

GAHC040007452024



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

Case No. : IA(C)/95/2024

Smti Likha Sang Chorre and 3 Ors

Age: 56

Occupation :

Address: 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: 52

Occupation :

Address: 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: 41

Occupation :

Address: 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: 48

Occupation :

Address: Son of Shri Likha Togor

resident of Village Sito

PO Yachuli

PS Yachuli

Yachuli Sub Division

Lower Subansiri (now Keyi Panyor) District

Arunachal Pradesh 791120

VERSUS

The Deputy Commissioner and 2 Ors

Age: 0

Occupation :

Address: Lower Subansiri District

Ziro

Arunachal Pradesh

2: The State Election Commission

Age: 0

Occupation :

Address: Nirvachan Bhawan

Arunachal Pradesh

Itanagar

3: The State President (in Charge) Cum Chairman

Age: 0

Occupation :

Address: State Disciplinary Committee

Bharatiya Janata Party

Itanagar

Arunachal Pradesh

Advocate for : Eddie Payeng

Advocate for : GA (AP) appearing for The Deputy Commissioner and 2 Ors.

WA/17/2024

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 Pradesh

Advocate for the Petitioner : Kamal Saxena

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 13.06.2024
(K. Ete, J)

Heard Mr. P. K. Tiwari, learned Senior Counsel assisted by Mr. K. Saxena, learned counsel for the applicants. Also heard Mr. D. Mazumdar, learned Senior Counsel assisted by Mr. S. K. Deori, learned counsel for the respondent No. 3; Mr. A. Apang, learned Senior Counsel for the respondent No. 2; and Mr. S. Tapin, learned Senior Government Advocate for the respondent No. 1.

2. This interlocutory application has been filed praying for stay/suspension of the judgment and order dated 30.05.2024, passed in WP(C) No. 211(AP)/2024, as well as the order dated 14.05.2024, passed by the learned Deputy Commissioner, Lower Subansiri District.

3. The said WP(C) No. 211(AP)/2024 was filed by the petitioners/applicants challenging the disqualification order dated 14.05.2024, whereby the applicants have been disqualified as Zila Parishad Member under Section 6(2) of the Arunachal Pradesh Local Authorities (Prohibition of Defection) (Amendment) Act, 2006 (hereinafter referred to as 'Local Authorities Act, 2006') by the Deputy Commissioner, Keyi Panyor, Lower Subansiri District, Ziro holding that the actions of the applicants attracts the provision of Section 3(1)(a) of the said Act.

4. Mr. P. K. Tiwari, learned Senior Counsel for the applicants, submits that the learned Single Judge as well as the Deputy Commissioner have failed to appreciate the fact that the conduct of the applicants as Zila Parishad Members was comprised of various actions like expression of intention to merge with another political party, resignation from the party on whose ticket they were elected followed by their acting on the call of the Chief Minister and withdrawing the resignation from the party with the request that they be allowed to join the party. The conduct of the applicants in the light of their above actions does not constitute a valid ground for disqualification within the meaning of Section 3(1) (a) of the Local Authorities Act, 2006, particularly when the disqualification proceeding was initiated on the basis of their expulsion from the party. He further submits that the disqualification proceeding was initiated only on the basis of expulsion of the applicants from the party. He submits that the learned Single Judge has erroneously held that once the petitioners had resigned, it was not obligatory on the part of concerned political party to communicate the petitioners as to whether the resignation was accepted or not. The learned

Single Judge has failed to appreciate the factum of expulsion of the applicants from the party was an indication that the resignation of applicants was never accepted because acceptance of resignation from the party and expulsion of those who resigned from the party are inherently contradictory. In case of the applicants, the disciplinary authority of the party, without accepting the resignation of the applicants, initiated the proceedings for their expulsion from the party culminating into the formal expulsion from the party which was the sole basis for initiation of the disqualification proceedings against the applicants. The expulsion of the applicants by itself could not have constituted the relevant facts of voluntary resignation from the party unless there was a resignation and its acceptance by the authority before its withdrawal and therefore, the conduct of the applicants as whole did not constitute voluntary giving up membership from the party within the meaning of the Local Authorities Act, 2006.

5. He further submits that the learned Single Judge has failed to appreciate that the principle of law laid down by the Hon'ble Supreme Court in case of **G. Viswanathan Vs. Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & Anr.** was put on hold by the Hon'ble Supreme Court in the case of **Amar Singh Vs. Union of India** and the issue as to whether the mere expulsion of the member from the political party on whose ticket the said member was elected could be the basis of initiation of disqualification proceedings was referred to Larger Bench for consideration. Therefore, Mr. Tiwari, learned Senior Counsel, prays that the impugned order dated 30.05.2024 and disqualification order dated 14.05.2024 may be stayed on the ground that

the *prima facie* case has been made out and a similar protection as provided by the Hon'ble Supreme Court in the case of **Amar Singh Vs. Union of India**, reported in **(2017) 13 SCC 222**, may be provided to the applicants.

6. Mr. D. Mazumdar, learned Senior Counsel for the respondent No. 3, while vehemently opposing the interim prayer of the applicants, submits that the law is well settled by the Hon'ble Supreme Court in the case of **G. Viswanathan Vs. Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & Anr.**, reported in **(1996) 2 SCC 353**, wherein it has been held that the act of voluntary giving up the membership of the political party may be either expressed or implied and when the person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another 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. In the present case, he submits that the acts of merger, resignation and the expulsion clearly constitutes the voluntary giving up the membership of political party which had set them up as candidates for election to the Zila Parishad Members. He further submits that if the impugned order dated 30.05.2024, passed by the learned Single Judge in WP(C) No. 211(AP)/2024, is stayed, the same would amount to grant of final relief, which is not permissible under the law. In support of his submission, he also referred to the case of **State of U.P. & Ors. Vs. Ram Sukhi Devi**, reported in **(2005) 9 SCC 733**.

7. Mr. Mazumdar, learned Senior Counsel, therefore, submits that no interim order be passed as no *prima facie* case, balance of convenience as well as the

public interest have been made out.

8. We have considered the submissions made by the learned counsels for the parties and also examined the materials on record for the purpose of consideration of the interim prayer of the applicants.

9. On consideration, on the first blush, we find that *prima facie* the conduct of the applicants as Zila Parishad Member like expression of intention to merge with another political party and resignation from the party which has set up them as candidates for the election to Member of Zila Parishad amounts to voluntary giving up their membership of such political party which may attract Section 3(1)(a) of the Local Authorities Act, 2006. However, the subsequent conduct of applicants shows that they have not joined another political party and the merger did not take place.

10. The Hon'ble Supreme Court in the case of **G. Viswanathan (supra)** has held that the act of voluntary giving up the membership by political party may be either expressed or implied. When the person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another 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.

11. In the instant case, as noted above, the applicants had expressed their

intention to merge with the another political party and then submitted resignation from the political party which has set them up as candidates for election to the Members of Zila Parishad. However, subsequently, they have withdrawn their resignation and no merger had taken place, though they have been expelled from the party.

12. On consideration of the order of the Hon'ble Supreme Court in the case of **Amar Singh Vs. Union of India (supra)**, we find that the issue as to whether the expulsion of a member from the political party on whose ticket the said member was elected could be the basis for initiation of disqualification proceedings has been referred to the Larger Bench for consideration. The Hon'ble Supreme Court, in our considered view, has not put on hold the law laid down in **G. Viswanathan (supra)** in its expressed term. The Hon'ble Supreme Court has provided that the issue remains to be dealt with as the same has not been answered by the earlier case of **Amar Singh** reported in **(2011) 1 SCC 210**, and since the question remains alive, it has been directed to be placed before the Larger Bench for consideration of the questions formulated in the case of **Amar Singh (supra)**. It has provided that the pending reference, the decision in **G. Viswanathan (supra)** case shall not be applied to the 2 (two) writ petitions in that case.

13. The Hon'ble Supreme Court has also deprecated the practice of granting interim orders which practically give the relief sought in the petition for no better reason than that of the *prima facie* case having been made out without being concerned about the balance of convenience, the public interest and the

hosts of other factors. In the present case, we are of the view that if an interim order is passed, it would not amount to grant of final relief as the appellant could make out a *prima facie* case.

14. We have also perused the Letter dated 21.05.2024, issued by the Secretary, State Election Commission, Itanagar, whereby the Deputy Commissioner is directed to furnish the Sl. Nos. in names of Zila Parishad Constituency falling within the jurisdiction of Keyi Panyor District for constitution of Zila Parishad in terms of the provision of Sub-Section 1 of Section 85 of Arunachal Pradesh Panchayati Raj Act, 1978, for notification of constitution of Zila Parishad in the district.

15. Having considered above and considering that the merger has not been completed and the applicants have not joined another political party as well as the issue as to whether the expulsion of member from a political party on whose ticket the said member was elected, could be the basis for initiation of disqualification proceedings has been referred to larger Bench and pending final determination by Hon'ble Supreme Court, we are of the considered view that an interim order is called for. Accordingly, the impugned order dated 30.05.2024, passed in WP(C) No. 211(AP)/2024, as well as the disqualification order dated 14.05.2024, passed by the learned Deputy Commissioner, Lower Subansiri District, are hereby stayed.

16. It is made clear that the observation made hereinabove are only for

consideration of interim prayer and the *prima facie* view of this Court subject to final determination of the writ appeal on merit.

17. In terms of above, this interlocutory application stands disposed of.

JUDGE

JUDGE

Comparing Assistant