



भारत निर्वाचन आयोग  
Election Commission of India

निर्वाचन सदन  
NIRVACHAN SADAN  
अशोक रोड, नई दिल्ली - 110 001  
ASHOKA ROAD, NEW DELHI - 110 001

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## REFERENCE CASE NO. 7 (G) OF 2018

### [REFERENCE RECEIVED FROM THE HON'BLE GOVERNOR OF UTTAR PRADESH UNDER ARTICLE 192(2) OF THE CONSTITUTION OF INDIA]

*IN RE: REFERENCE CASE NO. 7 (G) OF 2018 - REFERENCE RECEIVED FROM THE  
HON'BLE GOVERNOR OF UTTAR PRADESH UNDER ARTICLE 192(2) OF THE  
CONSTITUTION OF INDIA ON THE QUESTION OF DISQUALIFICATION OF SHRI  
SAHAB SINGH SAINI, MEMBER OF THE LEGISLATIVE COUNCIL OF UTTAR  
PRADESH.*

### OPINION

1. This is a reference seeking 'opinion' of the Election Commission of India which has been received from the Hon'ble Governor of Uttar Pradesh on 26.07.2018 under Article 192(2) of the Constitution of India on the Order dated 02.07.2018 passed by Hon'ble High Court of Judicature at Allahabad in Writ – C No. 16509 of 2018 wherein the Petitioner, Smt. Sumitra Saini, W/o Sh. Sahab Singh Saini, R/o 223, Gandhi Gram, Near Pani Ki Tanki, Dehradun, Uttrakhand, has sought action against Shri Sahab Singh Saini, Member of the Legislative Council of Uttar Pradesh (hereinafter referred to as 'the Respondent') for concealing material facts and giving false information on affidavit filed along with the nomination paper.
2. The Petitioner has submitted before the Hon'ble High Court that the Respondent has suppressed the fact of his marriage with Smt. Sumitra Saini and has falsely disclosed

that he is married to Smt. Reeta Basudeo in the affidavit filed by him along with the nomination papers for contesting in the Election held in 2015 for filling seats in the Legislative Council of Uttar Pradesh from the Legislative Assembly of Uttar Pradesh.

- 3. In the Order dated 02.07.2018, the Hon'ble High Court has noted that the Respondent is prima-facie guilty of second marriage during subsistence of the first marriage and has directed as under:

*"The information in this regard along with the copy of this order may be placed before the Governor of State of U.P., as well as the Chief Minister for necessary action at their end with the request to appraise the Court of any action, if any, taken by them in the matter."*

This direction of the Hon'ble High Court also finds reflection in the Letter of the Hon'ble Governor whereby he had made the present reference.

- 4. Section 125A of the Representation of People Act, 1951 provides the penalty for filing false affidavit and is being reproduced herein below for the sake of convenience:

*"125A. Penalty for filing false affidavit, etc.— A candidate who himself or through his proposer, with intent to be elected in an election,—*

*(i) fails to furnish information relating to sub-section (1) of section 33A; or*

*(ii) gives false information which he knows or has reason to believe to be false; or*

*(iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."*

- 5. The perusal of Section 125A of the Representation of People Act, 1951 makes it clear that it is a penal provision which can be brought into motion by any person by filing an

F.I.R. with the Police or by filing a complaint under Section 200 read with Section 156(3) of the Code of Criminal Procedure, 1974 with the Magistrate concerned. It is for this reason that the Hon'ble High Court has observed in the Order dated 02.07.2018 as under:

*"In the meantime, the petitioner may file a proper application before the competent authority for action under Section 125A of the Act for the prosecution of Respondent No. 3 for giving false information."*

- 6. It is also pertinent to note that there is no statutory provision which provides for disqualification for filing a false affidavit or for illegally entering into second marriage during the subsistence of the first marriage. However, the Government of Uttar Pradesh may take appropriate action in accordance with law to ensure that the inquiry and proceedings under Section 125A of the Representation of People Act, 1951 reach a conclusion within reasonable time.
- 7. In the view of the above, the Commission hereby opines that Shri Sahab Singh Saini, Member of the Legislative Council of Uttar Pradesh is not disqualified under any law for being a member of the Legislative Council of Uttar Pradesh.

  
Sunil Arora

(ELECTION COMMISSIONER)

  
O. P. Rawat

(CHIEF ELECTION COMMISSIONER)

  
Ashok Lavasa

(ELECTION COMMISSIONER)

Place: New Delhi

Date: 14.09.2018