

# ELECTION COMMISSION OF INDIA

NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI-110001

No. 3/ER/2013/SDR Vol. II

Dated: 6<sup>th</sup> September, 2013

To

The Chief Electoral Officer of  
all the States/Union Territories.

**Subject: Disqualification for conviction under Section 8 of Representation of the People Act, 1951- Clarification-regarding.**

Sir/Madam,

I am directed to invite your reference to the Commission's two letters bearing No. 4/2003/JS-II dated 6<sup>th</sup> February, 2003 and No. 509/5/2005 -JS-I dated 14.01.2005 (copies enclosed) whereby clarifications were issued in connection with disqualification on the ground of conviction under section 8 of the Representation of the People Act 1951.

2. It has come to the notice of the Commission that some Returning Officers and District Election Officers are not aware of the correct legal position about the impact of stay order of the Appellant Court on execution of sentence passed by the Trial Court for the purpose of disqualification of the convicted person. In this regard, it is once again clarified that

(i) In cases where a person is convicted and the conviction along with sentence awarded results in disqualification, under sub section (1), (2) or (3) of Section 8, and if the Higher Court, on appeal, stays the operation of only the execution of sentence of imprisonment passed by the Trial Court, then the stay on the execution of sentence so granted by Higher Court and release of the convicted person on bail will not have the effect of suspension of disqualification. In other words, the disqualification will continue to be applicable in such cases;

(ii) In cases where not just the operation of the sentence but, the conviction is also specifically stayed, then the disqualification will also remain suspended.

3. These clarifications may be brought to the notice of all the Returning Officers and the Assistant Returning Officers and all other election authorities concerned, in your State/UT, so as to avoid cases of wrong interpretation of law at the time of scrutiny of nominations.

4. Kindly acknowledge receipt.

Yours faithfully,



(N.T. Bhutia)

Under Secretary

Standard distribution

## ITEM NO. 121

Election Commission's letter No. 4/2003/JS-II dated 06.02.2003, addressed to the Chief Electoral Officer, Himachal Pradesh and copy forwarded to CEOs of remaining Stats/UTs

**Subject: Disqualification for conviction under Section 8 of Representation of the People Act, 1951 -Clarification**

I am directed to refer to your message No. 3-42/96-ELN, dated 27-1 -2003, on the above subject.

2.Your attention, in this connection, is invited to the Commission's Order No. 509/DisqIn./97/J.S.I, dated 28-8-1997, clarifying that a person convicted of an offence mentioned in Section 8 of the Representation of the People Act, 1951, will continue to be treated as disqualified even if he has filed an appeal or application for revision and has been granted bail during the pendency of such appeal/ revision. Such person will, however, not attract the disqualification in view of the exemption under sub section (4) of Section 8 of Representation of the People Act, 1951, if he was a sitting member of Parliament or of a State Legislature on the date of his conviction and if he has filed an appeal or application for revision against the order of conviction/sentence within three months of his date of conviction and the same is pending disposal by the Court. In such cases, subsequent dissolution of the House/Assembly will not have any adverse effect on the benefit available to the said person under the exemption clause under the said Section 8(4), and the person concerned will not be disqualified under Section 8 till the disposal of the appeal or application for revision.

3.I am also to bring to your notice that the information which was earlier required to be obtained from the candidates regarding cases of conviction for offences under Section 8 through a separate affidavit, prescribed vide the Commission's letter No. 509/DisqIn./97-J.S.I, dated 28.8.97, is now covered in the nomination paper itself, by a recent amendment of the Conduct of Elections Rules, 1961. A copy of the amendment notification has already been sent with the Commission's letter No. 3/4/2002/JS-II, dated 25th October, 2002, and the above position has also been clarified to you. The candidates will now be required to file only an affidavit prescribed in Form 26 appended to the Conduct of Elections Rules, 1961.

## INSTRUCTION SL. NO. 9

Election Commission's letter No.: 509/5/2005-JS.I, dated 14.01.2005 addressed to the Chief Secretaries/Chief Electoral Officers of all States and Union Territories

**Subject: Representation of the People Act, 1951- Sections 8(3) and 8(4) Interpretation thereof by the Supreme Court of India – CA No. 8213 of 2001 with Civil Appeal No. 6691 of 2002 – Forwarding of Judgment dated 11.1.2005 of the Hon'ble Supreme Court-regarding.**

I am directed to forward herewith a copy of the judgment of the Hon'ble Supreme Court of India dated 11.1.2005 in the matter cited above.

2. It may be noted that the Hon'ble Supreme Court in the above judgment has, inter-alia, held that :
  - (i) in the case of conviction of a person for more than one offence, in a common trial and with the sentences of imprisonment to run consecutively, for the purposes of Section 8(3) of the Representation of the People Act, 1951, the period of sentences of imprisonment for each offence should be added and if the total length of time for which a person has been ordered to remain in prison consequent upon such conviction and sentences is two years or more, the convicted person shall be disqualified under the said Section 8(3) of the Representation of the People Act, 1951;
  - (ii) the protection given under sub-section (4) of Section 8 of RP Act 1951 to a sitting member of Parliament or State Legislature from incurring disqualification will be available only so long as the House to which he belongs continues to exist and the person continues to be a member of that House.
3. You are requested to bring the above order of the Hon'ble Supreme Court to the notice of all returning officers and other authorities concerned for strict compliance in future. Where elections are in progress now, this should be brought to the notice of all Returning Officers immediately and in any case before the date of scrutiny of nominations.
4. In this context, it may be clarified that the interpretation placed by the Hon'ble Supreme Court on the provision of Section 8(3) of the Representation of the People Act, 1951 would be equally applicable to the provision of Section 8(2) of the said Act.
5. Further, to remove any ambiguity, it is also clarified in conformity with the above decision of the Hon'ble Supreme Court, that if any sitting MLA or MP, who is presently protected under Section 8(4) of the said Act till the dissolution of the existing House to which he belongs, files his nomination for any election held subsequent to his conviction, either for constituting a new House on the dissolution of the existing House or even for a bye-election to an existing House, he shall

not get the protection of the said Section 8(4) and he shall be deemed to be disqualified under Section 8(1), 8(2) or 8(3) of the Act, as may be applicable to him.

6. The receipt of this letter may kindly be acknowledged and copy of instruction issued in this behalf to the Returning Officers, etc. may be endorsed to the Commission for its information and record.