

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001

No. 509/Gen/2015/RCC

Dated: 13th Oct., 2015

To

- (1) The Secretary General,
Lok Sabha,
Lok Sabha Secretariat,
New Delhi.
- (2) The Secretary General,
Rajya Sabha,
Rajya Sabha Secretariat,
New Delhi.
- (3) The Chief Secretaries of
All States and Union Territories.
- (4) The Secretaries of
Legislative Assembly of all States (except J&K)
and NCT of Delhi & Puducherry.
- (5) The Secretaries of
Legislative Council,
Andhra Pradesh, Telangana, Karnataka,
Maharashtra, Bihar, UP and J&K.
- (6) The Chief Electoral Officers of
All States and UTs.
- (7) The Secretary,
Law Department,
All States and UTs.
(through Chief Electoral Officer of the State).

Sub:- Judgment dated 10-07-13 of the Hon'ble Supreme Court in WP (C) Nos. 490 of 2005 and 231 of 2005- Follow-up action for implementation of the law laid down by the Hon'ble Supreme Court.

Sir,

The Hon'ble Supreme Court, in their judgment dated 10-07-13 in WP (C) Nos. 490 of 2005 and 231 of 2005(Lily Thomas vs. Union of India & others) has, while declaring Section 8(4) of the Representation of the People Act, 195, as ultra vires the Constitution, held that on conviction by a Court, a sitting Member of a House becomes disqualified and

his seat in the House concerned thereupon becomes vacant under Article 101(3) (a) or Article 190(3)(a) of the Constitution, as may be applicable, forthwith if the conviction and/or sentence awarded attracts disqualification under Section 8 of the said Act.

2. The relevant extracts of the abovementioned judgement are reproduced below for ready reference:-

" Articles 101(3)(a) and 190(3)(a) of the Constitution provide that if a member of the House becomes subject to any of the disqualifications mentioned in clause(1), "his seat shall thereupon become vacant". Hence, the seat of a member who becomes subject to any of the disqualifications mentioned in clause (1) will fall vacant on the date on which the member incurs the disqualification and cannot await the decision of the President or the Governor, as the case may be, under Articles 103 and 192 respectively of the Constitution. The filling of the seat which falls vacant, however, may await the decision of the President or the Governor under Articles 103 and 192 respectively of the Constitution and if the President or the Governor takes a view that the member has not become subject to any of the disqualifications mentioned in clause(1) of Articles 102 and 191 respectively of the Constitution, it has to be held that the seat of the member so held not to be disqualified did not become vacant on the date on which the member was alleged to have been subject to the disqualification."

.....

" We do not also find merit in the submission of Mr. Luthra and Mr. Kuhad that if a sitting member of Parliament or the State Legislature suffers from a frivolous conviction by the trial court for an offence given under sub-section (1), (2) or (3) of Section 8 of the Act, he will be remediless and he will suffer immense hardship as he would stand disqualified on account of such conviction in the absence of sub-section(4) of Section 8 of the Act. A three Judge Bench of this Court in Rama Narang v. Ramesh Narang & Ors [(1995) 2 SCC 513] has held that when an appeal is preferred under Section 374 of the Code of Criminal Procedure [(for short 'the Code') the appeal is against both the conviction and sentence and, therefore, the Appellate Court in exercise of its power under Section 389(1) of the Code can also stay the order of conviction and the High Court in exercise of its inherent jurisdiction under Section 482 of the Code can also stay the conviction if the power was not be found in Section 389(1) of the Code. "

.....

"Therefore, the disqualification under sub-section(1), (2) or (3) of Section 8 of the Act will not operate from the date of order of stay of conviction passed by the Appellate Court under Section 389 of the Code or the High Court under Section 482 of the Code."

3. In this context, it may also be relevant to refer to the following observations of the Hon'ble Supreme Court in *PV Narasimha Rao Vs. State (CBI/SPE)* [1998(4)SCC 626] :

“By reason of Article 101(3) (a), the seat of a Member of Parliament becomes vacant if he becomes subject to the disqualifications mentioned in Articles 102(1) and (2). Those disqualifications are the holding of an office of profit under the Union or State government, other than an office declared by Parliament by law not to disqualify the holder; the declaration by a competent court of unsoundness of mind; undischarged insolvency; the citizenship of a foreign State of acknowledgement of allegiance or adherence thereto; and disqualification under any law made by Parliament or under the Tenth Schedule. Under the provisions of Article 103, it is only if a question arises as to whether a Member of Parliament has become subject to any of the disqualifications aforementioned, other than disqualification under the Tenth Schedule, that the question is referred to the President for his decision. The President's decision is final but, before giving it, the President has to obtain the opinion of the Election Commission and has to act according to such opinion.

The question for our purposes is whether, having regard to the terms of Articles 101, 102 and 103, the President can be said to be the authority competent to remove a Member of Parliament from his office. **It is clear from Article 101 that the seat of a Member of Parliament becomes vacant immediately upon his becoming subject to the disqualifications mentioned in Article 102 without more.** The removal of a Member of Parliament is occasioned by operation of law and is self-operative. **Reference to the President under Article 103 is required only if a question arises as to whether a Member of Parliament has earned such disqualification; that is to say, if it is disputed.** The President would then have to decide whether the Member of Parliament had become subject to the automatic disqualification contemplated by Article 101. His order would not remove the Member of Parliament from his seat or office but would declare that he stood disqualified. It would operate not with effect from the date upon which it was made but would relate back to the date upon which the disqualification was earned. Without, therefore, having to go into the connotation of the word “removal” in service law, it seems clear that the President cannot be said to be the authority competent to remove a Member of Parliament from his office.” *(emphasis supplied)*

4. In this connection, the Commission had earlier, vide its letter dated 7th August, 2013, instructed that cases of conviction of sitting members of Parliament and State Legislatures should be immediately reported to the Hon'ble Speaker/Chairman of the House concerned. A copy of the said letter dated 7th August, 2013 is enclosed for reference.

5. Thus, in view of the above law laid down by the Hon'ble Supreme Court, it will be seen that in cases of conviction of sitting members, their disqualification from membership under Section 8 of the Representation of the People Act, 1951, would be automatic by

operation of Law and no dispute can arise for determination by the President/Governor under Article 103(1) or 192(1) of the Constitution in such cases. Therefore, in such cases, the Secretariat of the House concerned should forthwith issue notification declaring the seat of the member concerned vacant. The Commission has noticed that in some cases there has been delay in the issuance of such notification by the Secretariat of the House with the result that the member who had incurred disqualification continued to be member of the House in violation of the provisions of Article 101(3)(a)/ 190(3)(a) of the Constitution and the law laid down by the Hon'ble Supreme Court.

6. In order to ensure that in future, the law is uniformly enforced without any discrimination whatsoever, the Commission requires the following measures to be taken in future in all such cases:-

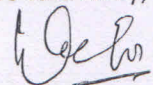
(i) The Chief Secretaries should issue appropriate instructions to the Department dealing with prosecutions in the State/UT to ensure that cases of conviction of sitting members of Parliament/State Legislature are brought to the notice of the Hon'ble Speaker /Chairman of the House and the Chief Electoral Officer of the State along with copy of the order passed by the court concerned immediately, and in any event within 7 days of the date of the order.

(ii) The Secretariat of the House concerned may put in place mechanism to ensure that in cases where conviction leads to disqualification of the member, necessary notification declaring the seat of the convicted member vacant is issued immediately and in any event within 7 days of receipt of the information/copy of order. Copy of such notification may be furnished immediately to the Chief Electoral Officer of the State in the case of notification by the Secretariat of State Legislature, and to the Commission in the case of notification issued by the Secretariat of Lok Sabha/Rajya Sabha.

(iii) The Chief Electoral Officer should report to the Commission immediately on receipt of information about conviction and copy of notification from the Legislature Secretariat.

7. Kindly acknowledge receipt and a copy of the instructions issued in this regard may please be endorsed to the Commission.

Yours faithfully,



(K.F. WILFRED)

PRINCIPAL SECRETARY

P. J. 1488w
Rm
01/08/2013
02

SP. No. 2091

By Special Messenger

(228)

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110001.

No. 509/127/2005/RCC 1319

Dated : 7th August, 2013

To

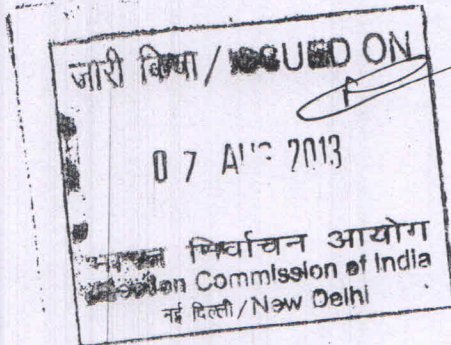
The Secretary General,
Lok Sabha Secretariat,
Parliament House,
New Delhi-110001.
(Kind attn : Sh. V.R. Ramesh, Joint Secretary)

Sub: Judgment dated 10-07-13 of the Hon'ble Supreme Court in WP (C) Nos. 490 of 2005 and 231 of 2005.

Sir,

Please refer to your letter No. 13/66/2013/P&E dated 23rd July, 13, in the above matter. The Commission does not have record/data base of pending cases against the sitting members of Parliament and State Legislatures and there is also no requirement under any law for transmitting to the Commission the orders of conviction involving sitting members. The Commission has written to the Chief Secretaries of all States/UTs to immediately put in place a mechanism for tracking and promptly reporting to the Speaker/Chairman of the House concerned the cases of conviction of sitting members. A copy of the letter addressed to the Chief Secretaries in this regard is enclosed for perusal.

2. The Lok Sabha Secretariat may also kindly consider the possibility of requesting Hon'ble Members of the Parliament to bring to its notice the cases pending, and orders of conviction, against them as soon as possible.



Yours faithfully,

(Signature)

(K.F.WILFRED)
PRINCIPAL SECRETARY

(Signature)

Sf. No. 21CT

(229)

f. 14-200
H08/2013

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001.

No. 509/127 /2005/RCC / 594+34 = 628 AEC 120 Dated : 7th August, 2013

To

628+34 = 663 All Chief Secy

The Chief Secretaries of
all States and Union Territories.

Sub: Judgment dated 10-07-13 of the Hon'ble Supreme Court in WP (C) Nos. 490 of 2005 and 231 of 2005.

Sir,

I am directed to enclose herewith a copy of the abovementioned judgment of the Hon'ble Supreme Court. It would be seen that by this judgment, the Hon'ble Supreme Court has declared sub-section (4) of Section-8 of the Representation of the People Act, 1951 as *ultra vires* the Constitution. Consequently, the protection against immediate disqualification from membership enjoyed by sitting members on conviction and sentence to imprisonment/fine for the offences mentioned in sub-sections (1) (2) and (3) of Section-8 of the said Act, by virtue of the provisions of sub-section (4) as it stood before being struck down by the present judgment, will no longer be available for the sitting members in future.

The relevant extracts from the judgment are reproduced below:-

".....We also hold that the provisions of Article 101(3) (a) and 190(3)(a) of the Constitution expressly prohibit Parliament to defer the date from which the disqualification will come into effect in case of a sitting member of Parliament or a State Legislature. Parliament, therefore, has exceeded its powers conferred by the Constitution in enacting sub-section (4) of Section 8 of the Act and accordingly sub-section (4) of Section 8 of the Act is *ultra vires* the Constitution.

The only question that remains to be decided is whether our declaration in this judgment that sub-section (4) of Section 8 of the Act is *ultra vires* the Constitution should affect disqualifications already incurred under sub-sections (1), (2) and (3) of Section of the Act by sitting members of Parliament and State Legislatures who have filed appeals or revisions against their conviction within a period of three months and their appeals and revisions are still pending before the concerned court. Under sub-sections (1), (2) and (3) of Section 8 of the Act, the disqualification takes effect from the date of conviction for any of the offences mentioned in the sub-sections and remains in force for the period mentioned in the sub-sections. Thus, there may be several sitting members of Parliament and State Legislatures who have already incurred disqualification by virtue of a conviction covered under sub-section (1), or sub-section (2) or sub-section (3) of Section 8 of the Act..... Sitting members of

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Parliament and State Legislatures who have already been convicted for any of the offences mentioned in sub-section (1), (2) and (3) of Section 8 of the Act and who have filed appeals or revisions which are pending and are accordingly saved from the disqualifications by virtue of sub-section (4) of Section 8 of the Act should not, in our considered opinion, be affected by the declaration now made by us in this judgment. This is because the knowledge that sitting members of Parliament or State Legislatures will no longer be protected by sub-section (4) of Section 8 of the Act will be acquired by all concerned only on the date this judgment is pronounced by this Court.....


However, if any sitting member of Parliament or a State Legislature is convicted of any of the offences mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act and by virtue of such conviction and/or sentence suffers the disqualifications mentioned in sub-sections (1), (2) and (3) of Section 8 of the Act after the pronouncement of this judgment, his membership of Parliament or the State Legislature, as the case may be, will not be saved by sub-section (4) of Section 8 of the Act which we have by this judgment declared as *ultra vires* the Constitution notwithstanding that he files the appeal or revision against the conviction and/or sentence."

2. Therefore, if any sitting Member of Parliament or State Legislature is convicted and/or sentenced to imprisonment/fine after the date of this judgment and if the provisions of sub-section (1) (2) and (3) of Section 8 (extract enclosed) are attracted, he/she will be disqualified from membership forthwith and his/her seat will become vacant. In order to monitor such cases, it is necessary to have a system in place so that cases of conviction of sitting members of Parliament and State Legislature are immediately communicated to the Speaker/Chairman of the House concerned and to the Commission. Therefore, you are requested to devise and provide for a fool-proof mechanism by involving the office of Advocate General/Directorate of Prosecution and other channels, if any, for tracking and promptly reporting to the Speaker/Chairman of the House concerned and the Commission cases of conviction of sitting MPs/MLAs/MLCs across Courts at all levels in the State. In order to ensure that cases do not go un-noticed, the Commission desires that the State Governments may send to the Commission a monthly report about cases of conviction, if any, of sitting members of Parliament or State Legislature. The statement may be submitted to the Commission by 15th of every month through the Chief Electoral Officer of the State. For the sake of uniformity in reporting, a model format for the report is enclosed.

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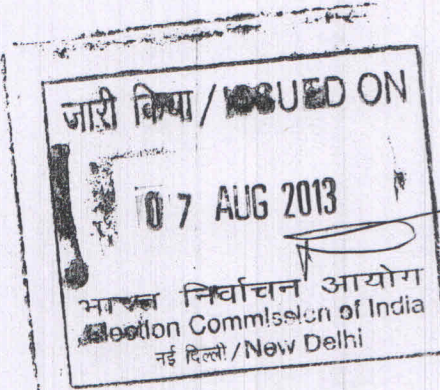
3. • Please acknowledge receipt of this letter and confirm action being action.

Yours faithfully,



(K.F.WILFRED)
PRINCIPAL SECRETARY

Copy to the Chief Electoral Officers of all States and Union Territories. They are requested to pursue the matter with the State Government in monitoring the case of conviction of sitting members and reporting to the Speaker/Chairman of the House concerned and to the Commission. They may also, in coordination with the State Government, submit the monthly report as mentioned above.



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8. Disqualification on conviction for certain offences. —³ [(1) A person convicted of an offence punishable under—

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; [or]

¹ [(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991;] ² [or]

³ [(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971),] ⁴ [; or]

⁴ [(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002),]

⁵ [shall be disqualified, where the convicted person is sentenced to—

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

(2) A person convicted for the contravention of—

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961);

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

⁷ [(4)] Notwithstanding anything [in sub-section (1), sub-section (2) or sub-section (3)] a disqualification under either sub-section shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation. —In this section, —

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be bought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955 (10 of 1955);

(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

Report regarding cases of conviction of sitting members of Parliament/State Legislature –
Report for the month of _____.

Name of the State : _____.

Name of MP/MLA/MLC	Name of the Court which passed the order of conviction	Section (s) under which conviction ordered	Date of conviction	Punishment/sentence passed

Place:

(Signature and Name of Officer
sending the report)

Date: