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DB

2024:GAU-AS:9764-

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

Case No. : WA/328/2024

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
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
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
SON OF SHRI LIKHA TOGOR
RESIDENT OF VILLAGE SITO
PO YACHULI
PS YACHULI
YACHULI SUB DIVISION
LOWER SUBANSIRI (NOW KEYI PANYOR) DISTRICT
ARUNACHAL PRADESH 7911

VERSUS

THE DEPUTY COMMISSIONER LOWER SUBANSIRI DISTRICT AND 2 ORS
LOWER SUBANSIRI DISTRICT, ZIRO, ARUNACHAL PRADESH

2:THE STATE ELECTION COMMISISON
NIRVACHAN BHAWAN
ARUNACHAL PRADESH
ITANAGAR

3:THE STATE PRESIDENT (IN CHARGE) CUM CHAIRMAN
STATE DISCIPLINARY COMMITTEE
BHARATIYA JANATA PARTY
ITANAGAR
ARUNACHAL PRADES

For the Appellant(s) : Mr. D. Das, Senior Advocate, assisted by Mr. R.B. Phookan,
Advocate and Ms. S. Sharma, Advocate.

For the respondent(s) : Mr. A. Chandran, Additional Senior Govt. Advocate, Arunachal
Pradesh.

: Mr. D. Mozumdar, Senior Advocate, assisted by Mr. S.K. Deori,
Advocate and Ms. Somila, Advocate.

Date of Hearing : 23.09.2024.

Date of judgment : 27.09.2024

– **BEFORE –**
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. D. Das, learned senior counsel, assisted by Mr. R.B. Phookan, learned counsel appearing for the appellants. Also heard Mr. A. Chandran, learned Additional Senior Government Advocate, Arunachal Pradesh, appearing on behalf of respondents No.1 and Mr. D. Mozumdar, learned senior counsel, assisted by Mr. S.K. Deori, learned counsel appearing for the respondent No.3.

2. This intra-Court appeal is preferred by the appellants assailing the order dated 30.05.2024, passed by the learned Single Judge in WP(C) No.211(AP)/2024, whereby the writ petition filed by the appellants has been dismissed.

3. The appellants filed the WP(C) No.211(AP)/2024 assailing the order dated 14.05.2024 passed by the Deputy Commissioner, Lower Subansiri District, Ziro, whereby the appellants had been disqualified to hold the posts of Zilla Parishad Member of Lower Subansiri District Zilla Parishad, Arunachal Pradesh.

4. The brief facts of the case are that the appellants were elected as Members of Lower Subansiri District Zilla Parishad (hereinafter referred to as "Zilla Parishad") from different constituencies and the same is evident from the Certificates of Election annexed by them with the writ petition. It is to be noticed that the appellants contested in the elections for the posts of Member of the Zilla Parishad as candidates from a political party, namely, Bharatiya Janata Party (BJP) and they were elected as Members of the Zilla Parishad.

5. The Government of Arunachal Pradesh, in exercise of powers conferred under sub-Section (2) of Section 1 of the Arunachal Pradesh (Re-organization of Districts) (Amendment) Act, 2024, has created a new district in the name of Keyi Panyor District. The above referred district is created out of the area of Lower Subansiri District of Arunachal Pradesh. However, the fact remains that despite creation of Keyi Panyor District, a separate Zilla Parishad for the said district has not been constituted as per the provisions of Section 85 of the Arunachal Pradesh Panchayat Raj Act, 1997.

6. Be that as it may, the appellants along with one independent Member of the Zilla Parishad sent a letter dated 28.03.2024 to the Deputy Commissioner-cum-Member Secretary, Keyi Panyor District, informing that they had merged with NCP (Ajit Pawar). A similar letter was also addressed to the District President, BJP, Keyi Panyor District, on the same day. The letter dated 28.03.2024, written by the appellants to the Deputy Commissioner, Keyi Panyor District is reproduced hereunder:

“To

*The Deputy Commissioner-cum-Member Secretary,
Keyi Panyor District,
Tergapin-Samsath, Yachuli,*

Sub: Merger to NCP (Ajit Pawar) with more than 2/3rd majority.

Sir,

It is to respectfully inform and bring to your notice that we the undersigned 05 (five) ZPMs (including the present ZPC) out of total 6 (six) ZPMs of Keyi Panyor District Zilla Parishad, do hereby merge to NCP (Ajit Pawar) with more than 2/3rd majority.

Therefore, our merger may kindly be acknowledged.

Yours faithfully,

Sd/-

1. Smti Likha Sang Chhore, ZPC

Sd/-

2. Shri Nilly Likha Tabo, ZPM 04-Pistana.

Sd/-

3. Smti Khode Dipung, ZPM, 20-Uppar Yachuli

Sd/-

4. *Smti Gem Aiti, ZPM, 02-Yachuli*

Sd/-

5. *Smti Nabam Piju, ZPM, 01-Pitapol*

7. On 29.03.2024, the State President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh issued a Show Cause Notice to the appellants for initiating disciplinary action against them alleging that the appellants were indulged in anti party activities. It appears that the appellants did not furnish their reply to the said Show Cause Notice and the said State President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh, expelled the appellants from BJP by issuing separate Expulsion Letters dated 07.04.2024. The State President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh also intimated the factum of expulsion of the appellants from the BJP to the Member Secretary of the Lower Subansiri Zilla Parishad vide letter dated 07.04.2024 and requested that the appellants be disqualified immediately while treating them as defectors under the provisions of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003 (As amended in 2006) (hereinafter referred to as ("Defection Act, 2003"). A similar communication was also sent to the Secretary of the State Election Commission, Arunachal Pradesh, intimating the factum of expulsion of the appellants along with some other Zilla Parishad Members from BJP, vide letter dated 08.04.2024. It appears that the Member Secretary, Lower Subansiri Zilla Parishad forwarded the intimation letter dated 07.04.2024 to the Secretary of the State Election Commission, Arunachal

Pradesh. The State Election Commission, on 09.04.2024 forwarded the letter dated 08.04.2024 sent by the State President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh, to the Deputy Commissioner, Lower Subansiri District and other Deputy Commissioners of all other districts.

8. Taking cognizance of the said letter dated 09.04.2024, written by the Secretary, State Election Commission, the Deputy Commissioner, Lower Subansiri District issued Show Cause Notice to the appellants on 10.04.2024 asking them to show cause as to why action should not be initiated against them under Section 3, read with Section 4, 5, and 6 of the Defection Act, 2003. The Show Cause Notice dated 10.04.2024 is reproduced hereunder:

“No. PR/DEFECTION-01/2024 Dated Ziro the 10/4/2024

SHOW CAUSE NOTICE

To,

- 1. Smti Likha Sang Chhore, ZPM, Deed*
- 2. Shri Nilly Likha Tabo, ZPM, Pistana*
- 3. Smti Khoda Dipung, ZPM, Upper Yachuli*
- 4. Smti Gem Aiti, ZPM, Yazali*

Whereas vide letter No. Nil dated 28/3/2024 addressed to Deputy Commissioner you had intimated that 4 (four) Bharatiya Janata Party ZPMs and One Independent ZPM (total-5) out of 6 ZPMs of Keyi Panyour district do hereby merge to NCP (Ajit Pawar) with more than 2/3rd majority.

And whereas the State President in charge cum Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh, vide letter No. SDAC/BJP/AP/21/24 dtd. 7/4/2024 had intimated regarding your expulsion from Bharatiya Janata Party and prayed for disqualification thereof under relevant laws.

In view of the above facts and circumstances you are hereby directed to Show Cause as to why action should not be initiated against you under Section 3 read with Sections 4, 5 and 6 of the Arunachal Pradesh Local

Authorities (Prohibition of Defection) Act, 2003.

In this regard, you are hereby required to be present in person or accompanied by an advocate if required on 16/4/2024 at 11 a.m. in the office chamber of Deputy Commissioner, Ziro, failing which the proceedings shall be treated ex-parte.

Given under my hand and Seal.

Sd/-

Deputy Commissioner

Keyi Panyor & L/Subansiri District”

9. In response to the said Show Cause Notice, the appellants wrote a letter to the Deputy Commissioner requesting him to furnish copy of the complaint, if any, made against them for disqualification. Simultaneously, on 16.04.2024, the appellants sent another communication to the District President, BJP, Keyi Panyor District, wherein it is mentioned that they had resigned from the primary membership of BJP on 28.03.2024, however, they decided to withdraw their resignation and they were rescinding, recalling and cancelling the said resignation letter. Vide another letter dated 16.04.2024, addressed to the District President, BJP, Keyi Panyour District, the appellants requested the District President to accept their rejoining in the party.

10. The State President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh, wrote a letter to the Deputy Commissioner, Lower Subansiri District and reiterated the demand of disqualification of the appellants stating that the expulsion of the appellants from the BJP is still in force.

11. Vide a letter dated 26.04.2024, addressed to the Deputy Commissioner, Keyi Panyour District, Ziro, the appellants replied to the Show Cause Notice

dated 10.04.2024. The relevant extract of the reply to the Show Cause Notice is reproduced hereunder:

“4. That, we beg to submit that on perusal of the certified copy of the complaints, it is found that Bharatiya Janata Party, Arunachal Pradesh has served Show Cause Notice on 29.03.2024, expulsion order was passed on 07.04.2024 and on the same day, complaint was lodged to the Member Secretary, Zilla Parishad, Lower Subansiri District. In this regard, we reiterate that no any show cause notice and expulsion order has been served upon us till date. Everything was done in hasty manners without giving us an opportunity of being heard and to reply their show cause notice. The ground for their complaint is solely relied on our merger application dated 28.03.2024, but party has not disclosed whether the power and function of Zilla Parishad Constituency for Lower Subansiri & Keyi Panyor District has been separated or not? We have not received any proper/written instruction to redress this issue till date from the party or from the Government of Arunachal Pradesh. However, owing to none clarity on separation of power Zilla Parishad Constituency in respect of Lower Subansiri District and Keyi Panyor District, as a resultant we have already withdrawn the merger application dated 28.03.2024, submitted to your good office.

5. That, we beg to inform you that NCP (Ajit Pawar) has not accepted our merger letter dated 28.03.2024 addressed to your good office. The merger application was submitted under misconception regarding the notification of newly created district “Keyi Panyor”. Also, the merger was under the impression that creation of new district would naturally entail new PRI connoting 2/3rd majority in such predicament. Since our merger has not been accepted by the NCP (Ajit Pawar) and no formal joining was completed. Also, undersigned has made an ethical decision to uphold the sanctity of the appeal made by young and dynamic Hon’ble Chief Minister, Shri Pema Khandu Ji on 04.04.2024 to all the misguided PRIs to return to the party on or before 17.04.2024 before 1700 hours. Accordingly, the undersigned 04 ZPMs has already recalled and withdrawn the merger application dated 28.03.2024 submitted to your good office vide dated 16.04.2024 and also withdrawn the resignation from primary membership of BJP and same has been sent through mail and registered posts to your good office. Also, we have re-joined the BJP on 16.04.2024 and same has been acknowledged to the party office in Keyi Panyor District, but die to absence of President and other party workers, we could not obtain proper receipts of our re-joining in the party.”

In the said reply to the Show Cause Notice, the appellants had requested for recalling and cancelling the Show Cause Notice dated 10.04.2024 on the

ground that they had withdrawn their merger application dated 28.03.2024.

12. The Deputy Commissioner, Lower Subansiri District, after taking into consideration the reply to the Show Cause Notice and after hearing the counsel for the appellants as well as the counsel for the State President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh, disqualified the appellants from holding the posts of Zilla Parishad Member by invoking the provisions of the Defection Act, 2003, vide order dated 14.05.2024. The relevant portion of the order dated 14.05.2024 is reproduced hereunder:

“Findings

It is neither denied nor refuted that the 4 ZP members voluntarily tried to merge with NCP (Ajit Pawar) under the misconception that the bifurcation of the district of Lower Subansiri and Keyi Panyor districts, the Zilla Parishad also stands bifurcated and that they form more than 2/3rd of the elected member of Zilla Parsishad for Keyi Panyor. It is pertinent to mention here that the Zilla Parishad of undivided Lower Subansiri district has 20 members out of which 14 members belong to Ziro-I block (Lower Subansiri) and 6 belong to Ziro-II block (now Keyi Panyor).

The matter regarding bifurcation of Zilla Parishad of undivided Lower Subansiri district was referred to State Electin Commission who vide WP message dated 10/04/2024 replied that the Zilla Parishad has been not yet constituted in respect of Keyi Panyor district.

That subsequent to the merger attempts made by the 4 ZP members vide their letter dated 28/03/2024, the BJP expelled the said members vide their expulsion order dated 07/04/2024 and that the request of the 4 ZPMs to rejoin the party by withdrawing the resignation has not been considered by the Disciplinary Action Committee, BJP, Arunachal Pradesh.

On the question regarding whether the disqualification matter can be instituted and orders be issued while the Modal Code of Conduct (MCC) being in force, the matter was referred to Chief Election Officer (CEO) and after obtaining due clarification this order is being pronounced.

ORDER

In view of all material facts as stated above and the relevant provisions of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003, I am of the considered opinion that the actions of the Zilla Parishad

members, namely, 1. Smti Likha Sang Choore, 2. Smti Gem Aiti, 3. Smti Khoda Dipung, 4. Shri Nilly Likha Tabo attract the provisions of Section 3 of Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003 and as per the provisions of Section 6(2) of Arunachal Pradesh Local Authorities (Prohibition of Defection) Amendment Act, 2006 it is hereby decided that the above mentioned Zilla Parishad members stand disqualified.

Given under my hand and seal.”

13. Assailing the order dated 14.05.2024 passed by the Deputy Commissioner, Lower Subansiri District, the appellants preferred the writ petition, as already indicated above, which was dismissed by the learned Single Judge vide the impugned judgment dated 30.05.2024. Hence this intra-Court appeal.

14. Mr. D. Das, learned senior counsel appearing for the appellants has argued that the learned Single Judge has grossly erred in dismissing the writ petition vide the impugned order.

It is contended that the learned Single Judge has failed to appreciate that the Deputy Commissioner initiated the disqualification proceeding against the appellant on the ground of their expulsion from the BJP as well as non-consideration of their request for withdrawal of their resignation from the BJP and non-acceptance of their request to rejoin the party. It is contended that the learned Single Judge on its own added new grounds to uphold the impugned order of the Deputy Commissioner by observing that appellants' withdrawal of their resignation and their request to rejoin the party was an afterthought and the same could not have undone the cause of action that had accrued the initiation of the disqualification proceedings.

15. It is further argued that the learned Single Judge as well as the Deputy

Commissioner failed to appreciate that though the appellants had expressed their desire to merge with another political party, however, as a matter of fact that merger did not take place and the appellant subsequently withdrew the proposed merger. It is further contended that though the appellants had also resigned from the primary membership of the BJP but the said resignations were never accepted and were subsequently withdrawn before passing of the impugned order by the Deputy Commissioner. It is emphasised that when the merger of the appellants with another political party had not materialised and when their resignations have not been accepted and withdrawn too, it cannot be presumed that the appellants had voluntarily given up their primary membership of such political party to which they belong.

16. It is also argued that the events that took place, after the appellants had expressed their intention to merge with another political party and their submission of resignation from the said political party, are relevant events which are to be taken into consideration, because such events lead to the conclusion that the appellants had not voluntarily given up their membership of the political party to which they belong. However, the Deputy Commissioner as well as the learned Single Judge have not appreciated the said facts and have illegally passed the impugned orders.

17. Learned senior counsel for the appellants has further invited our attention towards Show Cause Notice dated 10.04.2024 issued by the Deputy Commissioner and has argued that the said Show Cause Notice is based on the fact that the appellants were expelled by the Bharatiya Janata Party. However, the expulsion of the appellants from the political party to which they belong

does not constitute a valid ground for disqualification within the meaning of Section 2(1)(a) of the Act of 2003 until and unless it is established that the appellants had voluntarily given up their membership of the political party to which they belong.

18. Mr. Das has further argued that the learned Single Judge has failed to appreciate that the view expressed by the Hon'ble Supreme Court in **G. Viswanathan -Vs- Hon'ble Speaker Tamil Nadu Legislative Assembly, Madras & Anr.**, reported in **(1996) 2 SCC 353** is put on hold by the Hon'ble Supreme Court by referring it to a larger Bench and as such, on the ground of expulsion from party, no member can be disqualified.

19. Learned senior counsel has argued that the merger of the appellants with another political party has not materialised and their resignations from the primary membership of the BJP were also not accepted and these resignations were subsequently withdrawn by them before passing of the impugned order by the Deputy Commissioner and, in such circumstances, the action of the Deputy Commissioner of disqualifying them for holding the posts of Zilla Parishad Member is illegal and is liable to be interfered with.

20. Learned counsel for the appellants has therefore prayed that the impugned orders passed by the learned Single Judge as well as the Deputy Commissioner, Lower Subansiri District are liable to be set aside and the writ petition filed by the appellants deserves to be allowed.

21. Per contra, Mr. D. Mozumdar, learned senior counsel appearing for the

respondent No.3 has vehemently opposed the writ appeal and has argued that there is no illegality in the impugned order dated 30.05.2024 passed by the learned Single Judge as well as the order dated 14.05.2024, passed by the Deputy Commissioner, Lower Subansiri District. It is argued that the moment the appellants had informed the Member Secretary of the Zilla Parishad regarding their merger with NCP (Ajit Pawar), and the moment they resigned from the primary membership of the BJP on 28.03.2024, the provision of Section 3(1)(a) of the Defection Act, 2003 came into operation and all other subsequent events were liable to be ignored.

22. It is contended that by informing the Member Secretary of the Zilla Parishad vide letter dated 28.03.2024 that the appellants had merged with another political party, and with submission of their resignation letter to the District President of the BJP, the appellants had voluntarily given up the membership of the BJP and, in such circumstances, the Deputy Commissioner has not committed any illegality in disqualifying the appellants to hold the posts of Zilla Parishad Member by invoking the provision of Section 3(1)(a) of the Defection Act of 2003.

23. Learned senior counsel for the respondent No.3 has placed reliance on the decision of the Hon'ble Supreme Court rendered in the cases of **Ravi S. Naik -Vs- Union of India & Ors.**, reported in **1994 Supp (2) SCC 641** and **Rajendra Singh Rana & Ors. -Vs- Swami Prasad Maurya & Ors.**, reported in **(2007) 4 SCC 270**.

24. Lastly, Mr. Mozumdar has prayed that the appellants have failed to make out a case for interference, therefore, this writ appeal is liable to be dismissed.

25. Heard the learned counsel appearing for the parties.

26. The facts of the present case, which are not in dispute, are:

(i) That the appellants were elected as Members of Zilla Parishad from different constituencies of Lower Subansiri Zilla Parishad as candidates from the BJP.

(ii) The Government of Arunachal Pradesh has constituted a new district, namely, Keyi Panyor District, w.e.f. 01.03.2024 curving out the area from Lower Subansiri District but no separate Zilla Parishad has been constituted for Keyi Panyor District as per Section 85 of the Arunachal Pradesh Panchayat Raj Act, 1997.

(iii) The appellants informed the Deputy Commissioner, Keyi Panyor District as well as the District President of BJP, Keyi Panyor District that they had merged with NCP (Ajit Pawar).

(iv) The appellants had also resigned from the primary membership of the BJP by writing a letter to the District President of the BJP, Keyi Panyor District, on 29.03.2024.

(v) The appellants were expelled from the BJP on 07.04.2024.

(vi) The President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh intimated to the Member Secretary, Lower Subansiri Zilla Parishad regarding expulsion of the appellants from the BJP with the request to disqualify them under the provisions of the Defection Act, 2003.

(vii) The President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh also intimated the State Election Commission, Arunachal Pradesh vide its letter dated 08.04.2024 regarding

expulsion of the appellants from the BJP with the request to disqualify them.

(viii) The State Election Commission, Arunachal Pradesh, forwarded the intimation received by it from the President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh, to the Deputy Commissioner, Lower Subansiri District and the Deputy Commissioners of all other districts vide its communication dated 09.04.2024.

(ix) The Deputy Commissioner, Lower Subansiri District issued Show Cause Notice to the appellants on 10.04.2024.

(x) The appellants, vide letter dated 16.04.2024, requested the Deputy Commissioner, Lower Subansiri District, to supply copy of the complaint(s), if any, made against them for their disqualification. Simultaneously, the appellants had also written a letter to the District President, BJP, Keyi Panyor District regarding withdrawal of their resignation from the primary membership of BJP with the request to accept their rejoining the party.

(xi) On 23.04.2024, President (in-charge)-cum-Chairman, State Disciplinary Action Committee, BJP, Arunachal Pradesh, informed the Deputy Commissioner, Lower Subansiri District that the expulsion of the BJP is still in force with further request to disqualify them.

(xii) On 26.04.2024, the appellants replied to the Show Cause Notice dated 14.05.2024.

(xiii) The impugned order dated 14.05.2024 has been passed by the Deputy Commissioner, Lower Subansiri District.

27. Having gone through the Show Cause Notice dated 10.04.2024 and the impugned order dated 14.05.2024, we are of the view that the Deputy

Commissioner has not issued the Show Cause Notice solely on the ground that the appellants have been expelled from that party to which they belong. He has taken into consideration the letter dated 28.03.2024, written by the appellants to the Member Secretary, Zilla Parishad, whereby the appellants have informed about their merger with NCP (Ajit Pawar). Though the Commissioner has also noted the factum of expulsion of appellants from the BJP but it was not the only factor which influenced its decision.

28. The further ground, raised by the learned senior counsel for the appellants regarding the pending reference of the case of **G. Viswanathan** (supra) to the larger Bench, no more comes to their rescue because the same has already been dismissed by the Hon'ble Supreme Court vide order dated 08.08.2024 by treating it as infructuous.

29. Now the question that comes up for consideration is: whether the appellants had voluntarily given up their membership from the BJP?

30. Section 3 of the Defection Act of 2003, which is relevant for the purpose of this controversy, is quoted hereunder:

“3.(1) Subject to the provisions of Section-4, 5 and 6 a member, belonging to any political party, shall be disqualified for being such member :

(a) If he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in, or intentionally remains absent from any meeting of the Zilla Parishad or Anchal Samiti or Gram Panchayat contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf without obtaining the prior permission of such party, person or authority and such voting, abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting of such abstention or absence:

Explanation:- For the purpose of this sub-section a person elected as a member, 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;

(2) A person elected as a member, otherwise than as a candidate set up by a political party, shall be disqualified for being a member if he joins any political party after such election.”

Clause (a) of sub-Section (1) of Section 3 provides that if any member has voluntarily given up his membership from the political party to which he/she belongs, he/she shall be disqualified.

31. As noted above, the appellants had informed the Deputy Commissioner, Keyi Panyor District vide letter dated 28.03.2024 that they had merged with another political party, i.e. NCP (Ajit Pawar). Simultaneously, the appellants had also resigned from the BJP on 28.03.2024, which is evident from their letter dated 16.04.2024 written to the District President, BJP, whereby they had recalled their resignation letter dated 28.03.2024.

32. In reply to the Show Cause Notice, the appellants have tried to explain as to why they had decided to merge with the NCP (Ajit Power). It is stated by them that they were under the impression that with the creation of new District Keyi Panyor, a separate Zilla Parishad for the same district had also been constituted. It is further explained that they were under an impression that in the newly created Zilla Parishad for Keyi Panyor District, they constitute 2/3rd majority of the members of BJP and as such, without inviting the consequences of defection they could merge with other political party.

33. From the above facts, the only conclusion which can be arrived at is that the appellants had voluntarily given up their membership from the BJP on 28.03.2024. It is immaterial whether their merger with NCP (Ajit Pawar) has been materialized, or their resignation has been accepted, or not. The factum of the appellants' expulsion from the BJP is also not relevant for the purpose of deciding the issue regarding their disqualification from the membership of the Zilla Parishad. It is also immaterial under what impression the appellants had decided to merge with the NCP (Ajit Pawar) or to join the said party.

We are of the view that the moment the appellants had informed the Deputy Commissioner, Keyi Panyor District about their merger with the NCP (Ajit Pawar) and the moment they submitted their resignation from the BJP to the District President, BJP, the provision of Section 3(1)(a) of the Defection Act, 2003 came into operation. Any subsequent events that took place after issuance of Show Cause Notice by the Deputy Commissioner on 10.04.2024 are not liable to be taken into consideration.

With their steps taken after their merger with another political party and their resignation from the party they belong, the appellants cannot set the clock back.

Any other interpretation or conclusion, which we have taken or arrived at, would frustrate the object of Defection Act of 2003, which has been enacted to curb the evil of defection.

34. So far as non-acceptance of the resignation of the appellants by the BJP is concerned, the law is settled that the factum of voluntarily given up membership is not dependent upon submission of resignation, or its acceptance. The Hon'ble Supreme Court, in ***Ravi S. Naik -Vs- Union of India & Ors.***,

reported in **1994 Supp (2) SCC 641**, while taking into consideration the provisions of Para 2 of Schedule X of the Constitution of India, which are *pari materia* to Section 3 of the Defection Act of 2003, held as under:

“11. The words ‘voluntarily given up his membership’ are not synonymous with “resignation” and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.”

The above-referred judgment has been followed by the Hon’ble Supreme Court in subsequent decisions and the same still holds the field.

35. Our conclusion that the subsequent events, that took place after issuance of the Show Cause Notice to the appellants on 10.04.2024, are not liable to be taken into consideration, finds support from the decision of the Hon’ble Supreme Court rendered in **Ram Chandra Prasad Singh -Vs- Sharad Yadav**, reported in **(2021) 13 SCC 794**, wherein it is held that only those facts and events, which took place before initiation of the disqualification proceedings, are to be taken into consideration by the authority while deciding the question of disqualification of an elected representative. The relevant portion of the above-referred judgment is quoted hereunder:

“9. The disqualification is incurred by a Member of the House as soon as he has voluntarily given up his membership of such political party. This Court in Ravi S. Naik v. Union of India [Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641] had the occasion to consider the expression ‘voluntarily given up his membership’. Referring to Para 2(1)(a), this Court laid down the following : (SCC p. 649, para 11)

‘11. ... The said paragraph provides for disqualification of a Member of a

House belonging to a political party 'if he has voluntarily given up his membership of such political party'. The words 'voluntarily given up his membership' are not synonymous with 'resignation' and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a Member that he has voluntarily given up his membership of the political party to which he belongs.'

10. A Constitution Bench of this Court in *Rajendra Singh Rana v. Swami Prasad Maurya* [*Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270] had the occasion to consider Para 2 of the Tenth Schedule to the Constitution. In the above case, the Constitution Bench held that decision by the Speaker taken at a subsequent point of time cannot and does not postpone his incurring of disqualification by the act of the legislature. In para 34, this Court held : (SCC pp. 296-97)

'34. As we see it, the act of disqualification occurs on a Member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of Para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. ... The fact that in terms of Para 6 a decision on the question has to be taken by the Speaker or the Chairman, cannot lead to a conclusion that the question has to be determined only with reference to the date of the decision of the Speaker. An interpretation of that nature would leave the disqualification to an indeterminate point of time and to the whims of the decision-making authority. The same would defeat the very object of enacting the law. Such an interpretation should be avoided to the extent possible. We are, therefore, of the view that the contention that (sic it is) only on a decision of the Speaker that the disqualification is incurred, cannot be accepted. This would mean that what the learned Chief Justice has called the snowballing effect, will also have to be ignored and the question will have to be decided with reference to the date on which the membership of the legislature party is alleged to have been voluntarily given up.'

11. A recent three-Judge Bench judgment of this Court in *Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly* [*Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly*, (2020) 2 SCC 595] had the occasion to consider Para 2 of the Tenth Schedule to the Constitution of India. In the above case, this Court noticed the objects and reasons of the Constitution (Fifty-second

Amendment) Act, 1985. This Court categorically held that decision of the Speaker that a Member is disqualified relates back to the date of the disqualifying action complained of. In paras 92 and 93, this Court laid down the following : (SCC pp. 632-33)

‘92. In addition to the above, the decision of the Speaker that a Member is disqualified, relates back to the date of the disqualifying action complained of. The power of the Speaker to decide upon a disqualification petition was dealt by a Constitution Bench of this Court in *Rajendra Singh Rana v. Swami Prasad Maurya* [*Rajendra Singh Rana v. Swami Prasad Maurya*, (2007) 4 SCC 270] . This Court, reading the provisions of Paras 2 and 6 of the Tenth Schedule, has clearly held that the Speaker has to decide the question of disqualification with reference to the date it was incurred. The Court held that : (SCC pp. 296-97, para 34)

‘34. As we see it, the act of disqualification occurs on a Member voluntarily giving up his membership of a political party or at the point of defiance of the whip issued to him. Therefore, the act that constitutes disqualification in terms of Para 2 of the Tenth Schedule is the act of giving up or defiance of the whip. The fact that a decision in that regard may be taken in the case of voluntary giving up, by the Speaker at a subsequent point of time cannot and does not postpone the incurring of disqualification by the act of the legislator. Similarly, the fact that the party could condone the defiance of a whip within 15 days or that the Speaker takes the decision only thereafter in those cases, cannot also pitch the time of disqualification as anything other than the point at which the whip is defied. Therefore in the background of the object sought to be achieved by the Fifty-second Amendment of the Constitution and on a true understanding of Para 2 of the Tenth Schedule, with reference to the other paragraphs of the Tenth Schedule, the position that emerges is that the Speaker has to decide the question of disqualification with reference to the date on which the Member voluntarily gives up his membership or defies the whip. It is really a decision *ex post facto*.’

93. As such, there is no doubt that the disqualification relates to the date when such act of defection takes place.’

(emphasis in original)

12. The decision taken by the Speaker, thus, has to be on the basis of conduct or actions taken by Member, which may amount to voluntarily giving up his membership. The facts and sequence of the events on the basis of which the Hon'ble Chairman came to the conclusion that a person has incurred disqualification under Para 2(1)(a) of the Tenth Schedule are all facts, which

had occurred prior to adjudication by the Hon'ble Chairman. In the facts of the present case, the Chairman of Rajya Sabha has passed the order on 4-12-2017 on the claim of the appellant praying for disqualification as noticed above. The foundation of order of the Chairman are the facts and events, which took place after 26-7-2017. The petition having been filed by the appellant on 2-9-2017, the petition has to be treated to be founded on facts and events, which took place on or before 2-9-2017."

(emphasis supplied)

36. The Hon'ble Supreme Court in **Dr. Mahachandra Prasad Singh -Vs- Chairman, Bihar Legislative Council & Ors.**, reported in **(2004) 8 SCC 747**, while interpreting the rules and procedure for disqualification of Bihar Legislative Council, has held that even if the complaint for defection is withdrawn, the Speaker is obliged to decide the question of defection to carry out the mandate of law. The relevant paragraph of the judgment is reproduced hereunder:-

"16. There is no lis between the person moving the petition and the member of the House who is alleged to have incurred a disqualification. It is not an adversarial kind of litigation where he may be required to lead evidence. Even if he withdraws the petition it will make no difference as a duty is cast upon the Chairman or the Speaker to carry out the mandate of the constitutional provision viz. the Tenth Schedule. The object of Rule 6 which requires that every petition shall be signed by the petitioner and verified in the manner laid down in CPC for the verification of pleadings, is that frivolous petitions making false allegations may not be filed in order to cause harassment. It is not possible to give strict interpretation to Rules 6 and 7 otherwise the very object of the Constitution (Fifty-second Amendment) Act by which the Tenth Schedule was added would be defeated. A defaulting legislator, who has otherwise incurred the disqualification under Paragraph 2, would be able to get away by taking the advantage of even a slight or insignificant error in the petition and thereby asking the Chairman to dismiss the petition under sub-rule (2) of Rule 7. The validity of the Rules can be sustained only if they are held to be directory in nature as otherwise, on strict interpretation, they would be rendered ultra vires.

(emphasis supplied)

37. In view of the above discussions, we are of the view that since the appellants had voluntarily given up their primary membership of the BJP by

furnishing written letter to the Deputy Commissioner regarding their merger with the NCP (Ajit Pawar) and, simultaneously, by submitting their resignation from the BJP on 28.03.2024, the Deputy Commissioner has rightly disqualified them from holding the posts of Zilla Parishad Member vide the impugned order dated 14.05.2024 by invoking provisions of Section 3(1)(a) of the Defection Act of 2003. The learned Single Judge has also rightly upheld the same.

38. Hence, we do not find any merit in this appeal and the same is, therefore, dismissed. The *interim* order dated 13.06.2024 passed in I.A. (Civil) No. 95(AP)/2024 stands vacated.

JUDGE

CHIEF JUSTICE

Comparing Assistant