

GAHC040010322024



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

Case No. : WP(C)/334/2024

Bampu Nabam and 10 ors
Son of Shri Tarum Nabam, resident of Suchung, PO and PS Pakke Kessang, Pakke
Kessang District, Arunachal Pradesh 2: Ringso Natung

Age:

Occupation :

Son of Late Tassar Natung
resident of Sede
PO and PS Pakke Kessang
District Pakke Kessang
Arunachal Pradesh

3: Karling Natung

Age:

Occupation :

Son of Shri Taji Natung
resident of Sede
PO and PS Pakke Kessang
Pakke Kessang District
Arunachal Pradesh

4: Martin Brah

Age:

Occupation :

Son of Shri Hamak Brah
resident of Sede
PO and PS Pakke Kessang
Pakke Kessang District
Arunachal Pradesh

5: Gegung Natung

Age:

Occupation :

Son of Shri Tapia Natung

resident of Patiwa
PO and PS Pakke Kessang
Pakke Kessang District
Arunachal Pradesh

6: Senia Tajo Tachang
Age:
Occupation :
Son of Shri Parsing Tachang
resident of Pakso
PO and PS Pakke Kessang
Pakke Kessang District
Arunachal Pradesh

7: Baddo Nabam
Age:
Occupation :
Son of Late Sera Nabam
resident of Keko
PO and PS Pakke Kessang
Pakke Kessang District
Arunachal Pradesh

8: Saha nabam
Age:
Occupation :
Son of Late Taming Nabam
resident of Lower Bazarline
PO and PS Pakke Kessang
Pakke Kessang District
Arunachal Pradesh

9: Tango Nabam Hina
Age:
Occupation :
Son of Shri Nikia Nabam
resident of Keko
PO and PS Pakke Kessang
Pakke Kessang District
Arunachal Pradesh

10: Naga Tech
Age:
Occupation :
Son of Shri Tapak Tech
resident of Mungla/ Hote
PO and PS Pakke Kessang
Pakke Kessang District

Arunachal Pradesh

11: Smti Yalar Kino

Age:

Occupation :

Wife of Shri Tatum Kino

resident of Baliso

PO and PS Pakke Kessang

Pakke Kessang District

Arunachal Pradesh

VERSUS

The State of AP and 5 Ors

represented by the Secretary, Department of Panchayati Raj, Govt of Arunachal Pradesh, Itanagar 2:The Deputy Commissioner

Age: 0

Occupation :

Lemmi

Pakke Kessang District

Arunachal Pradesh

3:The Member Secretary cum CO

Age: 0

Occupation :

Gram Panchayat

Pakke Kessang District

Arunachal Pradesh

4:Bani Lego

APCS

Age: 0

Occupation :

Office of the Deputy Commissioner Pakke Kessang District

Arunachal Pradesh

5:Pani Tayam

President

Age: 0

Occupation :

Pakke Kessang District BJP Unit

Arunachal Pradesh

6:Nabro Natung

Age: 0

Occupation :

Mandal President BJP Upper Pakke Kessang

Pakke Kessang District

Arunachal Pradesh

Advocate for the Petitioner : Taba Tagum

Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 16.08.2024

Heard Mr. T. Tagum, learned counsel for the petitioner. Also heard Mr. S. Tapin, learned Senior Government Advocate for the State respondents.

The petitioners, 11(Eleven) in numbers has approached this Court assailing an Order dated 22.07.2024, passed by the Deputy Commissioner, Pakke-Kessang District, Arunachal Pradesh, whereby, the petitioners were disqualified as Panchayat Members under Sections 3(1)(b) of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act' 2003, alleging that in the last Assembly Election, the petitioners, who are Members/Presidents/Chairman of different Goan Panchayat Samitis 12 Pakke-Kessang Assembly Constituency had voted against the official BJP candidate of 12 Pakke-Kessang Assembly Constituency. On the basis of such complain before the Member Secretary, the Deputy Commissioner initiated a proceeding of disqualification under Section 3(1)(b) of the Act' 2003 and issued a Show-Cause notice to the petitioners. The petitioners replied the said Show-

Cause notice taking a stand that they have not done anything detrimental to their party and they have actively participated in support of the official BJP candidate in the Assembly Election. Thereafter, the Deputy Commissioner vide impugned Order dated 22.07.2024, had disqualified the petitioners.

The basic ground of challenge is that the Deputy Commissioner has not recorded any reasons how the Deputy Commissioner had arrived at such a satisfaction of the petitioners being disqualified under Section 3(1)(b) of the Act' 2003, nor any opportunity of hearing was given to the petitioners to substantiate their case, except allowing them to given their Show-Cause reply.

Prima facie, this Court is of the view that under Section 3 (1) of the Act' 2003, the elected member of the Panchayat Raj institution can be disqualified firstly, when such member voluntarily gives up his membership of such political party. In the case in hand, it is not the case that the petitioner had given up his membership voluntarily rather it is the case of expulsion. Secondly, the member can be disqualified, in the *prima facie* view of this Court, when the elected member votes or abstain from voting or intentionally remain absent in any meeting of the concerned institution, even after any direction issued by the political party on whose ticket he has been elected as member. Therefore, in the *prima facie* view, from the order of the Deputy Commissioner, this Court finds none of the aforesaid reasons.

Mr. S. Tapin, learned Senior Government Advocate has objected the interim prayer for stay on the ground that Deputy Commissioner has acted within his jurisdiction and not exceeded his jurisdiction, therefore, this Court in exercise of power of judicial review may not like to interfere with the order of the Deputy Commissioner.

In view of the above, this matter needs further consideration, more particularly in the given facts that the petitioners have duly replied and there is no specific reason of the Deputy Commissioner in rejecting such contention.

Accordingly, considering the matter in its entirety, let notice be issued returnable by 12.09.2024.

Having regard to the facts and circumstances as recorded herein above, it is provided that till the returnable date, the impugned disqualification order dated 22.07.2024, shall remain suspended.

Respondent shall be at liberty to file application for modification/vacation of the interim order.

The petitioner shall take steps for service of notice upon the private respondents through registered post with A/D as well as by usual process within 3(day) from today. *Dasti* mode for the step for service of notice is also permitted to be routed through Registry.

List the matter on **12.09.2024**.

JUDGE

Comparing Assistant