



सत्यमेव जयते

राष्ट्रपति
भारत गणतंत्र
PRESIDENT
REPUBLIC OF INDIA

26 October, 2017

ORDER

Whereas Shri Rambihaari Pandey (hereinafter the "Petitioner") has addressed a petition dated the March 08, 2017 to the undersigned alleging that Smt. Riti Pathak, Member of Parliament (Lok Sabha) (hereinafter the "respondent"), from the Parliamentary Constituency of 11-Sidhi, District Sidhi, Madhya Pradesh has become subject to disqualification under Articles 102 & 103 of the Constitution of India.

And whereas the Petitioner has alleged that the respondent filed her nomination for contesting the general elections of 2014 and on the date of her being elected on 16th May, 2014, she was holding the office of President of Zila Panchayat, District Sidhi (M.P.), which is an "office of profit" under Article 102 of the Constitution of India. The result of said elections was announced on 16th May, 2014 and on the same date the respondent was declared to be elected. The respondent subsequently submitted her resignation from the post of President Zila Panchayat on 24th May, 2014 which was accepted on 29th May, 2014. These chains of events clearly establish that since the respondent was occupying the office of profit on the date of her election to the Parliamentary Constituency, she thus stands disqualified for being the Member of the Parliament;

And whereas the said petition was referred to the Election Commission of India seeking its opinion as required under Article 103 of the Constitution of India;

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- 2 -

And whereas the Election Commission of India examined the matter and has submitted that according to Section 32(5) of the Madhya Pradesh Panchayat Raj Avam Gram Adhiniyam, 1993, if a President of the Zila Panchayat becomes a Member of Parliament, his seat shall be deemed to have been vacated as President with effect from the date of his becoming such Member. In this manner the respondent after the election was never the holder of the office of President of the Zila Panchayat;

And whereas under Article 103 the jurisdiction of the President to decide question of disqualification of a sitting Member of the Parliament arises only if disqualification is incurred after election as a Member of the Parliament. In Election Commission of India v/s Saka Venkata Subba Rao, AIR 1953 SC 210 the Supreme Court of India held that Election Commission jurisdiction to enquire into case of disqualification of a member under Articles 103 & 192 is applicable only to disqualifications to which a Member of Parliament or Member of Legislative Assembly becomes subject after he is elected as such member;

And whereas the Election Commission of India, after examining the petition has given its opinion on July 31, 2017, opining, that Smt. Riti Pathak has not incurred any disqualification under Article 102 of the Constitution of India for being a holder of office of profit in view of Section 32 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993. A copy of the opinion of Election Commission of India dated 1st August, 2017 is annexed hereto;

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- 3 -

Now, therefore, having considered the matter in the light of the opinion expressed by the Election Commission of India, I, Ram Nath Kovind, President of India, in exercise of the powers conferred upon me under Article 103 of the Constitution of India, do hereby hold that the petition dated March 08, 2017, filed by Shri Rambihaari Pandey, on the question of alleged disqualification of Smt. Riti Pathak, Member of Parliament (Lok Sabha), Madhya Pradesh, is not maintainable.

R. Kovind

PRESIDENT OF INDIA