

GAHC040013432024



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

Case No. : WP(C)/447/2024

Tanam Nacho
Son of Late Tako Nacho, resident of Jibaying Village, Po and PS Nacho, Upper
Subansiri District, Arunachal Pradesh.

VERSUS

The State Election Commission and 2 Ors
represented by the Chief Electoral Officer, Govt of Arunachal Pradesh, Itanagar.

2:The Deputy Commissioner
Age: 0
Occupation :
Upper Subansiri District
Daporijo
Govt of Arunachal Pradesh.

3:Tarh Tarak
Age: 0
Occupation :
State Vice President cum Chairman
State Disciplinary Action Committee
BJP
BJP Office
Opposite Homoeopathy College
Vivek Vihar
Itanagar
Papumpare District
Arunachal Pradesh. 79111

Advocate for the Petitioner : Dicky Panging, Rosy c Lowangcha, Tokge Darin, Kirmar Ado, Doge Lona, Marge D, Daina Tamuk

Advocate for the Respondent : Ajin Apang, Sr. Advocate, Uttam Deka, Chorpok Modi, GA (AP), S/C

Election Commission

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 03.10.2024

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. A. Apang, learned Senior Advocate assisted by Mr. K. Mena, learned counsel appearing for the respondent No. 1; Mr. R. H. Nabam, learned Additional Advocate General appearing for the respondent No. 2 and Mr. K. Gara, learned counsel for the caveator/respondent No. 3.

2. The challenge made in this writ petition is to the order dated 18.09.2024, passed by the Deputy Commissioner, Upper Subansiri District, Daporijo, whereby, the petitioner has been disqualified as Zila Parishad Member of 2nd Nacho ZPM Constituency under Section 3 of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003.

3. Issue notice to the respondents, returnable by 4(four) weeks.

4. Since, the respondents are duly represented by the learned counsels, no formal notice is required to be issued to the said respondents. However, they shall be provided with requisite extra-copies of the petition during the course of the day, if not already furnished.

5. Heard on the interim prayer.

6. Mr. D. Panging, learned counsel for the petitioner submits that pursuant to a show cause notice dated 02.04.2024, alleging anti-party activities and despite submission of reply, the petitioner was expelled from the political party, namely, Bhartiya Janta Party by the respondent No. 3 on 30.04.2024. The District Judge, Basar has suspended the expulsion order of the petitioner which is still in operation. On 01.05.2024, the respondent No. 3 issued a letter to the Member Secretary, Upper Subansiri District praying for initiation of disqualification proceedings under the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003. Accordingly, the disqualification proceeding was initiated before the Deputy Commissioner, Upper Subansiri District and vide impugned order dated 18.09.2024, the Deputy Commissioner has disqualified the petitioner as ZPM of 2nd Nacho Zila Parishad Constituency by heavily relying on the submissions of the complainant that the petitioner was absent in the meeting of BJP candidate and he has been expelled from the BJP which is beyond the purview of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003 which provides that a member can be disqualified only on 2(two) grounds, firstly, on giving up the membership of the party or if a member votes or abstains from any meeting of the Zilla Parishad contrary to the directions issued by the party. Therefore, he prays for an interim relief staying the impugned order dated 18.09.2024.

7. Mr. A. Apang, learned Senior Advocate submits that since the order of injunction passed by the District Judge is till 09.08.2024, therefore, practically there is no injunction order as on today as there is nothing on record to show that same has been extended after 09.08.2024.

8. Mr. R. H. Nabam, learned Additional Advocate General submits that the Deputy Commissioner has passed the disqualification order dated 18.09.2024 after careful

consideration and perusal of records presented before him which establishes the anti-party activity of the petitioner and same amounts to voluntarily giving up the membership of the political party for which he has been rightly disqualified.

9. Mr. K. Gara, learned counsel for the respondent No. 3 submits that records/documents placed before the Deputy Commissioner clearly establishes the anti-party activity on the part of the petitioner. On the clear act of anti-party activities by the petitioner, the petitioner was expelled from the party. Therefore, the petitioner has been rightly disqualified by the Deputy Commissioner, on the ground of voluntarily giving up of the membership of the political party as per the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act 2003.

10. Perusal of the impugned order dated 18.09.2024, goes to show that the Deputy Commissioner has disqualified the petitioner on the ground of anti-party activity. The disqualification order has been issued invoking Section 3 of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act 2003. Section 3 provides that subject to the provisions of Section 4, 5 & 6, a member belonging to any political party, shall be disqualified for being such member:

- (a) if he has voluntarily given up 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 contrary to any direction issued by the political parties 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 or such abstention or absence.

11. Reading of the above provisions shows that a member may entail disqualification on the ground of defection if he has voluntarily given up membership of such political party or if he votes or abstains from voting in, or intentionally remains absent from any meeting of the Zilla Parishad 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 and such voting abstention or absence has not been condoned by such political party, within 15(fifteen) days from the date of voting or such abstention or absence.

12. It is seen that the petitioner was expelled from the political party, namely, Bhartiya Janta Party on the alleged ground of anti-party activity. Against the expulsion, a suit is filed before the Civil Court of competent jurisdiction and the Civil Court has granted injunction, however, same has been vacated on the ground of not taking steps within time. An appeal was filed against vacation of injunction order by the Civil Judge before the District Judge on 04.07.2024, the District Judge restored the injunction order dated 24.05.2024 and suspended the order of expulsion dated 24.06.2024. It is submitted that the order of District Judge is still in currency.

13. Having considered the submissions of the learned counsel for the parties and on perusal of the materials available on record including the impugned order of disqualification dated 18.09.2024, passed by the Deputy Commissioner, Upper Subansiri District, I am of the prima facie view that since the ground of disqualification as recorded in the impugned order is anti-party activity on the part of the petitioner, same could not be a ground for disqualification under Section 3 of Arunachal Pradesh Local Authorities (Prohibition of Defection) Act 2003.

14. As noted above, a member is disqualified only on 2 grounds, namely, (a) if he

has voluntarily given up 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 contrary to any direction issued by the political parties to which he belongs or by any person our 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 15(fifteen) days from the date of voting or such abstention or absence. Thus, I am of the view that the disqualification of the petitioner, prima facie, appears to be not in accordance with the provisions of the above Act. Since the disqualification of the petitioner, prima facie, is not as per the relevant provisions of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act 2003, and considering that the Deputy Commissioner appears to have not followed even a minimum procedure for disqualification proceedings required under the law, interim order is called for. Accordingly, till the returnable date, the impugned order dated 18.09.2024 passed by the Deputy Commissioner, Upper Subansiri District, Daporijo, shall remain suspended.

Call for the records.

Parties to exchange affidavit(s).

List the matter after 4(four) weeks.

JUDGE

Comparing Assistant