रजिस्ट्री सं. डी.एल. (एन) 04/0007/2003—05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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प्राधिकार से प्रकाशित
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सं. 3] नई दिल्ली, फरवरी 23— फरवरी 29, 2020, शनिवार/फाल्गुन 4— फाल्गुन 10, 1941
No. 3] NEW DELHI, FEBRUARY 23 — FEBRUARY 29, 2020, SATURDAY/PHALGUNA 4—PHALGUNA 10, 1941

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्यक्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए साधारण आदेश और अधिसूचनाएं
Orders and Notifications issued by the Central Authorities (Other than the Administrations of Union Territories)

Hkkjr fuokpu vk;kx

नई दिल्ली, 24 फरवरी, 2020

vk- v- 11.&लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग 2019 की निर्वाचन अर्जी संख्या 1 में इलाहाबाद उच्च न्यायालय के तारीख 20 नवम्बर, 2019 के निर्णय को एतद्द्वारा प्रकाशित करता है ।

(निर्णय अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/उ.प्र.—लो.स./1/2019(इला.)]

आदेश से,

अनुज जयपुरियार, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 24th February, 2020

O.N. 11 .—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement dated 20th November, 2019 of the High Court of Judicature at Allahabad in Election Petition No. 1 of 2019.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

ELECTION PETITION NO. 1 OF 2019
(Under Sections 80, 80-A & 81 of the Representation of People Act, 1951)

DISTRICT- SAHARANPUR

Chintamani (In- person) S/o Bhagwan Das R/o House No. 222 Ward No. 22, Joginder Nagar, District Yamuna Nagar, Hariyana (Candidate of Akhil Rashtrawadi Party).

...Petitioner

Versus

1. Hazi Faziulrahman S/o Hazi Abdul Salam R/o Ward No. 4/1643, Nawabganj, Block Link Road, District Saharanpur (Candidate of Bahujan Samaj Party).
2. Imran Masood S/o Rashid Masood R/o Megh Chhappar, P.T.C. 3 K.V. Colony, District Saharanpur (Candidate of Indian National Congress).
3. Raghaw Lakhanpal S/o Sri Nirbhaypal R/o 01, Friends Colony, Delhi Road, District Saharanpur (Bhartiya Janta Party).
4. Mohd. Uvaish S/o Mohd. Taqui R/o House No.6/2246, Mohalla Husainabad, District Saharanpur (Pragtisheel Samajwadi Party [Lohiya]).
5. Pawan Kumar S/o Dataram R/o Village Anatmao, Rampur Maniharan, District Saharanpur (Aapki Apni Party).
6. Brijpal Singh S/o Madan Singh R/o Village Tapari Dr. Ambehata Chand, District Saharanpur (Hindustan Nirman Dal).
7. Yogesh Dahiya S/o Mahaveer Singh R/o Village Sabalpur, Nabada, Nabada Road, District Saharanpur (Candidate of Aam Admi Party).
8. Ravindra Kumar S/o Samarchand R/o Village Indrabali, Kalyanpur, Dr Jaankheda Daakghar, District Saharanpur (Inklab Vikas Party).
9. Amar Bahadur S/o Harbhal R/o Village and Post Islamnagar, District Saharanpur (Independent).
10. Indu Devi W/o Omveer Singh R/o Village Nahar, Majra Dr. Badhi, District Saharanpur (Independent).
11. Shabnam D/o Faizan R/o Rakesh Talkies Nala Patari, Tehsil and District Saharanpur.

...Respondents

Court No. - 40

Case :- ELECTION PETITION No. - 1 of 2019

Petitioner :- Chintamani (In Person)

Respondent :- Hazi Faziulrahman And 10 Others

Counsel for Petitioner :- In Person,Guru Prasad Mishra In Person
Counsel for Respondent :- K.C. Sinha,Ch. Dil Nisar, Krishna Chandra Sinha

Hon'ble Siddhartha Varma,J.

The Case has been taken up in the revised call.

No one is present for the applicant even though sri K.C. Sinha and Sri Dil Nisar, learned counsel for the respondents are present.

The election petition is, accordingly, dismissed for want of prosecution.

Order Date :- 20.11.2019

sd/-
(Siddhartha Varma, J.)

[No. 82/UP-HP/ 1 /2019(Alld.)]

By Order,

ANUJ JAIPURIAR, Principal Secy.

नई दिल्ली, 27 फरवरी, 2020

आ. अ. 12 .—लोक प्रतिनिधित्व अधिनियम 1951 (1951 की 43) की धारा 106 के अनुसरण में, भारत निर्वाचन आयोग झारखण्ड राज्य से राज्य सभा के लिए एक सदस्य के रुप में श्री धीरज प्रसाद साहू के निर्वाचन पर प्रश्न उठाते हुए श्री प्रदीप कुमार सोनथालिया द्वारा दर्ज की गई 2018 की निर्वाचन याचिका सं. 1 पर रांची स्थित झारखण्ड उच्च न्यायालय के दिनांक 17 जनवरी 2020 के आदेश को एतद्वारा प्रकाशित करता हैं।

(आदेश अधिसूचना के अंग्रेजी भाग में छपा है)

[सं. 82/रा.स.-झारखण्ड/1/18/2020-बी.ई.]

आदेश से,

वरिन्दर कुमार, वरिष्ठ प्रधान सचिव

New Delhi, the 27th February, 2020

O.N.12 .— In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 17th January, 2020 of the High Court of Jharkhand at Ranchi in the Election Petition No. 1 of 2018 filed by Shri Pradeep Kumar Sonthalia calling in question the election of Shri Dheeraj Prasad Sahu as the Member of the Council of States from the State of Jharkhand.

E.P. No. 01 of 2018

[In the matter of an Election Petition under Sections 80 and 81 read with Section 100 and 101 of the Representation of the People Act, 1951]

Pradeep Kumar Sonthalia …Petitioner

Versus

Dhiraj Prasad Sahu @ Dhiraj Sahu & Ors …Respondents

For the Petitioner : Mr. Jitendra Singh, Sr. Adv.

Mr. Indrajit Sinha, Advocate.

Mr. Bibhash Sinha, Advocate.

For the Respondents : Mr. Zishu Saha, Sr. Advocate.

Mr. Ishan Saha, Advocate

Mr. Rajiv Kumar, Advocate.

Mr. Rajesh Bhushan, Advocate.

PRESENT

HON'BLE MR. JUSTICE ANANT BIJAY SINGH

JUDGMENT

Reserved On : 13/01/2020 **Pronounced On : 17/01/2020**

1. The instant election petition has been filed on behalf of Pradeep Kumar Sonthalia (election petitioner) in terms of provisions of Sections 80 & 81 read with Sections 100 and 101 of the Representation of People Act, 1951 challenging the election of Dhiraj Prasad Sahu @ Diraj Sahu (respondent no. 1) pursuant to the notification issued by the Election Commission of India to hold Biennial Election to the Council of States-2018 for 16 States, as the term of office of 58 Members of the Rajya Sabha was due to expire on their retirement in April – May, 2018.

2. In the State of Jharkhand, two Members of Rajya Sabha were due to retire on 03.05.2018.

3. Accordingly, Election Commission of India by a press note as contained in letter No. ECI/PN/17/2018 dated 23.02.2018 issued under the signature of Shri Pawan Dewan, Under Secretary, Election Commission of India, declared the programme for election, which is as under: -

Sl. Nos.	**Subject of Programme**	**Dates and Days**
1.	Issue of Notifications	05th March, 2018 (Monday)
2.	Late Date of making nominations	12th March, 2018 (Monday)
3.	Scrutiny of nominations	13th March, 2018 (Tuesday)
4.	Last date for withdrawal of candidatures	15th March, 2018 (Thursday)
5.	Date of Poll	23rd March, 2018 (Friday)
6.	Hours of Poll	09:00 a.m. to 04:00 p.m.
7.	Counting of Votes	23rd March, 2018 (Friday) at 05:00 p.m.
8.	Date before which election shall be completed	26th March, 2018 (Monday)

4. Shri Binay Kumar Singh, Secretary of the Jharkhand Legislative Assembly was appointed as Returning Officer for the Biennial Election to the Council of States, 2018 by the Election Commission of India.

5. The petitioner filed his nomination as a Candidate set up by Bhartiya Janta Party for being elected as a Member of Rajya Sabha. Along with the petitioner, two other candidates namely, Shri Samir Uraon (set up by Bhartiya Janta Party) and Shri Dhiraj Prasad Sahu (set up by Indian National Congress) also filed their nominations.

6. The nomination papers were scrutinized by the Returning Officer on 13.03.2018 and the papers of all the three candidates were found to be in order.

7. None of the three candidates mentioned above, including the petitioner, withdrew their candidatures before the last date of withdrawal of candidatures i.e. 15.03.2018.

8. On 16.03.2018, the Returning Officer by letter no. Nirwachan 02/18-892/B.Sa dated 16.03.2018 requested all the three candidates to nominate 01 Election Agent, 01 Polling Agent and 03 Counting Agents in the forms enclosed with the said letter. Accordingly, the petitioner nominated his Election Agent, Polling Agent and Counting Agents.

9. As stated above, the Election Commission of India had declared 23.03.2018 as the date of polling, and accordingly, the returning officer by letter no. Nirwachan 02/18-942/B.Sa dated 21.03.2018, informed all the three candidates about the election programme, which is as follows: -

(i) Place of Polling: Tribunal Room of the Vidhan Sabha Secretariat.

(ii) Date of Polling: 23.03.2018.

(iii) Time of Polling: 09:00 A.M. to 04:00 P.M.

The candidates were also requested to be present at the place of polling 15 minutes prior to the commencement of polling.

10. On 23.03.2018, 80 Members of Legislative Assembly of the State of Jharkhand cast their votes from 09:00 A.M. to 04:00 P.M.

11. One Shri Amit Kumar Mahto @ Amit Kumar, son of Late Santosh Kumar Mahto (hereinafter referred to as Shri Amit Kumar Mahto), who was elected as the Member of the Legislative Assembly (Jharkhand Mukti Morcha) from Silli Constituency bearing Sl. No.61, cast his vote in the first hour i.e. around 09:15 A.M. The petitioner believes that since Shri Amit Kumar Mahto is a representative of Jharkhand Mukti Morcha and his party was supporting Shri Dhiraj Prasad Sahu, Shri Amit Kumar Mahto has cast his vote in favour of Shri Dhiraj Prasad Sahu.

12. On the same day i.e. on 23.03.2018 in the first half of Court working hours, the said Shri Amit Kumar Mahto was convicted by the Court of Learned Additional Judicial Commissioner-XVIII, Ranchi in Sessions Trial No. 481 of 2010 for committing the offences under Sections 147, 323/149, 341/149, 353/149, 427/149 and 506/149 of Indian Penal Code and he was immediately taken into custody after cancelling his bail. The order of sentence was pronounced by the Learned Additional Judicial Commissioner-XVIII, Ranchi in the second half at around 02:30 P.M. and Shri Amit Kumar Mahato was sentenced in the following manner: -

Offence	Punishment			Nature
	Imprisonment	Fine	Default	
Section 147 IPC	1 Year R.I.	Rs.10000/-	3 Months RI	Concurrent
Section 323/149 IPC	6 Month R.I.	Rs.10000/-	2 Months RI	
Section 341/149 IPC	1 Month S.I.			
Section 343/149 IPC	1½ Year R.I.	Rs.10000/-	3 Months RI	
Section 427/149 IPC	1 Year R.I.	Rs. 5000/-	3 Months RI	
Section 506/149 IPC	2 Years R.I.	Rs.10000/-	3 Months RI	

13. The conviction of Shri Amit Kumar Mahto and the sentence of two years rendered him disqualified in terms of Section 8(3) of The Representation of People Act, 1951 from the date of conviction i.e. 23.03.2018.

14. In any case, the aforesaid MLA ceases to be a member of the Legislative Assembly and his disqualification shall come into effect immediately from the date of conviction and sentence of two years and such disqualification can neither be postponed, nor suspended.

15. It is further submitted that the opening words of Article 102 and Article 191 of the Constitution of India makes it clear that the same disqualifications are provided for person being chosen as a member of either House of Parliament or the State Assembly or Legislative Council of the State and upon conviction and sentence of two years of a person being member of either house of Parliament or of the Legislative Assembly or Legislative Council of a State, he ceases to be a Member from the date of such conviction.

16. The seat of Member of Legislative Assembly in the Silli Constituency bearing Sl. No.61 becomes vacant with effect from 23.03.2018 i.e. the date of disqualification of Shri Amit Kumar Mahto.

17. The counting of votes was scheduled to start at 05:00 P.M., but the said process started at around 07:30 P.M. and out of the 80 votes cast, 02 votes were declared to be invalid by the Returning Officer. Accordingly, the election result of the 03 candidates was to be based on 78 votes, which were purportedly declared to be valid.

18. At around 11:20 P.M., an objection in writing was made on behalf of the petitioner that the vote cast by Shri Amit Kumar Mahto should be declared as invalid, as the said Shri Amit Kumar Mahto has been disqualified on account of his conviction and sentence of two years by competent court.

19. Around 12:15 A.M. on 24.03.2018, the Returning Officer declared Shri Samir Uraon (Bhartiya Janta Party) and Shri Dheeraj Prasad Sahu (Indian National Congress) to be the Elected Members of Rajya Sabha from the State of Jharkhand. The aforesaid 02 returned candidates were given a certificate to that effect by the Returning Officer in the prescribed form i.e. Form 24 in terms of Rule 85 of the Conduct of Election Rules, 1961.

20. The Returning Officer by an e-mail, sent from binayjvs@gmail.com (Returning Officer's e-mail address) to pksonthalia@shriramozone.com (petitioner's e-mail address) on 24.03.2018 at 06:22 P.M. attached a copy of the letter no. Nirwachan-02/2018-982/Vi.Sa. dated 23.03.2018 whereby the objection made on behalf of the petitioner questioning the validity of the vote of Shri Amit Kumar Mahto was rejected, inter alia, on the ground that the Returning Officer had not received the judgment of conviction of Shri Amit Kumar Mahato till the declaration of the results.

21. The Returning Officer, despite the written objection made on behalf of the petitioner on 23.03.2018 at 11:20 P.M., did not take any step whatsoever to verify about the correctness of the fact regarding the conviction and sentence of two years of Shri Amit Kumar Mahto in Sessions Trial Case No. 481 of 2010 on 23.03.2018 by the Learned Additional Judicial Commissioner-XVIII, Ranchi, before the declaration of the final results.

22. It is further stated that the news of conviction and sentence of two years awarded to Shri Amit Kumar Mahto had also been broadcasted in the local electronic media and was thus available in the public domain. The Returning Officer could have easily verified and / or ascertained the fact regarding the conviction and sentence of Shri Amit Kumar Mahto from Members of Jharkhand Mukti Morcha and / or Indian National Congress and / or their representatives who were present in and around the Jharkhand Vidhan Sabha at the time, when the Election Agent made the complaint in writing at 11:20 P.M. and at all times thereafter, till the declaration of final result at 12:15 A.M. on 24.03.2018. The Returning Officer did not chose to do so, and declared the results on the basis of 78 votes, which has materially affected the results of the election in so far the petitioner is concerned.

23. The undisputed fact remains that Sri Amit Kumar Mahto was convicted at around 11:00 A.M. on 23.03.2018 and at around 02:30 P.M., he was sentenced for two years imprisonment on the same day and, thus, on that day, he stood disqualified.

24. Thus, counting his invalid vote and accordingly declaring of the result was on the face of it illegal and unconstitutional. An invalid / illegal vote of such a convicted person cannot become legal or valid only on the ground that the judgment of conviction and order of sentence was not received by the Returning Officer.

25. In any case, the issue of disqualification upon conviction and sentence was brought to the notice of the Returning Officer before the declaration of results.

26. Thereafter at around 01:04 A.M. on 24.03.2018, the petitioner also registered his complaint with the Election Commission of India through an e-mail with attachment of letter questioning the validity of the vote of Shri Amit Kumar Mahto who was convicted and sentenced to undergo for an imprisonment for two years.

27. The Election Commission of India has not considered the representations / complaint of the petitioner till date and the petitioner has not received any communication from the Election Commission of India in this regard.

28. When the final election results were published, it transpired that Shri Samir Uraon had got 2700 votes (1 vote equalling 100 points), whereas Shri Dhiraj Prasad Sahu had got 2600 votes and the petitioner had got 2599 votes.

29. In other words, Shri Samir Uraon had got 27 votes, Shri Dhiraj Prasad Sahu had got 26 votes and the petitioner had got 25.99 votes, (including 2nd preferential votes) and as a result, the petitioner could not be elected by a margin of 0.01 vote.

30. The petitioner states and submits had the Returning Officer not considered the said 01 invalid vote, for which a complaint was also lodged in writing, the petitioner would have been successful and elected as a Member of Rajya Sabha, as the cut off would have to be re-fixed as 2632.33 votes, which would be evident from the comparative tables given below:

Scenario 1 (Treating the vote of Shri Amit Kumar Mahto as valid)						
	Votes Casted	**Valid Votes**	**To win**	**Samir Uraon**	**Pradeep Kumar Sonthalia**	**Dheeraj Prasad Sahu**
1st Preferential Votes	8000	7800	(7800/3)+1= 2601	2700	2500	2600
2nd Preferential Votes				-99	99	
			Total	**2601**	**2599**	**2600**
Winner				**I**	**III**	**II**
Excess Margin over Sh. Dheeraj Sahu					**-1**	**1**

Scenario 2 (Treating the vote of Shri Amit Kumar Mahato as invalid)						
	Votes Casted	**Valid Votes**	**To win**	**Samir Uraon**	**Pradeep Kumar Sonthalia**	**Dheeraj Prasad Sahu**
1st Preferential Votes	8000	7700	(7700/3)+1= 2567.67	2700	2500	2500
2nd Preferential Votes				-132.33	132.33	
			Total	**2567.67**	**2632.33**	**2500**
Winner				**II**	**I**	**III**
Excess Margin over Sh. Dheeraj Sahu					**132.33**	

31. The petitioner states and submits that disqualification of Shri Amit Kumar Mahto on account of his being convicted and sentenced for imprisonment of two years in Sessions Trial No. 481 of 2010 by the Additional Judicial Commissioner-XVIII, Ranchi, on 23.03.2018 rendered his vote void / illegal and, therefore, the same could not have been considered as a valid tender.

32. The disqualification of Shri Amit Kumar Mahto took effect from the date of conviction and sentence i.e. 23.03.2018 and, hence, neither was he eligible to cast his vote, nor the vote cast by him could be counted as a valid tender.

33. The expression "date of such conviction" as appearing in Section 8(3) of The Representation of People Act, 1951, would mean the day on which, a Member of Parliament or Legislative Assembly is convicted and sentenced for imprisonment for two years.

34. The judgment of conviction and order of sentence in Sessions Trial No. 481 of 2010 by the Additional Judicial Commissioner-XVIII, Ranchi, convicting Shri Amit Kumar Mahato and sentencing him for a period of two years was pronounced before the counting of votes had started and, therefore, the Returning Officer erred in treating his vote as a valid vote and counting the same.

35. Even otherwise, as stated above, the date of disqualification will have to be treated from the beginning of the date of 23.03.2018 and anything done by Shri Amit Kumar Mahto on 23.03.2018 as a Member of Legislative Assembly is to be treated as nonest. Thus, at the time of counting of votes and declaration of results the said Sri Amit Kumar Mahto already stood disqualified and he ceased to be a member and his seat had become vacant and, thus, his vote was invalid and should have been rejected.

36. Neither Shri Amit Kumar Mahto nor the party to which he is associated with in the elections, had informed the Returning Officer about the conviction, though, it is understood that they were aware about judgment of conviction and order of sentence immediately on pronouncement of the same by the Learned Court of Additional Judicial Commissioner-XVIII, Ranchi.

37. The result of election, in so far as it concerns the petitioner, has been materially affected by the improper reception of the votes and / or the reception of vote of Shri Amit Kumar Mahto which was void. Likewise, the election results has also been materially affected by non-compliance of the provisions of Section 8 of the Representations of the People Act, 1951, read with Article 191 of the Constitution of India and Article 190(3) of the Constitution of India.

38. In any case the aforesaid MLA ceases to be a member of the Legislative Assembly and his disqualification shall come into effect on the date of such conviction and sentence of two years and such disqualification can neither be postponed nor suspended as per the settled law.

39. The express and affirmative words in Article 101(3) (a) and 190(3)(a) of the Constitution further put express limitations even on such powers of Parliament to defer the date on which the disqualification would have effect as the seat upon conviction and sentence of two years becomes vacant. Thus, the Returning Officer clearly exceeded its jurisdiction in counting the vote of a convicted Member of the Legislative Assembly as he stands disqualified upon conviction and sentence of two years in terms of Section 8(3) of the Representation of People Act, 1951.

40. It is trite that by virtue Section 8(3) of The Representation of People Act, 1951 as interpreted by the Hon'ble Supreme Court, a sitting Member of Parliament or Legislative Assembly incurs disqualification from the date of such conviction and sentence of imprisonment of two years or more and resultantly, seat of the disqualified Member of Parliament or Legislative Assembly falls vacant in terms of Article 101(3) or Article 190(3)(a) of the Constitution of

India, and therefore, it is submitted that the seat of Silli Constituency bearing Sl. No. 61 fell vacant and / or deemed to be vacant from the beginning of 23.03.2018.

41. The petitioner was a contesting candidate for the election of Member of Rajya Sabha, and as such, he has a right under Section 81 of The Representation of People Act, 1951 to file this election petition.

42. The petitioner is claiming declaration that the election of respondent no.1 be declared to be void and also further claiming that he himself to be duly elected as a returned candidate and, therefore, all the contesting candidates are being arrayed as necessary parties in this election petition in view of Section 82 (a) of The Representation of the People Act, 1951.

43. The result of the election was announced on 24.03.2018 (00:15 A.M.) and this election petition is being filed within 45 days from the date of announcement of the result of the election and, hence, this election petition is in time and not barred by limitation.

44. In the instant election petition, petitioner has sought for following reliefs:

(a) It may be declared that the Returning Officer has improperly received the vote of Shri Amit Kumar Mahto which was void on account of the disqualification incurred by Shri Amit Kumar Mahto on 23.03.2018 by virtue of his conviction and sentence of imprisonment of two years in Sessions Trial in Sessions Trial No. 481 of 2010 passed by Learned Additional Judicial Commissioner-XVIII, Ranchi;

(b) Consequently declare that the election of Shri Dhiraj Prasad Sahu, as a Member of Rajya Sabha in the Biennial Election to the Council of States- 2018 is void;

(c) Declare that the petitioner has been duly elected as a Member of Rajya Sabha in the Biennial Election to the Council of States- 2018 from the State of Jharkhand;

(d) Cost of the election petition be awarded to the petitioner;

(e) Any other or further relief or reliefs to which the petitioner entitled to may be granted to him.

45. Written statement on behalf of the Dhiraj Prasad Sahu @ Diraj Sahu, respondent no. 1 was filed on 08.06.2018 and has taken the following grounds:-

(a) That the present impugned election petition is de void of any merits and as to be dismissed in limine because the petitioner Mr. Pradeep Kumar Sonthalia has sworn in deliberately false affidavit before this Hon'ble Court in the matters the present impugned election petition in the present judicial proceedings with a heinous intent to cheat and abuse the process of Law and of this Hon'ble court as well; which deserves to be dealt with the tough hands of Law.

(b) That there is no cause of action at all for the institution of the present impugned election petition as the same is ab initio nullius juris right at the face of it, because the petitioner Mr. Pradeep Kumar Sonthalia has deliberately sworn in false affidavits before this Hon'ble Court in the impugned election petition, with the criminal intents to falsely fabricate the present impugned proceedings before this Hon'ble Court.

(c) That the present impugned election petition is not maintainable in the eyes of law and hence the same must be rejected at the threshold itself; since further the petitioner Mr. Pradeep Kumar Sonthalia has deliberately sworn in false affidavits before this Hon'ble Court in the impugned election petition, to defeat the ends of justice in the present subject matter.

(d) That yet again the petitioner Mr. Pradeep Kumar Sonthalia has deliberately sworn in false affidavits before this Hon'ble Court in the impugned election petition, to heinously cheat and deliberately abuse the process of this Hon'ble Court.

(e) That the false submissions and averments so made by the petitioner Mr. Pradeep Kumar Sonthalia, have been pre-meditatedly made by him with the heinous mens rea of committing fraud and perjury with this Hon'ble Court and prejudice the Administration of Justice.

(f) That the petitioner Mr. Pradeep Kumar Sonthalia has filed the present impugned election petition on absolutely no cause of action and the entire proceedings are ab initio null and void.

(g) That the replying respondent no. 1 specifically denies the commission and / or happening of any illegality at all in the voting processes and / or the declaration of the election victory of the replying respondent no. 1 in the election under question.

(h) That it is the admitted case of the petitioner Mr. Pradeep Kumar Sonthalia that Sh. Amit Mahto had voted at the time when even the gates of the concerned courts were not opened and by that time nothing had been pronounced by the concerned Hon'ble Court against Mr. Amit Mahto.

(i) That the petitioner Mr. Praddep Kumar Sonthalia has miserably failed to produce on records of this Hon'ble Court any records at all to even prima facie reveal as to in whose favour Mr. Amit Mahto had exercised his voting rights.

(j) That further the petitioner Mr. Pradeep Kumar Sonthalia has miserably failed to produce on records of this Hon'ble Court any original documents at all to substantiate his criminally concocted facts and circumstances; consequent to which no trial proceedings can take place on the basis of photocopies enclosed with the present impugned election petition vide commands of the Section 62 of the Indian Evidence Act, 1872; and hence the present petition deserves to be dismissed with exemplary heavy costs against the erring petitioner Mr. Pradeep Kumar Sonthalia.

(k) That the petitioner has illegally filed an additional affidavit allegedly being supplementary to the present impugned Election Petition; which cannot at all be taken on records without an order of this Hon'ble Court under order – 6 Rule 17 of the C.P.C.; upon an application of the petitioner under order – 6 Rule 17 of C.P.C.; required in Law; and thereupon the reply and objection of the replying respondent no.1 is also very well mandated in law.

(l) That the replying respondent vehemently states that present impugned Election Petition is not at all maintainable in Law since no original documents have been filed by the petitioner on records of this Hon'ble Court.

(m) That the present impugned election petition suffers with non-joinder of the necessary parties because the Chief Election Officer of Jharkhand has not been a party in the present case and as such the present impugned Election petition is not maintainable in Law.

(n) That the replying respondent no. 1 reserves its rights and prays for the liberty and leave of this Hon'ble Court to file detailed additional objections and reply against the illegal Additional supplementary affidavit filed by the petitioner in contravention of the Rule of Law.

46. Further, respondent no. 1 has replied the averments made in the election petition on merits:

(i) That the contents of para-1, 2, 3, 4, 5, 6, 7, 8 and 9 of the impugned election petition are matters of records only, whereas it is vehemently objected that the petitioner Mr. Pradeep Kumar Sonthalia has not filed any original documents to said effects on records of this Hon'ble Court in the impugned election petition and as such this is the gross violation of the commands of the statutes under Section 62 of the Indian Evidence Act, 1872.

(ii) That the contents of para-10 and para-11 of the impugned election petition, are specifically and categorically not in the knowledge of the replying respondent and as such the same is specifically denied to the extent of the want of knowledge, whereas it is vehemently objected that the petitioner Mr. Pradeep Kumar Sonthalia has not filed any original documents to said effects on records of this Hon'ble Court in the impugned election petition and as such this is the gross violation of the commands of the statutes under Section 62 of the Indian Evidence Act, 1872. Further it is the admitted case of the petitioner Mr. Pradeep Kumar Sonthalia that he himself has no specific knowledge of the facts of the para-10 of the impugned election petition and all that has been averred by the petitioner Mr. Pradeep Kumar Sonthalia is bare mere belief of the petitioner Mr. Pradeep Kumar Sonthalia. The contents of the para- 10 of the impugned election petition are reproduced herewith for the ready reference of this Hon'ble Court:-

"One Shri Amit Kumar Mahto @ Amit Kumar, son of Late Santosh Kumar Mahto (hereinafter referred to as Shri Amit Kumar Mahto) who was elected as the member of the Legislative Assembly (Jharkhand Mukti Morcha) from Silli Constituency bearing Sl. No. 61, casted his vote in the first hour i.e. around 9:15 a.m. The petitioner verily believes that since Shri Amit Kumar Mahto is a representative of Jharkhand Mukti Morcha and his party was supporting Shir Dhiraj Prasad Sahu, Shri Amit Kumar Mahto has casted his vote in favour of Shri Dhiraj Prasad Sahu."

(iii) That the contents of para-12 of the impugned election petition, are specifically and categorically not in the knowledge of the replying respondent and as such the same is specifically denied to the extent of the want of knowledge; whereas it is vehemently objected that the petitioner Mr. Pradeep Kumar Sonthalia has not filed any original documents to said effects on records of this Hon'ble Court in the impugned election petition and as such this is the gross violation of the commands of the statutes under Section – 62 of the Indian Evidence Act, 1872. Further it is admitted case of the petitioner Mr. Pradeep Kumar Sonthalia that the said Sh. Amit Mahto casted his vote at 09:15 A.M. and this fact itself reins at the top of everything that by that time nobody on this earth ever knew as to what was going to happen in next ten hours in the concerned court as alleged and in this case a plain reading of the Section 8 (3) of the Representation of People Act, 1951 will not at all be construed in Law rather the admitted time of the casting of the vote of Mr. Amit Mahto will be construed and considered in Law under the legal maxim of Doctrine of de facto construction of the facts and the then existent circumstances thereof; which mandate that neither Mr. Amit Mahto himself nor anyone else

had the knowledge of the perspective happenings in the forthcoming ten hours as alleged and that is why it stands proved beyond all doubts that the vote of Mr. Amit Mahto as alleged, has been casted by him in the favour of whosoever; has been done at the time when no judgment was pronounced against him by the concerned Court as alleged and hence the Vote as casted by Mr. Amit Mahto at 09:15 A.M.; is absolutely legal, genuine, legitimate and legally enforceable under all circumstances whatsoever in Law.

(iv) That the contents of para-13, 14 and 15 of the impugned election petition, are specifically and categorically not in the knowledge of the replying respondent and as such the same is specifically denied to the extent of the want of knowledge; whereas it is vehemently objected that the petitioner Mr. Pradeep Kumar Sonthalia has not filed any original documents to said effects on records of this Hon'ble Court in the impugned election petition and as such this is the gross violation of the commands of the statutes under Section 62 of the Indian Evidence Act, 1872.

(v) That the contents of para-16 and 17 of the impugned election petition, are matter of records only.

(vi) That the contents of para-18, 19, 20, 21, 22, 23, 24, 25 and 26 of the impugned election petition, are specifically and categorically not in the knowledge of the replying respondent and as such the same is specifically denied to the extent of the want of knowledge, whereas it is vehemently objected that the petitioner Mr. Pradeep Kumar Sonthalia has not filed any original documents to said effects on records of this Hon'ble Court in the impugned election petition and as such this is the gross violation of the commands of the statutes under Section 62 of the Indian Evidence Act, 1872.

(vii) That the contents of para-27, 28, 29 and 30 of the impugned election petition, are specifically and categorically not in the knowledge of the replying respondent and as such the same is specifically denied to the extent of the want of knowledge; whereas it is vehemently objected that the petitioner Mr. Pradeep Kumar Sonthalia has not filed any original documents to said effects on records of this Hon'ble Court in the impugned election petition and as such this is the gross violation of the commands of the statutes under Section 62 of the Indian Evidence Act, 1872.

(viii) Further it is the admitted case of the petitioner Mr. Pradeep Kumar Sonthalia that the said Sh. Amit Mahto casted his vote at 09:15 A.M. and this fact itself reins at the top of everything that by that time nobody on this earth ever knew as to what was going to happen in next ten hours in the concerned court as alleged and in this case a plain reading of the section 8 (3) of the Representation of People Act, 1951 will not at all be construed in Law rather the admitted time of the casting of the vote of Mr. Amit Mahto will be construed and considered I Law under the legal maxim of Doctrine of de facto construction of the facts and the then existent circumstances thereof; which mandate that neither Mr. Amit Mahto himself nor anyone else had the knowledge of the perspective happenings in the forthcoming ten hours as alleged and that is why it stands proved beyong all doubts that the vote of Mr. Amit Mahto as alleged, has been casted by him in favour of whosoever, has been done at the time when no judgment was pronounced against him by the concerned court as alleged and hence the vote as casted by Mr. Amit Mahto at 09:15 A.M. is absolutely legal, genuine, legitimate and legally enforceable under all circumstances whatsoever in Law.

(ix) That the contents of Para-31 of the impugned Election Petition are specifically denied to the extent of any rights of the petitioner to file the present impugned election petition before this Hon'ble Court, since the petitioner has sworn in false affidavit with his nomination papers against which the respondent no. 1 is seeking legal actions against the very nomination itself of the petitioner as also the respondent no. 1 is filing application under Section 340 of Cr.P.C. against the erring petitioner before this Hon'ble Court.

(x) That the contents of Para-32 of the impugned Election Petition are specifically denied to the extent that the petitioner has not at all any claims seeking declaration that the election of respondent no. 1 be declared to be void and also further the petitioner has not at all any rights for claiming that he be dully elected as a returned candidate.

(xi) That the contents of para-33 of the impugned Election Petition are matters of records only.

(xii) That per sethe contents of para-34 of the impugned Election Petition; the replying respondent no. 1 specifically states and reiterates that there is neither any cause of action nor there can at all be any cause of action for the institution of the present impugned illegal Election petition.

(xiii) That the contents of Para-35 and 36 of the impugned Election Petition are matters of records only.

(xiv) That the contents of Para-37 of the impugned Election Petition pertain to the illegal prayers of the petitioner and all his prayers deserve to be dismissed by this Hon'ble Court in the interests of justice.

47. Written statement on behalf of the Sameer Uraon, Respondent No. 2 was filed on 22.06.2018 stating therein that:-

(i) That it is a matter of fact that the President of India called upon the Elected Members of Jharkhand Legislative Assembly to elect two Members to the Rajya Sabha by way of Biennial Election to the Council of States-2018.

(ii) That it is a matter of fact that the Election Commission of India has decided to hold Biennial Election to the Council of States-2018 in 16 States as term of office of 58 Members of the Rajya Sabha was due to expire in April – May, 2018. It is also an admitted fact that Election Commission of India had issued Press Note dated 23.02.2018 containing schedule for programme for election.

(iii) That it is matter of fact that the petitioner and the answering respondent no.2 has filed their nomination, as candidates set up by Bhartiya Janta Party and the respondent no.1 has filed nomination as a candidate set up by Indian National Congress. The nomination papers were scrutinized on 13.03.2018 and after expiry of last date of withdrawal of candidature on 15.03.2018, the Returning Officer vide its letter dated 16.03.2018 requested all three candidates to nominate one Election Agent, one Polling Agent and three Counting Agents.

(iv) That it is matter of fact Election Commission of India had declared 23.03.2018 as the date of polling having venue at "Tribunal Room of Vidhan Sabha Secretariat", timing of polling 09:00 A.M. to 04:00 P.M.

(v) That it is matter of fact that 80 Members of Legislative Assembly of the State of Jharkhand cast their vote on 23.03.2018 including one Amit Kumar Mahto @ Amit Kumar.

(vi) That it is matter of fact that Sri Amit Kumar Mahto @ Amit Kumar was the Elected Member of Legislative Assembly (Jharkhand Mukti Morcha) from Silli Constituency bearing Sl. No.61 who cast his vote in the first hour i.e. around 09:15 A.M. It is matter of fact that Sri Amit Kumar Mahto @ Amit Kumar being representative of Jharkhand Mukti Morcha and on account of fact that his party was supporting respondent no.1 Dhiraj Prasad Sahu has cast his vote in favour of Sri Dhiraj Prasad Sahu. It is also admitted fact that in the nomination paper, said Sri Amit Kumar Mahto @ Amit Kumar is one of the proposer of Sri Dhiraj Prasad Sahu. It is also an admitted fact that on the same day i.e. on 23.03.2018 in first half of court working hours, Sri Amit Kumar Mahto @ Amit Kumar was convicted by the Court of Learned Additional Judicial Commissioner - XVIII, Ranchi.

(vii) That it is also matter of fact that conviction of Sri Amit Kumar Mahto @ Amit Kumar rendered him disqualified in terms of Section 8(3) of the Representation of the Peoples Act, 1951, from the date of his conviction i.e. 23.03.2018.

(viii) That it is admitted fact that when final result were published, it transpire that the answering respondent had got 2700 votes (1 vote equaling 100 points), whereas Dhiraj Prasad Sahu got 2600 votes and the petitioner has got 2599 votes. In other words, the answering respondent has got 27 votes, the respondent no.1 has got 26 votes and the petitioner has got 25.99 votes (including 2nd preferential votes), as a result of which the petitioner could not be elected by the margin of 0.01 vote, whereas the answering respondent and the respondent no.1 were declared as Returned Candidate. The answering respondent understands that even if vote of Sri Amit Kumar Mahto @ Amit Kumar is discarded, the same will not effect the election of this returned candidate i.e. answering respondent.

(ix) That it is stated that improper reception of vote of Sri Amit Kumar Mahto @ Amit Kumar has materially effected the result of the election of the petitioner, as Sri Amit Kumar Mahto @ Amit Kumar stands disqualified in terms of Section 8(3) of the Representation of the Peoples Act, 1951, from the date of his conviction i.e. 23.03.2018.

Further, written arguments on behalf of respondent no. 2 Sameer Oraon has also been filed.

48. A supplementary affidavit has been filed on behalf of the petitioner on 09.04.2018 stating the grounds of conviction and sentence of two years in Sessions Trial No. 481 of 2010 by the Additional Judicial Commissioner-XVIII, Ranchi and Shri Amit Kumar Mahto ceased to be a Member of Legislative Assembly.

49. The election petition was filed on 28.03.2018 before the Joint Registrar (List & Computer). Thereafter, it was listed before this Court on 11.04.2018 and a Caveat Application No. 101 of 2018 under Section 148A of the C.P.C. was filed on behalf of respondent no. 1 Dhiraj Prasad Sahu and another Caveat Application No. 102 of 2018 under Section 148A of the C.P.C. was also filed on behalf of the respondent no. 1 – Dhiraj Prasad Sahu.

50. Further, Caveat Application No. 125 of 2018 under Section 148A of the C.P.C. read with Chapter IX of the High Court of Jharkhand Rules, 2001 was filed on behalf of the respondent no. 2 – Sameer Uraon.

51. Further, Rajiv Kumar, Advocate appeared on behalf of the respondent no. 1 Dhiraj Prasad Sahu, the winning candidate by filing Vakalatnama and Mr. Arpan Mishra, Advocate appeared on behalf of respondent no. 2 – Sameer Uraon by filing Vakalatnama.

52. Further, I.A. No. 3425 of 2018 in terms of provisions of Section 151 of the Code of Civil Procedure read with Section 87 of the Representation of People Act read with Rule 342 of the High Court of Jharkhand Rules filed on behalf of the petitioner was pressed and learned counsel for the respondent no. 1 prayed for two days time for obtaining instruction and also to file fresh Vakalatnama and the matter was directed to be listed on 27.04.2018.

53. On 27.04.2018, learned counsel for the petitioner submitted that he did not want to press the I.A. No. 3425/2018 and the same was dismissed as not pressed. Further, Mr. A.R.M. Pandey, learned counsel assisted by Ms. Manshi Bhatia appeared and filed Vakalatnama on behalf of the respondent no. 1 and the matter was directed to be listed on 12.06.2018.

54. On 12.06.2018, I.A. No. 4831 of 2018, kept at Flag-'5' under Section 151 read with Order I Rule 10 of the C.P.C. read with Section 87 of the Representation of People Act, 1951 was filed by one Dr. Irfan Ansari, Member of Legislative Assembly of State of Jharkhand on 11.06.2018, copy of the same has been served upon respondent no. 1 and learned counsel for the petitioner.

55. Further, I.A. No. 4832 of 2018 under Order 151, Order I Rule 10 of C.P.C. read with Section 87 of the Representation of People Act, 1951 was filed by one Sukhdeo Bhagat, Member of Legislative Assembly of State of Jhrkhand. Further, three petitions have been filed on behalf of respondent no. 1, first one was styled as C.M. Application No. /2018 under Section 151 of C.P.C. read with Section 87 of the Representation of People Act, 1951. Second application i.e. C.M. Application No. /2018 under Section 151 of the C.P.C. read with Section 87 of the Representation of People Act was filed challenging the maintainability of the present election petition and the third application bearing Cr.M.A. No. /2018 under Section 340 of Cr.P.C. read with 151 of C.P.C. read with Section 87 of Representation of People Act, 1951 was filed on behalf of the respondent no. 1. Further, learned counsel for the petitioner raised objection to the maintainability of the petitions filed on behalf of the respondent no. 1, so office was directed to make stamp reporting of the aforesaid petitions filed on behalf of the respondent no. 1 and the matter was directed to be listed on 03.07.2018.

56. The matter was listed on 03.07.2018 and the stamp reporter had given a report that there was no nomenclature as C.M. Application and Crl. Misc. Application under Jharkhand High Court Rule No. 84 (I). So fresh stamp report was asked for and matter was adjourned. Thereafter, the matter was listed on 01.08.2018 and it was adjourned and finally on 17.09.2018, I.A. No. 4831 of 2018 and I.A. No. 4832 of 2018 were directed to be taken up together.

57. Further, under order dated 29.01.2019, I.A. No. 7888 of 2018, kept at Flag-27, filed on behalf of the Dhiraj Prasad Sahu @ Dhiraj Sahu, respondent no. 1 under Section 151 of the C.P.C., Order I, Rule 10 of C.P.C. and Section 87 of the R.P. Act challenging the maintainability of election petition was dismissed as not pressed as he did not want to press I.A. No. 7888 of 2018. Further, I.A. No. 7889 of 2018, kept at Flag-28 filed on behalf of the Dhiraj Prasad Sahu @ Dhiraj Sahu, respondent no. 1 under Sections 151 of the C.P.C., Order I, Rule 10 of C.P.C. and Section 87 of the R.P. Act challenging the illegal filing of the impugned supplementary affidavit by the petitioner of the present election petition was dismissed as not pressed, as he did not want to press I.A. No. 7889 of 2018. I.A. No. 7890 of 2018, kept at Flag-29, was earlier filed under Section 340 (i) of the Cr.P.C. read with Section 151 of the C.P.C. read with Section 87 of Representation of People Act, 1951, but subsequently, it was modified and proposed to be filed under Order I Rule 10 of the C.P.C. and Section 87 of the R.P. Act filed on behalf of the respondent no. 1 was dismissed as not pressed, as he did not want to press I.A. No. 7890 of 2018.

58. Further, it appears that on 14.02.2019, I.A. No. 4831/2018 filed under Section 151 of C.P.C., Order I, Rule 10 of C.P.C. read with Section 87 of Representation of People Act by way of intervention application on behalf of Dr. Irfan Ansari, Member of Legislative Assembly of State of Jharkhand and I.A. No. 4832 of 2018 has been filed under Section 151 of C.P.C., Order I, Rule 10 of C.P.C. read with Section 87 of Representation of People Act on behalf of Sukhdeo Bhagat, Member of Legislative Assembly of State of Jharkhand were dismissed by this Court and the matter was directed to be listed on 13.03.2019 for framing of issues.

59. On 13.03.2019, on the basis of the pleadings of the parties and after hearing the learned counsel for the parties, the following issues are framed :-

1. Whether Shri Amit Kumar Mahto has cast his vote in favour of respondent no. 1 in Biennial Election to the Council of States, 2018 in connection with State of Jharkhand?

2. Whether on conviction and sentence of two years in Sessions Trial No. 481 of 2010 by the Additional Judicial Commissioner-XVIII, Ranchi, Shri Amit Kumar Mahto ceased to be a Member of Legislative Assembly and his disqualification came into effect immediately from the date of his conviction and sentence of two years and, therefore, the vote of Shri Amit Kumar Mahto could not have been taken into consideration at the time of counting?

3. Whether the disqualification of Shri Amit Kumar Mahto rendered his vote void / illegal that was cast to respondent no. 1 and, therefore, reception of his vote was improper and, thus, in terms of Section 100 (1)(d)(iii) of the Representation of People Act, 1951, the election of respondent no. 1 is liable to be declared void?

4. Whether the communication from the Returning Officer (e-mail dated 24.03.2018) rejecting the objection made on behalf of the petitioner on the ground that the Returning Officer had not received the judgment of conviction of Shri Amit Kumar Mahto till the declaration of the results, is absolutely illegal and unlawful?

5. Whether disqualification of Shri Amit Kumar Mahto in terms of Section 8 (3) of the Representation of People Act, 1951, takes effect from the date of his conviction and sentence of two years i.e. 23.03.2018 which means the

day as per English calendar beginning at midnight and covering a period of 24 hours i.e. with effect from 23.03.2018 at 00:00 hours?

6. The respondent no. 1 having been declared to be elected in the Biennial Election to the Council of States – 2018 by a margin of 0.01 vote and in the event, the vote of Shri Amit Kumar Mahto which has been received improperly is ignored, then whether the petitioner is entitled to be declared successful and consequently for being elected as a Member of Rajya Sabha?

60. Further, the matter was listed on 25.04.2019. On that date, I.A. No. 4007 of 2019 which was filed on behalf of the petitioner under Order 16 Rule 1 of Code of Civil Procedure, Rule 342 of the Jharkhand High Court Rules for issuance of summons to Shri Binay Kumar Singh, the then Returning Officer of the Biennial Election to the Council of States, 2018 as witness before this Court, I.A. No. 4008 of 2019 which was filed under Order 16 Rule 6 and Section 151 of the Code of Civil Procedure read with Rule 342 of the Jharkhand High Court Rules, 2001 for issuance of summons to the Returning Officer / Election Officer for production of original documents referred in para-3 of the I.A. and I.A. No. 4009 of 2019 which was filed under Section 151 of the Code of Civil Procedure read with Rule 342 of the Jharkhand High Court Rules, 2001, for direction upon the Returning Officer / Election Officer to take immediate necessary steps to preserve the documents referred in paragraph no. 3 of the instant I.A. were pressed and learned counsel for the respondent no. 1 proposed to file counter affidavit to the aforesaid I.As.

61. During course of trial of the case, election petitioner in respect of his case has examined Election Petitioner Witness No. 1, Binay Kumar Singh, Returning Officer and Election Petitioner Witness No. 2, Pradeep Kumar Sonthalia, Election Petitioner himself.

62. Respondent Nos. 1 & 2 have not examined any witnesses.

63. In this case, following documents were exhibited on behalf of the election Petitioner:-

Sl No.	Exhibit No.	Exhibit Details	Marked on
1	X for identification	Photocopy of Press Note No. ECI/PN/17/2018 dtd 23.02.18 (2 pages)	02.07.19
2	1.	Original of Letter No. 02/2018 734/Vi. Sa. Dated 05.03.18 issued by the Returning Officer	02.07.19
3	Y for identification	Office Copy of Form-7B containing List of Contesting candidates issued by R.O. on 15.03.18	02.07.19
4	2	Original of Form 3B (Rule-7) dtd 12.03.18 received by the R.O. showing Nominations on the last date of receipt of the forms along with the names of the proposers+ Covering Letter.	02.07.19
5	3	OriginalObjection dated 23.03.18 along with endorsement received at 11:20 p.m.	02.07.19
6	4	Original Acknowledgement of receipt of the certificate of the returned Candidate along with Letter No. *Election 02/2018 – 985 LA* dated 23.03.2018, (3 pages).	02.07.19
7.	5	Original Letter No. *Nirvachan – 02/2018 -982 /Vi. Sa* dated 23.03.2018 (1 page)	02.07.19
8.	6	Original application dated 27.03.2018 (1 page) filed by the petitioner.	02.07.19
9.	7	Original letter no. Nirvachan- 02/2018-1017/Vi. Sa. Dated 28.03.2018 (01 page) issued by the R.O.	02.07.19
10.	8	Original Counter foil of the ballot paper cast by Sri Amit Kumar Mahto in the Biennial Rajya Sabha Election of year 2018.	02.07.19
11.	9	The Original Ballot paper showing the casting of vote by Sri Amit Kumar Mahto in favour of	02.07.19

		Sri Dhiraj Prasad Sahu.	
12.	10	Signature of Binay Kumar Singh (R.O) as receiving on the application by Pradeep Kumar Verma, the election agent of Pradeep Kumar Sonthalia.	02.07.19
13.	1/1	Original Form -1 (Rule 3) (1 page) attached with letter no. 02/18 – 734/ Vi. Sa. Dated 05.03.2018	02.07.19
14.	11	Original of Result Sheet, Transfer No. 1 in Form - 23 B (showing distribution of surplus votes to elected candidates and return of election) enclosed with letter no. Election 02/02018 – 984 dated 23.03.2018 (4 pages)	02.07.19
15.	12	Original letter no. Karmik-04/18- 1376/Vi. Sa dated 26.04.2018 issued by Under Secretary, Jharkhand Vidhan Sabha along with its enclosures (08 pages).	02.07.19
16.	12/1	Serial No. 61 in the enclosure with letter no. Karmik-04/18- 1376/Vi. Sa dated 26.04.2018.	02.07.19
17	13	Notification no. Karmik-04/18- 1062/Vi. Sa. Dated 02.04.2018 issued by the Secretary I/c Jharkhand Vidhan Sabha. (2 pages)	02.07.19
18	13/1	Signature of Secretary I/c, Jharkhand Vidhan Sabha.	02.07.19
19	14	2 sets of Original acknowledgments part–Vof Pradeep Kumar Sonthalia.	02.07.19
20	15	Entire Certified copy of the Judgment passed in Sessions Trial No. 481/2010 (mentioned in Para- 8 of examination-in-chief)	22.07.2019
21	16	E-mail dated 24.03.2018 at 01:04 A.M. along with attachment in 04 sheets.	22.07.2019
22	17	E-mail dated 24.03.2018 at 6:22 p.m. along with attachments in 02 sheets	22.07.2019
23	18	Original affidavit filed under Section 65B of the Evidence Act. Original Affidavit marked.	22.07.2019.

64. For determining the issues involved in this election petition, Issue Nos. 1, 2, 3 & 5 are being taken together.

65. Learned counsel for the petitioner during course of oral submissions and in the written statement and also in the rebuttal has referred to evidence of Binay Kumar Singh, Returning Officer (P.W.-1), who has proved Exhibit-1 to 14. Exhibit–2 is the original of 'Form-3B' (Rule-7) dated 12.03.2018 showing nominations received by P.W.-1 upto 03:00 P.M. on the last date of receipt of form along with names of proposers of the respective candidates, consisting of 03 sheets along with the covering letter. He had also proved the original Objection dated 23.03.2018 along with endorsement received by P.W.-1 at 11:20 P.M. consisting of 01 page. This original Objection dated 23.03.2018 was marked as Exhibit-3.

66. Further, he has also proved the original Letter No. Election 02/2018-984/L.A. This is the original acknowledgement of receipt of the Certificate of the Returned Candidates along with Letter No. Election – 02/2018-9985/L.A. dated 23.03.2018, consisting of 03 pages. This original acknowledgement is marked as Exhibit-4.

67. Further, he has proved the original Letter No. Nirvachan – 02/2018-982/Vi.Sa. dated 23.03.2018 consisting of 01 page sent by P.W.-1. This original Letter No. Nirvachan – 02/2018-982/Vi.Sa. dated 23.03.2018 is marked as **Exhibit-5.**

68. Further, he has also proved the original application dated 27.03.2018 consisting of 01 page which was filed by the petitioner and acknowledged by me at 02:00 P.M.. This original application dated 27.03.2018 is marked as Exhibit-6.

69. He has also proved the original Letter No. Nirvachan-02/2018-1017/Vi.Sa. dated 28.03.2018 consisting of 01 page issued by P.W.-1. This original Letter No. Nirvachan-02/2018-1017/Vi.Sa. dated 28.03.2018 is marked as Exhibit-7.

70. He has also proved the original counter foil of the ballot paper cast by Sri Amit Kumar Mahto in the Biennial Rajya Sabha Election of Year 2018. At the back side of counter foil, serial number of ballot paper is mentioned as 001. The counter foil is marked as Exhibit-8.

71. He has also proved the original ballot paper containing serial number 001 cast by Sri Amit Kumar Mahto in the Biennial Rajya Sabha Election of Year 2018, showing that Sri Amit Kumar Mahto has cast his vote in favour of Sri Dhiraj Prasad Sahu and he has not cast second, third and fourth preference vote. This original ballot paper is marked as Exhibit-9.

72. Further, P.W.-1 has also proved the application submitted by Pradeep Kumar Verma, the election agent of Sri Pradeep Kumar Sonthalia, election petitioner on which he had put my signature and issued the receiving at 11:20 P.M.. The signature of Binay Kumar Singh (Returning Officer) on the receiving is marked as Exhibit-10.

73. Further, the Original Form-1 (Rule 3), which was attached with letter no. 02/18 734/Vi. Sa. dated 05.03.2018, which pertains to notice of election, its schedule and timing, which bears signature of P.W.-1, which is marked as Exhibit- 1/1.

74. He has also proved the original copies of the Result Sheet, Transfer Sheet No. 1 showing distribution of surplus votes to elected candidates and Return of Election in "Form-23B" of Biennial Rajya Sabha Election, 2018, which are enclosed with Letter No. Election 02/2018-984 dated 23.03.2018, all of which bear original signatures of P.W.-1. The entire document in 04 sheets is marked as Exhibit-11.

75. Further, he has also proved the original Letter No. Karmik-04/18-1376/Vi. Sa. dated 26.04.2018 issued by Under Secretary, Jharkhand Vidhan Sabha, consisting of 08 sheets is marked as Exhibit-12.

76. He has also proved the enclosure enclosed with Letter No. Karmik-04/18-1376/Vi. Sa. dated 26.04.2018 contains the names of the Hon'ble Members of the Legislative Assembly, their permanent addresses and parties to which they belong and present status and Serial No. 61, which pertains to Silli Assembly Constituency, which shows that it is vacant from 23.03.2018. Serial No. 61 is marked as Exhibit-12/1.

77. Further, he has also proved the original Notification No. Karmik-04/18-1062/Vi. Sa. dated 02.04.2018 issued by Secretary In-charge, Jharkhand Vidhan Sabha, consisting of two sheets, bears the signature of P.W.-1, which pertains to Amit Kumar (Amit Kumar Mahto), Member of 61, Silli Assembly Constituency upon his conviction in terms of Section 8 of Representation of People Act, 1951 read with provisions of Article 191 (1)(e) of the Constitution of India as he was convicted in a case on 23.03.2018 and he is disqualified. The Notification is marked as Exhibit-13 and the signature of Secretary Incharge, Jharkhand Vidhan Sabha is marked as Exhibit-13/1.

78. Further, the original copies of two sets of Acknowledgments Part-V (Receipt of Nomination Paper and Notice of Scrutiny) of Sri Pradeep Kumar Sonthalia, a candidate for election to the Council of States by the elected members of the Legislative Assembly of Jharkhand, which bear signatures of P.W.-1, consisting of two sheets. The two Acknowledgement sets are marked as Exhibit-14.

79. He has also stated that Exhibit-3, which is an Objection given by Pradeep Kumar Verma, Election Agent of the contesting candidate Pradeep Kumar Sonthalia addressed to Returning Officer, which was received by P.W.-1 on 11:20 P.M. intimating that Amit Mahto, who had participated in the election stands convicted and sentenced for two years and his participation in the election is illegal. Suo moto he said that Exhibit-3 received at 11:20 P.M. was not supported by copy of any judgment delivered against Amit Kumar Mahto and the objection was in single sheet. In cross-examination on behalf of the respondent no. 1, he has stated that Exhibit-3, the Objection filed by Pradeep Kumar Verma, Election Agent was not accompanied by the judgment indicating that Amit Kumar Mahto was convicted by a competent court of law.

80. Based on the statements, learned counsel for the petitioner submitted that admittedly Shri Amit Kumar Mahto had voted at 09:15 A.M. and subsequently, at 2:30 P.M. he stood convicted, so with regard to Issue No. 1 i.e. whether Shri Amit Kumar Mahto cast his vote in favour of respondent no. 1 in Biennial Election to the Council of States, 2018 in connection with State of Jharkhand, the answer is in affirmative.

81. So far Issue Nos. 2, 3 and 5 are concerned, learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court passed in the case of "Lily Thomas Vs. Union of India and others" reported in (2013) 7 SCC 753. Paragraph nos. 30, 31, 32, 33 reads as under:

> "30. Thus, Article 101 (3) (a) provides that if a Member of either House of Parliament becomes subject to any of the disqualifications mentioned in Article 190 (3)(a) provides that if a Member of a House of the Legislature of a State becomes subject to any of the disqualifications mentioned in clause (1), his seat shall thereupon become vacant. This is the effect of a disqualification under Articles 102 (1) and 190 (1) incurred by a Member of either House of Parliament or a House of the State Legislature. Accordingly, once a person who was a Member of either

House of Parliament or House of State Legislature becomes disqualified by or under any law made by Parliament under Articles 102 (1)(e) and 191(1)(3) of the Constitution, his seat automatically falls vacant by virtue of Articles 101 (3)(a) and 190 (3) (a) of the Constitution and Parliament cannot make a provision as in sub-section (4) of Section 8 of the Act to defer the date on which the disqualification of a sitting Member will have effect and prevent his seat becoming vacant on account of the disqualification under Article 102(1)(e) or Article 191(1) (e) of the Constitution.

31. We cannot also accept the submission of Mr. Kuhad that until the decision is taken by the President or Governor on whether a Member of Parliament or State Legislature has become subject to any of the disqualifications mentioned in clause (1) of Article 102 and Article 191 of the Constitution, the seat of the Member alleged to have been disqualified will not become vacant under Articles 101(3)(a) and 190(3)(a) of the Constitution. 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.

32. The result of our aforesaid discussion is that the affirmative words used in Articles 102(1)(e) and 191 (1)(e) confer power on Parliament to make one law laying down the same disqualifications for a person who is to be chosen as Member of either House of Parliament or as a Member of the Legislative Assembly or Legislative Council of a State and for a person who is a sitting Member of a House of Parliament or a House of the State Legislature and the words in Articles 101(3)(a) and 190(3)(a) of the Constitution put express limitations on such powers of Parliament to defer the date on which the disqualifications would have effect. Accordingly, sub-section (4) of Section 8 of the Act which carves out a saving in the case of sitting Members of Parliament or State Legislature from the disqualifications under sub-sections (1), (2) and (3) of Section 8 of the Act or which defers the date on which the disqualification will take effect in the case of a sitting Member of Parliament or a State Legislature is beyond the powers conferred on Parliament by the Constitution.

33. Looking at the affirmative terms of Articles 102(1)(e) and 191(1)(e) of the Constitution, we hold that Parliament has been vested with the powers to make law laying down the same disqualifications for person to be chosen as a Member of Parliament or a State Legislature and for a sitting Member of a House of Parliament or a House of a State Legislature. 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.

82. Learned counsel for the petitioner further submitted that in view of the aforementioned paragraphs read with Exhibit-13 (Notification No. Karmik-04/18- 1062/Vi.Sa dated 02.04.2018), whereby Amit Kumar Mahto stands disqualified as a member of Jharkhand Legilative Assembly with immediate effect from the very date of his conviction i.e. from 23.03.2018, the Issue Nos. 2, 3 & 5 may be decided in favour of the petitioner.

Further while advancing arguments on the question of date, learned counsel for the petitioner submitted that at the cost of repetition, he pointed out that it is constitutionally impermissible to defer the date of disqualification and, therefore, the interpretation of the term 'date' assumes immense significance. The gravamen of the issue in the facts, thus, is the true import of the word 'date' applied in Section 8(3) of the Act, 1951 in order to peg the point of time from which, if other requirements of that provision are satisfied, the disqualification would be incurred by the Member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State, as the case may be. In the above predominant perspective, the intended importance of the word 'date' used in Section 8(1) & (2) and in particular, in the present case in Section 8(3) would be of decisive significance. In any case, interpretation of this word has to be to advance and fortify the legislative purpose, which essentially has to be the guiding factor. Before adverting to the cardinal principles of interpretation of statues, it would be permissible to refer at the outset to the dictionary meaning of the words 'date' and 'day' to identify the salient features thereof.

Corpus Juris Secundum, Volume 25A.

'DATE'

> "While all the authorities give a definite meaning to the word in general, they also show that it may have a different meaning when that is necessary, ut res valeat……"

The date in its ordinary meaning imports the day, month and year, and this is also the legal significance of the word and unquestionably is the popular as well as the technical meaning……

It has been said that the term "date" embraces the whole day……"

Strouds Judicial Dictionary

"The word 'date' is much more commonly descriptive of a day than of any smaller division of time" (per Stormonth Darling L.O., Simpson v. Marshall, 37 S.L.R.316)……

Date means day, so that where a cover note providing for temporary insurance of a motor car expires "15 days after date of commencement" it runs for the full 15 days after the day on which it was to commence (Cartwright v. Mac Cormack; Trafalgar Insurance Co. (Third Party) [1963]1W.L.R.18]."

This definition of 'date', as above was recorded with approval by the Supreme Court in ***Ahmadsahab Abdul Mulla (2) (dead) vs. Bibijan and others*** *(2009) 5 SCC 462.*

PREM & SAHARYAS JUDICIAL DICTIONARY

"Day – means solar day of 24 hours beginning at mean midnight (Webster)…. The word "day" as per the English Calendar begins at midnight and covers a period of 24 hours thereafter. [Ramkisan Onkarmal Agrawal vs. State of Maharashtra, AIR 1994 Bom 87(DB)…

The word 'day' means the whole of the working hours of the day and not the moment when the case is called (Ram Narin vs. Mool Chand, AIR 1963 ALL 296 (299)…

In computing a day, it is not correct to take into account a fraction of a day… Day must in the absence of anything to the contrary in the text, be taken to mean a duration of 24 hours and not 12 hours……"

Black's Law Dictionary

"The day when an event happened or will happen……

Day – Any 24 hour period……"

English Oxford dictionary:

Day *– Each of the twenty-four-hour periods, reckoned from one midnight to the next, into which a week, month, or year is divided, and corresponding to a rotation of the earth on its axis.*

Day *–* ***Merriam Webstar Dictionary*** *– means solar day of 24 hours beginning at midnight by mean time.*

83. Therefore from the elucidation of the concept of 'date' and 'day', as noted hereinabove, 'date' in a given context and in the demanding exigencies, more particularly too actualize a statutory purpose has to be construed as or descriptive of a 'day', which is a period of 24 hours to be reckoned from the beginning of that day. The 24 hours comprising a day commences from the intervening midnight between the previous day and the day concerned and encompasses these hours till the next midnight.

84. The Supreme Court of India, while dilating on the period of 45 days as the limitation for filing an election petition from the date of election sought to be challenged, had held in Raj Kumar Yadav Vs. Samir Kumar Mahaseth and others reported in (2005) 3 SCC 601 that the 45th day would expire on the midnight immediately preceding commencement of the next day. It was propounded that the word 'day' is not defined in the Act, 1951 and has to be assigned its ordinary meaning as understood in law. It was explained that the word 'day' as per English Calendar begins at the midnight and covers a period of 24 hours thereafter, in the absence of there being anything to the contrary in the context. It was underlined that when the statute prescribes a particular date and day as the last day for any act being performed, it can be so done up to as late as the midnight immediately preceding the commencement of the next day. The relevant paragraph of "Raj Kumar Yadav vs. Samir Kumar Mahaseth and Others (2005) 3 SCC 601" is quoted below:

"6. The limitation provided by Section 81 of the Act expires on the 45th day from the date of election. The word "day" is not defined in the Act. It shall have to be assigned its ordinary meaning as understood in law. The word "day" as per English calendar begins at midnight and covers a period of 24 hours thereafter, in the absence of there being anything to the contrary in the context. (See Ramkisan Onkarmal Agrawal v. State of Maharashtra AIR 1994 Bom 87, AIR at p. 94, Municipal Council of Cuddalore v. S. Subrahmania Aiyar 16 MLJ 101 and P. Ramanatha Aiyar, The Law Lexicon, pp. 470, 471.) "

85. In Eerati Laxman vs. State of Andhra Pradesh (2009) 3 SCC 337, the Supreme Court was confronted with the plea of the petitioner who claimed to be a juvenile, contending that as his date of birth was 10.05.1978, he had not completed 16 years on 09.05.1994, the date of the incident. The Supreme Court approved its earlier rendition in Prabhu Dayal Sesma vs. State of Rajasthan reported in (1986) 4 SCC 59 that in absence of any express provision, while calculating a person's age, the day of his birth must be counted as a whole day and any specified age in law is to be

computed as having been attained on the day preceding the anniversary of the birthday. It has held as well that a legal day commences at 12 o'clock midnight and continues until the same hour the following night. The relevant paragraphs of "Eerati Laxman vs. State of Andhra Pradesh (2009) reported in 3 SCC 337, is quoted below:

"12. Section 3 of the Majority Act, 1875 provides for age of majority of persons domiciled in India and the criteria for computation of age of majority. It reads as under:

'3. Age of majority of persons domiciled in India.—(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.'

14. The appellant, therefore, having been born on 10-5-1978, the said day was to be counted as a whole day and, thus, he had not attained the age of 16 years before 12 o'clock in the midnight of the previous day i.e. 9-5-1978 (sic 9-5-1994)."

86. It is respectfully submitted that in **Prabhu Dayal Sesma vs. State of Rajasthan (1986)4 SCC 59,** the Hon'ble Supreme Court has held that:

1. "The short point involved in this appeal by special leave pertains to the determination of age at a particular point of time. The question is whether the appellant having his date of birth as January 2, 1956 had attained the age of 28 years on January 1, 1984 and was therefore disqualified from being considered for direct recruitment to the Rajasthan Administrative Service under Rule 11-B of the Rajasthan State and Subordinate Services (Direct Recruitment by Competitive Examination) Rules, 1962 (for short "the Rules").

9. It is plain upon the language of Rule 11-B that a candidate must have attained the age of 21 years and must not have attained the age of 28 years on the first day of January next following the last date fixed for receipt of application. Last day fixed for receipt of application in this case, was January 1, 1983. First day of January next following that day would be January 1, 1984. The object and intent in making Rule 11-B was to prescribe the age limits upon which the eligibility of a candidate for direct recruitment to the Rajasthan Administrative Service and other allied services is governed. At first impression, it may seem that a person born on January 2, 1956 would attain 28 years of age only on January 2, 1984 and not on January 1, 1984. But this is not quite accurate. In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birthday. We have to apply well accepted rules for computation of time. One such rule is that fractions of a day will be omitted in computing a period of time in years or months in the sense that a fraction of a day will be treated as a full day. A legal day commences at 12 o'clock midnight and continues until the same hour the following night. There is a popular misconception that a person does (sic not) attain a particular age unless and until he has completed a given number of years. In the absence of any express provision, it is well settled that any specified age in law is to be computed as having been attained on the day preceding the anniversary of the birthday.

10. In Halsbury's Laws of England, 3rd Edn, Vol. 37 para 178 at p. 100, the law was stated thus:

"In computing a period of time, at any rate when counted in years or months, no regard is. as a general rule, paid to fractions of a day in the sense that the period is regarded as complete although it is short to the extent of a fraction of a day....

Similarly, in calculating a person's age the day of his birth counts as a whole day; and he attains a specified age on the day next before the anniversary of his birthday."

11. We have come across two English decisions on the point. In Rex v. Scoffin LR (1930) 1 KB 741, the question was whether the accused had or had not completed 21 years of age. Section 10(1) of the Criminal Justice Administration Act, 1914 provides that a person might be sent to Borstal if it appears to the court that he is not more than 21 years of age. The accused was born on February 17, 1909. Lord Hewart, C.J., held that the accused completed 21 years of age on February 16, 1930 and that he was one day more than 21 years of age on February 17, 1930 which was the Commission day of Manchester Assizes.

12. In Re Shurey Savory v. Shurey LR (1918) 1 Ch 263 the question that arose for decision was this: Does a person attain a specified age in law on the anniversary of his or her birthday, or on the day preceding that anniversary? After reviewing the earlier decisions, Sargant. J. said that law does not take cognizance of part of a day and the consequence is that person attains the age of twenty-one years or of twenty-five years, or any specified age, on the day preceding the anniversary of his twenty- first or twenty-fifth birthday or other birthday, as the case may be.

14. It is in recognition of the difference between how a person's age is legally construed and how it is understood in common parlance. The legislature has expressly provided in Section 4 of the Indian Majority Act, 1875 that how the age of majority is to be computed. It reads:

> *"4. Age of majority how computed*.—In computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of Section 3, at the beginning of the twenty-first anniversary of that day, and if he falls within the second paragraph of Section 3, at the beginning of the eighteenth anniversary of that day."

The section embodies that in computing the age of any person, the day on which he was born is to be included as a whole day and he must be deemed to have attained majority at the beginning of the eighteenth anniversary of that day. As already stated, a legal day commences at 12 o'clock midnight and continues until the same hour the following night. It would therefore appear that the appellant having been born on January 2, 1956, he had not only attained the age of 28 years but also completed the same at 12 o'clock on the midnight of January 1, 1984. On the next day i.e. on January 2, 1984, the appellant would be one day more than 28 years. The learned Judges were therefore right in holding that the appellant was disqualified for direct recruitment to the Rajasthan Administrative Service and as such was not entitled to appear at the examination held by the Rajasthan Public Service Commission in 1983. We affirm the view taken by the learned Judges as also the decision in G. Vatsala Rani case.

87. The Hon'ble Supreme Court in **New India Assurance Co. Ltd. vs. Ram Dayal and others** (1990) 2 SCC 680 had held that when an insurance policy is taken on a particular date, its effectiveness is from the commencement of the date and, therefore, the High Court was right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award. The plea of the insurer that as the policy had been taken after the accident on the same date, and that therefore, it had no liability in law thereunder, was negated. The relevant paragraphs of **"New India Assurance Co. Ltd vs. Ram Dayal and others (1990) 2 SCC 680**" is quoted below:

2 In appeal, the High Court took the view relying upon certain

decisions that the insurance policy obtained on the date of the accident became operative from the commencement of the date of insurance — i.e. from the previous midnight and since the accident took place on the date of the policy the insurer became liable.

3. Apart from the judgment under appeal, we find that this view is supported by two judgments of the Madras High Court and an earlier decision of the Punjab and Haryana High Court. Two Division Benches of the Madras High Court have taken the view after discussing the law at length that the policy taken during any part of the day becomes operative from the commencement of that day. Besides these judgments a Division Bench decision of the Allahabad High Court in Jaddoo Singh v. Malti Devi AIR 1983 All 87 supports this view on principle.

4. There is evidence in this case that the vehicle was insured earlier up to August 31, 1984 and the same was available to be renewed but instead of obtaining renewal, a fresh insurance was taken from September 28, 1984, which is the date of the accident. We are inclined to agree with the view indicated in these decisions that when a policy is taken on a particular date, its effectiveness is from the commencement of the date and, therefore, the High Court, in our opinion, was right in holding that the insurer was liable in terms of the Act to meet the liability of the owner under the award.

5. As pointed out in Stroud's Judicial Dictionary " 'Date' means day, so that where a cover note providing for temporary insurance of a motor car expires 15 days after date of commencement, it runs for the full 15 days after the day on which it was to commence.

7. To the same effect is the decision in **In re F.B. Warren(1938) 1 Ch 725: (1938) 2 All ER 331,** where it has been held that a judicial act will be referred to the first moment of the day on which it is done. A payment made by a bankrupt in the morning of a day is, therefore, not made, within Section 45 of the Bankruptcy Act, 1914 before the date of a receiving order made later in the same day. The Chancery Division (Luxmoore and Morton) JJ stated as follows:

> "…….. the substantial question under the section, therefore, depends on the true meaning of the words 'before the date of receiving order'…….it was argued by Mr Blegden, on behalf of the appellant, both before the country court judge and in this court, that the word "date" in the phrase "before the date of receiving the order", on the true construction of the section, means the actual point of time when the order was pronounced and does not mean the date of the day on which the order was pronounced, and which the order in fact bears."
>
> The country judge held that the making of the receiving order was a judicial act and, and that, in consequence, it was unnecessary to consider at what point of time the actual pronouncement was made, because e it is rule of law that a judicial act- and the making of a receiving order is admittedly such and act-is to be deemed to have been performed at the earliest moment of the day on which it is in fact performed.
>
> The result of these cases seems to us to be plain, that, when there is competition in point of time between a judicial act and the act of a person-that is, a non-judicial act- the application of the rule gives precedence to the judicial act. If, however, the competition is between two judicial acts, the actual time when each was done

can be considered and priority and priority given to the judicial act earlier in point of time, unless there be some other ground for preferring the one act to the other.

It is unnecessary to refer in detail to the cases cited by Mr Blagden. It is sufficient to say that they are not in conflict with the view expressed, and are reconcilable with the authorities to which we have referred on this basis.

In all of them, the competition was between two judicial acts- namely, the issue of a fiery facias and the doing of some other judicial act-and in noe of them was preference given to a non- judicial act at the expense of a judicial one, by reason of the fact that non-judicial act was performed at an earlier moment of the same day than the judicial act."

88. The same view was taken by the Supreme Court in **New India Insurance Co. vs. Bhagwati Devi and others (1998) 6 SCC 534.** The textual facts of this case witnessed that the appellant insurer had issued the policy at about 4 p.m. on 17.02.1999, but prior thereto on the same date i.e. at 9 a.m., the accident had taken place. In arriving at this decision, the Supreme Court recognized the legal fiction that when a policy is taken on a particular date, its effectiveness would start from the commencement of the date which is from the previous midnight. The relevant paragraphs of **"New India Assurance Co. Ltd vs. Bhagwati Devi and others (1998) 6 SCC 534"** is quoted below:

"2 The principle deduced is thus clear that should there be no contract to the contrary, an insurance policy becomes operative from the previous midnight, when bought during the day following……"

89. In **"Ramkisan Onkarmal Agrawal v. State of Maharashtra AIR 1994 Bom 87"**, the Hon'ble High Court of Bombay has held that:

"25. If the said letter of resignation has validly reached the Collector, then as per the said letter dated 15-12-1992, it becomes effective from 16-12-1992 which means after the midnight of 15th. Although there is no definition of the word "Day" given in the Bombay General Clauses Act, 1904, the said word has to be understood according to English Calendar according to which the official business is transacted and according to which the words "month" and "year" are defined in the Bombay General Clauses Act, 1904, the word "Day" as per the English Calendar begins at Midnight and covers a period of 24 hours thereafter. Since the day 16-12-1992 begins: from the midnight between 15th and 16th, the resignation of the petitioner would become effective after the midnight hour between 15th and 16th of December, 1992 because the petitioner wanted his resignation to be effective from 16th December, 1992. The subsequent letter of withdrawal of resignation submitted by the petitioner on 16-12-1992 whether at 1.05 P.M. or 3.00 P.M. would not be of any avail to the petitioner, because after his resignation had become effective, it could not have been withdrawn by him".

90. The aforesaid pronouncements indubitably authenticate that a legal day commences from 12 o'clock midnight and continues until the same hour the following night, signifying in clear terms that if in a statute, the word 'date' is used unless the context suggest otherwise, it is to be construed to signify 'day', i.e. the entire duration of 24 hours from the commencement of the day from 12 o'clock midnight till the same hour of the following night for the purpose(s) comprehended by the legislature.

The meaning of the term 'date' or 'day' encompasses within itself a legal fiction as to its commencement and it is fairly well settled that a legal fiction must be given full effect.

91. Thus, from the aforesaid discussions, there is no cavil of doubt that the term 'date' as occurring in Sec. 8(3) of the Representation of People Act, 1951 has to be understood as 'day', which begins at midnight and covers a period of 24 hours thereafter.

92. Another aspect that requires consideration is the effect of time of pronouncement of judgment of conviction and order of sentence being subsequent to the casting of vote by Shri Amit Kumar Mahto. Admittedly, Shri Mahto was convicted and sentenced later, whereas he had cast his vote earlier in the day. The House of Lords in Re: F.B. Warren (1938) 1CH725: (1938) 2 All ER 331, held that a judicial act will be referred to the first moment of the day on which it is done. In the case of Warren (supra), it was further held that judicial acts shall have precedent over non-judicial acts. Therefore, the judgment of conviction and order of sentence would take effect from the first moment of the day i.e. 12 AM (midnight) of 23 March, 2018 and would have priority over others including the act of casting of vote by Shri Amit Kumar Mahto. The said judgment of the Chancery Division has been approved by Supreme Court of India in 1990 (2) SCC 680.

93. Thus, by applying the aforesaid legal principles to the facts of this case, it is submitted that the conviction and sentence of Shri Amit Kumar Mahto took effect from 12 AM (mid night) of 23rd March, 2018 and consequently he stood disqualified from the membership of the legislative assembly from 23rd March 2018. Therefore the vote cast by Shri Amit Kumar Mahto could not have been taken into consideration for the purposes of the election in question. In other words, the vote of Shri Amit Kumar Mahto has to be ignored.

94. In view of the aforesaid principles of law, it is clear that on conviction and sentence of two years in Sessions Trial No. 481 of 2010 by the Additional Judicial Commissioner-XVIII, Ranchi, Shri Amit Kumar Mahto ceased to be a

Member of Legislative Assembly by virtue of Section 8(3) of the Representations of peoples Act and his disqualification came into effect immediately from the date of his conviction i.e. w.e.f. 23.03.2018, since, he was sentenced for two years and, therefore, the vote of Shri Amit Kumar Mahto could not have been taken into consideration at the time of counting.

95. On the other hand, learned counsel for the respondent no. 1 also in course of oral arguments referred to the written statement and submitted that:-

(i) Article 191(1) of the Constitution of India provides that "A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State-..

(e) if he is so disqualified by or under any law made by Parliament"

Section 8 of the Representation of People Act, 1951 which provides that a person shall stand disqualified from being a member of the Legislative Assembly if he is convicted of an offense and sentenced to imprisonment for a term not less than two years, is such a law as envisaged under Article 191(1)(e) of the Constitution of India. Section 8 of the Representation of People Act, 1951 is thus enacted under the authority of Article 191(1)(e) of the Constitution of India and must be construed in light of Articles 190 and 191 of the Constitution of India. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Lily Thomas v. union of India & Ors., reported in (2013)7 SCC 653 at paragraphs 26 and

30. It is needless to state that the Constitution is the fountainhead of all laws of the nation and that any law which is dehors the constitution is ultra vires, non est and a nullity.

(ii) Article 190 pertains to vacation of seats.

Article 190(3) of the Constitution of India provides -"If a member of a House of the Legislature of a State-(a) becomes subject to any of the disqualifications mentioned in 1[clause (1) or clause (2) of Article 191]; his seat thereupon become vacant."

The provision of Articles 101 and 102 of the Constitution of India, pertaining to disqualification of members of parliament and vacation of seats is pari material to the provision in Articles 190 and 191 which pertain to the state legislatures.

(iii) It is settled law that no word in a statute can be treated as a surplussage. Thus in determining when a member of the state legislature stands disqualified under Article 190(3) of the Constitution by virtue of disqualification under section 8(3) of the Representation of People Act,1951 as enacted under Article 191(1)(e), and consequently when his seat stands vacated, thereby disentitling him from voting in an election for the Council of States, a meaningful construction must be given to the word thereupon'.

(iv) Various dictionaries which are authorities on the English language have defined the word thereupon' to mean the following:-

Cambridge Dictionary-

Immediately after something that is mentioned

Eg. He thereupon produced a knife and stabbed the assailant

Merriam Webster-

On the matter, thereafter, immediately after that

Eg. The committee reviewed the documents and thereupon decided to accept the proposal

Eg. The jurors discussed the evidence and made their decision thereupon

Collins English Dictionary-

Adverb: Thereupon means happening immediately after something else has happened and usually as a result of it.

Eg. Ursula had returned to marry Atilla the Hun, who thereupon ordered one of his archers to shoot her Oxford Advanced American Dictionary- Immediately after the situation mentioned; as a direct result of the situation mentioned

Eg. The audience thereupon rose cheering to their feet

(v) This apart, the word thereupon has also received judicial construction in the following decisions-

(a) **Kunjukrishnan Nadar v. Speaker, Kerala Legislative Assembly & Ors., reported in 1964 Scc Online Ker 23** at paragraphs 15 and 16- In an election petition concerning resignation of his seat by a member of the Kerala State Legislative Assembly, Article 190(3) of the Constitution of India was

interpreted by the Hon'ble Kerala High Court to hold that the expression thereupon' contained in Article 190(3) of the Constitution would mean 'as a consequence of. The Hon'ble Kerala High Court thus held that as per Article 190(3) of the Constitution, the seat of a member of a House or of the Legislature of the State would fall vacant as a consequence of his resignation in writing addressed to and accepted by the Speaker or Chairman in terms of Article 190(3)(b).

(b) The above decision of the Hon'ble Kerala High Court was approved by the Hon'ble Allahabad High Court in **Surat Singh Yadav v. Sudama Prasad Goswami & Anr., reported in AIR 1965 All 536** at paragraph 26.

(c) In the decision of the Division Bench of the Hon'ble Madhya Pradesh High Court in **Indrajit Singh v. State of Madhya Pradesh & Ors.,** reported in MANU/MP/0254/1971 at paragraph 5 onwards.

(d) In the decision of the Division Bench of the Hon'ble Allahabad High Court in **Jaswant Singh v. State of Uttar Pradesh**, reported in **SCC Online All 345** at paragraph 9.

(vi) From the aforementioned dictionary definitions of the word thereupon' and the various Judicial decisions construing the same, it is abundantly clear that the word 'thereupon' means as a result of or consequent on the happening of a certain thing or event. Article 190(3)(a) provides that once a person becomes subject to any disqualification under clause (1) or (2) of Article 191, his seat shall 'thereupon' fall vacant. The seat of a member of the Legislative Assembly shall thus stand vacated under the aforesaid articles only after he suffers a disqualification as envisaged in Article 191(1) and (2) and not before. The legislative scheme and intent behind sections 7 and 8 of the Representation of People Act, 1951 is clear from the aforesaid articles as Article 191(1)(e) is the source of the authority on the basis of which sections 7 and 8 of the Representation of People Act, 1951 has been enacted. The Constitutional mandate behind section 7 and 8 clearly reveals that the sequence of events as envisaged in section 8(3) of the Representation of People Act, 1951 is triggered by an order of conviction followed by a sentence of imprisonment for a period not less than two years which will result in a disqualification as contemplated under Article 191(1)

(3) and finally resulting in the seat of the member falling vacant The under article 190(3), as a consequence of such disqualification. The order of conviction and sentence is the cause and the vacation of the seat of the member is the effect of the disqualification and the consequence effect cannot precede the disqualification itself. This cause and effect relationship and sequence of events contemplated in section 8 of the Representation of People Act, 1951 is clear from the use of words 'If' and 'then' used in Article 191 of the Constitution. As a result, a member would stand disqualified under section 8(3) of the Representation of People Act, 1951 only once he is convicted of an offence and sentenced to imprisonment for a period not less than two years. Only upon once such disqualification is attracted, will the members seat stand vacated. This is the constitutional mandate which is apparent from a combined reading of Articles 80, 101, 102, 190 and 191 of the Constitution of India.

(vii) Section 8(3) of the representation of People Act, framed under Article 191(1) (e) of the Constitution must therefore be interpreted in light of the clear constitutional mandate contained in the aforementioned articles and any construction to the contrary which would allow the consequence of disqualification of a member and vacation of his seat to preceded the cause of the conviction and sentence, would be repugnant to the Constitution and would as such be ultra vires.

(viii) It is a settled rule of statutory interpretation that if there are two possible interpretations to the words in a statute, one of which would render the statute ultra vires the powers of the legislature, while the other would allow the statute to remain effective and operative, the Court will prefer the latter construction, on the ground that the legislature is presumed not to have intended to act in excess of its jurisdiction. This rule requires a statute to be harmoniously construed in a way to save its constitutionality. As per this rule, general words in a statute are often required to be reading down to keep the legislation within permissible Constitutional limits. Reliance in this regard is placed on G.P. Singh Principles of Statutory Interpretation, 13th Edition, pages 601 to 610.

(ix) In light of the aforementioned provisions of the Constitution and on application of the rule of reading down and the presumption of section 8(3) of the Representation of People Act, 1951 being intra vires, the word 'date' in section 8(3) of the Representation of People Act, 1951 cannot be read to mean 'day' starting at 00 hours to hold a member disqualified even before the passing of an order of conviction or sentence against him. Such a literal construction of the word 'date' in section 8(3) of the Representation of People Act, 1951 would not only lead to absurdity, but would render the provision ultra vires the mandate of the Constitution expressed unequivocally in Articles 190 and 191 of the Constitution. In light of the clear legislative intent behind Section 8(3) of the Representation of People Act, 1951 as expressed in Articles 190 and 191 of the Constitution, the Court must depart from the literal words of the statute and give the provisions of section 8(3) of the Representation of People Act, 1951 a purposive interpretation to render it intra vires and in harmony with the express constitutional mandate. Reliance in this regard is placed on the following decisions:

a. Sushil Kumar Agarwal v. Meenakshi Sadhu & Ors., reported in (2019) 2 SCC 241 at paragraphs 25 to 27

b. Sailesh Dhairyawan v. Mohan Balkrishna Lulla, reported in (2016) 33 SCC 619 at paragraph 33

c. Anurag Mittal v. Saily Mishra Mittal, reported in (2018)9 SCC 691 at paragraph 21

(x) The petitioner has relied on various decisions which interpret 'day to mean the English calendar day beginning at 12 am and continuing for 24 hours until 12 pm. Such decisions which are concerned with statutory interpretation of the word 'day' are not of relevance to the instant case as the word used in section 8(3) of the Representation of People Act, 1951 is 'date' and not 'day', The word 'date' is often used in a connotation which is distinct and different from the word 'day', though the meanings of the two words may sometimes coincide. Reliance is placed on the Cambridge English dictionary, the Collins English support of dictionary and the Merriam Webster English dictionary, in support of the proposition that the word 'date' is capable of being construed to mean various things other than 'day' as per the English calendar as used in beginning at 12 am and continuing for 24 hours. 'Date' as used in section 8(3) of the Representation of People Act, 1951 cannot be construed not to mean a the English calendar day from midnight to midnight, as such a construction would lead to absurdity and would render the provision ultra vires.

(xi) The consequence cannot precede the cause as Article 190(3) clearly says that its is only as a result of the disqualification that the seat will fall vacant.

(xi) It is clearly the intention of the legislature, as is evident from Articles 191(1)(e) and 190(3) of the Constitution, that a member will be disqualified only as a consequence of an order of conviction and sentence of imprisonment for a period exceeding two years and that the seat of the member will stand vacated result of such disqualification. Interpreting section 8(3) of the Representation of People Act, 1951 to hold that Amit Kumar Mahto stood disqualified from being chosen as, or from being a member of the Legislative Assembly from 12 am on 23rd March, 2018 and that his seat stood vacated under Article 190(3) thereby disentitling him from voting in an election of the Council of States earlier that day even before the pronouncement of the order of the express the sentence, is clearly contrary conviction Constitutional mandate and legislative intent.

(xii) It is an admitted fact that at the time when Amit Kumar Mahto cast his vote at 9.15 am in favour of the respondent No.1 in the biennial election of the Council of States on 23rd March, 2018, he was a member of the Jharkhand Legislative Assembly. It is submitted that upon a vote being cast in the said election by a duly appointed member of the state legislative assembly in favour of a validly nominated candidate, the candidate acquires a vested right to rely on the said vote and to have the said vote counted in his favour in the election. It is submitted that such vested right of the respondent No. 1 to rely on, and to have counted in his favour, the vote cast by Amit Kumar Mahto as a duly appointed member of the state Legislative Assembly at the time of casting of such vote, cannot be abrogated or taken away retrospectively by operation of a mere legal fiction that the word 'date' in section 8(3) of the Representation of People Act, 1951 will be deemed to mean that the disqualification will operate from 12 am on the date of pronouncement of the order of conviction and sentence, invalidating all acts done by the member on the said date, even prior to the order of conviction and sentence of imprisonment. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in ICICI Bank Ltd. v. Sidco Leathers Ltd. and Ors., reported in (2006) 10 SCC 452 at paragraphs 41 to 43.

(xiii) That had it been the intention of the legislature that all acts done or votes cast by a member of the state legislative assembly would be invalidated as a result of a conviction and sentence of imprisonment passed against him later on in the day, the legislature would clearly have provided for the same. In the absence of such provision, to hold that the disqualification of a member would operate even prior to the passing of an order of conviction or sentence of imprisonment against him and that the consequence of his seat falling vacant would precede the passing of the order of conviction and sentence, would amount to Judicial legislation and result in giving an absurd construction to section 8(3) of the Representation of People Act, 1951, which would render it ultra vires the express constitution mandate contained in Articles 190 and 191 of the Constitution.

96. Learned counsel for the respondent no. 1 submitted that petitioner has failed to prove his case, so the Issue Nos. 2, 3 & 5 be decided in favour of the respondent no. 1.

97. I have gone through the evidences on record and the submissions advanced on behalf of the parties and also the evidence of Pradeep Kumar Sonthalia, election petitioner who has proved the Judgment dated 23.03.2018 passed by Sri. Diwakar Pandey, learned Additional Judicial Commissioner-XVIII, Ranchi in Sessions Trial No. 481/2010, by which Sri Amit Kumar Mahto was convicted and sentenced as Exhibit-15.

98. Learned counsel for the petitioner based on the judgment of the **Lily Thomas Vs. Union of India reported in (2013) 7 SCC 653** tried to build a case that no sooner Amit Kumar Mahto was convicted on 23.03.2018, the date commenced and in support of the literal meaning given in different dictionaries and also in the judgment passed in the case of **New India Assurance Co. Ltd. Vs. Bhagwati Devi & Others reported in (1998) 6 SCC 534** which is related to contract between the parties and the facts mentioned therein that policy issued by the Company commences to have come into operation when the Insurance Company sold a policy at about 4 p.m. on 17.02.1989 and accident took place at 9 a.m. on the same day. The said decision proceeded on the legal fiction that when a policy is taken on a particular date, its effectiveness would start from the commencement of that date which is from the previous midnight. The accident

taking place at any time during the day would be covered by the policy. That view have been upheld by three-member Bench of Hon'ble Supreme Court passed in the case of **National Insurance Company Limited Vs. Jikubhai Nathuji Dabhi reported in (1997)1 SCC 66**. Similarly, he has also relied on the judgment passed in the case of **Eerati Laxman Vs. State of Andhra Pradesh reported in (2009) 3 SCC 337** (para-13), in which the matter is related to calculating of age of a juvenile and the date therein. Similarly, he has also relied on the judgment passed in the case of **Prabhu Dayal Sesma Vs. State of Rajasthan reported in (1986)4 SCC 59**, which is also related to determine the date of birth. Only one case pertaining to Representation of People Act has been cited on behalf of the petitioner i.e**. Raj Kumar Yadav Vs. Samir Kumar Mahaseth & Others reported in (2005) 3 SCC 601** (Para-6-14). In this case, while interpreting the meaning of day as provided by Section 80 of the Representation of People Act, in para-6, it has been held that the word "day" is not defined in the Act. It shall have to be assigned its ordinary meaning as understood in law. The word "day" as per English calendar begins at midnight and covers a period 24 hours thereafter, in the absence of there being anything to the contrary the context.

99. On the other hand, learned counsel for the respondent no. 1 in course of argument and in his written submissions submitted that Section 8 (3) of the Representation of People Act has been framed in terms of provision of Article 191 (1)(e) of the Constitution of India, and must be construed harmoniously with Section 8 (3) of the Representation of People Act and further submitted that the rule of reading down may be exercised in this case and to make the provisions of the word date, the presumption of Section 8 (3) of Representation of People Act being intra vires, the word 'date' in section 8 (3) of the Representation of People Act, 1951 cannot be read to mean 'day' starting at 00 hours to hold a member disqualified even before the passing of an order of conviction or sentence against him. He further submitted that there is difference between the meaning date and day. Such a literal construction of the word 'date' in Section 8 (3) of the Representation of People Act would not only lead to absurdity, but would render the provision ultra vires and the word date cannot be construed not to mean a English Calendar day from midnight to midnight and as such, a construction would lead to absurdity and would render the provision ultra vires. He further submitted that the admitted case is that Amit Kumar Mahto cast his vote at 09:15 A.M. on 23.03.2018 in favour of the respondent no. 1 in Biennial Election of Council of States as member of legislative assembly and as respondent no. 1 had received the votes of Amit Kumar Mahto, his vested right to vote is fit to be counted in his favour. One cannot look into the conviction of Amit Kumar Mahto to start from midnight of the day 24 hours as interpreted by learned counsel for the petitioner.

100. In the rebuttal argument, learned counsel for the petitioner while giving his oral arguments on interpretation of Article 190 & 191 of Constitution of India and Section 8 (3) of the Representation of People Act stated as follows:-

(i) Reverting to the provision under scrutiny, it is patent from the language applied in Section 8(3) of the Act, 1951 that if a person aspires to be a member of a House of the Parliament or the Legislature of a State or who is an existing Member thereof, is convicted of an offence, not enumerated in Section 8(1) and 8(2) and is sentence for a term of imprisonment for not less than two years, he would stand disqualified from the date of his conviction and in terms of Article 190(3) of the Constitution of India, his seat thereupon would fall vacant. The disqualification from the date of conviction stands to logic even if the sentence is imposed after a time lag on affording an hearing to the person convicted, as the sentence is an inevitable incidence of conviction and when awarded has to logically relate back to the conviction.

(ii) The incidence of disqualification spells cessation of the membership of an existing Member of a House of Parliament or of a State Legislature and the ineligibility of any person, who aspires to be a member thereof. Such disqualification would imply complete extinction of the status / eligibility of the Member / person concerned on and from the date of conviction. Such a disqualification for an existing Member would not save action / decision taken in exercise of his individual / personal right in such capacity, even if taken on the very same date, prior in point of time to the order of conviction.

Though Shri Amit Kumar Mahto, as in this case, had cast his vote earlier to the order of conviction, having regard to the mandate of Section 8(3) of Act, 1951 read in conjunction with Articles 190(3) and 191 of the Constitution of India, he stood disqualified from the intervening midnight of 22.03.2018 & 23.03.2018 and, thus, the vote cast by him was invalid and could not have been accounted for in deciding the result of the election.

(iii) Noticeably, the Legislature has consciously used the word 'date' in Section 8(1), (2) and (3) and not 'time'. Thus, having regard to the background of the enactment of Act 1951 and the objective behind incorporating Chapter III thereof, a purposive interpretation of the expression 'date' is inevitable to achieve the statutory goal. There is no indication whatsoever explicit or otherwise suggestive of a different comprehension. In that view of the matter, , the word 'date' has to be construed as 'day' comprising of 24 hours commencing from the intervening midnight of the previous day and the day concerned so much so that the conviction and sentence which otherwise attract the disqualification, if made at any point of time within the duration of 24 hours, would subject the person concerned to the disqualification as intended by Section 8 for the whole of the day, irrespective of the actual time of conviction and sentence.

(iv) If as against this, the actual time of conviction and sentence is accepted to be the date of conviction, varying inconsistent, anomalous, uncertain and unpredictable consequences would follow much is impermissible in law and

such exposition, besides defeating the purpose of enacting the provision, would be in apparent derogation of the acknowledged prescripts of interpretation of statues. On the other hand, if the word 'date' is understood to mean the corresponding day, comprised of 24 hours from the intervening midnight of the previous day and the said day, upto the midnight of that day, the convicted person or the Member, irrespective of the time of conviction or sentence in course of the date / day would incur the disqualification. Such an interpretation would, thus, ensure the desired, consistent, precise and predictable consequences, in all contemplated and both foreseen and unforeseen eventualities and guard against a variety of incongruent outcomes rendering the provisions unworkable and expose it to innovative strategies of evasion, thus leading to negation of the legislative intendment to the contrary.

(v) If examined in the factual setting of the present facts, the word 'date' when construed as 'day' of 24 hours starting from the intervening midnight of the previous day and the day concerned i.e. 23.03.2018, no matter at what point of time the conviction and sentence has been recorded in the day / date, Shri Amit Kumar Mahto would stand disqualified at the time of casting of his vote, thus, rendering it invalid. Further, his seat would also fall vacant from the beginning of the intervening midnight of 22.03.2018 and 23.03.2018. The same test would apply to all persons and existing Members uniformly leading to the same result.

(vi) If to the contrary, the disqualification has to follow the actual time of conviction and sentence, it would lead to a variety of eventualities inconsistent with each other. For instance, in the present case, as the vote had been cast before the order of conviction had been made, Shri Amit Kumar Mahto would not incur disqualification and his vote would be valid. In such a situation, though at the time of counting, he would be disqualified Member and his seat had fallen vacant, his vote would be accepted to be a valid one to decide the fate of the election in which he had participated. This would particularly be in the teeth of fact that by that time, his seat, because of his disqualification, had fallen vacant by a constitutional mandate. Same would be the consequence, if the conviction and sentence comes after counting but before the results. In other words, if the actual point of time of conviction and sentence is taken to be the date, which even otherwise, having regard to the distinguishing attributes of the words "date/day" and 'time' is not allowable notionally, the incidence of disqualification would then become uncertain and at times would depend on the pleasure, fancy, desire and strategy of the person/Member concerned, who by conveniently negotiating the time of such conviction and sentence in course of the day defeat the very purpose of the provision and the statute. Such a leeway and unpredictability in the enforcement of a statutory legislation with the help of this unwarranted interpretation cannot be comprehended in law. It would then render the provision indeterminate, emasculated and unworkable.

101. I find that the petitioner in his election petition has only made specific prayer to declare that the Returning Officer P.W.-1 has improperly received the vote of Shri Amit Kumar Mahto which was void on account of his disqualification incurred on 23.03.2018 by virtue of his conviction and sentence of imprisonment for two years in Sessions Trial No. 481 of 2010 and has made a further prayer to declare that the election of Shri Dheeraj Prasad Sahu as a Member of Rajya Sabha in the Biennial Election to the Council of States – 2018 is void, but no prayer has been made for recounting of the votes, nor the Election Commission of India has been made party in this case.

102. I further find that while examining Binay Kumar Singh, Returning Officer, the petitioner has only proved Exhibit-11, which is declaration of result of Biennial Election 2018 to the Council of States, but no cross-examination has been made by the petitioner on the point that how Dhiraj Prasad Sahu, respondent no. 1 received 2600 votes and Pradeep Kumar Sonthalia received 2500 votes and Samir Oraon received 2700 votes and whether any second preference vote was given to the candidates.

103. Further, P.W.-1 has proved Exhibit-13, which is notification issued under the signature of Secretary, In- charge, Jharkhand Vidhan Sabha, whereby Amit Kumar Mahto who was convicted and sentenced, was debarred from the Membership on 23.03.2018, but no cross- examination has been made by the petitioner as to when the judgment passed by the court learned Additional Judicial Commissioner-XVIII, Civil Court, Ranchi in S.T. No. 481/2010, G.R. No. 371/2006, arising out of Sonahatu P.S. Case No. 42 of 2006 was finally received in his office.

104. Further, in Paragraph-23 of the plaint, petitioner has made averment that P.W.-1 Returning Officer did not consider the said 01 invalid vote, for which a complaint was also lodged in writing. It is further averred that the petitioner would have been successful and elected as a Member of Rajya Sahba, if the cut off would have been re- fixed as 2632.33 votes, a comparative chart is given, but it was never placed before the Returning Officer during cross-examination. Although, during course of argument, only submission was made that in para-6 of the written statement of the respondent no. 1, the averments made in para-23, 24, 25, 26 have been specifically denied to the extent of the want of knowledge as Pradeep Kumar Sonthalia (election petitioner) has not filed any original document.

105. Arguments were advanced on behalf of the petitioner on Issue Nos. 2, 3 & 5 that with regard to conviction of Amit Kumar Mahto vide judgment dated 23.03.2018, the day will be counted from 00 hours. I accept the submissions of the learned counsel for the petitioner. I find that respondent no. 1 has tried to make out a case that if this interpretation is given, the provision of Section 8 (3) of the Representation of People Act will become ultra vires under Article 191 of the Constitution of India and placed reliance on the judgment passed in the case of Lily Thomas, wherein Hon'ble Supreme Court has struck down the provision of Section 8(4) of the Representation of People Act, where Parliament wisdom has given time to convicted person for filing appeal on the ground that the Parliament cannot make a provision to defer the

date on which the disqualification of a sitting Member will have effect and prevent his seat becoming vacant on account of the disqualification under Article 102(1)(e) or Article 191(1)(e) of the Constitution and provision of Section 8 (3) of the Representation of People Act has been framed under the aforesaid constitutional provisions. There is no question of any contradiction, if the view is taken that the date commences from 12 Midnight to 12 Midnight in view of different judgments of the Hon'ble Supreme Court. Accordingly, Issue Nos. 2, 3 & 5 are decided in favour of the petitioner.

106. So far grant of reliefs prayed for by the election petitioner is concerned, I am of the view that admittedly, in this election petition, the issues have been decided on the basis of pleadings and written statements and prayers made in the plaint. As there is no prayer for recounting of votes, nor Election Commission of India has been made a party in the election petition, no relief can be granted to the petitioner by drawing inferences.

107. Further, I am of the view that this election petition is related to Biennial Election for Member of Rajya Sabha in which respondent no. 1 has been elected in accordance with the system of proportional representation by means of the single transferable vote which is a highly technical issue and this Court is not competent to deal with this issue. So, the reliefs as prayed for to set aside the election of respondent no. 1 and to declare the petitioner to be elected as a Member of Rajya Sabha cannot be allowed.

108. Although this Court has decided the issue Nos. 1, 2, 3 & 5 in favour of the petitioner, no relief can be granted to the petitioner.

109. So far as Issue Nos. 4 & 6 are concerned, no independent finding is required to be recorded in view of discussions made above.

110. Accordingly, this election petition is dismissed.

No order as to costs.

111. Registrar General is directed to send an authenticated copy of this judgment to Election Commission of India and also, to send the substance of the decision to the Hon'ble Chairman, Rajya Sabha, New Delhi and the Hon'ble Speaker, Jharkhand Legislative Assembly, Ranchi.

(Anant Bijay Singh, J.)

Jharkhand High Court, Ranchi The 17th January, 2020 Sunil/AFR

[No. 82/CS-JH/1/18/2020-BE]

By Order,

VARIDNER KUMAR, Sr. Principal Secy.

भारत निर्वाचन आयोग सचिवालय

शुद्धिपत्र

नई दिल्ली, 21 फरवरी, 2020

आ. अ. 13 .—दिनांक 10.02.2020 की आयोग की अधिसूचना में आंशिक संशोधन में, श्री सी पालरासु, आई. ए. एस. के आंवटन का वर्ष (HP:2002) के स्थान पर (HP:2004) पढ़ा जाय।

[सं. 154/HP/2019-P. Admn.]

आदेश से,

बी. सी. पात्रा, सचिव

SECRETARIAT OF THE ELECTION COMMISSION OF INDIA

CORRIGENDUM

New Delhi, the 21st February, 2020

O.N. 13.—In partial modification of Commission's Notification of even number dated 10.02.2020, the year of allotment of Shri C. Paulrasu, IAS written as (HP:2002) shall be read as (HP:2004).

[No. 154/HP/2019-P.Admn.]

By Order,

B. C. PATRA, Secy.

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