



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-क

वर्ष ३, अंक ३४]

गुरुवार, ऑगस्ट ३, २०१७/श्रावण १२, शके १९३९

[पृष्ठे २ किंमत : रुपये ९.००

असाधारण क्रमांक ४२

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिकाऱ्यांनी तयार केलेले

(भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर)

वैधानिक नियम व आदेश ; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क),
जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक न्यायाधिकरण, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील
इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

BEFORE THE GOVERNOR OF MAHARASHTRA

In Re.— Petition under article 192 (1) of the Constitution of India by Adv. Ashish Giri, Mumbai regarding alleged disqualification of Shri Dhananjay Panditrao Munde, Member of the Maharashtra Legislative Council under article 191(1)(e) of the Constitution of India read with section 8(3) of the Representation of the People Act, 1951.

Order

The petition dated 6th April 2015 received from Adv. Ashish Giri, Mumbai under Article 192(1) of the Constituion of India, alleging that Shri Dhananjay Panditrao Munde, Member of the Maharashtra Legislative Council, has incurred disqualification under Article 191(1)(e) of the Constitution of India read with section 8(3) of the Representation of People Act, 1951, which provides for disqualification by or under any law made by Parliament and disqualification on conviction for certain offences, respectively. The petitioner has also alleged that Shri Dhananjay Panditrao Munde, Member of the Maharashtra Legislative Council has violated Rules 252, 253 and 254 of the Maharashtra Legislative Council Rules, 2009 for his failure to intimate the Chairman of the Maharashtra Legislative Council about his arrest on 13th March, 2014 by the Superintendent (Service Tax) and the bail order dated 13th March, 2014.

2. The petitioner has contended that Shri Dhananjay Munde, Member of Maharashtra Legislative Council is liable to be disqualification under section 8(3) of the Representation of the People Act, 1951 on the grounds of being convicted for an offence punishable under section 89(1)(i) of the Finance Act, 1994 read with Service Tax Rules, 1994 for failure of payment of Service Tax and for violation of Article 252, 253 and 254 of the Maharashtra Legislative Council Rules, 2009.

3. As required by the provisions of Clause (2) of Article 192 of the Constitution, the question of the alleged disqualification was referred to the Election Commission of India for its opinion.

4. The Commission observed that, section 8(3) of the Representation of People Act, 1951 states that a person shall be disqualified if he is convicted and sentenced to imprisonment for a period of not less than two years, for any offence other than those mentioned under sub-sections (1) and (2) of the said section 8. The pre-requisites for disqualification under section 8(3) are conviction and imprisonment for a minimum term of two years. The Commission also observed that, the purpose of disqualification under section 8(3) of the Representation of the People Act, 1951 is to prevent persons who have been convicted of certain offences to enter politics, thereby asserting that conviction is *sine qua non* for disqualification under section 8(3) (*See K. Prabhakaran versus Jayarajan, AIR 2002, SC 3393*).

5. The Commission pointed out that, it is well settled and recognised through a catena of judgements of the Hon'ble Supreme Court that disqualification under section 8(3) of the Representation of the People Act, 1951 arises only on conviction (*See Raghbir Singh versus Surjit Singh, 1994 Supp (3) SCC 162 and Lily Thomas versus Union of India and Ors., (2013) 7 SCC 653*).

6. The Commission also observed that, bare reading of section 91(1) of the Finance Act, 1994 shows that a person can be arrested if there is a reason to believe that he has committed an offence under section 89(1) of the Act. The Commission referred to the decision of the Bombay High Court in *Clear Trip Private Ltd. and Ors. versus Union of India and Ors., (2016) 288 CTR (Bom) 515*, in this connection wherein it is held that, the arrest under section 91 arises on launching the prosecution, that is, a person can be arrested before he is convicted of an offence under section 89 of the Finance Act, 1994.

7. The Commission, thus established that a person can be arrested under section 91 of the Finance Act, 1994 after prosecution is launched against him, and before his conviction. Hence, the Commission rejected the contention of the petitioner that the arrest memo of 13th March 2014 is evidence of the fact that Shri Dhananjay Munde was convicted under section 89(1)(i) of the Finance Act, 1994. The Commission also pointed out that no order was produced before it, of any competent authority, declaring that Shri Dhananjay Munde, Member of Maharashtra Legislative Council is convicted under the said provision of law.

8. The Commission has ruled out the contention of the petitioner that Shri Dhananjay Munde, Member of Maharashtra Legislative Council is liable to be disqualified for violation of Rules 250, 253 and 254 of the Maharashtra Legislative Council Rules, 2009 as the same do not prescribe conviction for violation of the provisions contained therein. Also, there is no statutory law that provides for disqualification of a Member of the Maharashtra Legislative Council on the ground of violation of the Maharashtra Legislative Council Rules.

9. In view of the foregoing findings and analysis, the Commission opined that, Shri Dhananjay Panditrao Munde, Member of the Maharashtra Legislative Council has not incurred disqualification for being a Member of the Legislative Council of Maharashtra under section 8(3) of the Representation of the People Act, 1951.

10. In accordance with the said opinion of the Election Commission of India, I pass the following order :—

Order

The petition of Adv. Ashish Giri is hereby, for the reasons stated above, dismissed.

Dated the 31st July 2017.

CH. VIDYASAGAR RAO,
Governor of Maharashtra.

क्रमांक डीआयएस.२०१७/प्र.क्र. ५५७/१७/३३,
सामान्य प्रशासन विभाग,
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय विस्तार, मुंबई ४०० ०३२,
दूरध्वनी क्रमांक : ०२२-२२०२५०५९,
दिनांक ३ ऑगस्ट २०१७.

प्रत, माहिती व योग्य कार्यवाहीसाठी अग्रेषित :-

- (१) प्रधान सचिव, महाराष्ट्र विधानमंडळ सचिवालय, विधान भवन, मुंबई.
- (२) निवडनस्ती.

अ. ना. वळेची,
उप सचिव व सह मुख्य निवडणूक अधिकारी,
महाराष्ट्र राज्य.



REFERENCE CASE NO. 2 (G) OF 2015

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

In re: Reference Case No. 2(G) of 2015 - Reference received from the Governor of Maharashtra under Article 192(2) of the Constitution of India seeking opinion of the Election Commission of India on the question of alleged disqualification of Shri Dhananjay Panditrao Munde, Member of the Legislative Council of Maharashtra under Article 191(1) of the Constitution of India read with Section 8(3) of the Representation of the People Act, 1951

OPINION

This is a reference, dated 07th July 2015, received from the Governor of Maharashtra seeking opinion of the Election Commission of India under Article 192(2) of the Constitution of India, on the question of whether Shri Dhananjay Panditrao Munde, a Member of the Legislative Council of Maharashtra, has become subject to disqualification, for being member of that Assembly, under Article 191(1) of the Constitution of India read with Section 8(3) of the Representation of the People Act, 1951.

2. In the said reference, the question of disqualification arose because of a petition, dated 06th April 2015, filed by Shri Ashish Giri (hereinafter the "Petitioner")

before the Chairman of the Legislative Council of Maharashtra. The said petition was forwarded by the Maharashtra Legislative Assembly to the Governor of Maharashtra, whereby the Petitioner has sought disqualification of Shri Dhananjay Panditrao Munde (hereinafter the "*Respondent*") under Article 191(1) of the Constitution of India read with Section 8(3) of the Representation of the People Act, 1951 (hereinafter the "*1951 Act*").

3. The Central Government introduced the Service Tax Voluntary Compliance Encouragement Scheme, 2013 (hereinafter the "*VCS Scheme 2013*") in May 2013, that allowed tax payers to pay their dues for a period from 01st October 2007 to 31st December 2012 without attracting interest, penalty and other legal proceedings. The VCS Scheme 2013 allowed the tax payers to file their dues on or before 31st December 2013. Meanwhile, the Respondent contested the bye-election to the Legislative Council of Maharashtra and was elected on 02nd September 2013. The Respondent was a service provider for developing dry flay ash collection and disposal plant at Parali Thermal Power Station and he had given a declaration under the VCS Scheme 2013 with respect to his tax liability amounting to a sum of Rs. 9200502/-. The Respondent failed to pay the said amount in the given time period and thus, a notice for non-payment was issued against him. The Respondent, vide his letter, dated 24th January 2014, stated that he could not avail the benefit under the VCS Scheme 2013 owing to a financial crisis and requested for an extension of time for payment of his service tax dues. Subsequently, the Superintendent (Service Tax), Central Excise, Customs & Service Tax (Nanded Division, Beed) issued a notice, dated 24th February 2014, directing the Respondent to pay the balance amount of the service tax along

with the interest and penalty, failing which actions would be initiated under the Finance Act, 1994 (hereinafter the "*Finance Act*") and the Service Tax Rules, 1994 (hereinafter the "*Service Tax Rules*"). A similar letter, dated 24th February 2014, was sent by the Assistant Commissioner, Central Excise, Customs & Service Tax (Nanded Division, Nanded) to the Respondent for payment of the said balance amount, interest and penalty. Then, an arrest memo, dated 13th March 2014, was issued in the name of the Respondent by the Superintendent for violation of Section 89(1)(i) of the Finance Act and Service Tax Rules. After his arrest, the Respondent requested for grant of bail vide his letter, dated 13th March 2014, to the Assistant Commissioner. Thereafter, the Respondent furnished a bail and security bond, and he was granted bail on the same day, that is, 13th March 2014, subject to the conditions placed by the Assistant Commissioner.

4. The Respondent filed Criminal Writ Petition No. 412 of 2014, titled *Dhananjay Panditrao Munde v. The Assistant Commissioner of Central Excise & Customs*, before the Bombay High Court, Aurangabad Bench challenging the bail order of 13th March 2014. In the said petition, he prayed for an order directing the Assistant Commissioner to refrain from taking any coercive action under Section 89(1)(i) of the Finance Act. The case is pending before the High Court Bench.

5. The Petitioner has also contended before the Commission that the Respondent has violated Articles 252, 253 and 254 of the Maharashtra Legislative Council Rules, 2009. Articles 252, 253 and 254 of the Maharashtra Legislative Council Rules are reproduced below:

"252. When a member of the Council is arrested on a criminal charge or of a criminal offence or is sentenced to imprisonment by a Court or is detained under an executive order the committing judge, magistrate or executive authority, as the case may be, shall immediately intimate such fact to the Chairman indicating the reasons for the arrest, detention or conviction, as the case may be, as also the place of detention or imprisonment of the member in the appropriate form set out in the Second Schedule.

253. When a member of the Council is released on bail pending his trial or pending an appeal against his conviction, or otherwise, such fact shall also be intimated to the Chairman by the authority concerned in the appropriate form set out in the Second Schedule.

254. As soon as may be, the Chairman shall, after he has received a communication referred to in rule 252 or 253, deal with it in the following manner :—

(i) if the said arrest, detention or imprisonment takes place when the House is in Session, the Chairman shall communicate such fact to the House. If the member is released subsequently while the House is still in Session, the said fact also shall be communicated to the House;

(ii) if a member who is arrested, detained or imprisoned, during the period when the House is not in Session, continues to be under such arrest, detention or imprisonment after the

House commences its Session, the Chairman shall communicate such fact to the House. If the member is released subsequently while the House is still in Session, the said fact also shall be communicated to the House;

(iii) in all other cases the Chairman shall direct such communication to be published in the "Bulletin" for the information of the members of the Council."

It is alleged by the Petitioner that the Respondent is liable to be disqualified for his failure to intimate the Chairman of the Maharashtra Legislative Council about his arrest on 13th March 2014 by the Superintendent (Service Tax) and the bail order of the same date.

6. To sum up the Petitioner has contended that the Respondent is liable to be disqualified under Section 8(3) of the 1951 Act on the grounds of being convicted for an offence punishable under Section 89(1)(i) of the Finance Act read with Service Tax Rules for failure of payment of service tax and for violation of Articles 252, 253 and 254 of the Maharashtra Legislative Council Rules/Section 8(3) of the 1951 Act is reproduced below:

"8. Disqualification on conviction for certain offences. —

(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."

Section 8(3) states that a person shall be disqualified if he is convicted and sentenced to imprisonment for a period of not less than two years, for any offence other than those mentioned under sub-section (1) and (2) of this provision. The pre-requisites for disqualification under Section 8(3) is conviction and imprisonment for a minimum term of two years. The Supreme Court in the case of *K. Prabhakaran v. Jayarajan*, AIR 2002 SC 3393 held that the purpose of disqualification under Section 8(3) of the 1951 Act is to prevent persons who have been convicted of certain offences to enter politics, thereby asserting that conviction is *sine qua non* for disqualification under Section 8(3). The relevant paragraph of the judgments is reproduced below:

"54. The purpose of enacting disqualification under Section 8(3) of the RPA is to prevent criminalization of politics. Those who break the law should not make the law. Generally speaking, the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics, and the House- a powerful wing of governance. Persons with criminal background do pollute the process of election as they do not have many holds barred and have no reservation from indulging into criminality to win success at an election. Thus, Section 8 seeks to promote freedom and fairness at elections, as also law and order being maintained while the elections are being held. The provision has to be so meaningfully construed as to effectively prevent the

mischief sought to be prevented. The expression 'a person convicted of any offence has to be construed as all offences of which a person has been charged and held guilty at one trial. The applicability of the expression "sentenced to imprisonment for not less than 2 years" would be decided by calculating the total term of imprisonment for which the person has been sentenced."

The Supreme Court has re-affirmed this position in a number of cases including *Ragbir Singh v. Surjit Singh*, 1994 Supp (3) SCC 162 and *Lily Thomas vs. Union of India and Ors.*, (2013) 7 SCC 653, wherein it was held that disqualification under section 8 of the 1951 Act arises only on conviction.

7. The Petitioner places reliance on the arrest memo, dated 13th March 2014, to contend that the Respondent was convicted under Section 89(1)(i) of the Finance Act. This arrest memo was issued by the Superintendent under Section 91(1) of the Finance Act. Section 91(1) of the Finance Act is reproduced below:

"Section 91. Power to arrest. — (1) If the Principal Commissioner of Central Excise or Commissioner of Central Excise has reason to believe that any person has committed an offence specified in clause (ii) of sub-section (1) of section 89, he may, by general or special order, authorise any officer of Central Excise, not below the rank of Superintendent of Central Excise, to arrest such person."

A bare reading of Section 91(1) shows that a person can be arrested if there is a *reason to believe* that he has committed an offence under section 89(1). In this regard, the High Court of Bombay in the case *Cleartrip Private Ltd. and Ors. v. The Union of*

India and Ors., (2016) 288 CTR (Bom) 515 has held that the arrest under Section 91 arises on launching the prosecution, that is, a person can be arrested before he is convicted of an offence under Section 89 of the Finance Act. The relevant paragraph is produced below:

" 16. We are clear in our minds and from the scheme of the Act and the Law as a whole that coercive measures, including effecting any arrest, would arise only when investigation has been completed and on launching the prosecution. (emphasis added) "

Thus, it is established that a person can be arrested under Section 91 of the Finance Act after prosecution is launched against him and before his conviction. Hence, the Commission rejects the contention of the Petitioner that the arrest memo of 13th March 2014 is evidence of the fact that the Respondent was convicted under Section 89(1)(i) of the Finance Act. It may also be noted that no order has been produced before the Commission, of any competent authority, declaring that the Respondent is convicted under the said provision of law.

8. Additionally, the Petitioner has contended that the Respondent is liable to be disqualified for violation of Articles 252, 253 and 254 of the Maharashtra Legislative Council Rules, 2009. The Maharashtra Legislative Council Rules does not prescribe conviction for violation of the provisions contained therein. Further, there is no statutory law that provides for disqualification of a Member of the Maharashtra Legislative Council on the grounds of violation of the Maharashtra Legislative Council Rules.

9. In view of the forgoing findings and analysis, the opinion of Election Commission of India under Article 192(2) of the Constitution of India on the reference, dated 07th July 2015, received from the Governor of Maharashtra is that Shri Dhananjy Panditrao Munde has not incurred disqualification for being a Member of the Legislative Council of Maharashtra under Section 8(3) of the Representation of the People Act, 1951.

10. Accordingly, the opinion of the Election Commission of India is hereby tendered to the Governor of Maharashtra under Article 192 (2) of the Constitution of India.



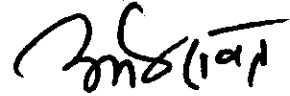
(Shri A.K. Joti)

Election Commissioner



(Dr. Nasim Zaidi)

Chief Election Commissioner



(Shri O.P. Rawat)

Election Commissioner

Place: New Delhi

Date: 27.06.2017