

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashok Road, New Delhi-110 001

No. 4/2014/SDR-Vol-I

Dated: 26th April, 2014

To

The Chief Electoral Officer of
All States and UTs

Sub: Filing of false affidavit in Form-26 reg.

Sir/Madam,

You are aware that the format of affidavit in Form-26 appended to the Conduct of Elections Rules, 1961, was amended with effect from 1/8/2012. Now the candidates are required to make declarations about assets and liabilities including that of spouse and dependents, candidate's criminal antecedents and educational qualifications, in the affidavit in Form 26. The affidavit in Form 26 is provided under section 33A and any false declaration or concealing of information in the affidavit in Form 26 will attract the provisions of section 125A. Under the said Section 125A, furnishing of any false information or concealing of information in the affidavit in Form 26 is an electoral offence punishable with imprisonment upto six months, or with fine, or both.

2. Prior to the amendment to Form 26 in August 2012, the affidavit regarding declaration about assets, liabilities, criminal antecedents and educational qualification was given in the format prescribed by the Commission. In the case of complaints about false statement in the said affidavit, the Commission, vide its circular letter No.3/ER/2004, dated 2/6/2004, had clarified that if complaints were filed before the Returning Officer raising the issue of false declaration in the affidavit and if the RO was prima facie satisfied about the merits of the complaint, then the RO was to file a complaint before the competent Court under Section 177 of IPC read with Section 195 of Cr. P.C.

3. Now that the affidavit is in Form 26 under section 33A of the R.P. Act, 1951, making false declaration/concealing of information in the affidavit would be covered under Section 125A of the Act. Under Section 125A, there is no stipulation that complaints under that section have to be made by the public servant concerned (in this case the R.O.). Therefore, it would be open to any aggrieved person to move petition before the appropriate Court of competent

jurisdiction with petition for action under Section 125A in the case of any false declaration or concealing of information in the affidavit in Form 26.

4. Therefore, it will be no longer necessary under the Cr.PC for the Returning Officer to move the competent court in relation to any complaint about a false affidavit. The complainant himself can be the complainant before the court as well.

5. The above instructions may be brought to the notice of all DEOs and ROs for elections to both the Houses of Parliament and State Legislature for their guidance so that in the event of complaints about false statements in the affidavit in Form 26, the complainant can be informed that it would be open for him to move the appropriate court of law for action under Section 125 A of the RP Act 1951.

Kindly acknowledge receipt.

Yours faithfully,



(K.F. Wilfred)
Principal Secretary