

विधान सभा सचिवालय

उत्तर प्रदेश
(संसदीय अनुभाग)

संख्या : 1032/वि0स0/संसदीय/138(सं)/2019

दिनांक 20 नवम्बर, 2019

अधिसूचना

प्रकीर्ण

श्री राज्यपाल महोदया का निम्नलिखित आदेश, दिनांक 07 नवम्बर, 2019 सर्वसाधारण की सूचनार्थ एतद्वारा प्रकाशित किया जाता है :-

“आदेश

1. Complainants S/Shri Rajeshwar, Vipul Kumar Agarwal & Munish Sharma, have filed their joint complaint dated 18.03.2019 against Dr. Arun Kumar MLA (125-Bareilly Assembly constituency), Uttar Pradesh alleging therein that said MLA has become subject to disqualification for being a Member of the said Legislative Assembly of Uttar Pradesh under Article 191(1) of the Constitution of India read with Section 9A of the Representation of the People Act, 1951.
2. Complainants alleged that the Dr. Arun Kumar, MLA misused his position as Member of Legislative Assembly from Bareilly (Assembly constituency No. 125) to pressurize the then Commissioner, Bareilly Municipal Corporation to derive illicit monetary gains by restoring to blatant abuse of power. The Complainant has alleged that the MLA wrote to the then Commissioner, Bareilly Municipal Corporation vide letter dated 22.01.2019, proposing that the vehicles of the Bareilly Municipal Corporation engaged in a cleanliness drive, be refuelled at M/s Quality Fuels, Dealer Indian Oil Corporation, Peerbahora, near Air Force Gate, Pilibhit Road, Bareilly, a commercial establishment owned by the said MLA for the reason that he could transport diesel to the Bareilly Municipal Corporation garage as he owned small refuelling tankers. Further, the Petitioner has purported that the Commissioner, Bareilly Municipal Corporation, seemingly operating under duress, endorsed the application of the said MLA, who also serves as an ex-officio Corporator, to the Nagar Swasthya Adhikari/Health Officer, Bareilly Municipal Corporation. On the basis of the endorsement, a proposal to the aforementioned effect was put up for approval before the Commissioner, Bareilly Municipal Corporation which was accorded on 24.01.2019, and an Office Order to this effect was issued by Nagar Swasthya Adhikari/Health Officer, Bareilly Municipal Corporation to the respondent on 29.01.2019 apprising the said MLA of the grant of approval to his proposal. The complainant claimed that in committing the acts stated above, the respondent has violated Sections 25(1)(e) and 25(7) of the Uttar Pradesh Municipal Corporation Act, 1959. Having regard to the facts stated as above complainants has requested to disqualify the said MLA from the membership of Legislative Assembly of the Uttar Pradesh.

3. As per the provisions contained in Article 192(2) of the Constitution of India the matter was referred to the Election Commission of India seeking opinion on the question of alleged disqualification of Dr. Arun Kumar, MLA from the membership of the Legislative Assembly of the Uttar Pradesh. The Election Commission of India vide its letter dated 30.09.2019 sent its opinion dated 25.09.2019, which was received on 03.10.2019.
4. After examination of the said matter of alleged disqualification, Election Commission of India vide its opinion dated 25.09.2019 opined that Dr. Arun Kumar MLA (Assembly constituency No. 125, Bareilly, Uttar Pradesh) has not incurred disqualification under Article 191(1)(a) of the Constitution of India. Relevant portion of the opinion is being reproduced below :

"4. In order to determine whether the Respondent has acquired disqualification under Section 9A of the Representation of the People Act, 1951, it must be established that the Respondent entered into a valid contract with the appropriate government. In the present case, there is no agreement enforceable by law which has been entered into between the Respondent and the Bareilly Municipal Corporation and therefore, it does not satisfy the requirements under Section 2 (h) of the Indian Contract Act, 1872. Hence, there is no contract between the Respondent and the Bareilly Municipal Corporation. Moreover, even if a contract did exist between the above-mentioned parties, the Bareilly Municipal Corporation does not fall within the purview of "appropriate government" as defined under Section 7(a) of the Representation of the People Act, 1951. Section 7 (a) is reproduced herein :

(a) "Appropriate Government" means in relation to any disqualification for being chosen as or for being a member of either House of Parliament, the Central Government, and in relation to any disqualification for being chosen as or for being a member of the Legislative Assembly or Legislative Council of a State, the State Government.

(Emphasis supplied)

5. *With regard to the allegations of the petitioner relating to violation of the provisions of the Uttar Pradesh Municipal Corporation Act, 1959, it is outside the jurisdiction and domain of the Commission to decide the same and it is an issue for the appropriate authority to look into.*
In view of the discussion above, this Commission hereby opines under Article 192 of the Constitution of India that the respondent has not incurred disqualification under Article 191(1)(a) of the Constitution of India."

5. The provisions enshrined in Article 192 of the Constitution of India are relevant in this regard and are reproduced as under :

"192. Decision on question as to disqualifications of members : (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) *Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."*

6. A Constitution Bench of the Hon'ble Supreme Court of India, in the case reported in **Brundaban Nayak Vs. Election Commission of India & Another, AIR 1965 SC 1892** held that Any citizen can make complaint to the Governor that the such MLA has incurred disqualification under Article 191(1) and when the Governor receives the complaint and forwards the same to the Election Commission, it can be assumed that the Election Commission should proceed to try the complaint before giving its opinion. It would not be correct to say that it is the Governor who should hold the enquiry and then forward to the Election Commission all the material collected in such an enquiry to enable the Election Commission to form its opinion and communicate the same to the Governor. Governor should forward the complaint to the Election Commission and it is the Election Commission alone which can conduct the enquiry in the complaint. Disqualification referred to in Article 191(1) must be incurred subsequent to the election of the member as follows from Article 190(3)(a) of the Constitution. The decision on the question raised under Article 192(1) has no doubt to be pronounced by the Governor but the Governor must take his decision in accordance with the opinion of the Election Commission. It is the opinion of the Election Commission which in substance is decisive.
7. On the basis of discussion as above and according to the opinion dated 30.09.2019 received for the Election Commission of India under Article 192(2) of the Constitution of India, I, Anandiben Patel, Governor, Uttar Pradesh finally decide that Dr. Arun Kumar, MLA (Assembly constituency No. 125, Bareilly, Uttar Pradesh) has not incurred disqualification under Article 191(1)(a) of the Constitution of India. Above mentioned complaint is hereby disposed of accordingly.

आनन्दीबेन पटेल,

राज्यपाल,
उत्तर प्रदेश।

आज्ञा से,
प्रदीप कुमार दुबे,
प्रमुख सचिव।

संख्या : 1032(1-14)/वि0स0/संसदीय/138(सं)/2019, तद्दिनांक।

प्रतिलिपि-निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यार्थ प्रेषित :-

- 1-मा0 राज्यपाल के अपर मुख्य सचिव को मा0 राज्यपाल की सूचनार्थ,
- 2-मा0 मुख्य मंत्री के प्रमुख सचिव को मा0 मुख्य मंत्री की सूचनार्थ,
- 3-मुख्य सचिव, उत्तर प्रदेश शासन,

- 4-उत्तर प्रदेश विधान सभा के समस्त सदस्यगण,
- 5-जिलाधिकारी, बरेली,
- 6-डॉ० अरुण कुमार, 15951, गांधी नगर, बरेली, उ०प्र०,
- 7-मुख्य निर्वाचन अधिकारी, उत्तर प्रदेश, लखनऊ,
- 8-प्रमुख सचिव, उत्तर प्रदेश शासन, संसदीय कार्य अनुभाग-1,
- 9-प्रधान महालेखाकार, उत्तर प्रदेश, प्रयागराज,
- 10-सचिव, विधि मंत्रालय, भारत सरकार, नई दिल्ली,
- 11-सरकारी सचिवालय के समस्त विभाग,
- 12-निदेशक, सूचना एवं जनसम्पर्क विभाग, उत्तर प्रदेश, लखनऊ,
- 13-महासचिव, लोक सभा, नई दिल्ली,
- 14-विधान सभा सचिवालय के समस्त अधिकारीगण तथा अनुभाग।

बृज भूषण दुबे,
विशेष सचिव।