



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

Case No. : WP(C)/274/2023

Techi Atum

Aged about 52 years, So of Late Techhi Tad, permanent resident of Ganga Village,
PO/PS Itanagar, District Papum Pare, AP

VERSUS

State Election Commission and 3 Ors

Arunachal Pradesh, represented by its Secretary, Govt. of AP, Itanagar 2:The
Deputy Commissioner cum Returning Officer

Age: 0

Occupation :

3:The Returning Officer

Age: 0

Occupation :

4:Taro Tagio

Age: 0

Occupation

Advocate for the Petitioner : Joram Mebi

Advocate for the Respondent : Ajin Apang, Sr. Advocate

BEFORE
HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. D. Das, Senior Advocate.

For the Respondents : Mr. P. K. Tiwari, Sr. Advocate,
Assisted by Mr. K. Saxena, Adv.
Ms. N. Anju, Govt. Advocate.
Ms. R. Basar, Govt. Advocate.

Date of Hearing : 07.08.2024

Date of Judgement : 16.08.2024

JUDGMENT & ORDER (CAV)

1. Heard Mr. D. Das, learned senior counsel for the petitioner. Also heard Mr. P. K. Tiwari, learned senior counsel assisted by Mr. K. Saxena, learned counsel representing respondent No. 4 and Ms. N. Anju, learned counsel for the respondent No1 and Ms. R. Basar, learned counsel for the respondent Nos. 2 and 3.
2. The present writ petition under article 226 of the Constitution of India is filed for setting aside and quashing the judgment and order dated 15.05.2023, passed by learned Member, Arunachal Pradesh Panchayat Raj Tribunal at Yupia in Election Petition (PR) 03/2021 with a further direction to set aside and quash the election of the respondent No. 4 to the No. 11 Batt Ganga Zila Parishad Constituency (for short concerned ZPC).
3. The brief facts of the case leading to filing of the present writ petition can be recorded as follows:

- I. On 12.11.2020 the State Election Commission, AP (for short Election Commission) issued a notification for general Election to the Panchayat Raj Institution and Itanagar Municipal Council and Pasighat Municipal Council in a single phase election, which also included the concerned ZPC.
- II. The petitioner and the respondent No. 4 submitted nomination, offering their candidature for the concerned Zila Parishad.
- III. On the date of scrutiny of the nomination paper, on 04.12.2020, the petitioner filed a complaint alleging disqualification of the respondent No. 4 to be chosen to fill the concerned seat having his name registered in two electoral constituencies i.e. in the electoral roll of the concerned Zila Parishad as well as under Chakha So Gram Panchayat. Accordingly, a prayer for cancellation of nomination was made.
- IV. The respondent No. 3 rejected such contention and published a list of validly nominated candidate vide notification dated 04.12.2020, (for short impugned notification) wherein both the nomination of the petitioner and the respondent No. 4 was found valid. Thereafter a complaint was lodged to the District Election Officer on the same day by the petitioner but to of no avail.
- V. Election to the concerned ZPC was held on 22.12.2020 and after counting, the respondent No. 4 was declared to be duly elected to fill the seat in the concerned ZPC by a notification dated 26.12.2020. The respondent No. 4 received 1042 valid votes and petitioner received 892 valid votes.
- VI. The petitioner assailed the impugned order, dated 04.12.2020, whereby the nomination of the respondent No. 4 was accepted. The further prayer made in the election petition was to suspend the

candidature of the respondent No. 4 for election to the concerned ZPC.

VII. The fundamental ground of such challenge is violation of provision of Section 109 of the Arunachal Pradesh Panchayat Raj Act, 1997 (for short APPR Act, 1997) and violation of Rule 12 (2) of the Arunachal Pradesh Panchayat Raj (Conduct of Election) Rules, 2001 (for short Election Rules, 2001). The further ground was that respondent No. 4 was disqualified to be elected in terms of Section 57 of the Act, 1997 inasmuch as in view of mandate Section 108, the respondent No. 4 is disqualified having dual enrolment in voter list of two constituencies.

4. The respondents filed their written statement and took a stand, in substance that dual enlistment in voter list in two constituencies cannot be a ground either for rejection of nomination or for declaring an election invalid. The parties had also laid evidence in support of their contentions.

5. The learned Tribunal framed two issues which are quoted herein below:

I. Whether this suit is maintainable in present form?

II. Whether the nomination paper of private respondent No. 4 as a candidate for the post of Zila Parishad Member, 11-Bath Ganga Zila Parishad Constituency, is liable to be rejected, for having enrolment his name in two electoral rolls of Zila Parishad Constituency?

6. After conclusion of the trial, the learned Tribunal dismissed the election petition and made the following conclusions:

a. The act of 1997 does not prescribe for disqualification to contest election, if the name of the person appears in voter list of two panchayat or ZP constituency.

- b. Cumulative effect of Section 108, 110(a) and 120(c) of the APPR Act, 1997 is that a person ordinarily residing at the particular ZPC has statutory right to get his or her name entered in the E-Roll as voter and to be chosen to fill the seat of ZPC.

7. Mr. D. Das, learned senior counsel for the petitioner argues the following:-

- I. The Section 120(1)(c) of the APPR Act, 1997 is mandatory and same contemplates that a candidate cannot file a nomination from more than one constituency. The nomination of the candidate on or his election is liable to be interfered, if he is enrolled in the voter rolls from more than one constituency.
- II. Section 120(1)(a) of the Act, 1997 provides that a candidate should be a voter of the constituency from which he/ she is contesting the election. The term "voter" is not defined under the Act.
- III. Section 108 and 109 of the Act, 1997 clearly provide that a person cannot be a voter in more than one constituency. Thus, for a person to be a valid voter, the person is required to fulfil the requirements of Chapter VI and more particularly under Sections 106 to 119 of the Act, 1997.
- IV. Relying on the decision rendered by a coordinate Bench in **Chera Loma –Vs- State Election Commission and Ors** reported in **2017 1 GLT 469**, it is contended that the coordinate bench in an exactly similar situation considered the provisions of Sections 108 and 109 of the Act, 1997 along with eligibility requirement under Section 120 and Section 120(1)(a) of the Act, 1997, has to be read with Section 108 and 109 of the Act, 1997, and the relevant rules to give it a harmonize and logical interpretation and accordingly, it was

held that double entry in the electoral roll of more than one constituency shall disqualify a candidate to be chosen and/or to fill a seat under the Act, 1997. In the aforesaid judgment it was clearly held that the provision of Sections 16 and 17 of the RP Act, shall not be applicable in case of an election under the Act, 1997 inasmuch as there is no pari materia provision in the RP Act.

V. The said judgment was overlooked by the Tribunal, and the Tribunal decided to entertain election petition based on Section 57 of the 1997 Act, which was not applicable in the present case.

VI. Under Section 57 of the Act, 1997, the candidate is required to be eligible for being chosen as or for being a member of the Gram Panchayat, etc.

VII. Section 120 of the Act, 1997, prescribes the eligibility/qualification criteria to be chosen to fill a seat in a constituency of a Gram Panchayat, etc. the word "chosen" is used in both the sections and therefore a candidate in order to "qualified to be chosen" is first required to fulfil the requirements(s) under Section 120 of the Act, 1997 and thereafter for the candidate to be disqualified "for being chosen" and/ or "for being a member" any of the reasons mentioned under Section 57 has to arise. Section 120 of the Act, 1997 is the qualifying requirement and Section 57 of the Act, 1997 is the disqualifying provision. But a candidate has to be first qualified to be disqualified.

8. Per contra, Mr.P. K. Tiwari, learned Senior Counsel argues the following:-

I. Section 120(1) mandates that a person cannot be chosen to fill a seat in more than one constituency and it does not mandate that he cannot contest election or shall be disqualified having enrolment

in the electoral roll in more than one constituency.

- II. Section 108 is independent of Section 120 (1)(c) inasmuch as the first one prohibits registration of a name in more than one constituency and the later prohibits a person from being chosen in more than one constituency.
- III. Section 108 of the Act, 1997 is pari materia to Section 17 of the RP Act and in a similar circumstances, the Hon'ble Apex Court in **Babu Rao –Vs- Manik Rao** reported in **1995 5 SCC 38**, it was held that if a person's name finds a place in more than one constituency, it would not entail disqualification which was subsequently followed in **Pothula Rama Rao –Vs- P. V. K. Rao** reported in **2007 11 SCC 1** and therefore, such principle shall be binding upon this Court and not the determination made by the Coordinate Bench in **Chera Loma** (supra).
- IV. The Coordinate Bench did not deal with the Section 120 and also did not treated the 120(1)(c) as a ground for declaring election void rather the learned Coordinate Bench gave emphasized upon Section 108 of RP Act.
- V. Though Coordinate Bench in **Chera Loma** (supra) distinguished the Supreme Court judgment in **Babu Rao**(supra) on the ground that in parliamentary and in State Legislative Election, one can contest elections from two different constituencies which is not permissible under the Act, 1997 which is erroneous for the reason that Section 120(1)(c) only mandates that a person is not qualified to be chosen in more than one constituency.

9. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the material available on record.

10. Chapter IV of the APPR Act, 1997 consisting of Section 53 to Section 84 deals with establishment, constitution of Anchal Samities and also disqualification resignation etc. of elected members and also the removal of members are dealt.

Section 57 specifically deals with the disqualification for being chosen as a member of Gram Panchayat, Anchal Samiti and Zila Parishad and also the disqualification for being a member of such. The disqualifications are prescribed in Clause- (a) to (j) of Section 57. Under the aforesaid clauses, there is no prescription that a person shall be disqualified for being chosen or for being a member of Anchal Samiti for having registered in voter roll in two different constituencies.

11. Chapter VI of the APPR Act, 1997 consisting of Section 104 to Section 122 deals with superintendence, direction and control of election to panchayat by the State Election Commission.

Section 108 under the said Chapter prescribes that a person registered in electoral roll for a constituency relating to a Gram Panchayat shall not be entitled to be registered in electoral roll for another Gram Panchayat constituency etc. Such provision is pari materia to section 16 of the RP Act 1950.

Section 109 also prescribes that no person shall be entitled to be registered in electoral roll for more than one constituency and also clarifies that no person shall be entitled to be registered in electoral roll for any constituency more than once. Such provision is pari materia to section 17 of the RP Act, 1950.

12. In **Babu Rao** (supra) similar issue was for determination before the Hon'ble Apex Court, which was relatable to Section 16 and 17 of the Representation of People Act, 1950 (hereinafter referred to as RP Act). While dealing with Section 16 and Section 17 of the RP Act, the Hon'ble

Apex Court made the following conclusions:

- I. There is nothing to suggest in Section 16 of the RP Act that if a person's name finds a place in more than one constituency, that would automatically entail disqualification from contesting in anyone of the constituency.
 - II. Though Section 17 of the RP Act expressly states that no person shall be entitled to be registered in the electoral roll for more than one constituency, however, if a person's name finds a place in more than one constituency that does not automatically entail disqualification under Section 16 of the RP Act.
13. In ***Pothula (supra)***, in a similar circumstance, while relying on ***Babu Rao (supra)***, the Hon'ble Apex court held that double entry of name of a citizen in the electoral roll of a constituency is not a ground of disqualification under Section 16 of the RP Act.
 14. In the case in hand also there is no provision under Section 108 or 109, which suggest that if a person's name finds in a place more than one constituency, that would automatically entail disqualification from contesting in anyone of the constituency
 15. Thus, in view of the aforesaid ratio laid down by the Hon'ble Apex Court, this Court can conclude that under Section 108 or 109 of the Act, 1997, double entry of an name of a citizen in electoral roll in more than one constituency cannot be a ground of disqualification.
 16. As Section 120 of the Act, 1997 is the bone of contention, before dealing with it, the same is quoted herein below:-

“ 120. (1) A person shall not be qualified to be chosen to fill a seat in a constituency or a Gram Panchayat, Anchal Samiti and Zilla Parishad, unless;

 - a. His or her name appears as an elector in the electoral roll or concerned constituency of a Gram Panchayat, Anchal Samiti and Zilla Parishad.

- b. *He or she has completed 21 years of age on the date of submission of nomination at an election.*
- c. **A person shall not be qualified to be chosen to fill a seat in more than one constituency of a Gram Panchayat, Anchal Samiti and Zilla Parishad**. (*emphasise supplied*)

17. A reading of the aforesaid provision it is clear that such provision prescribes that a person shall be disqualified to be chosen to fill a seat in a constituency under the Act, 1997 if;

i. He or she is not enrolled in the electoral roll of the concerned constituency.

ii. Has not completed 21 years of age on the date of submission of nomination.

iii. He or she is not qualified to be chosen in a seat in more than one constituency.

Thus, there is not prescription under Section 102 of the Act, 1997 entailing a person to be disqualified of being enrolled in voters roll in more than one constituency and what it bars is that a person cannot be elected from more than one constituency and that he is to be enrolled as voter under the constituency from which he has filed his nomination. The other aspect is that he should be aged minimum 21 years on the date of filing nomination.

18. To summarize, in the considered opinion of this Court, Section 120, do not prescribe that more than one entry in the electoral roll in more than one constituency to be a ground for disqualification. What it mandates is that the candidate shall be qualified to be chosen to fill a seat only when his or her name appears as an electoral in the electoral roll of the concerned constituency. Section 120 further puts an embargo that a person shall not be qualified to be chosen to fill a seat in more than one

constituency, however, such provision also do not prescribe a mandate that a person shall not be qualified to be chosen to fill a seat when his or her name is enrolled in more than one constituency. Therefore, in the considered opinion of this Court, the principle laid down in **Babu Rao** (supra), and **Pothula** (supra), shall be applicable in the present case, there being no prescription under Section 120 (1) of the Act, 1997 prescribing a disqualification for having enrolled as voter in more than one constituency.

19. Now coming to Section 57, said provision deals with disqualification for being chosen as a member and also disqualification for being a member. The grounds of disqualification are enumerated under clause (a) to (l). This provision being a bone of contention of the learned senior counsel, same is quoted herein below:-

“57. A person shall be disqualified for being chosen as, and for being a member of the Gram Panchayat, Anchal Samiti and Zilla Parishad if he:-

(a) is not a citizen of India or .(b) is not twenty one years of age; or

(c) has been dismissed from the services of Central or any state Government or Gram Panchayat, Anchal Samiti and Zilla Parishad or any other local authority for misconduct, unless a period of five years has elapsed from such dismissal; or (d) if he is in the service of or holds any office of profit under the Central Government or any state Government or autonomous body or any Zilla Parishad/Anchal Samiti or any Gram Panchayat;

(e) has directly or indirectly any share or monetary interest in any work done by, or to, (f) the Gram Panchayat/Anchal Samiti/Zilla Parishad or in any contract or employment with, under, by or on behalf of the Gram Panchayat Anchal Samiti Zilla Parishad; or (g) is an undischarged insolvent; or

(h) is of unsound mind and stands so declared by a competent Court; or (i) has been convicted by a criminal court of any offence involving moral turpitude and sentenced to imprisonment for not less than six months and five years have not elapsed since his release;

(j) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State:

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if

he has attained the age of twenty one years;
 (k) if he is so disqualified by or under any law made by the Legislature of the state;(l) if arrears of any kind are due by him to the Gram Panchayat Anchal Samiti/Zilla Parishad and Government: Provided that the disqualifications specified in clauses (d) and (e) shall not apply to an ex-officio member”.

20. A bare reading of the aforesaid provision, do not make any prescription that a person shall be disqualified for being chosen as a member or disqualified for being a member for the reason of being enrolled in the electoral roll of two constituencies under the Act, 1997. Though, Clause-(j) prescribes that the person can also be disqualified if he is otherwise disqualified by or under any law for the time being in force for the purpose of elections to the legislature of the State.
21. For the reasons recorded hereinabove,, this Court while exercising its certiorari jurisdiction cannot find fault with the decision of the learned Tribunal below, more particularly, for the reason that the learned Tribunal had come to such a conclusion on the basis of the principle laid down by the Hon'ble Apex Court in the case of **Pothula (supra)** and **Babu Rao (supra)**.
22. Since heavy reliance is placed upon by the learned senior counsel for the petitioner on the judgment rendered by the Coordinate bench in **Chera Loma (supra)**, let this Court deal with such argument.
23. It is by now well settled that a ratio laid down by a Coordinate Bench is binding upon the subsequent Bench of same strength. However what is binding is the ratio decidendi. In the case of State of **Gujrat and Ors. vs Utility Users Welfare Association and ors** reported in **(2018) 6 SCC 21**, the Hon'ble Apex Court propounded that the inversion test is to be applied to find out the ratio decidendi in a judgment. It was held that to test whether a particular proposition of law is to be treated as the ratio

decidendi of the case, the proposition is to be removed from the text of the judgment, as if it did not exist and the conclusion after such removal still have been the same, even without examining the proposition, then it cannot be regarded as ratio decidendi of the case. In the case of ***Dalbir Sing and Ors vs State of Punjab*** reported in **1979 3 SCC 744**, which was followed by the Hon'ble Apex court in ***Jayanta Verma and Ors vs Union of India & Ors*** reported in **(2018) 4 SCC 743**, held that it is not the finding of material fact, direct and inferential but the statement of the principle of law applicable to the legal problem disclosed by the fact, which is the vital element in the decision and operate as a precedent. Even the conclusion does not operate as a precedent and the only thing which is binding as a legal precedent is the principle upon which the case is decided.

24. The Coordinate Bench in **Chera Loma** (supra) held that the determination made in **Babu Rao** (supra) is not applicable in case of Act, 1997.

25. The learned Coordinate Bench dealt with the ratio of **Babu Rao** (supra), in the following manner and quoted herein below:-

“Thus, for election to a Legislative Assembly, a person can be an elector in any Assembly constituency in cases of unreserved seats and subject to the restrictions in case of reserved seats. On the other hand, section 120 of the Act, 1997, clearly lays down that in order to be qualified to be chosen to fill a seat in an Anchal Samiti, the candidates' name has to appear in the electoral roll of the concerned constituency. Hence, for election to an Anchal Samiti, a candidate has to be an elector from that particular constituency, which requirement is not there in the case of elections to a Legislative Assembly. Considered, thus, the said Acts cannot be said to be similar. Hence, it is respectfully submitted that the decision

of Manikrao's case (supra) is not applicable in the instant case and is distinguishable as the facts and circumstances are apparently different."

26. With due respect to the judgment of the Coordinate Bench, it is seen that while dealing with **Babu Rao (supra)**, the learned Coordinate Bench did not dealt with the ratio laid down in **Babu Rao (supra)**, at paragraph 14 15 and 16 nor the said judgment had dealt with the section 16 and 17 of the RP Act, which are *parimateria* to the provision of Section 108 and 109 of the Act, 1997, and recorded a conclusion that as there is no similar provision in RP Act to Section 120 of the Act, 1997, the ratio in **Babu Rao (supra)** is not applicable.
27. That being the position, it cannot be said that a ratio has been laid down by the Coordinate Bench that an election is liable to be set aside on the ground that a candidate is enrolled in the electoral roll of more than one constituency inasmuch as the determination of the election tribunal was interfered with the same case to the extent that the nomination was not correctly rejected. However, no fresh election was directed.
28. This court is also of the considered opinion that in view of the clear principle laid down by the Hon'ble Apex Court on the same point in **Babu Rao (supra)**, such principle shall be binding upon this court more particularly when the coordinate Bench did not deal with determination made in **Babu Rao(supra)**viz-a-viz the *parimateria* provisions of the RP Act and the Act, 1997. However, the said provisions are being extensively argued in the present case as recorded hereinabove and therefore, the ratio laid down in **Babu Rao (supra)** shall be a binding precedent in the given facts of the present case and not **Chera Loma (supra)**.
29. Yet another aspect of the matter is that the Election Petition 03/2021 was filed with the prayer to set aside the notification dated 04.12.2020

issued by the Returning Officer, whereby the nomination of the private respondent was accepted. No prayer what so ever was made by the election petitioner either seeking a declaration that the petitioner be declared as duly elected candidate. There is no prayer seeking a declaration that the election of respondent No. 4 is illegal. There is also no prayer for fresh election to be held. Though such prayer are made in the writ petition. The relief sought for in the writ petition is for issuance of a writ of certiorari setting aside the election of the respondent no. 4. In the considered opinion of this court such prayer cannot be even considered in the present writ petition when such prayers were not made in the election petition. On this count alone, the writ petition is liable to be dismissed.

30. The election disputes are dealt in Part-VII consisting of Section 69 to 75 of Arunachal Pradesh Panchayati Raj (Conduct of Election) Rules, 2001 (hereinafter referred to as Rule, 2001). In terms of Rule 70 of the Rules, 2001, election disputes are required to be enquired by the Election Tribunal as nearly as may be possible in accordance with the Code of Civil Procedure, 1908 relatable to trial of suits. An election can be declared void or valid under Section 74 or it may pass further orders, when the Election Tribunal reaches an opinion as enumerated under Rule 73 of the Rules 2001. Rule 73 and 74 are quoted herein below:-

“73. If in the opinion of the Election Tribunal:-
(1) A returned candidate or his agent or any other person with the connivance of such candidate or agent has committed or abetted the commission of any election offence falling under Chapter-IX-A of the Indian Penal Code or any law or rule relating to the infringement of the secrecy of an election, the election of such candidate shall be declared as void.
(2) The election of a returned candidate has been procured or induced; or the result of the election has been materially affected by any of the following corrupt practices, namely:-
(i) any election offence as mentioned in sub-rule (1) above;
(ii) any payment to any person whomsoever on account of the conveyance of any elector to or from any place for the purpose of casting his vote;
(iii) hiring employment, borrowing or using any vehicle for the purpose of

conveyance of any elector to or from any place to the polling station for the purpose of casting his vote:

Provided that any elector may hire any conveyance or use his own vehicle for conveying himself to or from the polling station, or

(3) The result of the election has been materially affected by any irregularity in respect of the nomination paper or by the improper reception or refusal of nomination paper or in voting or by any non-compliance with the provision of the Act or the Rules made thereunder, the election of such candidates shall be declared as void:

Provided that, if the Election Tribunal is one of opinion that any corrupt practice specified in sub-rule (2) of this rule which does not amount to any form of bribery other than "treating" as hereinafter explained has been committed and if the Election Tribunal is further of the opinion that the candidate has satisfied him that:-

(i) no corrupt practice was committed at such election by the candidate and that any corrupt practices committed/or committed contrary to the orders and without the sanction or connivance of such candidate; and

(ii) such candidate took reasonable means for preventing the commission of corrupt practice at such election; and

(iii) the corrupt practices, committed were of trivial nature not affecting the election materially; and

(iv) In all other respects, the election was free from any corrupt practice on the part of such candidate or any of his agents;

Then the Election Tribunal may declare that the election of such candidate is not void.

Explanation:- For the purpose of this rule "treating" means incurring by any person of the expenses of giving or providing any food, drink, entertainment or provision to any person with the object directly or indirectly inducing him or any other person to vote or refrain from voting or as a regard for having voted or refrained from voting"

74. (1) At the conclusion of the enquiry, the Election Tribunal shall declare, whether election of the returned candidate or candidates is void under Rule (73).

(2) If he declares the election of the returned candidates void, he shall further pass an order either;

(a) declaring that, any other party to the petition who has under these Rules claimed the seat has been duly elected; or

(b) ordering a fresh election;

(3) The order of the Election Tribunal under sub-rule (1) or sub-rule (2) shall be communicated forthwith to the District to the District Election Officer concerned, State Election Commission and the State Government.

31. Rule 74 empowers the Election Tribunal, after conclusion of the trial to declare the election of the returned candidate to be void or valid. If the election is declared void he can further declare the petitioner to be duly

elected or can directed for fresh election. However, from the reading of the aforesaid provisions, it is clear that such course of action shall be permissible when a election petitioner makes such a prayer and makes out a case under Section 73. But in the case in hand, there is no prayer whatsoever, as recorded hereinabove, seeking such declaration or for further order, except praying to set aside the order dated 04.12.2020, declaring the candidature of the respondent No. 4 valid. Therefore, the election petition cannot be allowed nor such prayer can be entertained under certiorari jurisdiction when the original election petition lacks such prayer.

32. In view of the reasons recorded hereinabove, the present writ petition shall stands dismissed. Parties to bear their own cost.

JUDGE

Comparing Assistant