

**IN THE GAUHATI HIGH COURT  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &  
ARUNACHAL PRADESH)**

**WP (C) 266(AP) 2015**

Smti. Gyamar Yakum,  
W/o Shri Gyamar Tadap,  
Resident of Village – Tabiang,  
P.O. Nyapin, District Kurung Kumey,  
Arunachal Pradesh.

.....Petitioner

Advocates for the Petitioners:

Mr. T. Son  
Mr. D. Miodam  
Mr. T. Milli  
Mr. T. Maling  
Mr. B. Ganga  
Mr. R. Sanglo  
Mr. K. Natung

**-Versus-**

1. The State of Arunachal Pradesh (Represented through the Chief Secretary), Government of Arunachal Pradesh, Civil Secretariat, Itanagar, P.O. Itanagar.
2. The Secretary,  
Government of Arunachal Pradesh, Civil Secretariat  
Itanagar, P.O. Itanagar.
3. The Deputy Commissioner,  
Kurung Kumey District, Koloriang, P.O. Koloriang.
4. The State Election Commissioner,  
On Govt. of A.P., C-Sector, Itanagar, P.O. Itanagar.
5. Shri Tadar Chachung (ASM);  
77-Lower Nyapin, PO/PS Nyapin  
District Kurung Kumey,  
Arunachal Pradesh.
6. Shri Tadar Nillo (ASM);

- 73-Hiya-II Village, PO/PS Nyapin  
District Kurung Kumey,  
Arunachal Pradesh.
7. Shri Tame Logu (ASM);  
68-Hiya-II Village, PO/PS Nyapin  
District Kurung Kumey,  
Arunachal Pradesh
8. Smt. Gyamar Kioch (ASM);  
76-Uooer Nyapin, PO/PS Nyapin  
District Kurung Kumey,  
Arunachal Pradesh
9. Smti. Gyamar Yaming (ASM);  
75-Gyamar Village, PO/PS Nyapin  
District Kurung Kumey,  
Arunachal Pradesh
10. Shri Gyamar Sima (GPM);  
276- Gyamar Village, PO/PS Nyapin  
District Kurung Kumey,  
Arunachal Pradesh
11. Shri Tadar Powak (GPM);  
261-Ayer Labarjariang Village, PO/PS Nyapin  
District Kurung Kumey,  
Arunachal Pradesh
12. Smti. Yangbiu Yaha (GPM);  
254-Tapuk Colony, PO/PS Nyapin  
District Kurung Kumey,  
Arunachal Pradesh
13. Shri Tadar Tagi (GPM);  
269- Kumayar Village, PO/PS Nyapin  
District Kurung Kumey,  
Arunachal Pradesh

.....*Respondents*

Advocates for the Respondents:

Mr. K. Ete, learned AAG  
Ms. L. Hage, Govt. Adv.  
Mr. M. Pertin, Sr. Counsel.  
K. Dabi,  
Mr. C. Gongo  
Mr. J. Dulom  
Mr. H. Tayo  
Mr. W. Sawin  
Mr. S. Ringu  
Mr. K. Dubey  
Mr. Y. Kiri  
Mr. L. Perme.

**:::BEFORE:::**

**HON'BLE JUSTICE (MRS.) Dr. INDIRA SHAH**

Date of hearing : 03-03-2016.

Date of Judgment & Order : 10-03-2016.

**JUDGMENT & ORDER (CAV)**

Heard Mr. T. Son, learned counsel appearing on behalf of the petitioner. Also heard Mr. K. Ete, learned Addl. Advocate General assisted by Ms. L. Hage, learned State counsel appearing on behalf of the State and Mr. M. Pertin, learned Sr. Counsel assisted by Mr. K. Dabi, learned counsel appearing on behalf of respondent Nos. 5 to 13.

**2].** By filing this application under Article 226 of the Constitution of India, the petitioner has challenged the impugned dismissal order No. KK/PR-72/2008 dated 26.03.2015 passed by the Addl. Deputy Commissioner, Koloriang under Arunachal Pradesh Local Authorities (Prohibition or Defection) amended Act, 2006 dismissing the compliant filed by the petitioner and others.

**3].** The private respondent Nos. 5 to 13 were elected as ASMs and GPMs on Indian National Congress (INC) tickets from 73-Longth Loth-II, 68-Hiya, 77-Lower Nyapin, 76-Upper Nyapin, 75-Gyammarr, 276-Gyammarr, 261-Iyer Labajariang, 254-Tapuk Colony and 269-Kumayar respectively. During the

bye-election held in the month of May, 2013 for Zilla Parishad Member, all the 5 ASMs and 4 GPMs were issued party whips by the President Block Congress Committee 19<sup>th</sup> Nyapin Assembly Constituency Secretary, BCC (Nyapin-Sangram Assembly Constituency), Kurung Kumey District, Arunachal Pradesh. While issuing the party whips, it was clearly directed the concerned Congress Panchayati Raj Members to support and to vote in favour of INC Candidate in the ensuing bye-election to be held on 16.09.2013 for the victory of the party, failing which a disciplinary action was to be initiated against the anti-party activities which may lead to disqualification under the Arunachal Pradesh Local Authorities (Prohibition or Defection) Act.

**4].** It is alleged that in spite of party whips, the private respondents indulged themselves in anti-party activities by supporting and voting Smti. Gyamar Diriang, a candidate of Peoples Party of Arunachal (PPA, in short) openly in defiance of party whip and therefore, in spite of having majority of INC elected ASMs and GPMs, the petitioner was defeated by the regional party candidate Smti. Gyamar Diriang by margin of 74 votes in the bye-election held on 16.09.2013. Accordingly, a complaint under Section 3 (1) (a) and 3 (1) (b) of Arunachal Pradesh Local Authorities (Prohibition or Defection) Act was lodged. On receipt of the complaint, the Member Secretary of 6<sup>th</sup> Nyapin ASMs forwarded it to the Deputy Commissioner, Koloriang, Kurung Kumey District, Arunachal Pradesh for necessary action. The Deputy Commissioner took cognizance of the complaint and issued notice to all 5 ASMs and 4 GPMs. They submitted their replies. On perusal of written replies and after hearing both the parties, the Deputy Commissioner passed an order dated 31.10.2013 declaring the 5 ASMs and 4 GPMs as disqualified for indulging in anti-party activities in terms of Section 3 of the aforesaid Act.

**5].** Being aggrieved with the said order, all the ASMs and GPMs assailed the said order by filing writ petition being WP (C) 489 (AP) 2013 and this Court disposed of the same directing the aggrieved parties to appear before the Deputy Commissioner on or before 15.02.2014 and submit certified copy of the order. The Deputy Commissioner was also directed to issue necessary show-cause notices to the aggrieved parties in terms of the complaint lodged by the Member Secretary and to allow them to file their replies within a specified time period prescribed under the Act. Further, the Deputy

Commissioner was also directed to take fresh decision after hearing all the parties. It is alleged that the petitioner on several occasions approached the Deputy Commissioner to declare the respondents herein as disqualified but the matter remained pending. On arrival of Addl. Deputy Commissioner, who was holding the charge of Deputy Commissioner, Kurung Kumey District issued notices to the aggrieved parties. The complainant in the meantime filed a contempt petition under Section 11 & 12 of the Contempt of Court Act, 1971 against the Deputy Commissioner as well as Addl. Deputy Commissioner, Koloriang, Kurun Kumey District, for non-compliance of the order passed in WP (C) 489 (AP) 2013. The aforesaid Contempt Petition was disposed of with direction to the contemnors/respondents to dispose of the matter within a period of 5 months and accordingly, the matter was disposed of by the Addl. Deputy Commissioner-cum-In-charge Deputy Commissioner, Koloriang, Kurung Kumey District, Arunachal Pradesh.

**6].** It is alleged by the petitioner that the impugned order passed by Addl. Deputy Commissioner-cum-In charge Deputy Commissioner is bad in law as the Addl. Deputy Commissioner had no authority to take up the matter of disqualification under the Arunachal Pradesh Local Authorities (Prohibition or Defection) Act.

**7].** The Arunachal Pradesh Local Authorities (Prohibition or Defection) Act, 2003 says that when a complaint is received by Member Secretary of the concerned Local Authorities he shall refer the matter for decision to the State Election Commission who shall decide the question within 30 days after the receipt by him. The aforesaid Act was amended in the year 2006 and in the amended Act appearing in Section 6 "the State Election Commissioner is substituted by the words" Deputy Commissioner. The word 'Deputy Commissioner' has neither been defined in the Act of 2003 nor in the amendment Act of 2006.

**8].** *The Arunachal Pradesh Interpretation and General Clauses Act, 1982.* Clause 22 defines 'Deputy Commissioner' means the Chief Officer incharge of the general administration of a district. Here, in this case, the Addl. Deputy Commissioner passed the impugned order not as Addl. Deputy Commissioner

but in his capacity of in charge Deputy Commissioner. It is submitted by the learned counsel for the respondents that as per the Govt. guidelines in the event of absence/leave of superior officer, the next senior most officers shall discharge the duties and responsibilities. Admittedly, the Deputy Commissioner was on leave and the Addl. Deputy Commissioner was functioning as Deputy Commissioner.

**9].** In the case of *Tarlochan Dev Sharma-vs- State of Punjab and Others reported in (2001) 6 SCC 260*, it was observed as under:-

*"10...To find the meaning of a word or expression not defined in an enactment the Courts apply the "Subject-and-object rule" which means – ascertain carefully the subject of the enactment where the word or expression occurs and have regard to the object which the legislature has in view. Forego the strict grammatical or etymological propriety of language, even its popular use; let the subject or the context in which they are used and the object which the legislature seeks to attain be your lenses through which look for the meaning to be ascribed.*

*"In selecting one out of the various meanings of a word, regard must always be had to the context as it is a fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Therefore when the context makes the meaning of a word quite clear, it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers.... judge Learned Hand cautioned "not to make a fortress out of the dictionary" but to pay more attention to "the sympathetic and imaginative discovery" of the purpose or object of the statute as a guide to its meaning".*

**10].** As per the Act, 2003, any complaint under Section 3 was to be disposed by the State Election Commissioner. The object of substitution of Deputy Commissioner in place of State Election Commissioner must be that the Deputy Commissioner of a concerned District may promptly dispose of and take decision in terms of Section 3 of the Act and the Deputy Commissioner as per the Arunachal Pradesh General Clauses Act means the in charge of the general administration of a district. Here, in this case, the impugned order passed by the in charge of the general administration of a district, therefore, this Court finds that the in charge Deputy Commissioner too has the jurisdiction to take decision under Section 3 of the said Act.

**11].** The contention of the respondents is that there was bye-election in the month of May 2013 for the post of Zilla Parishad Member of 6<sup>th</sup> Nyapin Zilla Parishad constituency. The petitioner contested the election but unfortunately her lost by 74 votes in the election. She started blaming all the respondents. Accordingly a complaint was lodged by the president and secretary, Block Congress Committee which was forwarded to the Deputy Commissioner.

**12].** The petitioner complained that inspite of having majority in the ASMs and GPMs, the congress(I) candidate lost the election. The respondents contended that the ASMs and GPMs were not only the voters since it was general election as such other than ASMs and GPMs, common voters were also allowed to vote in the election. Total 4012 were valid votes and Respondents no. 14 secured 2043 votes whereas 1969 votes were in favour of petitioner. Therefore the allegations made against the respondents are imaginary and without proof. The petitioner got more than 9 (nine) votes in all polling centers and lost by 74 votes.

**13].** Para 2 of the tenth schedule to the constitutions of India and Section 3 (1) (a) (b) of the prohibition Act provide for ground of disqualification of members of houses in the parliament and state Legislature and panchayat bodies respectively. The relevant provisions in the tenth Schedule and prohibition Act are quoted below:-

2. *Disqualification on ground of defection:*

*(1) Subject to the provision of (para 4 & 5) a members of a house belonging to any political party shall be disqualified for being a member of the House-*

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

*(b) if he votes or abstains from voting in such house contrary to any direction issued by a political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.*

*Explanation:- For the purposes of this Sub paragraph-*

*(a) An elected member of a House 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;*

*(b) A nominated member of a House shall-.....*

*Prohibition Act*

*3. (1) Subject to the provision of Selections 4, 5, and 6 a member belong to any political party shall be disqualified for being such member;*

*(a) if he has voluntarily given up his membership or such political party; or*

*(b) if he votes or abstains from voting in or intentionally remains absent from any meetings of the Zilla Parishad or Anchal samity 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 or 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.*

**14].** The petitioner submitted before the in-charge of Deputy Commissioner counting sheets showing the number of votes obtained by INC and PPA candidate to prove that the respondents were not working for INC party. They also submitted photographs showing respondents allegedly participated in the victory celebration of PPA candidate.

**14].** Learned In-charge Deputy Commissioner held that the evidence of counting sheets is grossly insufficient and inconclusive. The allegation of voting against INC candidates is neither verifiable since it was a voting by secret ballot and not open ballot. It was further observed from the photographs that alleged victory celebration was in fact Reconciliation Ceremony of outgoing team and new team as it was clearly visible on the banners shown in the photographs. Further, senior functionaries of INC, Ex-Ministers, President Arunachal Pradesh Youth Congress were also invited and the said ceremony was attended by Members across the party lines.

**15].** From the above, it appears that the petitioner failed to prove that the respondents acted against the nominee of INC or gave up membership of INC voluntarily or involuntarily. Therefore, this Court does not find that the decision of the Deputy Commissioner in charge suffers from any infirmity, legal or factual.

**16].** The petition, therefore, stands dismissed.

**JUDGE**

*talom*