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Election Disqualification Case No.1 of 2020

In the matter of :

An application under Article 192(2) of the Constitution of India

Shri Jagdeep Pratap Deo, Rajbati, Ward No.2, Sundargarh - Petitioner

Vrs.

Smt. Kusum Tete, Member of Odisha Legislative Assembly
of the 9-Sundargarh (ST) Assembly Constituency - Respondent

ORDER

Dated the 7th December, 2020

Shri Jagdeep Pratap Deo, Rajbati, Ward No.2, Sundargarh has submitted an application before me under Article 192(2) of the Constitution of India on 27.01.2020 for an enquiry by the Election Commission of India seeking disqualification of Smt. Kusum Tete, Member of Odisha Legislative Assembly from 9-Sundargarh (ST) Assembly Constituency under Article 191 of the Constitution of India on grounds of holding an office of profit.

On receipt of the aforesaid application, a reference was made under Article 192(2) of the Constitution of India vide Governor's Secretariat letter No.6350/SG(Con) dated 31.07.2020 seeking opinion of the Election Commission of India on the question of whether the above mentioned member of Odisha Legislative Assembly (Opposite Party) has become subject to disqualification under Article 191 of the Constitution of India on ground of holding of office of profit.

The Under Secretary to Election Commission of India vide letter No.113/4(G)/ECI/LET/FUNC/JUD/2020/Registry-643 dated 16th November, 2020 has forwarded the opinion (in original) recorded by the Election Commission of India on the above reference made to the Commission under Article 192(2) of Constitution of India.

The Election Commission of India vide their opinion dated 16th November, 2020 had given their considered views that Smt. Kusum Tete, Member of Legislative Assembly, Odisha has not incurred disqualification under the provisions of Article 191 of the Constitution of India. Hence, the reference made by the Governor to the Election Commission of India is not a ground for disqualification of an elected representative under Article 191 of the Constitution of India with the following observations.

1. In the said reference, the question of disqualification arose out of a petition made by Shri Jagdeep Pratap Deo (hereinafter, "Petitioner"), before the Hon'ble Governor of Odisha, wherein the Petitioner sought disqualification of Smt. Kusum Tete, Member of Legislative Assembly of Odisha (hereinafter, "Respondent"), under Article 191 of the Constitution of India on ground of holding an 'Office of Profit'.

FACTS :

2. In the said petition, the Petitioner has stated that the Respondent was appointed as Vice-Chairperson of the Special Development Council, Sundargarh by the Planning & Convergence Department, Government of Odisha, vide its notification No.14629/P dated 09.11.2017 for a term of two years. It was further stated that the Respondent was appointed as Chairperson of the Special Development Council, Sundargarh (hereinafter, "said office") vide 1024/P dated 04.02.2019.
3. The Petitioner has alleged that the Respondent was holding the positions of both Chairperson and Vice-Chairperson in the Special Development Council, Sundargarh at the time of filing her nomination papers from 09-Sundargarh Assembly Constituency during the 2019 Odisha Legislative Assembly Elections and that the Respondent failed to disclose the above mentioned two posts which fell under the category of 'Office of Profit'. The Petitioner, therefore prayed for the

disqualification of the Respondent under Article 191(1)(a) of the Constitution of India. It was further alleged that the Respondent by suppressing a material fact in her nomination paper has committed fraud and managed to get elected using corrupt practices and that the Returning Officer of the said constituency ought to have rejected the nomination paper of the Respondent in light of Section 33 and Section 36 of the Representation of the Peoples Act, 1951.

4. On 18.08.2020, a letter was sent by the Commission to the Chief Secretary, Odisha, wherein the Government of Odisha was directed to furnish factual details pertaining to the said office alleged to be held by the Respondent.

In compliance to the above mentioned letter, a letter dated 21.09.2020 was received from Shri Asit Kumar Panda, Joint Secretary to the Government of Odisha. In the said letter, it was stated that Smt. Kusum Tete had resigned from the post of Chairperson, Special Development Council, Sundargarh with effect from 16.03.2019 and that she was not holding any position in the said body with effect from the above mentioned date.

ANALYSIS :

5. It is pertinent to note that Respondent had filed her nomination papers for contesting the above mentioned constituency on 26.03.2019 while she had resigned from her position in the Special Development Council, Sundargarh with effect from 16.03.2019 as per the details provided by the Government of Odisha. Therefore, the Respondent was not holding an office of profit at the time of filing her nomination paper from the said constituency.

6. In respect of the issue of improper acceptance of nomination papers of the Respondent by the Returning Officer, Sundargarh Assembly Constituency during the 2019 Odisha Legislative Assembly Elections, it is stated that since the Respondent had resigned from the said office before the date of filing of nomination papers, there was no illegality on the part of the Returning Officer in accepting the nomination papers of the Respondent. Furthermore, improper acceptance of nomination paper is not a ground for disqualification of an elected representative under Article 191 of the Constitution of India.

CONCLUSION :

7. In the view of above, this Commission hereby opines that Smt. Kusum Tete, Member of Legislative Assembly of Odisha, has not incurred disqualification under the provisions of Article 191 of the Constitution of India.

In view of the above Constitutional and Legal provisions and the opinion of the Election Commission of India on the reference made to the Commission on the aforesaid line, I hereby order that the application filed before me as above under Article 191 of the Constitution of India is not maintainable in as much as is not a ground for disqualification of the elected representative under Article 191 of the Constitution of India.

Given this order on the 7th day of December, 2020 under my seal and signature to be published in the next issue of the Official Gazette.

GANESHI LAL
GOVERNOR, ODISHA