IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)
WRIT PETITION (CIVIL) NO 699 OF 2016

IN THE MATTER OF:

ASHWINI KUMAR UPADHYAY .... PETITIONER

VERSUS

UNION OF INDIA AND ANOTHER .... RESPONDENTS

COUNTER AFFIDAVIT
ON BEHALF OF RESPONDENT NO.1

I, S. Mahesh Babu aged 49 years, s/o Late Shri P. Shanmugam, in my official capacity working as Deputy Legislative Counsel, am well conversant with the facts and circumstances of the present matter and am competent to swear this Counter Affidavit. I hereby solemnly affirm and state as under: -

1. That I am conversant with the facts of the case from the official records maintained, which I believe to be true and correct. On the basis of the same, I am acquainted with the facts and circumstances of the case and accordingly competent to swear the present reply

2. That I have perused the contents of the present writ petition and I deny each and every averment made and contentions raised therein except those which are expressly admitted herein

3. I state and submit that I am filing this preliminary affidavit in reply. I reserve liberty to file a further detailed affidavit, as and when I am so advised or directed by this Hon'ble Court

SCOPE OF CHALLENGE

4. The amended prayers in the captioned writ petition, as noted in the order dated 10.02.2025, are as follows:

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"a. direct and declare the words "and shall continue to be disqualified for a further period of six years since his release" be severed from sections 8(1)(ii), 8(2) and 8(3) of the Representation of the People Act, 1951 and the words "for a period of five years from the date of such dismissal" be severed from section 9(1) of the Representation of the People Act, 1951 as invalid and ultra-vires the Article 14 and basic structure of the Constitution of India;

b. direct the Respondent-1 to take appropriate steps to setup Special Courts to decide the cases related to people representative and public servants within one year and implement the important electoral reforms, proposed by the National Commission to Review the Working of the Constitution, Law Commission of India in its 244th and 255th Report and Election Commission of India;

c. direct the Respondents to take appropriate steps to debar the person convicted for the offences specified in sections 8(1), 8(2), 8(3), 9(1) of the Representation of the People Act, 1951 from contesting MLA/MP election, forming political party or becoming office bearer of political party."

5. It is submitted that the present affidavit is limited to the aspect of constitutional validity of sections 8 and 9 of the Representation of the People Act, 1951 i.e., prayer "a" quoted above.

6. At the outset, it is submitted that the prayer "a" quoted above is similar to the prayers in ***W.P. (C) 679 of 2021*** titled as *Lok Prahari vs Union of India and Anr*. The prayers in the said petition is quoted below:

"(1) declare that Sub-Sections (1), (2) and (3) of Section 8 of the Representation of the People Act 1951, in so far as these limit the period of disqualification/further disqualification to only six years from the date of conviction/ release of the convicted person, are ultra vires the Constitution as being violative of its Articles 14, 102(1) and 191(1),

(2) declare that, likewise, Section 9 of the Representation of the People Act 1951, in so far as it limits the period of disqualification to only five years from the date of dismissal on charge of corruption or disloyalty, is ultra vires the Constitution as being violative of its Articles 14, 102(1) and 191(1),

(3) declare that, as a consequence of the declarations as in (1) and (2) above, Sub-Sections 8(1), 8(2), 8(3) of the said Act shall be read down deleting the words "and shall continue to be disqualified for a further period of six years since his release", and Section 9 of the

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said Act shall be read down deleting the words "for a period of five years from the date of such dismissal."

(4) declare further that Section 11 of the RP Act, 1951 is also ultra vires the Constitution as the duration of the disqualification fixed by the Parliament under the provisions of the law framed under Article 102(1) (e) and 191(1)(e) cannot be permitted to be waived or curtailed by the Election Commission since a delegatee cannot delegate further.

(5) direct that, as consequence of the declaration in (4) above, the orders of waiver/curtailment issued by the Election Commission shall not be given effect to since the impugned provision was invalid ab initio.

(6) issue any other, writ, direction or order for doing complete justice in the matter of restoring and ensuring purity of our legislative bodies,

(7) award the cost of the petition to the Petitioner organisation."

7. It is submitted that the abovesaid petition i.e., ***Lok Prahari* (supra)** is pending consideration before this Hon'ble Court and the next date of listing as per the website of the Hon'ble Court is 25.02.2025.

8. It is pertinent to mention that the prayers in the present petition and the abovesaid petition are similar and a counter affidavit opposing the latter petition had already been filed by the answering respondent way back in November, 2023. However, the reply to the present petition is as follows:

BRIEF FACTS

9. It is submitted that the Representation of the People Act, 1951 was enacted on 17th July 1951. The purpose of the Act was to regulate certain aspects related to elections eg: the conduct thereof, the qualifications/disqualifications of legislators and voters, mode of challenge to elections et cetera.

10. It is submitted that Chapter III of the Act deals with disqualifications for Election as a member of Parliament and State Legislatures. This includes

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disqualification on conviction for certain offences under Section 8, disqualification for dismissal for corruption or disloyalty under Section 9 as well as the Power of the Election Commission to remove or reduce the period of disqualifications under Section 11.

11. It is submitted that under section 8(1) the period of disqualification is 6 years from the date of conviction or in case of imprisonment, 6 years from the date of release. The period of disqualification under sections 8(2) and 8(3) is six years while that under section 9 is five years from date of dismissal.

12. It is submitted that the present petitioner has challenged the Constitutional validity of the aforementioned sections on the ground that limiting the disqualification by time violates articles 14, 102, and 189 of the Constitution. Further, the petitioner has challenged section 11 of the Act on the ground of excessive delegation.

13. The relevant articles of the Constitution, read as follows:

> *"**102**. Disqualifications for membership*
> *(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament*
> *(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;*
> *(b) if he is of unsound mind and stands so declared by a competent court;*
> *(c) if he is an undischarged insolvent;*
> *(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;*
> ***(e) if he is so disqualified by or under any law made by Parliament***
> *Explanation For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State*
> *(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule*

191. Disqualifications for Membership

(1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State —

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

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

Explanation. — For the purposes of this clause, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule."

14. The relevant provisions of the Representation of the People Act, 1951 are quoted as under :

"Section 8. Disqualification on conviction for certain offences. —

(1) A person convicted of an offence punishable under—

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence

relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or

(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991;] or

[(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971),] ; or

(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or
(m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002),

shall be disqualified, where the convicted person is sentenced to—

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(2) A person convicted for the contravention of—

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961);

shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) Notwithstanding anything 8 [in sub-section (1), sub-section (2) or sub-section (3) a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation. —In this section, —

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be bought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955 (10 of 1955);

(d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954).

Section 9. Disqualification for dismissal for corruption or disloyalty. —

(1) A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of five years from the date of such dismissal.

(2) For the purposes of sub-section (1), a certificate issued by the Election Commission to the effect that a person having held office under the Government of India or under the Government of a State, has or has not been dismissed for corruption or for disloyalty to the State shall be conclusive proof of the fact:

Provided that no certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State shall be issued unless an opportunity of being heard has been given to the said person.

Section 11. Removal or reduction of period of disqualification.—

The Election Commission may, for reasons to be recorded, remove any disqualification under this Chapter 2 (except under section 8A) or reduce the period of any such disqualification

11B. Removal of disqualifications.—

The Election Commission may, for reasons to be recorded, remove any disqualification under sub-section (1) of section 11A."

PRELIMINARY SUBMISSIONS

Petition not maintainable – Relief beyond the jurisdiction

15. At the outset, it is submitted that the disqualifications made under the impugned sections are limited by time as a matter of parliamentary policy and it would not be appropriate to substitute the Petitioner's understanding of the issue and impose a lifetime ban. It is submitted that as a matter of judicial review, the Hon'ble Court can declare the provisions to be unconstitutional and declare them to be inoperative, however, the relief that the Petitioner is seeking amounts to re-writing of the provision as it effectively seeks to read "life-long" instead of "six years" in all sub-sections of section 8 of Representation of the People Act, 1951. It is submitted that the said approach is unknown to judicial review and unknown to any canon of constitution law.

16. It is submitted that a lifetime disqualification is the maximum that can be imposed under the provisions and to impose such a disqualification is certainly within the power of Parliament. However, it is one thing to say that a power exists and another to say that it must necessarily be exercised in every case. The prayer of the Petitioner amounts to re-writing of the statute or directing the Parliament to frame a law in a particular manner which is wholly beyond the powers of judicial review. It is trite law that the Courts cannot direct Parliament to make a law or to legislate in a particular way. In ***Madras Bar Association vs Union of India*** **2021 SCC Online SC 463** it has been held:

> *"74. A conspectus of the above judgments, inter alia, among many others, is that the judiciary in exercise of power of judicial review can strike down any legislation which violates fundamental rights or if it is beyond the legislative competence* ***but the courts cannot direct the legislature to frame or enact a law and in a particular manner.*** *The law declared by the Supreme Court is binding on all Courts in India in terms of Article 141 of the Constitution. The directions issued under Article 142 of the Constitution, are binding on every Court in terms of Article 141 of the Constitution. The legislature cannot be said to be Court within the meaning of Article 141 of the Constitution by any stretch of imagination. Article 144 of the Constitution mandates, civil and judicial authorities in India shall act in aid of the Supreme Court meaning thereby executive and judicial authorities shall act in aid of the Supreme Court. The legislature is neither civil or judicial authority who is mandated by the Constitution to act in the aid of Court.* ***The legislature is supreme so as to enact a law falling within its legislative competence. The directions of the court cannot compel the legislature to frame law in that particular manner only****. The legislature while enacting laws can legislate in a manner which is not in accordance with the directions issued by the Court to the legislature, even if the Court has specially chosen to do so.* ***The directions of this Court stop outside the four walls of legislature.*** *The judiciary will step in only after a law is enacted to test the legality of a statue on the known principles of judicial review. The Judiciary cannot and should not usurp the powers vested with legislature. The Judiciary cannot legislate in the scheme of the constitution as propounded by many judgments including*

> *larger Bench Judgments, which are binding on the smaller strength benches. The directions of this Court in MBA-III are encroaching upon the field reserved for legislature."*

In ***State of Himachal Pradesh vs Satpal Saini*** **2017 11 SCC 42** the above point has been reinforced and reiterated as follows:

> *"12. The judiciary is one amongst the three branches of the State; the other two being the executive and the legislature. Each of the three branches is co-equal. Each has specified and enumerated constitutional powers. The judiciary is assigned with the function of ensuring that executive actions accord with the law and that laws and executive decisions accord with the Constitution. The courts do not frame policy or mandate that a particular policy should be followed. The duty to formulate policies is entrusted to the executive whose accountability is to the legislature and, through it, to the* ***people. The peril of adopting an incorrect policy lies in democratic accountability to the people. This is the basis and rationale for holding that the court does not have the power or function to direct the executive to adopt a particular policy or the legislature to convert it into enacted law.*** *It is wise to remind us of these limits and wiser still to enforce them without exception."*

17. It is submitted that at the outset that the impugned laws are constitutionally sound, do not suffer from the vice of excess delegation and are *intra vires* the powers of Parliament. In that regard it is stated that all laws duly passed by the Legislature are entitled to the presumption of constitutionality [***Charanjit Lal Chowdhury v. Union of India,*** **AIR 1951 SC 41**; ***Ram Krishna Dalmia v. Justice S.R. Tendolkar,*** **AIR 1958 SC 538**; ***B Banerjee v. Anita Pan,*** **(1975) 1 SCC 166**; ***Mohd. Hanif Quareshi*** **v.** ***State of Bihar,*** **AIR 1958 SC 731**; ***Sanjeev Coke Manufacturing Company v. M/s. Bharat Coking Coal Limited*** **(1983) 1 SCC 147**]. The burden is on the petitioner to show that the law is unconstitutional. The present petition has failed to make

out any cogent ground at all to show that the impugned laws are constitutionally invalid.

Parliamentary policy

18. It is submitted that issues raised by the Petitioner have wide ranging ramifications and clearly fall within the legislative policy of the Parliament and the contours of judicial review would be suitably altered in such regard. It is submitted that this Hon'ble Court has consistently held that legislative choice over one option or the other cannot be questioned in Courts over its efficacy or otherwise. In ***Premium Granites* v. *State of T.N.* [(1994) 2 SCC 691]**, this Hon'ble Court clarified that it is the validity of a law and not its *efficacy* that can be challenged. This Hon'ble court, noted as under :

> *"54. It is not the domain of the court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right."*

19. In ***Delhi Science Forum* v. *Union of India* [(1996) 2 SCC 405]**, a Bench of three learned Judges of this Court, while rejecting a claim against the opening up of the telecom sector reiterated that the forum for debate and discourse over the merits and demerits of a policy is Parliament. It restated that the services of this Hon'ble Court are not sought till the legality of the policy is disputed, and further, that no direction can be given or be expected from the courts, unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provisions. It held as under :

> *"7. What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in court of law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies."*

20. It is submitted that therefore, merely because as a matter of policy the Petitioners feel that the impugned provisions may not be appropriate, the same would not be a ground for unconstitutionality of the provision. [*Union of India v. Indian Radiological & Imaging Assn.*, (2018) 5 SCC 773 [Para 16]; *State of H.P. v. Satpal Saini*, (2017) 11 SCC 42 [Para 6]; *Ravindra Ramchandra Waghmare v. Indore Municipal Corpn.*, (2017) 1 SCC 667 [Para 46]; *State of H.P. v. H.P. Nizi Vyavsayik Prishikshan Kendra Sangh*, (2011) 6 SCC 597 [Para 21]

21. It is submitted that this Hon'ble Court, in a recent judgment in ***Dr. Ashwani Kumar v. Union of India and Anr.*, 2019 SCC OnLine SC 1144**, in the context of a similar prayer, has held as under :

> *"26. Legislating or law-making involves a choice to prioritise certain political, moral and social values over the others from a wide range of choices that exist before the legislature. It is a balancing and integrating exercise to give expression/meaning to diverse and alternative values and blend it in a manner that it is representative of several viewpoints so that it garners support from other elected representatives to pass institutional muster and acceptance. Legislation, in the form of an enactment or laws, lays down broad and general principles. It is the source of law which the judges are called upon to apply. Judges, when they apply the law, are constrained by the rules of language and by well identified background presumptions as to the manner in which the legislature intended the law to be read. Application of*

law by the judges is not synonymous with the enactment of law by the legislature. Judges have the power to spell out how precisely the statute would apply in a particular case. In this manner, they complete the law formulated by the legislature by applying it. This power of interpretation or the power of judicial review is exercised post the enactment of law, which is then made subject matter of interpretation or challenge before the courts.

27. Legislature, as an institution and a wing of the Government, is a microcosm of the bigger social community possessing qualities of a democratic institution in terms of composition, diversity and accountability. Legislature uses in-built procedures carefully designed and adopted to bring a plenitude of representations and resources as they have access to information, skills, expertise and knowledge of the people working within the institution and outside in the form of executive.[31] Process and method of legislation and judicial adjudication are entirely distinct. Judicial adjudication involves applying rules of interpretation and law of precedents and notwithstanding deep understanding, knowledge and wisdom of an individual judge or the bench, it cannot be equated with law making in a democratic society by legislators given their wider and broader diverse polity. The Constitution states that legislature is supreme and has a final say in matters of legislation when it reflects on alternatives and choices with inputs from different quarters, with a check in the form of democratic accountability and a further check by the courts which exercise the power of judicial review. It is not for the judges to seek to develop new all-embracing principles of law in a way that reflects the stance and opinion of the individual judges when the society/legislators as a whole are unclear and substantially divided on the relevant issues[32]. In Bhim Singh v. Union of India[33], while observing that the Constitution does not strictly prohibit overlapping of functions as this is inevitable in the modern parliamentary democracy, the Constitution prohibits exercise of functions of another branch which results in wresting away of the regime of constitutional accountability. Only when accountability is preserved, there will be no violation of principle of separation of powers. Constitution not only requires and mandates that there should be right decisions that govern us, but

equal care has to be taken that the right decisions are made by the right body and the institution. This is what gives legitimacy, be it a legislation, a policy decision or a court adjudication.

28. It is sometimes contended with force that unpopular and difficult decisions are more easily grasped and taken by the judges rather than by the other two wings. Indeed, such suggestions were indirectly made. This reasoning is predicated on the belief that the judges are not directly accountable to the electorate and, therefore, enjoy the relative freedom from questions of the moment, which enables them to take a detached, fair and just view.[34] The position that judges are not elected and accountable is correct, but this would not justify an order by a court in the nature of judicial legislation for it will run afoul of the constitutional supremacy and invalidate and subvert the democratic process by which legislations are enacted. For the reasons stated above, this reasoning is constitutionally unacceptable and untenable."

22. Without prejudice, it is submitted that the question whether a life time ban would be appropriate or not is a question that is solely within the domain of the parliament. It is not for the petitioner or the respondent to state that the same is appropriate or even state that the same would be excessive. As a matter of law, in imposing any penalty, the Parliament seeks to maintain considering the principles of proportionality and reasonability.

23. It is submitted that in the case of ***Laxmibai vs Collector, Nanded and Others,*** **(2020) 12 SCC 186**, the Supreme Court was considering the power of the State Election Commission to disqualify candidates for not furnishing election expenses under Section 14-B of the Maharashtra Village Panchayat Act, 1959. The Court's observations are apposite in the present case as well:

"**18.***The judgments relate to the procedure to be followed in election petition and proof of allegation but such principles are to be followed in the case of inflicting punishment of disqualification, which has far serious implication almost similar to indulging in corrupt practices in an election. The purity and transparency in election process does not give*

unbridled and arbitrary power to the Election Commission to pass any whimsical order without examining the nature of default. ***The extent of period of disqualification has to be in proportion to the default. The Election Commission has to keep in mind that by such process, an election of duly elected candidate representing collective will of the voters of the constituency is being set at naught.***

20. *The disqualification of a candidate for five years passed under Section 14-B of the 1959 Act leads to disqualification for future election as well. Though, Section 14-B of the 1959 Act empowers the Commission to disqualify a candidate for a period not exceeding five years from the date of the order, but to pass an order of disqualification for five years, which may disqualify him to contest the next elections as well requires to be supported by cogent reasons and not merely on the fact of not furnishing of election expenses. We find that the order of disqualification for a period of five years is without taking into consideration the extent of default committed by the appellant and that the will of people is being interfered with in the wholly perfunctory way. We find that such mechanical exercise of power without any adequate reasons, though required to be recorded, renders the order of disqualification for a period of five years as illegal and untenable. It is abdication of power which is coupled with a duty to impose just period of disqualification.* ***Therefore, though the appellant could be disqualified for a period up to five years, but we find that such period of disqualification must be supported by tangible reasons lest it would border on being disproportionate.***"

24. It is submitted that in the above case, this Hon'ble Court has recognized that disqualification even for a length of time is a severe punishment which in the absence of tangible reasons "borders on being disproportionate".

25. It is submitted that it is a settled principle of law that penalties are limited either by time or by quantum. For instance, the entirety of the Bharatiya Nyaya Sanhita, 2023 or penal law provide for imprisonment or fines up to certain limits. The rationale behind the same is that the punitive measures would co-relate with the gravity of the offence. It is submitted that post the serving of such

penalty, a person is free to rejoin the society and enjoy all other rights available to any individual.

Further, there are numerous penal laws which provide for restrictions to be imposed on the exercise of rights and freedoms, which restrictions are in most cases time-limited. At the end of the prescribed time, the restrictions imposed by the penalty cease to operate automatically.

It is submitted that numerous laws provide for penalties limited by time, in the same manner as in the impugned Act. It is submitted that this is in line with well-established principles governing penal law. By confining the operation of the penalty to an appropriate length of time, deterrence is ensured while undue harshness is avoided.

26. It is submitted that the petition fails to make the crucial distinction between basis of disqualification and effects of disqualification. It is true that the basis of disqualification is conviction for an offence and that this basis remains unchanged so long as the conviction stands. The effect of such conviction lasts for a fixed period of time. As stated above, there is nothing inherently unconstitutional in limiting the effect of penalties by time.

27. It is submitted that the petitioner has failed to appreciate in full the decision rendered by the Hon'ble Supreme Court in ***Manoj Narula vs Union of India*** **(2014) 9 SCC 1**. While the court in that case had rightly expressed apprehensions about criminality in politics, it had also recognized that judicial restraint must be exercised and the court could not prescribe qualifications or disqualifications for election. In his concurring opinion, Justice Madan Lokur had held as follows:

> ***"133.5 It is not for this Court to lay down any guidelines relating to who should or should not be entitled to become a legislator or***

who should or should not be appointed a Minister in the Central Government"

28. It is submitted that the petitioner's reliance on articles 102 and 191 of the Constitution is totally misplaced. It is submitted that clause (e) of article 102 and Article 191 are enabling provisions that confer on Parliament the power to make laws governing disqualification. It is in exercise of this power that the Representation of the People Act, 1951 has been enacted. The Constitution has left the field open to Parliament to enact such further law governing disqualifications as Parliament deems fit. Parliament has power both to determine the grounds for disqualification and the duration of disqualification.

29. It is submitted that in fact, the very contention that the disqualifications under articles 102 and 191 are permanent is untenable. Briefly put, the grounds for disqualification given in the above articles are-Holding of an office of profit, unsoundness of mind, insolvency and not being a citizen of India. It is submitted that these are not permanent disqualifications. In all these cases, disqualification is tied to the existence of a supervening circumstance. It would last only so long as the supervening circumstances last i.e., disqualification would cease once the holder of office of profit demits that office, where the insolvent person comes out of insolvency, where the person who was unsound of mind is cured of such unsoundness and where the non-citizen becomes an Indian citizen.

30. That the present affidavit is *bona fide* and in the interest of justice

31. That no additional facts or documents or grounds which are not part of the record, have been pleaded or are being placed before this Hon'ble Court

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32. In light of the above, it is submitted that the writ petition filed by the Petitioner is devoid of merit. Hence, it is prayed that the Petition may be dismissed and the court may pass such necessary orders as deemed fit

S. MAHESH BABU
Deputy Legislative Counsel
Legislative Department
Ministry of Law & Justice

DEPONENT

IDENTIFIED

VERIFICATON

Verified at Delhi on this 24th day of February, 2025, that the contents of the above affidavit are true and correct to my knowledge and belief derived from the official records. No part of the above affidavit is false and nothing material has been concealed there from.

S. MAHESH BABU
Deputy Legislative Counsel
Legislative Department
Ministry of Law & Justice

DEPONENT

NOTARY PUBLIC
K. BANDANA
Delhi
Regn. No. 19718
Date of Expiry
26.02.2025
Govt. of India

24/2/2025

ATTESTED
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