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# मध्यप्रदेश राजपत्र

## ( असाधारण )

### प्राधिकार से प्रकाशित

क्रमांक 126]

भोपाल, गुरुवार, दिनांक 22 फरवरी 2018—फाल्गुन 3, शक 1939

संसदीय कार्य विभाग  
(विंध्याचल भवन, बी विंग, द्वितीय तल)

भोपाल, दिनांक 22 फरवरी 2018

क्र. 245-एफ (2)14-2017-दो.—अड़तालीस, माननीय राज्यपाल महोदय का आदेश दिनांक 27 जनवरी 2018, एतद्वारा, सर्वसाधारण की जानकारी के लिए प्रकाशित किया जाता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,  
महेन्द्र सोनूने, उपसचिव.

RAJ BHAVAN, BHOPAL, Dated 27th January 2018

ORDER

1. WHEREAS Shri Alok Agarwal, State Coordinator and Shri Akshay Hunka, State Secretary, representing Aam Admi Party, Madhya Pradesh have submitted petition dated 4th July, 2016, for alleged disqualification of 116 Members of the State Legislative Assembly (List enclosed) under Article 191(1) (a) of the Constitution of India.

2. WHEREAS, averments have been made in the said petition that the 116 Members of the State Legislative Assembly are holding the posts of office of profit by virtue of being appointed as Chairmen of various Jan Bhagidari Samitis in different colleges in Madhya Pradesh.

3. AND, WHEREAS, in pursuance of clause (2) of Article 192 of the Constitution of India, the opinion of the Election Commission of India has been sought regarding the alleged disqualification of 116 Members of the Legislative Assembly for being Members of the Legislative Assembly.

4. WHEREAS, the Election Commission of India has submitted its opinion dated 15th December, 2017 *vide* letter dated 18th December 2017 (Annex-I).

5. The Election Commission of India opined that,—

" 9. In view of the foregoing findings and analysis based on the information received in the Commission on record, the opinion of Election Commission of India under Article 192(2) of the Constitution on the Reference dated 11th January 2017 received from the Governor of Madhya Pradesh, is that above mentioned 116 Members of the Madhya Pradesh Assembly have not incurred disqualification, for being member of that Assembly, under Article 191 (1) (a) of the Constitution of India by reason of being Chairman of Jan Bhagidari Samitis of various Colleges.

10. Hence, the opinion of the Election Commission of India is hereby tendered to the Governor of Madhya Pradesh under Article 192(2) of the Constitution of India that above mentioned 116 Members of the Legislative Assembly of Madhya Pradesh are not disqualified under Art. 191(a) of the Constitution of India."

6. NOW, THEREFORE, I, Smt. Anandiben Patel, 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 4th July 2016 filed by Shri Alok Agrawal, State Coordinator and Shri Akshay Hunka, State Secretary, representing Aam Admi Party, Madhya Pradesh against 116 Members of the State Legislative Assembly are not disqualified under Article 192(1) of the Constitution of India.

ANANDIBEN PATEL  
Governor  
Madhya Pradesh.

1. Shri Surendra Nath Singh, M.L.A., 153-Bhopal Madhya, A.C.
2. Shri Rameshwar Sharma, M.L.A., 155-Huzur, A.C.
3. Shri Vishnu Khatri, M.L.A., 149-Berasia (SC), A.C.
4. Shri Ranjeet Singh Gunwan, M.L.A., 157-Ashta (SC), A.C.
5. Shri Sudesh Rai, M.L.A., 159-Sehore, A.C.
6. Shri Amarsingh Yadav, M.L.A., 162-Rajgarh, A.C.
7. Shri Kunwarji Kothar, M.L.A., 164-Sarangpur (SC), A.C.
8. Shri Kunwar Hajarilal Dangi, M.L.A., 163-Khilchipur, A.C.
9. Shri Kalyan Singh Thakur, M.L.A., 144-Vidisha, A.C.
10. Shri Suryaprakash Meena, M.L.A., 148-Shamshabad, A.C.
11. Shri Ramkishan Patel, M.L.A., 140-Udaipura, A.C.
12. Shri Thakur Das Nagwanshi, M.L.A., 139-Papariya (SC), A.C.
13. Shri Vijaypal Singh, M.L.A., 138-Sohagpur, A.C.
14. Shri Sanjay Shah Makdai, M.L.A., 134-Timarni (ST), A.C.
15. Shri Hemant Vijay Khandelwal, M.L.A., 131-Betul, A.C.
16. Shri Mahendra Kesharsingh Chouhan, M.L.A., 133-Bhainsdehi (ST), A.C.
17. Shri Chaitram Manekar, M.L.A., 130-Amla, A.C.
18. Shri Chandrashekhar Deshmukh, M.L.A., 129-Multai, A.C.
19. Shri Mahesh Rai, M.L.A., 35-Bina (SC) A.C.
20. Smt. Parul Sahu Kesari, M.L.A., 37-Surkhi, A.C.

21. Shri Harvansh, M.L.A., 42-Banda, A.C.
22. Shri Umadevi/Lalchand Khatik, M.L.A., 57-Damore, A.C.
23. Shri Manvendra Singh, M.L.A., 48-Maharajpur, A.C.
24. Shri R. D. Prajapati, M.L.A., 49-Chandla (SC) A.C.
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26. Shri Gudden Pathak (Pushpendra Nath), M.L.A., 52-Bijawar, A.C.
27. Smt. Ahir Rekha Yadav, M.L.A., 53-Malhara, A.C.
28. Shri K. K. Shrivastava, M.L.A., 43-Tikamgarh, A.C.
29. Smt. Anita Sunil Nayak, M.L.A., 45-Prithvipur, A.C.
30. Shri Anil Jain, M.L.A., 46-Niwari, A.C.
31. Shri Mahendra Singh, M.L.A., 59-Gunnaor (SC), A.C.
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33. Smt. Ranjana Baghel, M.L.A., 199-Manawar (ST), A.C.
34. Shri Kalu Singh Thakur, M.L.A., 200-Dharamपुरी (ST), A.C.
35. Shri Welsing Bhuriya, M.L.A., 196-Sardarpur (ST), A.C.
36. Shri Ranjendra Shyamlal Dadu (Raju Bhaiyya), M.L.A., 179-Neapanagar (ST), A.C.
37. Smt. ArchanaDisi, M.L.A., 180-Burhanpur, A.C.
38. Shri Balkrishna Patidar, M.L.A., 185-Khargone, A.C.
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52. Shri Madho Singh Dawar, M.L.A., 192-Jobat (ST), A.C.
53. Shri Dilip Singh Parihar, M.L.A., 229-Neemuch, A.C.
54. Shri Kailash Chawla, M.L.A., 228-Manasa, A.C.

55. Shri Omprakash Sakhlecha, M.L.A., 230-Jawad, A.C.
56. Shri Chetanya Kumar Kashyap, M.L.A., 220-Ratlam City, A.C.
57. Shri Jitendra Thawarchand Gehlot, M.L.A., 223-Alot (SC), A.C.
58. Smt. Sangeeta Vijay Charel, M.L.A., 221-Sailana (ST), A.C.
59. Shri Yashpal Singh Sisodiya, M.L.A., 224-Mandsour, A.C.
60. Shri Jagdish Dewra, M.L.A., 225-Malhargarh (SC), A.C.
61. Shri Rajendra Phulchand Verma, M.L.A., 170-Sonkatch, A.C.
62. Shri Aashish Govind Sharma, M.L.A., 173-Khategaon, A.C.
63. Shri Champalal Devda, M.L.A., 174-Bagali (ST), A.C.
64. Shri Arun Bhimawad, M.L.A., 167-Shajapur, A.C.
65. Shri Jaswant Singh Hada, M.L.A., 168-Shujalpur, A.C.
66. Shri Indersingh Parmar, M.L.A., 169-Kalapipal, A.C.
67. Shri Murlidhar Patidar, M.L.A., 165-Susner, A.C.
68. Shri Gopal Parmar, M.L.A., 166-Aagar, A.C.
69. Shri Dilip Singh Shekhawat, M.L.A., 212-Nagada-Khachrod, A.C.
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72. Shri Bhadur Singh Chouhan, M.L.A., 213-Mahidpur, A.C.
73. Shri Anil Firojiya, M.L.A., 214-Tarana (SC), A.C.
74. Shri Girish Gautam, M.L.A., 72-Deotalab, A.C.
75. Smt. Neelam Abhey Mishra, M.L.A., 69-Semariya, A.C.
76. Shri Narayan Tripathi, M.L.A., 65-Maihar, A.C.
77. Shri Harsh Singh, M.L.A., 67- Rampur-Baghelan, A.C.
78. Shri Kunwar Singh Tekam, M.L.A., 82-Dhauhani (ST), A.C.
79. Shri Ram Lallu Vaishya, M.L.A., 80-Singrauli, A.C.
80. Shri Rajendra Meshram, M.L.A., 81- Devsar (SC), A.C.
81. Smt. Pramila Singh, M.L.A., 84-Jaisinghnagar (ST), A.C.
82. Shri Jaisingh Maravi, M.L.A., 85-Jaitpur (ST), A.C.
83. Shri Ramlal Rautel, M.L.A., 87-Anuppur (ST), A.C.
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96. Shri Durgalal Vijay (Vakil), M.L.A., 1-Sheopur, A.C.
97. Shri K.D. Deshmukh, M.L.A., 113-Balaghat, A.C.
98. Dr. Yogendra Nirmal, M.L.A., 11-Waraseoni, A.C.
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103. Shri Sanjay Pathak, M.L.A., 92-Vijayraghavgarh, A.C.
104. Shri Pandit Singh Dhuwey, M.L.A., 105-Bhichhiya (ST), A.C.
105. Shri Rampyare Kulaste, M.L.A., 106-Niwas (ST), A.C.
106. Shri Jalam Singh Patel "Munna Bhaiya", M.L.A., 119-Narsinghpur, A.C.
107. Shri Sanjay Sharma, M.L.A., 120-Tendukheda, A.C.
108. Shri Govind Singh Patel, M.L.A., 121-Gadarwara, A.C.
109. Dr. Kailash Jaatav, M.L.A., 118-Gotegaon (SC), A.C.
110. Shri Kamal Marskole, M.L.A., 114-Barghaat (ST), A.C.
111. Shri Susheel Kumar Tiwari (Indu Bhaiya), M.L.A., 101-Panagar, A.C.
112. Smt. Nandni Maravi, M.L.A., 102-Sihora (ST), A.C.
113. Smt. Pratibha Singh, M.L.A., 96-Bargi, A.C.
114. Shri Susheel Kumar Tiwari (Indu Bhaiya), M.L.A., 101-Panagar, A.C.
115. Shri Ashok Ishwarda Rohani, M.L.A., 99-Jabalpur Cantt, A.C.
116. Shri Omprakash Dhurwey, M.L.A., 103-Shahpura (ST), A.C.

**ELECTION COMMISSION OF INDIA**

Nirvachan Sadan, Ashoka Road, New Delhi—110 001

REFERENCE CASE NO. 4 (G) OF 2017

**[Reference from the Governor of Madhya Pradesh under Article 192 (2) of the Constitution of India]**

In re : Reference Case No. 4(G) of 2017-Reference received from the Governor of Madhya Pradesh under Article 192 (2) of the Constitution of India seeking opinion of the Election Commission on the question of alleged disqualification of 116 Members of the Legislative Assembly of Madhya Pradesh under Article 191 (1) (a) of the Constitution of India.

**Parties :****Petitioners :**

1. Shri Alok Agrawal, State Coordinator, Aam Admi Party, M. P.
2. Shri Akshay Hunka, State Secretary, Aam Admi Party, M. P.

**Respondents :**

1. Shri Surendra Nath Singh, M.L.A., 153-Bhopal Madhya, A.C.
2. Shri Rameshwar Sharma, M.L.A., 155-Huzur, A.C.
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106. Shri Jalam Singh Patel "Munna Bhaiya", M.L.A., 119-Narsinghpur, A.C.
107. Shri Sanjay Sharma, M.L.A., 120-Tendukheda, A.C.
108. Shri Govind Singh Patel, M.L.A., 121-Gadarwara, A.C.
109. Dr. Kailash Jaatav, M.L.A., 118-Gotegaon (SC), A.C.
110. Shri Kamal Marskole, M.L.A., 114-Barghaat (ST), A.C.
111. Shri Susheel Kumar Tiwari (Indu Bhaiya), M.L.A., 101-Panagar, A.C.
112. Smt. Nandni Maravi, M.L.A., 102-Sihora (ST), A.C.
113. Smt. Pratibha Singh, M.L.A., 96-Bargi, A.C.
114. Shri Susheel Kumar Tiwari (Indu Bhaiya), M.L.A., 101-Panagar, A.C.
115. Shri Ashok Ishwarda Rohani, M.L.A., 99-Jabalpur Cantt, A.C.
116. Shri Omprakash Dhurwey, M.L.A., 103-Shahpura (ST), A.C.

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**OPINION**

This is a reference, dated 11<sup>th</sup> January 2017, received from the Governor of Madhya Pradesh seeking opinion of the Election Commission of India under Article 192 (2) of the Constitution of India, on the question whether above mentioned 116 Members of the Legislative Assembly of Madhya Pradesh, have become subject to disqualification, for being members of that Assembly, under Article 191(1)(a) of the Constitution of India.

1. In the reference, the question of disqualification arose because of a petition dated 04<sup>th</sup> July 2016, filed by Shri Alok Agarwal, State Coordinator and Shri Akshay Hunka, State Secretary, representing Aam Admi Party, Madhya Pradesh, (hereinafter the "*Petitioners*") before the Governor of Madhya Pradesh, whereby the Petitioners have sought disqualification of above mentioned 116 Members of the Legislative Assembly of Madhya Pradesh (hereinafter the "*Respondents*") under Article 191(1)(a) of the Constitution of India, on the ground of holding offices of profit, by virtue of being appointed as Chairmen of various Jan Bhagidari Samitis in different colleges in Madhya Pradesh.

2. It is pertinent to note that the said reference concerned 116 members of the Legislative Assembly of Madhya Pradesh. However, in the list annexed by the petitioners, there is a repetition of name of one of the respondents [Shri Sushil Kumar Tiwari (Indu Bhaiya), 101-Panagar] at SR. Nos. 111 and 114. On perusal of the documents on record of the Commission, it has been found that the said respondent is a Chairman of two Jan Bhagidari Samitis. Therefore, the total members in question in the said reference are reduced to 115 members from 116 members.

3. The facts of the case, as disclosed in the said petition, are as follows:

I. It is alleged by the petitioners in the petition that above mentioned 116 Respondents are holding position of Chairman in various Jan Bhagidari Samitis in different colleges in Madhya Pradesh. They can also allegedly avail allowances by the virtue of such position. The position of Chairman of a Jan Bhagidari Samiti comes under the purview of office of profit and, therefore, the said members (in the list annexed with the petition) are liable to be disqualified under Article 191(1)(a) of the Constitution.

II. It is further alleged by the petitioners that the said office of Chairman of Jan Bhagidari Samiti is not an exempted category of 'office of profit' under the exempted list of offices of profit under the Schedule to the Madhya Pradesh Vidhan Mandal Sadasya Nirharta Nivaran Adhiniyam, 1967 (*hereinafter "the Act"*).

4. The Act lists 103 categories of offices which are exempted from the ambit of 'office of profit' in the Schedule. Also, item 17 and item 44 of the Schedule are relevant to be produced below:-

**Item 17**

*"17. Chairman and Vice-Chairman or President and Vice-President or Managing Director or Director of a statutory body, or a member of any committee by whatever name of aforesaid office be called.*

*Explanation: - For the purpose of item 17, the office mentioned therein shall include any other office held jointly with that office in item 17 in the statutory body."*

**Item 44**

*"44. The Chairman of Local Management Committee of Government Colleges."*

Furthermore, the term 'Committee' is defined under Section 2 (a) of the Act which is produced below:

*“(a) Committee means any committee, council, board or any other body of persons whether a statutory body or not set up by the Central Government or any State Government;”*

5. A perusal of the Act and the petition, *prima facie*, indicates that the posts held by the above mentioned 116 respondents are offices which are exempted from the purview of 'office of profit' as they fall under items 17 and 44 of the Schedule of the Act. As per Section 3(2) of Act, no M.L.A holding the office of the Chairman or member of any statutory body or committee shall be disqualified by the reason of the fact that he holds such office or is in receipt of any compensatory allowance in such office. Section 3 of the Act is produced as follows:

*“3. Removal of certain disqualifications:*

*(1) It is hereby declared that none of the offices of profit specified in the Schedule shall disqualify or shall be deemed ever to have disqualified the holder thereof for being chosen as, or for being, a member of the Legislative Assembly of Madhya Pradesh or the Legislative Council of Madhya Pradesh, as the case may be.*

*(2) Subject to the provisions of sub section (1), no person holding the office of the Chairman or member of any statutory body or committee shall be disqualified at any time for being chosen as or for being member of the Legislative Assembly of Madhya Pradesh or the Legislative Council of*

*Madhya Pradesh by reason only of the fact that he holds such office or is in receipt of any compensatory allowance in such office."*

Also, it appears from the definition of compensatory allowance given in Section 2(c) of the Act that compensatory allowance in question will cover travelling allowance, daily allowance not exceeding the amount to which a member of the Legislative Assembly of Madhya Pradesh is entitled for receiving under the Act. The ambit of compensatory allowance also includes conveyance allowance, house rent allowance or communication allowance or any expenditure incurred by Chairman or Member of any committee or statutory body in performing the functions of that office which can be recouped by them. The definition of term 'compensatory allowance' under the Act is produced as below:

*"2(c) Compensatory Allowance means any sum of money payable to the Chairman or Member of any committee or statutory body by way of travelling allowance, daily allowance not exceeding the amount to which a member of the Legislative Assembly of Madhya Pradesh or the Legislative Council of Madhya Pradesh is entitled of receiving under the Madhya Pradesh Vidhan Sabha Sadasya Vetan, Bhatta Tatha Pension Adhinyam, 1972 (No. 7 of 1973), conveyance allowance, house rent allowance or communication allowance for the purpose of enabling the Chairman or Member of any committee or statutory body to recoup any expenditure incurred by him in performing the functions of that office."*

6. Further, since the petitioners have failed to provide or annex any document in regard to this issue in support of the petition filed, the Commission obtained

information from the Chief Secretary, Government of Madhya Pradesh vide its letter dated on 11<sup>th</sup> May 2017 in respect of the issue under consideration. In reply to the said letter of the Commission, Principal Secretary, Higher Education Department, Government of Madhya Pradesh has submitted the information vide his letter dated 27<sup>th</sup> July 2017 that the members of these Committees have not been provided with any salary/allowance/sitting fee. They are only entitled to vehicle allowance on prescribed rate for attending meetings. He has further mentioned that other than this, they are not entitled to any other facility or remuneration. Vehicle allowance comes under the category of 'conveyance allowance'. Thus, it is inferred from the said reply of the Principal Secretary, Higher Education Department, Government of Madhya Pradesh, that no allowance is being provided to the respondents which falls beyond the 'compensatory allowance' in such office.

7. Further, in response to the Commission's query dated 30<sup>th</sup> August 2017 to the Chief Secretary, Government of Madhya Pradesh, as to whether Local Management Committee is the same as Jan Bhagidari Samitis of Government Colleges, the Higher Education Department, Government of Madhya Pradesh has responded vide its letter dated 21<sup>st</sup> September 2017 that Local Management Committees are covered under item 44 of the Schedule of the Act.

8. Therefore, it appears that said posts in the Samitis fall within the exempted category of 'office of profit' under the Act and hence do not attract Article 191(1)(a) of the Constitution of India for disqualification as members of State Legislative Assembly.

9. In view of the forgoing findings and analysis based on the information received in the Commission on record, the opinion of Election Commission of India under Article 192(2) of the Constitution on the reference dated 11<sup>th</sup> January 2017 received from the Governor of Madhya Pradesh is that above mentioned 116 members of the Legislative Assembly of Madhya Pradesh have not incurred disqualification, for being member of that Assembly, under Article 191(1)(a) of the Constitution of India by reason of being Chairman of Jan Bhagidari Samitis of various Colleges.

10. Hence, the opinion of the Election Commission of India is hereby tendered to the Governor of Madhya Pradesh under Article 192(2) of the Constitution that above mentioned 116 members of the Legislative Assembly of Madhya Pradesh are not disqualified under Article 191(1)(a) of the Constitution of India.

Sd./-  
(Shri. O. P. RAWAT)  
Election Commissioner

Sd./-  
(Shri A. K. JOTI)  
Chief Election Commissioner

Sd./-  
(SHRI SUNIL ARORA)  
Election Commissioner

Place : New Delhi

Date : 15-12-2017