following the last date for filing nominations. Thus, if today is the last date for filing nominations then tomorrow will be the date for scrutiny of nominations. But if tomorrow is a public holiday then the scrutiny of nominations will take place day after tomorrow provided it again is not a public holiday. In other words, scrutiny of nomination papers cannot be held on a public holiday.
- 4.1.3. Scrutiny of nomination papers can be done only by Returning Officer. This function cannot be delegated by the Returning Officer even to an Assistant Returning Officer. There is only one exception, that is to say, an Assistant Returning Officer may be authorized by the Returning Officer to hold the scrutiny of nominations if, and only if, the Returning Officer is unavoidably prevented from performing the function relating to the scrutiny of nominations (see the proviso to section 22 (2) of the Representation of the People Act,1951).

4.2. WHO MAY ATTEND SCRUTINY OF NOMINATIONS?

- 4.2.1. According to law only four persons in the case of each candidate may attend the place of scrutiny. These four persons are: (1) the candidate himself, (2) the candidate's election agent, (3) one proposer of the candidate and (4) one other person authorized in writing by the candidate. Even if the candidate has filed the maximum number of nomination papers from the same constituency, namely, four nomination papers and there are different proposers, even then only one proposer can be present at the scrutiny. Thus, only four persons for each candidate can be present, and if there are, say, for example, ten candidates who have filed nomination papers from a particular constituency then in all forty persons can be present at the scrutiny. It will be better for the candidate if the fourth person to be authorized by him/her in writing at the time of scrutiny is a lawyer conversant with election law, so that he may adequately protect his/her interests at the time of scrutiny. It will also be to interest of the candidate if he/she can present himself/herself at the scrutiny.

4.3. REASONABLE FACILITIES FOR EXAMINATION OF NOMINATION PAPERS

4.3.1. The four persons (including candidate), who can be present on the candidate behalf at the time of scrutiny, have a right to have all reasonable facilities for examining the nomination papers of all the candidates which are taken up for scrutiny by the Returning Officer. This is a valuable right for the candidate and the three other persons, who may be present along with him/her, namely, election agent, one of the proposers and the person authorized by him/her.

4.4. OBJECTIONS WHICH MAY BE RAISED

4.4.1. The candidate should not raise any flimsy or technical objections in regard to any nomination paper. Similarly, the candidate or the person representing him/her can oppose any objection raised against his/her nomination on flimsy or technical ground. Section 36(4) of the Representation of the People act, 1951 clearly lays down that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Rule 4 of the Conduct of Elections Rules 1961 lays down that the failure to complete or defect in completing a declaration regarding symbols in the nomination paper is not a defect of substantial character. Therefore, if any of the opposing candidates raises any objection regarding a defect, which is not of a substantial character, the candidate or any of the persons who may be present on his/her behalf may oppose it. It has already been pointed out that, on the presentation of a nomination paper, the Returning Officer will satisfy himself that the names and the electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. Any misnomer or any inaccurate description or clerical or technical or printing error in regard to the candidate name or the name of his/her proposer or any other person or in regard to any place mentioned in the electoral roll or nomination paper, etc., should not ordinarily be a ground for objection if such description in regard to any name and place is such as to be commonly understood. If at the time of scrutiny any objection is raised regarding such misnomer or inaccurate description etc., the candidate may draw immediate attention to the proviso to section 33(4) of the Representation of the People Act, 1951.

4.4.2. When any objection is raised against nomination paper of a candidate, he/she should try to impress upon the Returning Officer that he should not reject the nomination paper on any flimsy or technical ground. If R.O. is satisfied as to the identity

of the candidate and of the proposer then he should not reject the nomination paper only on ground of any technical defect or inaccurate description in the name of the candidate or the proposer or the inaccurate description of any place.

4.5. GROUND FOR REJECTION OF NOMINATION PAPER

4.5.1. Remember that the Returning Officer will be justified in rejecting nomination paper of a candidate on any one of the following grounds namely,

- i. If the candidate is clearly not qualified in law to be a member of the House of the People or of State Legislative Assembly, or
- ii. If the candidate is clearly disqualified in law to be such member, or
- iii. If the candidate has not taken the oath or affirmation as required by the Constitution; or
- iv. If nomination paper of the candidate has not been delivered in time; or
- v. If the candidate's nomination paper has been delivered to the Returning Officer or to an authorized Assistant Returning Officer by a person other than the candidate or his/her proposer; or
- vi. If the candidate's nomination paper has not been delivered at the place specified in the public notice issued by the Returning Officer; or
- vii. If the candidate's nomination paper has been delivered to a person other than the Returning Officer or any of his authorized Assistant Returning Officer; or
- viii. If the candidate nomination paper is not substantially in the prescribed form; or
- ix. If the candidate's nomination paper has not been subscribed by the required number of proposers or has not been signed either by the candidate or by his/her proposer(s) or by both in the places meant for such signatures in the nomination paper; or
- x. If the proper security deposit has not been made by the candidate in accordance with the law already explained; or
- xi. If the candidate's signature or the signature(s) of his/her proposer(s) on the nomination paper is/are not genuine; or
- xii. If the candidate does not belong to the class of persons for whom the seat in his/her constituency is reserved, e.g. if a candidate does not belong to Scheduled Caste and he/she files nomination paper to contest a seat reserved for the Scheduled Castes; or
- xiii. If the proposer is not an elector of the constituency or is not eligible to be proposer.

- xiv. If the candidate fails to furnish with his/her nomination papers, the affidavit in the prescribed formats.
- xv. If the candidate fails to specify his/her age in the nomination paper.
- xvi. where the candidate is not an elector of the constituency for which he has filed nomination paper and he has neither filed a copy of the electoral roll of the constituency in which he is registered as an elector or of the relevant part thereof or a certified copy of the relevant entries relating to his name in such electoral roll along with the nomination paper nor produced the same at the time of scrutiny as required under Section 33(5) of the said Act.
- xvii. columns were left blank in the affidavit and fresh affidavit not filed in spite of notice.

4.5.2. If a candidate's nomination paper is rejected for any reason by the Returning Officer, that candidate must get certified copies of the order of the Returning Officer immediately containing reasons for such rejections. According to the Commission's instructions, the candidate is entitled to get a copy immediately after the Returning Officer has passed an order rejecting his /her nomination paper for which he/she need not to pay any fee or charges. It may be noted that if any of the nomination papers is found valid and accepted, that candidate will be a validly nominated candidate even if the other nomination papers are rejected.

4.5.3. The candidate may apply for time to rebut any objection, if he/she find that any objection has been raised against his/her nomination as a candidate and to rebut that objection he/she require some time. The candidate may immediately apply to Returning Officer for time. In such a case the Returning Officer may allow adjournment as per the proviso to sub-section 15 of Section 36, which states that in such cases candidate concerned may be allowed time to rebut if not later than the next day but one following the date fixed for scrutiny.

4.6. OATH OR AFFIRMATION BY THE CANDIDATE

4.6.1. In this connection, the candidate attention may again be drawn to the Supreme Court decision in the case of Pashupati Nath Singh vs. Hari Har Prasad Singh (AIR 1968 SC 1064). According to that decision, the oath or affirmation by a candidate must be made after he has been nominated and before the date fixed for scrutiny. The detailed instructions in this regard have already been given in previous Chapter.

4.7. REJECTION OF ONE NOMINATION PAPER NOT TO AFFECT THE NOMINATION IF ANY OTHER NOMINATION PAPER IS FOUND VALID

4.7.1. It has already been mentioned that from the same constituency, the candidate can file as many as four nomination papers. If any of these four nomination papers is found to be valid, then that itself will be enough for his/her valid nomination even though the other three are rejected.

4.8. INDICATIVE LIST OF DOCUMENTS AND OTHER MATERIALS WITH WHICH THE CANDIDATE SHOULD BE PRESENT AT THE TIME OF SCRUTINY

4.8.1. To meet possible objections against nomination, candidate should take with him/her to the place of scrutiny the following documents, namely:

- a. Copy of checklist given by RO at the time of filing of nomination;
- b. Satisfactory evidence regarding his/her age;
- c. Where deposit has been made in cash, the receipt given to the candidate by Returning Officer or an authorized Assistant Returning Officer and, where deposit has been made in a Government treasury or in the Reserve Bank of India, the duplicate copy of the treasury receipt or challan;
- d. The receipt for nomination paper and notice of scrutiny which was handed over to the candidate by the Returning Officer or the authorized Assistant Returning Officer on presenting the nomination paper; and
- e. A copy of the affidavit filed in Form 26; and
- f. Any other evidence or material, which may be necessary to repeal and rebut any objection which has been or may be raised against the candidate's nomination.

4.9. CORRECTION IN THE NAMES OF CANDIDATES

4.9.1. In the past, there have been complaints from some candidates that their names were not correctly spelt in the ballot paper. In order to avoid such complaints, each candidate or in his absence, his election agent or his proposer, may be required to give the correct spelling of the name of the candidate in each of the languages in which the ballot papers are to be printed, in writing either at the time of filing the nomination or immediately after the scrutiny of nominations is over or at the time of the allotment of symbols. If a candidate considers that his name is incorrectly spelt or is otherwise incorrectly shown in his nomination paper or is different from the name by which he is popularly known, he may, at any time before the list of contesting candidates is prepared, furnish in writing to Returning Officer the proper form and spelling of his name along with

evidence to support the claim and Returning Officer shall, on being satisfied as to the genuineness of the request make the necessary correction or alteration in the list in Form 4 and adopt that form and spelling in the list of contesting candidates. Such request will not be entertained after list of contesting candidates is prepared.

4.10. DO'S AND DON'TS FOR GUIDANCE OF CANDIDATES

4.10.1. The election law of our country is quite comprehensive and the procedure quite elaborate. It is upon their due observance that the purity of the elections depends. Some of the Do's/Don'ts are suggested for the candidate guidance in **Appendix 11**. It should be noted that these are not exhaustive but are only illustrative.

4.11. CODE OF CONDUCT – DO'S AND DON'TS FOR GUIDANCE OF POLITICAL PARTIES AND CANDIDATES

4.11.1. Apart from the Model Code of Conduct (**Appendix 17**), the Commission has issued another set of Code of Conduct - Do's and Don'ts for guidance of political parties and candidates to be observed from the announcement of an election and until the completion of the process of election. A copy these Code of Conduct - Do's and Don'ts is also given in **Appendix 12**. It is the responsibility of the candidate to ensure that neither he/she or nor the political party which has set him/her up, his/her agents, workers, supporters sympathizers indulge in any act of commission or omission which may amount to violation of the said Code of these Do's and Don'ts.