

GAHC040006862024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/211/2024

Smti Likha Sang Chorre and 3 Ors
Wife of Shri Likha Tara, resident of Dem Village, PO Deed, PS Ziro, Yachuli Sub
Division, Lower Subansiri District (now Keyi Panyor District), Arunachal Pradesh
791120 2: Smti Gem Aiti

Age:

Occupation :

Wife of Late Gem Tade

resident of Yazali

PO Yazali

PS Yazali

Lower Subansiri (now Keyi Panyor) District

Arunachal Pradesh 791120

3: Smti Khoda Dipung

Age:

Occupation :

Wife of Khoda Tabang

resident of Village Linia

PO Yachuli

PS Yachuli

Lower Subansiri (now Keyi Panyor) District

Arunachal Pradesh 731120

4: Nilly Likha Tabo

Age:

Occupation :

Son of Shri likha Togor

resident of Village Sito

PO Yachuli

PS Yachuli

Yachuli Sub Division

Lower Subansiri (now Keyi Panyor) District

Arunachal Pradesh 79112

VERSUS

The Deputy Commissioner and 2 Ors
Lower Subansiri District, Ziro, Arunachal Pradesh 2:The State Election Commisison
Age: 0
Occupation :
Nirvachan Bhawan
Arunachal Pradesh
Itanagar

3:The State President (in Charge) Cum Chairman
Age: 0
Occupation :
State Disciplinary Committee
Bharatiya Janata Party
Itanagar
Arunachal Prades

Advocate for the Petitioner : Kamal Saxena

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 30.05.2024

Heard Mr. P.K. Tiwari, learned senior counsel, assisted by Mr. K. Saxena, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Senior Govt. Advocate, representing respondent no.1, Mr. A. Apang, learned senior counsel, assisted by Ms. N. Anju, learned counsel for the respondent no.2 and Mr. D. Mozumdar, learned senior counsel, assisted by Mr. S.K. Deori, learned counsel for the respondent no.3.

2) In brief, the case of the petitioners is that they were Zilla Parishad Members of Lower Subansiri Zilla Parishad, and they were declared

elected from 05- Deed Zilla Parishad Constituency, 02- Yazali Zilla Parishad Constituency, 20- Upper Yachuli Zilla Parishad Constituency, and 04 Pistana Zilla Parishad Constituency respectively, under the then Lower Subansiri District. By a notification dated 23.02.2024, the Keyi Panyor District came into force on and from 1st March, 2024.

3) Thereafter, all these 4 (four) petitioners along with the Zilla Parishad Member from 01- Pitapool Zilla Parishad vide two separate letters dated 28.02.2024, informed the (i) District President of Bhartiya Janata Party (hereinafter referred to as "BJP" for brevity) and Deputy Commissioner,- cum- Member Secretary, Keyi Panyor District that out of 6 Zilla Parishad members of Keyi Panyor District Zilla Parishad 5 (five) of them had merged to N.C.P. (Ajit Pawar) with more than $\frac{2}{3}$ rd majority and requested them to acknowledge their merger.

4) The petitioners also project that they had also submitted their resignation from primary membership of BJP. However, the petitioners have not annexed any document in support of such plea. The case of the petitioners is that instead of accepting their resignation, the State President- cum- In-charge Chairman, Disciplinary Action Committee, BJP, Arunachal Pradesh (respondent no.3) had issued a show cause notice dated 29.03.2024 on the petitioners and thereafter, by issuing individual "expulsion orders" dated 07.04.2024, expelled them from BJP for a period of 6 (six) years and it was also ordered that their respective primary membership, active membership and any responsibility assigned to them by the party shall cease and would stand cancelled. This was followed by issuing of a intimation letter dated 07.04.2024 by the respondent no. 3 to the Member Secretary, Zilla Parishad, Lower Subansiri District regarding

the expulsion of the petitioners and requested them to be disqualified. Similar information was issued by the respondent no.3 to the Secretary, State Election Commission (respondent no.2) vide letter dated 08.04.2024 and thus, the respondent no.2 had forwarded the same to the Deputy Commissioner, Lower Subansiri/ Keyi Pynor District, West Kameng District and Tirap District regarding expulsion/ disqualification of the petitioners.

5) The Deputy Commissioner, Lower Subansiri/ Keyi Pynor District (respondent no.1) had issued a show-cause notice dated 10.04.2024 to the petitioners, fixing 16.04.2024 as the date fixed for hearing. Accordingly, the petitioners appeared before the respondent no.1 on 16.04.2024, and requested to be supplied with copy of complaint. The petitioners project that by a letter dated 16.04.2024, addressed to the District President, BJP, they had withdrawn their respective resignation by expressing their strong faith on the BJP leadership and by another letter dated 16.04.2024, a further request was made to the District President (respondent no.3) to accept their re-joining in BJP pursuant to an appeal made by the Chief Minister. However, the respondent no.3, by a letter dated 23.04.2024, addressed to the respondent no.1, prayed for immediately disqualify the defectors. Thereafter, the petitioners had submitted their show-cause reply dated 26.04.2024 before the respondent no.1.

6) The Deputy Commissioner, Lower Subansiri/ Keyi Pynor District (respondent no.1), by a speaking order dated 14.05.2024, held that the provisions of section 3 of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003 was attracted in respect of the petitioners and under section 6(2) of the said Act (as amended in 2006), it was declared that the petitioners stand disqualified.

7) The said order is assailed in this writ petition filed under Article

226 of the Constitution of India.

8) The learned senior counsel for the petitioners has submitted that there cannot be a unilateral merger and there was no formal merger with NCP (Ajit Pawar) Party and therefore, the petitioners' letter dated 28.03.2024 can only be treated as an "expression of an intention to merger". It was also submitted that their resignation letter dated 28.02.2024, from BJP was never accepted by the respondent no.3 and before it was acted upon, the petitioners had withdrawn it vide letter dated 16.04.2024, by reposing full faith and allegiance to the Chief Minister of the State.

9) It was submitted that as a new District, Keyi Panyor was created with effect from 01.03.2024, covering six constituencies of undivided Lower Subansiri District, the petitioners were waiting for their constituencies to be integrated with the new Zilla Parishad for Keyi Panyor District to be created under section 85 of the Arunachal Pradesh Panchayat Act, 1997. Moreover, it was submitted that the petitioners had a 5 years term and/or tenure, which would expire in the year 2025, thus, the respondent authorities ought to have treated the petitioners as a separate group as per section 5(1)(b) of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003 (as amended) and the petitioners could not have been disqualified.

10) It was submitted that the respondent nos. 1 and 3, in a haste had disqualified the petitioners so as to prevent the petitioners from being made a part of the new Zilla Parishad of Keyi Panyor District and thereby, they have purposefully kept all the seats of Zilla Parishad Constituencies in the newly created district vacant, with an ulterior motive.

11) It was also submitted that by withdrawal of resignation, the

intention of merger with another political party was no longer existing, is a fact which was not appreciated by the respondent no.1. It was also submitted that the intention to merger led to the expulsion of the petitioners, and such expulsion had triggered the disqualification process. But, the non-acceptance of resignation, coupled with withdrawal of resignation and expression of intention to return to BJP were a few facets of this case, which was ignored by the Deputy Commissioner, Lower Subansiri District (respondent no.1).

12) In support of his submissions, the learned senior counsel for the petitioners had cited the case of *Ravi S. Naik v. Union of India & Ors., (1994) Supp. (2) SCC 641*. Moreover, the case of *Amar Singh v. Union of India, (2017) 13 SCC 222* was cited for the purpose of bringing home the point that the respondents may place reliance on the case of *G. Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & Anr., (1996) 2 SCC 353*, but the said judgment cannot be considered to be a good law as its application had been stayed.

13) Accordingly, it was submitted that the petitioners have been able to make out a *prima facie* case for adjudication. Therefore, it was prayed that on issuance of notice of motion or Rule, as an interim measure, the operation of the impugned order be stayed.

14) The learned senior counsel for the respondent no.3 has advanced his submissions to oppose the writ petition and his submissions were adopted by the learned Government Advocate and the learned senior counsel for respondent no.2.

15) On a perusal of the herein before referred two letters dated 28.02.2024, submitted by the petitioners before the respondent nos. 1 and 3

the petitioners had clearly stated that they have merged to N.C.P. (Ajit Pawar) with more than $\frac{2}{3}$ rd majority and requested them to acknowledge their merger. Such a statement in the letter dated 28.02.2024 of the petitioners clearly demonstrate that they were aware of the legal provision as to when they may become liable to be disqualified. Thus, the step so taken by the petitioners was a calculated move, clearly depicting their intention to part way from the political party under whose aegis they had been elected in such a manner that they can be saved from disqualification.

16) The clear stand of the petitioners in paragraphs 8 and 10 of the writ petition is that they had submitted their resignation from primary membership of BJP.

17) Once the petitioners have resigned, it was not obligatory on part of the concerned political party to communicate to the petitioners as to whether their resignation was accepted or not. It is seen that the respondent no. 3 had not only issued 4 (four) separate expulsion orders dated 07.04.2024, but had also initiated process to have the petitioners disqualified. It is also admitted by the petitioners that they were served with a show-cause notice dated 10.04.2024, issued by the respondent no.1. The petitioners had purportedly withdrawn their resignation on 16.04.2024, and on the same date, they had also expressed their intention to re-join the concerned political party. The said two steps on the part of the petitioners, in the considered opinion of the Court, cannot have the effect of obliterating and/or nullifying the proceedings initiated by issuance of show-cause notice dated 07.04.2024 by the respondent no.1. Moreso, because the respondent no.3, by his letter dated 23.04.2024, addressed to respondent no.1, had clarified that he was batting for the

expulsion of the petitioners.

18) The petitioners could not produce a copy of any notification by virtue of which the Zilla Parishad for the newly created Keyi Panyor District had been notified. Therefore, the explanation provided by the petitioners as to why they had taken such step to resign and merge with another political party is not sufficient to persuade the Court that the impugned order dated 14.05.2024 is vitiated in any manner.

19) The petitioners' volte face after the merger did not materialize clearly depicts that the plea of withdrawing resignation and expression of interest to re-join the party of respondent no.3 is an after-thought. The petitioners, having written to the concerned political party that they were withdrawing resignation and their expression of intention to re-join the said political party cannot undo the cause of action that had already accrued for the respondent no.1 to examine their disqualification, after the process initiated by respondent no.3 was not recalled.

20) The learned senior counsel for the petitioners had cited the case of *Ravi S. Naik v. Union of India & Ors., (1994) Supp. (2) SCC 641*. However, the Court is of the considered opinion that because of the observations made by the Supreme Court of India in para-11 of the said judgment, the said case would not help the petitioners in any way because in this case the petitioners had not only tendered their resignation from their original political party, but by their conduct of unilaterally declaring their merger with another political party with disclosure that they constitute $\frac{2}{3}$ rd majority, not only discloses that they had voluntarily left the membership of their original party and that they were fully conscious and aware of the legal provisions as to when they can be disqualified

and thus, the petitioners had taken a calculated risk.

21) As stated herein before, the learned senior counsel for the petitioners has placed reliance on the case of *Amar Singh v. Union of India*, (2017) 13 SCC 222, for the purpose of showing that the respondents may cite the case of *G. Viswanathan v. Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & Anr.*, (1996) 2 SCC 353, but the said judgment cannot be considered to be a good law as its application had been stayed.

22) To test the said submissions, it would be appropriate to extract para-11 of the case of *G. Viswanathan (supra)*, which is quoted below: -

“11. It appears that since the explanation to paragraph 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'. The further question is when does a person 'voluntarily give up' his membership of such political party, as provided in paragraph 2(1)(a)? The act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member.”

23) In the case of *Amar Singh (supra)*, their Lordships in the Supreme Court of India had merely stated that the case of *G. Viswanathan (supra)* would not apply on the two petitioners therein. However, the observations made in para-8 thereof cannot be construed as if the 2- Judge co-ordinate Bench of Supreme Court of India in *Amar Singh (supra)*, had held that the judgment of the other 2-Judge co-ordinate Bench of Supreme Court of India rendered in the

case of *G. Viswanathan (supra)* was not a good law.

24) Therefore, in light of the observations made in para-11 of the case of *G. Viswanathan (supra)*, pitted with the facts of this case in hand, as narrated herein before, the Court is inclined to hold that by the letter dated 28.02.2024, the petitioners had informed the respondent no.3 that they had merged with another political party and that they had also clearly expressed that they had voluntarily given up their membership of their original political party which had set them up as a candidate for election in Zilla Parishad of Lower Subansiri District. Therefore, for the purpose of proceeding against the petitioners under the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003, the petitioners continue to belong to that very party.

25) Hence, the challenge by the petitioners to the impugned order No. PR/DEFECTION01/2024 dated 14.05.2024, passed by the Deputy Commissioner, Lower Subansiri District (respondent no.1) fails and thus, this writ petition is found devoid of any merit and is hereby dismissed at the motion stage without issuing notice upon the respondents.

26) Before parting with the records, we put on record that it is noticed that the State of Arunachal Pradesh as well as the concerned political party have not been arrayed as respondents.

JUDGE

Comparing Assistant