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SERIES II No. 5

OFFICIAL GAZETTE



GOVERNMENT OF GOA

PUBLISHED BY AUTHORITY

EXTRAORDINARY

No. 2

GOVERNMENT OF GOA

Department of Elections

Office of the Chief Electoral Officer

Notification

No. 8-23-2014/ELEC/115

The following Order dated 12th February, 2018 of the Hon'ble Governor of Goa and the Opinion dated 10th January, 2017 from the Election Commission of India, New Delhi are hereby published for general information.

Place: Panaji-Goa *Devidas S. Gaonkar*
Dated: 02-05-2018 Joint Chief Electoral Officer.

Governor of Goa

Raj Bhavan

BEFORE THE GOVERNOR OF THE
STATE OF GOA

Order

By this order, I dispose of the petition dated 25th November, 2013 filed by Shri John Fernandes of Novangully, Varca, Salcete, Goa, alleging disqualification of Shri Caetano R. Silva, MLA of Goa Legislative Assembly, under Article 191 (1) (a) (d) of Constitution of India.

2. On receipt of the above petition, my predecessor had sought the opinion of the Election Commission of India in the matter, as required under

Article 192(2) of the Constitution of India. I have since received the opinion of the Election Commission of India vide communication No. 113/5(G)/Goa/ECI/LET/FUNC/JUD/RCC/2013 dated 15th January, 2018.

3. The opinion of the Election Commission of India under Article 192(2) of the Constitution of India is reproduced as below:-

- "a) This is a reference dated 25th November, 2013 received from the Governor of Goa, seeking opinion of the Election Commission of India under Article 192(2) of the Constitution of India, on a petition filed by Shri John Fernandes seeking disqualification of Shri Caetano R. Silva, from being a Member of the Legislative Assembly of Goa, under Article 191(1)(d) of the Constitution of India as Shri Silva had allegedly acquired the citizenship of Portugal and was liable to be disqualified from being a Member of the Legislative Assembly of Goa elected in 2012.
- b) The reference arose as a result of the petition filed by Shri John Fernandes of Novangully, Varca, Salcete, Goa, alleging that Shri Silva had registered his birth in the Central Registry of Births, Lisbon and thus acquired the citizenship of Portugal. The Ministry of Home Affairs, New Delhi responded to the representation of Shri John Fernandes dated 9th January, 2013, according to which the Ministry passed an Order dated 20th November, 2013 declaring that Shri Silva had ceased to be a citizen of India from the date he registered his birth in Portugal. Thus, it was contended by Shri Fernandes that Shri

Silva had incurred disqualification under Article 191(1)(d) and therefore should be declared disqualified.

- c) It is noteworthy to mention that Shri Silva had allegedly ceased to be a citizen of India in accordance with Section 9(2) of Citizenship Act, 2013; i.e. after the elections to the Goa Legislative Assembly in 2012. Therefore, the case would be covered under Article 192(1) of the Constitution providing full-fledged jurisdiction to the Election Commission of India.
- d) A reply was sought from Shri Silva vide notice of the Commission dated 31st January, 2014 wherein he stated that the case was a pre-election disqualification dispute which cannot be referred to the Commission and that the question of jurisdiction should be adjudicated first before going further in the matter. He added that the Order dated 20th November, 2013 passed by the Ministry of Home Affairs declaring Shri Silva a Portuguese National with effect from 21st July, 2010 had been challenged by him before the High Court of Bombay, Goa Bench and hence the matter was sub-judice before the Court. Thereafter, he requested that he may be allowed to file a detailed reply and produce documents on merits and also be allowed a personal hearing in the matter.
- e) Shri John Fernandes replied to the preliminary objections raised by Shri Silva by stating that Shri Silva, being a Portuguese Citizen, contested the Legislative Assembly elections and had thus committed a fraud on the Constitution of India. He added that Shri Silva was applying dilatory tactics by citing technical objections with respect to filing a detailed reply in the matter, which could have been filed along with the preliminary objection itself.
- f) In a detailed reply dated 8th August, 2014, Shri Silva informed the Commission that the Order dated 20th November, 2013 passed by the Ministry of Home Affairs had been stayed by the High Court of Bombay by Interim Orders dated 29th April, 2014 and 18th June, 2014 respectively and denied all allegations of not being a citizen of India. He had also attached a copy of the Indian Passport, EPICs issued to him and his family, Baptism certificate, PAN card of his family, residence certificate issued by the Village Panchayat, Mamlatdar, an extract of electoral roll, ration card, driving license, bank letters, birth certificate of the parents, wife and children.

He also denied ever visiting Portugal or having the intention of being conferred with the citizenship of Portugal and requested a personal hearing again.

- g) The Chief Electoral Officer, Goa submitted a letter dated 25th October, 2016 stating that the final Judgment dated 20th October, 2016 was passed by the High Court of Bombay at Goa setting aside impugned order of the Ministry of Home Affairs dated 20th November, 2013 and holding that the Competent Authority shall decide the matter afresh as expeditiously as possible and preferably within a period of three months from the receipt of the Order.
- h) Thereafter, vide letter dated 9th November, 2016, a reminder had been sent by the Election Commission of India to the Ministry of Home Affairs requesting the desired information for formulating Opinion in the Reference case and in consideration of the final Order passed by the High Court of Bombay at Goa.
- i) Fresh elections were held to the Legislative Assembly of Goa in February, 2017 and the previous Legislative Assembly, of which Shri Caetano R. Silva was a member has since been dissolved in March, 2017.
- j) In light of the aforementioned facts, the opinion of the Election Commission of India under Article 192(2) of the Constitution of India on the Reference dated 20th November, 2013 received from the Governor of Goa, is that after the dissolution of the previous Goa Legislative Assembly in 2017 and after constitution of the new House in Goa, the Reference has become infructuous as Shri Caetano R. Silva is no more a Member of the Legislative Assembly of Goa.

Accordingly, acting on the opinion tendered by the Election Commission of India, as required under Article 192(2), I hereby order that after the dissolution of the previous Goa Legislative Assembly in 2017 and after constitution of new House in Goa, the Reference has become infructuous as Shri Caetano R. Silva is no more a Member of the Legislative Assembly of Goa. The petition is hereby disposed off accordingly.

Raj Bhavan,
Dona Paula,
Goa 403 004
Dated: 12th February, 2018.

Sd/-
Mridula Sinha
Governor of Goa.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashoka Road, New Delhi-110001

REFERENCE CASE No. 5 (G) OF 2013

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

In re: Reference Case No. 5(G)/2013- Reference received from the Governor of Goa on the petition filed by Shri John Fernandes of Novangully, Varca, Salcete, Goa alleging disqualification of Shri Caetano R. Silva, MLA of Goa Legislative Assembly, under Art. 191 (1)(d) of the Constitution of India.

OPINION

1. This is a reference dated 25th November, 2013 received from the Governor of Goa, under Article 192(2) of the Constitution of India, on a petition filed by Shri John Fernandes seeking disqualification of Shri Caetano R. Silva, from being a member of the Legislative Assembly of Goa, under Article 191 (1)(d) of the Constitution of India as Shri Silva had allegedly acquired the citizenship of Portugal and was liable to be disqualified from being a member of the Legislative Assembly of Goa elected in 2012.
2. The reference arose as a result of the petition filed by Shri John Fernandes of Novangully, Varca, Salcete, Goa alleging that Shri Silva had registered his birth in the Central Registry of Births, Lisbon, and thus acquired the citizenship of Portugal. The Ministry of Home Affairs, New Delhi responded to the representation of Shri John Fernandes dated 9th January, 2013, according to which the Ministry passed an Order dated 20th November, 2013 declaring that Shri Silva had ceased to be a citizen of India from the date he registered his birth in Portugal. Thus, it was contended by Shri Fernandes that Shri Silva had incurred disqualification under Article 191 (1)(d) and therefore should be declared disqualified.
3. It is noteworthy to mention that Shri Silva had allegedly ceased to be a citizen of India in accordance with Section 9(2) of Citizenship Act, 2013; i.e. after the elections to the Goa Legislative Assembly in 2012. Therefore, the case would be covered under Article 192(1) of the Constitution providing full-fledged jurisdiction to the Election Commission of India.
4. A reply was sought from Shri Silva vide notice of the Commission dated 31st January, 2014 wherein he stated that the case was a pre-election disqualification dispute which cannot be referred to the Commission and that the question of jurisdiction should be adjudicated first before going further in the matter. He added that the Order dated 20th November, 2013 passed by the Ministry of Home Affairs declaring Shri Silva a Portuguese National with effect from 21st July, 2010 had been challenged by him before the High Court of Bombay, Goa Bench and hence the matter was sub-judice before the Court. Thereafter, he requested that he may be allowed to file a detailed reply and produce documents on merits and also be allowed a personal hearing in the matter.
5. Shri John Fernandes replied to the preliminary objections raised by Shri Silva by stating that Shri Silva, being a Portuguese citizen, contested the Legislative Assembly elections and had thus committed a fraud on the Constitution of India. He added that Shri Silva was applying dilatory tactics by citing technical objections with respect to filing a detailed reply in the matter, which could have been filed along with the preliminary objection itself.
6. In a detailed reply dated 8th August, 2014, Shri Silva informed the Commission that the Order dated 20th November, 2013 passed by the Ministry of Home Affairs had been stayed by the High Court of Bombay by Interim Orders dated 29th April, 2014 and 18th June, 2014 respectively and denied all allegations of not being a citizen of India. He had also attached a copy of the Indian Passport, EPICs issued to him and his family, Baptism certificate, PAN card of his family, residence certificate issued by the Village Panchayat, Mamlatdar, an extract of electoral roll, ration card, driving license, bank letters, birth certificate of the parents, wife and children. He also denied ever visiting Portugal or having the intention of being conferred with the citizenship of Portugal and requested a personal hearing again.
7. The Chief Electoral Officer, Goa submitted a letter dated 25th October, 2016 stating that the final Judgment dated 20th October, 2016 was passed by the High Court of Bombay at Goa setting aside impugned order of the Ministry of Home Affairs dated 20th

- November, 2013 and holding that the Competent Authority shall decide the matter afresh as expeditiously as possible and preferably within a period of three months from the receipt of the Order.
8. Thereafter, vide letter dated 9th November, 2016, a reminder had been sent by the Election Commission of India to the Ministry of Home Affairs requesting the desired information for formulating Opinion in the Reference case and in consideration of the final Order passed by the High Court of Bombay at Goa.
9. Fresh elections were held to the Legislative Assembly of Goa in February, 2017 and the previous Legislative Assembly, of which Shri Caetano R. Silva was a member has since been dissolved in March, 2017.
10. In light of the aforementioned facts, the opinion of the Election Commission of India under Article 192 (2) of the Constitution of India on the Reference dated 25th November, 2013 received from the Governor of Goa, is that after the dissolution of the previous Goa Legislative Assembly in 2017 and after constitution of the new House in Goa, the Reference has become infructuous as Shri Caetano R. Silva is no more a Member of the Legislative Assembly of Goa.

Place: New Delhi.

Date:

<i>Sd/-</i>	<i>Sd/-</i>	<i>Sd/-</i>
O. P. Rawat,	A. K. Joti,	Sunil Arora,
Election	Chief Election	Election
Commissioner.	Commissioner.	Commissioner.

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