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मध्यप्रदेश राजपत्र

(असाधारण)

प्राधिकार से प्रकाशित

क्रमांक 340]

भोपाल, शनिवार, दिनांक 27 जुलाई 2013—श्रावण 5, शक 1935

संसदीय कार्य विभाग

Raj Bhavan, Bhopal the 22nd July 2013

ORDER

WHEREAS, a joint petition dated 14th August 2012 for alleged disqualification of Shri Rajendra Singh Saluja, MLA of Guna Constituency, Madhya Pradesh under Article 191 (1) of the Constitution of India has been submitted to Hon'ble Governor by Shri Komal Prasad Shakya, General Secretary, Anusuchit Jaati-Janjaati Sangharsh Parishad, Guna and Smt. Sangeeta Mohan Rajak (Candidate for Vidhan Sabha Election 2008), Vice President, Anusuchit Jaati-Janjaati Sangharsh Parishad, Guna.

2. WHEREAS, averment has been made in the said petition that Shri Rajendra Singh Saluja was elected to the State Legislative Assembly on the basis of Scheduled Caste Certificate, which was later cancelled by the Caste Scrutiny Committee *vide* its order dated 10th August 2011, thus attracting disqualification from his membership.

3. AND, WHEREAS, the opinion of the Election Commission of India has been sought in pursuance of clause (2) of Article 192 of the Constitution of India, about the alleged disqualification for being Member of the Legislative Assembly of Shri Saluja.

4. WHEREAS, the Election Commission of India has given its opinion *vide* letter dated 24th June 2013 (Annex-I), which is briefly as below:—

“A bare look at the above quoted provisions of Article 191 (1) of the Constitution and Sections 8 to 10A of the Representation of the Peoples Act, 1951 would *ex-facie* show that the case of disqualification as sought to be made out by the petitioners against the respondent is not covered by any of the constitutional disqualifications laid down by the constitution makers in sub-clauses (a) to (d) of clause (1) of Article 191 or under the statutory disqualifications prescribed by Parliament to sub-clause (e) of clause (1) of Article 191.

In fact, what the petitioners have averred and contended is that the respondent is not eligible to represent the constituency reserved for Scheduled Castes in Madhya Pradesh Legislative Assembly. Here it may be relevant to point out that the eligibility or qualification for contesting an election from a constituency reserved for the Scheduled Castes is laid down in Section 5 (A) of the Representation of People Act, 1951 which has been prescribed by Parliament in pursuance of Article 173 of the Constitution and not under Article 191(1). In other words, what the petitioners have contended is that the respondent is not qualified to continue as a member of the Madhya Pradesh Legislative Assembly as he does not belong to Scheduled Castes in the State of Madhya Pradesh.

Election Commission as also stated that, "it is well settled that qualification and disqualification are two different concepts under the Constitution of India and lack of qualification is not a disqualification (See Shyamdeo Pd. Singh Vs. Nawal Kishore Yadav AIR 2000 SC 3000), see also Election Commission's opinion dated 31st October 1981 to the President in Re. Pranab Kumar Mukherjee and opinion dated 19th November 1991 in Re. Suraj Mandal and others). Therefore the Constitution has prescribed certain qualifications in Article 173 and also certain disqualifications in Article 191 separately. And what the Governor and the Election Commission are concerned with under Article 192 are the questions of disqualification under Article 191 (1) of the Constitution and not the qualifications or lack thereof under Article 173 of the Constitution. Thus viewed the question raised by the petitioners in their present petition before the Governor of Madhya Pradesh is not maintainable before him in terms of Article 192 (1) of the Constitution and consequently the Commission has also no jurisdiction under Article 192 (2) to tender an opinion in the present reference made by the Governor of Madhya Pradesh.

Before parting with this reference, the Commission would however like to add here that a copy of the order passed by the Hon. High Court of Madhya Pradesh on 21st March 2012 in Writ petition No. 6378/2011 holding that Shri Rajendra Singh Saluja, MLA from 29-Guna (SC) Assembly Constituency does not belong to a Scheduled Caste was forwarded by the Commission to the Speaker of the Madhya Pradesh Legislative Assembly on 25th April 2012 for such action on his part as deemed appropriate under Article 193 of the Constitution and other relevant provisions of the Constitution and law.

Accordingly, the reference received from the Governor of Madhya Pradesh on 25th March 2013, in respect of Shri Rajendra Saluja, MLA is returned to him with the opinion of the Election Commission of India under Article 192 (2) of the Constitution to the effect that the question raised by the petitioners in their petitions mentioned in para-1 above, is not maintainable under Article 192(1) of the Constitution."

5. AND, WHEREAS, having carefully considered the facts on record as contained in the opinion of Election Commission of India and having been fully satisfied therewith.

6. NOW, THEREFORE, I, Ram Naresh Yadav, Governor of Madhya Pradesh in exercise of the powers conferred on me under clause (1) of Article 192 of the Constitution, do hereby decide that the petition dated 14th August 2012 filed by the Petitioners against Shri Rajendra Singh Saluja, MLA, Guna is not maintainable under Article 191(1) of the Constitution of India.

RAM NARESH YADAV
Governor,
Madhya Pradesh.