

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

ITANAGAR PERMANENT BENCH

WP(C)605(AP)2016

Shri Chera Loma
Son of Chera Hakap
Permanent resident of village Apop Sango
PO / PS - Sagalee, District - Papum Pare
Arunachal Pradesh, Phone No. 09774495586

.....Petitioner

By Advocates:

Mr. P. D. Nair
Ms. Nikita Danggen
Mr. P. Sangeeta
Ms. A. Panor
Ms. O. Perme
T. Tatak
B. Gadi
D. Taggu
J. Lomi

-Versus-

- 1.** The State Election Commission, Arunachal Pradesh represented by its Secretary, Government of Arunachal Pradesh, Itanagar.
- 2.** The Additional Deputy Commissioner-cum-Returning Officer, Sagalee, Papum Pare District, Arunachal Pradesh.
- 3.** Sri Nabam Tatum, Son of Late Nabam Tapak, Resident of Ward No. 23, House No. E-48, Naharlagun, PO/PS - Naharlagun, District Papum Pare, Arunachal Pradesh. Pin NO. 791110.

.....Respondents

By Advocates:

Mr. Ajin Apang, Senior Counsel/Standing Counsel(EC)
Mr. Duge Soki, Addl. Senior Government Advocate
Mr. Muk Pertin, Senior Counsel

Mr. Karyom Dabi
Mr. Chakter Gongo
Mr. Lissing Perme
Mr. Krishna Dubey
Mr. D. Tatak
Mr. H. Tayo
Mr. W. Sawin

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 04-01-2017
Date of Judgment & Order: 27-01-2017

JUDGMENT & ORDER (CAV)

Heard Mr. P. D. Nair, learned counsel for the petitioner.

Also heard Mr. Ajin Apang, learned senior counsel/standing counsel, for respondent State Election Commission, Arunachal Pradesh; Mr. Duge Soki, learned Addl. Senior Government Advocate, for respondent No. 2; and Mr. Muk Pertin, learned senior counsel, assisted by Mr. Karyom Dabi, learned counsel, appearing on behalf of private Respondent No. 3.

2. By this application under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of judgment & order, dated 16.11.2016, passed by the Arunachal Pradesh State Election Tribunal in Case No. PRET-06 of 2013, on the ground of arbitrariness and non-application of judicious mind.

3. According to the petitioner, a petition was filed by Respondent No. 3, herein, for quashing the election of the petitioner to the office of the Anchal Samiti Member ('ASM', for short), under 46-Dadang Anchal Samiti ('46-DAS', for short) on the ground that the petitioner was improperly declared elected unopposed due to Respondent No. 2's rejection of his nomination on the

ground of double enrolment. It was an admitted position that private Respondent No. 3's name was enrolled as a voter, both, in Itanagar Municipal Council('IMC', for short) and 46-DAS. The case of the petitioner is that while disposing of the case in favour of Respondent No. 3, the State Election Tribunal('SET', for short) did not address the primary issue of whether double enrolment could be a ground for rejection of nomination. It also did not decide the case on the vital point on whether rejection of nomination is strictly limited to Rule 12(2) (a) to (d) of the Arunachal Pradesh Panchayat Raj(conduct of election) Rules, 2001(hereinafter referred to as the Rules of 2001). The SET did not decide whether Rule 12(4) i.e. *The Returning Officer shall not reject nomination paper on the ground of any defect which is not of substantial character.*" is totally circumscribed by Rule 12(2) (a) to (d).

4. According to the petitioner, the SET held that double enrolment was a non-issue and inconsequential by holding that an Anchal Samiti and a Municipality are distinct and separate constituencies, which is in violation of the provisions of section 108 of the Arunachal Pradesh Panchayati Raj Act 1997, (hereinafter referred to as the Act of 1997), which clearly prohibits enrolment of one person simultaneously in Gram Panchayat, Anchal Samiti and Municipality. According to the petitioner, Anchal Samiti and Municipality are the bodies of local self governance, one being Rural and the other being Urban.

5. Brief facts of the case are that the instant petitioner is the returned ASM candidate of the 46-DAS Constituency. The candidature of Respondent No. 3 who had filed his nomination for election to the said Constituency was rejected by the Returning Officer('RO', for short) during the scrutiny held on 25.04.2013, which led to the petitioner being elected unopposed since there were only two candidates. Being aggrieved, the private Respondent No. 3 filed Election Petition before the Arunachal Pradesh State Election Commission which was registered as Case No. PRET-06/2013.

6. In the meantime, the Government of Arunachal Pradesh issued Notification for conducting Panchayati Raj Election including Gram Panchayat, Anchal Samiti and Zilla Parishad Members all over the State wherein, the date for filing of nomination was fixed from 16.04.2013 and the date of polling was fixed on 16.05.2013. The case of Respondent No. 3 is that he being a permanent resident of Apop Sango Village of Sagalee district, filed his nomination papers on 22.04.2013 for the post of ASM from 46-DAS Constituency, as an independent candidate. The Petitioner too filed his nomination papers as an INC candidate. It was alleged by respondent No. 3 that the RO arbitrarily and illegally rejected his nomination paper during scrutiny, on 25.04.2013, without assigning any valid reason. The Respondent No. 3 was informed that his nomination paper was rejected "on the ground under Chapter IV Rule 2(a) *read with* Arunachal Pradesh Panchayati (Preparation of Election Roll) Rules 2002 Chapter II". According to the petitioner, respondent No. 3 admitted that his nomination paper was rejected by the RO due to double enrolment in IMC as well as in 46-DAS Constituency. After rejection of Respondent No. 3's nomination, petitioner being the lone candidate, in the fray, was declared elected as ASM from 46-DAS Constituency.

Notwithstanding the same, it was also pleaded by respondent No. 3 that the RO rejected his nomination paper in violation of the provisions of section 57 of the Act and Rule 12 of the said Conduct of Election Rules. Challenging the order of rejection of his nomination paper, the Respondent No. 3, had filed representation before the SET on 06.04.2013 but the same was not acted upon. According to the petitioner, though Respondent No. 3 claims to have learnt about the grounds for rejection of his nomination paper only on 30.05.2013, by way of reply to his RTI query, he had already made a challenge to the order of his nomination by representation, dated 06.04.2013, wherein it was argued that double enrolment cannot be a ground for rejection.

7. In the said Election case, the present petitioner contested by filing written statement wherein it was categorically stated that as per Rules 10 and 11 of the Arunachal Pradesh Panchayati Raj (Preparation of Electoral Roll) Rules 2002 (hereinafter referred to as 'APPR Rules of 2002'), no person is entitled to be registered in the electoral roll for more than one constituency. The SET issued clarification that if a candidate enrolled himself at more than one place, his nomination should not be treated as valid if the Returning Officer is satisfied beyond reasonable doubt. The Respondent No.3's name having been enrolled in two different constituencies, the RO had rightly rejected his nomination paper. Similar stand was also taken by the other respondent in his separate written statement. The petitioner pleaded that respondent No. 3's claim as voter from 46-DAS Constituency could not be accepted as he was also enrolled as voter in the Municipal Election Roll at IMC. It was contended by the petitioner that the RO has rightly rejected the nomination paper of the Respondent No. 3 in accordance with the Returning Officer's Handbook, Chapter-12 (Scrutiny), Rule 2A and under Rule 10 and 11 of the APPR Act 2002, and also Section 108 and 109 of the Act of 1997. It was specially pleaded by the petitioner that Respondent No. 3's name was enrolled at Sl. No. 73 and Sl. No. 81 in the Electoral Rolls of 46-DAS Constituency and Itanagar Municipality at Naharlagun Ward No. 23. Upon hearing the parties, the following issues were framed:-

- (1) Whether the election petition is maintainable?
- (2) Whether the nomination paper of the petitioner for Anchal Samiti Election of 46 Dadang Anchal Samity Constituency is valid in law?
- (3) Whether the petitioner is a valid voter of 46 Dadang Anchal Samiti?
- (4) Whether the Returning Officer erred in law in rejecting the nomination of the petitioner?
- (5) To what relief the petitioner is entitled to?

8. During the course of hearing, the Respondent No. 3 examined himself as PW-1 and one Nabum Isser as PW-2. The petitioner examined himself as DW-1 but he was not cross-examined by Respondent No. 3. The respondent also examined 1 namely J. Pertin as DW-2 who is the present Additional Deputy Commissioner, Sagalee. Though the Respondent No. 3 did not cross examine DW-2, he was cross examined by the Petitioner.

9. Based on the arguments placed on behalf of the petitioner(respondent No. 3 in Case No. PRET-06/2013), the case was summarised in the form of a written argument as follows:

"In the humble submission of the Respondent No.3, the following provisions of the law in this regard may be relevant of the purpose of the deciding case. As regard the issue of double enrolment these are the relevant provision of the Arunachal Pradesh Panchayat (preparation of electoral rolls)) Rules, 2002.

Rule 10. No person shall be entitled to be registered in the electoral roll for more than one Constituency in Gram Panchayat, Anchal Samiti or Zilla Parishad.

Rule 11. No person shall be entitled to be registered in the electoral roll for any Constituency more than one.

Rule 12. Subject to the foregoing provision of this rule, every person who-

(a) is not less than 18 years of age on the qualification date, and

(b) is ordinarily resident in a Constituency of the Gram Panchayat,

shall be entitled to be registered in the Electoral Roll for that Constituency.

Provisions of the Arunachal Pradesh Panchayati Raj Act 1997:-

Section 108: A person registered in the electoral roll for a Constituency relating to a Gram Panchayat shall not be entitled to be registered in the electoral roll for a constituency relating to any other Gram Panchayat, or in the electoral roll for any Municipality or Notified Area Authority as to be established or as to be constituted under any law.

Section 109: (1) No person shall entitled to be registered in the electoral rolls for more than one Constituency.

(2) No person shall be entitled to be registered in the electoral roll for any constituency more than once.

Section 111. (1) a person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of a dwelling house therein.

(2) a person absenting himself temporarily from his place of ordinary residence shall not, by reason thereof, cease to be ordinary resident therein.

Section 117 if any person makes in connection with

(a) the preparation, revision or correction of electoral roll; or

(b) the inclusion or exclusion of any entry in or from an electoral roll;

A statement or declaration in writing which he either knows or believes to be false or does not believe to be true, he shall be punishable either imprisonment for a term which may extend to two months or with fine which may extend to two hundred rupees or with both.

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

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

It is stated and submitted that as per section 120 (1) (a) of the Arunachal Pradesh Panchayat Raj Act 1997, the first qualification a person intending to contest an election to any of the seat has to be enrolled in the concerned constituency of Gram Panchayat, Anchal samiti or a Zilla Parishad as the case may be. This is in consonance with the intents and purpose of the Panchayati Raj Institution which postulates setting up of local self government. This provision in the Panchayati Raj Act 1997 is a marked departure from the provision of section 5 of the Representation of Peoples Act 1951 which provides as follows:-

"5. Qualifications for membership of a Legislative Assembly- A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a state unless-

*(a) in the case of a seat reserved for the Schedule Caste or for the Schedule Tribes of the State, he is a member of any of those castes or those tribe, as the case may be, and is an elector for **any** Assembly constituency in that State.*

Thus, the Act specifically provides for enrolment of a candidate in the particular constituency in which he intends to contest for a post. This is to fulfill the explicit and necessary condition for local self governance which is not just a representation of the people of a particular constituency but also a representation of the candidate himself or herself.

It is stated and submitted that situated thus, it is preposterous to claim on the part of the Petitioner, that the issue of double enrolment is of no consequence so far as disqualification is concern. It would be not out of place to submit that a person

cannot be ordinarily resident of two different constituencies. And if he claims to be simultaneously enrolled in two different constituencies it is for him to prove that he is ordinary resident of one particular constituency and not the other.

Furthermore, there is nothing in his representation nor in his petition to show that he is ordinarily resident of 46-Dadng Anchal Samiti Constituency and nowhere else. The petitioner has also not made any averment to the effect that because of some mistake or foul play his name came to be enrolled in two different Constituency. On the contrary, he has no qualms about being enrolled in two different Constituencies. Thus, it is with his full knowledge and consent that he is enrolled in two different Constituencies. This in fact points to commission of an offence under section 107 of the Arunachal Pradesh Panchayati Raj Act 1997.

2. Rule 12 of the Arunachal Pradesh Panchayati Raj Act 1997 (conduct of election rules) provide the following;

"Rule 12:- (1) On the date fixed for the scrutiny of nomination, the Candidates or their election agent and one proposer and no other persons may attend at the time and place appointed in this behalf and the Returning Officer shall give them all reasonable facilities for examining the nomination Paper of all the Candidates which have been delivered within the time.

(2) The Returning Officer shall then examine the nomination paper and shall decide all objections which may be made to any nomination and may either on such objection or on his own motion, after such summary enquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds, namely:-

(a) that the candidate is disqualified for being chosen to fill the seat by or under the Act;

(b) that the proposer is not a voter of the Constituency concerned.

(c) that there has been a failure to comply with any provision of the Rules-5 and 6; and

(d) that the signature of the candidate or of the proposer on the nomination paper is not genuine.

(3). Nothing contained in Clause (c) or (d) of sub-rule (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularities in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularities have been committed.

(4). The Returning Officer shall not reject nomination paper on the ground of any defect which is not of substantial character."

It is stated and submitted that the grounds of rejection of a nomination paper as enumerated in Rule 2 are not limited to the said rule only. This is in view of the provision in Rule 4 which states that the nomination paper shall not be rejected on the ground of defect which is not of substantial character. In this context it is submitted

that the legislature do not waste their breath unnecessarily. If the grounds for rejection were to be circumscribed or limited by Rule 2 only, then Rule 4 would not have been provided. It is a settled law that statutes must be interpreted in such a way that all provisions carry some meaning. One provision should not be interpreted in such a way that another provision of the same statute is rendered otiose. Therefore the provisions of Rule 2 and 4 should be read and construed harmoniously. In **Krishan Kumar V. State of Rajasthan, AIR 1992 SC 1789, Para 11** it was held thus;

" 11. It is a settled principle of interpretation that where there appears to be inconsistency in two sections of the same Act, the principle of harmonious construction should be followed in avoiding a head on clash. It should not be lightly assumed that what the Parliament has given with one hand, it took away with the other. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to reconcile the same....."

It is also stated and submitted that since Rule 2 (a) to (d) evidently enumerates the specific grounds for rejection of a nomination paper, but the presence of Rule 4 shows that the enumerations as contained in Rule 2 (a) to (d) is not self contained and the Legislature by adding Rule 4 has laid down the outer limits by which the nominations can be rejected indicting thereby, some other reasonable grounds other than those enumerated in Rule 2 (a) to (d). Therefore Rule 4 must be construed to the 'Key' provisions following which rejections of nominations must be limited and Rule 2 (a) to (d) must be construed to be within such key provision.

3. In order to show that discrimination has been meted out to him in not accepting his nomination paper, the Petitioner has adduced a witness in the form of one Nabam Isser(PW-2) who contended that under similar circumstances he assailed the nomination of his rival namely Ngurang Takap but his contention was rejected by the same Returning Officer. But it may be noted herein that this discrimination or discrimination of any sort involving another person has not been pleaded by the Petitioner. There is no whisper about this in the plaint filed nor was any issue rightly framed in this regard. Hence this is a violation of the provisions of Rule 69(2) of the Arunachal Pradesh Panchayat Raj(Conduct of Election) Rules,2001, which provides that the election petition shall contain statement in brief of the material facts on which the Petitioner relies. Therefore this Hon'ble Court may ignore his deposition.

In any case, Nabam Isser (PW-2) admitted in the cross examination that; " I have enclosed P.Ex 6(enrolment of Shri Ngurang Takap in Itanagar Municipal Council) alongwith P.Ex-4(his complaint regarding double enrolment of Shri Ngurang Takap). I have submitted P.Ex-6 for the first time when I enclosed it with P. Ex-4" it may be noted herein that his complaint against was brought before the Returning Officer only on 29/04/2013, whereas the scrutiny of the nominations took place prior to that date, i.e, on 25/04/2013. Therefore his complaint even if it may have been true was of no consequence or relevance.

That in view of the above facts and circumstance and the position in law, this Hon'ble Tribunal may be pleased to dismiss the instant election petition as being frivolous, vexatious and devoid of merit and with costs."

10. In the said Election case, the learned Judge of APSET put his emphasis upon issue no. 2, i.e. Whether rejection of nomination paper of the Petitioner for Anchal Samity Election of 46 Dadang Anchal Samity Constituency is valid in law? The learned Judge decided the said issue in negative, and in favour of the present respondent No. 3, as under:

"20. A close scrutiny of Section 108 of the APPR Act 1997 disclosed that in case of a person whose name is registered in Gram Panchayat electoral Roll not be entitled to be enrolled in the electoral roll relating to other Gram Panchayat or in the electoral roll of Municipality or notified area authority. Thus the prohibition is not in respect of enrolment under Gram Panchayat but enrolment under the Municipal Electoral Roll or other Gram Panchayat. It is an admitted fact that the petitioner's name is enrolled in the 46 Dadang Anchal Samittee Constituency and his name is also enrolled in the electoral roll of Itanagar Municipality, but not in other Gram Panchayat. In such case the prohibition is in respect of municipality and not in respect of Dadang Anchal Samittee.

21. The Returning Officer, in the instant case, before rejection of the nomination paper of the petitioner, admittedly did not held any summary enquiry which is a mandatory requirement as per provisions of Rule 12(2) of the Conduct of Election Rules, 2001. The Returning Officer gets jurisdiction to reject a nomination paper only on the ground stated in Rule 12(2) of the Conduct of Election Rules, 2001 read with Section 57 of the APPR Act 1997, but none of the said provision attract the ground of rejection upon which the nomination paper of the petitioner was rejected.

22. The election petitioner examining himself as PW-1, has reiterated the statement made in the election petition. He was cross-examined only on one point by the respondent No.3 and the respondent No. 1 and 2 declined. Similarly, the PW-2 also supported the case of the petitioner. PW-2 further stated on the ground of double enrolment, the nomination paper of his opponent Ngurang Takap Tarap an Indian National Congress sponsored candidate was not rejected although he had also double enrolment in the same manner like that of the present petitioner and this was done by the same Retuning Officer and thus he took different stand with two different candidates in similar facts.

23. Similarly, the retuned candidate Respondent No.3 examined himself as DW-1, who reiterated his stand taken in the written statement. He was not cross-examined by the election petitioner. DW-2 is the present Addition Deputy Commissioner, Sagalee, who deposed on the basis of record. The DW-2 (respondent No.2) admitted in his statement that the ground of rejection of nomination

paper of the petitioner is not clearly mentioned, but as per para-wise comments we find that nomination paper of the petitioner was rejection on the ground of being double voter.

24. Ms. N. Danggen, learned counsel for the respondent No. 3 submits that the it is as admitted position that the petitioner had double enrolment both in the 46 Dadang Anchal Samittee Constituency electoral roll as well as in Itanagar Municipality. The learned counsel referring to Section 102 of the APPR Act submits that in order to represent a local self-government name of a person must appear in electoral roll of the concerned constituency. The petitioner's name having being entered into two different constituencies it cannot be said that he qualified himself for being a member of local self-government where he should be an ordinary resident. The learned counsel has also lent support to the clarification allegedly issued by the Secretary, State Election Commission as well as the Returning Officer's handbook relied by the State respondent and submits that the decision of Returning Officer is perfectly justified and not to be interfered with.

25. The submission of the learned counsel for respondent No.3 cannot be accepted for more than one reason. The ground and manner of rejection of nomination paper has been specifically provided in Rule 12(2) of the APPR (Conduct of Election) Rules read with Section 67 of the APPR Act 1997. The manner for rejection of nomination paper by holding a summary enquiry is spelt out in the Handbook for Returning Officer as referred to above. The petitioner's name was not entered in two different Anchal Samittee Constituencies, but in one Anchal Samittee Constituency electoral roll and one Municipal electoral roll under two different Acts. After entry of the name of the petitioner in the electoral roll of Dadang Anchal Samittee I do not find any entry of the name of the petitioner in the electoral roll of any other Anchal Samittee Constituency. The ground for double entry has not been incorporated as a ground for rejection of nomination paper under Rule 12 of the APPR (Conduct of Election) Rules. Unless a double entry, one in respect of municipality and one in respect of Panchayat is made ground for rejection by the statute the Returning Officer had no jurisdiction to reject nomination paper on such ground on mere surmises and conjecture, that too without holding any summary enquiry.

In view of the above discussions, the Issue No.2 is decided in negative and in favour of the election petitioner."

11. According to Mr. Nair, learned counsel for the petitioner, from the above cited facts and circumstances, the impugned Judgment and Order, dated 16.11.2016, passed by the SET in Case No. PRET-06/2013 is, in fact, based on non-existent grounds.

12. According to Mr. Nair, learned counsel, the said order is bad in law as because the Election Tribunal has held in paragraph No. 25 of the impugned Judgment that "*The petitioner's name was not entered in two different Anchal Samittee Constituencies, but in one Anchal Samittee Constituency electoral roll and one Municipal electoral roll under two different Acts. After entry of the name of the petitioner in the electoral roll of Dadang Anchal Samittee I do not find any entry of the name of the petitioner in the electoral roll of any other Anchal Samittee Constituency. The ground for double entry has not been incorporated as a ground for rejection of nomination paper under Rule 12 of the APPR (Conduct of Election) Rules. Unless a double entry, one in respect of municipality and one in respect of Panchayat is made ground for rejection by the statute the Returning Officer had no jurisdiction to reject nomination paper on such ground.....*", which according to the petitioner, is in direct violation of the provision of section 108 of the Act of 1997, which prohibits enrolment of one person simultaneously in Gram Panchayat, Anchal Samiti and Municipality. It is also not understandable to hold an Anchal Samity and a Municipality as distinct and separate constituencies in view of the simple fact that these two are, after all, bodies of local self governance, their only difference being one is Rural and the other is Urban.

13. Furthermore, according to Mr. Nair, learned counsel, it is clear that the Tribunal did not decide the case in its true perspective as it did not decide the case on vital point on whether the rejection of nomination is strictly limited to Rule 12(2) (a) to (d) of the Arunachal Pradesh Panchayati Raj(Conduct of Election Rules), 2001. It did not decide whether rule 12 (4) i.e. *The Returning Officer shall not reject nomination paper on the ground of any defect which is not of substantial character.*" is totally circumscribed by Rule 12(2) (a) to (d).

14. According to Mr. Nair, learned counsel, the Tribunal failed to appreciate that the Act of 1997 specifically provides for enrolment of a candidate in the particular constituency in which he intends to contest for a post. This is to fulfill the explicit and necessary condition for local self governance; which is not just a representation of the people of a particular constituency but also a representation of the candidate himself or herself.

15. Mr. Nair, learned counsel, situated thus, therefore submitted that it is preposterous to claim on the part of Respondent No. 3, that, the issue of double enrolment is of no consequence so far as disqualification is concerned. It would be not out of place to submit that a person cannot be ordinarily a resident of two different constituencies and if he claims to be simultaneously enrolled in two different constituencies it is for him to prove that he is ordinarily resident of one particular constituency and not the other. The above argument placed on behalf of the petitioner has not been addressed at all. As a matter of fact, if we go by the logic as postulated in paragraph 25 of the impugned judgment, we could safely conclude that double enrolment could easily be a ground for rejection of nomination of the Respondent No. 3, but for the difficulty, that these enrolments were in respect of not two Anchal Samities but of an Anchal Samity and a Municipality.

16. Mr. Nair, learned counsel for the petitioner, further submitted that in order to show that discrimination has been meted out to the petitioner in not accepting his nomination paper, the Respondent No. 3 has adduced a witness in the form of one Nabam Isser(PW-2) who contended that under similar circumstances he assailed the nomination of his rival namely Ngurang Takap but his contention was rejected by the same RO. Such discrimination or discrimination of any sort involving another person has not been pleaded by Respondent No. 3 and there is no whisper about it in the plaint nor was any issue rightly framed by the Tribunal in that regard. As such, this is a violation of the provision of Rule 69(2) of the Rules of 2001, which provides that the

election petition shall contain statement in brief of the material facts on which the petitioner relies. In any case, Nabam Isser (PW-2) admitted in the cross examination that: "I have enclosed P.Ex 6 (enrolment of Shri Ngurang Takap in Itanagar Municipal Council) alongwith P.Ex-4(his complaint regarding double enrolment of Shri Ngurang Takap). I have submitted P.Ex-6 for the first time when I enclosed it with P. Ex-4", it may be noted herein that his complaint was brought before the Returning Officer only on 29.04.2013 whereas the scrutiny of the nomination papers took place prior to that date, i.e. on 25.04.2013. Therefore, his complaint even if it may have been true was of no consequence or relevance.

17. Mr. Nair, learned counsel for the petitioner also submitted that since no Notification has been issued by the Arunachal Pradesh State Election Commission for Election to the 46-DAS Constituency in terms of the direction given in the impugned judgment and order, dated 16.11.2016, passed in Case No. PRET-06/2013, as such, the impugned Judgment and order, dated 16.11.2016, be set aside and quashed.

18. Mr. Soki, learned Addl. Senior Government Advocate, appearing on behalf of respondent No. 2, submitted that the basic issue in the instant proceeding is whether a candidate's enrolment in the voters' list of two different constituencies, one in Panchayat and another in Municipal area, would entail a disqualification from contesting in Panchayat constituency. Mr. Soki, learned Addl. Senior Govt. Advocate, further submitted that the provisions of the Act of 1997 are incorporated and borrowed from the Representation of the Peoples Act, 1950 and Section 57 of the Act of 1997 embodies the grounds of disqualification of a person for being chosen as a member of Gram Panchayat, Anchal Samiti and Zilla Parishad, which has to be read in consonance with Sections 108 and 109. According to Mr. Soki, the respondent No. 2's decision to reject the nomination of respondent No. 3 was not proper.

19. A pointed query was made to the learned senior counsel representing respondent No. 3 as to whether the case of enrolment in both 46-DAS constituency as well as Itanagar Municipality at Naharlagun was correct and whether his enrolment in any of the said constituencies should be removed whereupon he fairly replied that the said enrolment in the two constituencies was correct as he had residences in both the constituencies. A perusal of the records also reveals that the same is an undisputed fact. Thus, it is an admitted position as revealed from the records and submissions of the learned senior counsel representing respondent No. 3/election petitioner that he was enrolled in two different electoral rolls – one in 46-DAS and the other in Itanagar municipality at Naharlagun. The question to be considered in the instant case is whether the enrolment of the respondent No. 3 in the Electoral Roll of Itanagar Municipality could led to the rejection of his nomination for election as an ASM to the 46-DAS.

20. Mr. Nair, learned counsel, further submitted that Panchayati Raj Institutions and Municipalities are institutions of local-self governance, Panchayats being covered by Part IX of the Constitution of India and Municipalities being covered in Part-IX A of the Constitution. Article 243(d) of the Constitution of India defines the term 'Panchayat' to mean an institution(by whatever name called) of self-government constituted under Article 243-B, for rural areas. Article 243-B of the Constitution of India, deals with the constitutions of Panchayats, Clause(1) wherein it is laid that:

"There shall be constituted in every State, Panchayat at the village, intermediate and district levels, in accordance with the provisions of this Part."

21. Reference may also be made to Article 243-C(2) of the Constitution of India which lays down that all the seats in the Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the

Panchayat area and for this purpose, each Panchayat area shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area. The term 'Municipality' defined in Article 243-P(e) of the Constitution of India, means an institution of self-government constituted under Article 243-Q. Article 243-Q of the constitution deals with the constitution of Municipalities and it lays down as follows:

"(1) There shall be constituted in every State,

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) a Municipal council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area,

in accordance with the provisions of this Part:

Provided that a Municipality under this Clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."

Reference to 'panchayat' is also made in Part IX-A of the Constitution wherein Article 243-P(f) defines 'Panchayat' to mean a Panchayat constituted under Article 243-B. Panchayats and Municipalities exist in two different domains and they cannot overlap. A Panchayat is an institution of local self-governance for urban areas. Thus, if a Panchayat exists for an area, a

Municipality cannot exist for the same area. A population and territory for which a Panchayat is constituted cannot be the same for the constitution of a Municipality for the same population and territory. Both institutions, being institutions of self governance, cannot certainly be comprised by the same person as a member of both institutions at the same time.

22. In the context of the issue in the present proceeding, I find it appropriate to apply the rule of literal construction of words of a statute, extracted hereunder, to ensure justice to the parties:-

"The words of a Statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning unless that leads to some absurdity or unless there is something in the context, or in the object of the Statute, to suggest the contrary. "The true way", according to Lord Brougham is, "to take the words as the Legislature have given them, and to take the meaning which the words given naturally imply, unless where the construction of those is, either by the preamble or by the context of the words in question controlled or altered....."

("Principles of Statutory Interpretation", Page 91, by Justice G.P. Singh)

23. It is pertinent to take into consideration of Sections 56(a), 106, 108, 109, 111(1), 111(2), 117 and 120 of the Arunachal Pradesh Panchayati Raj Act, 1997, which are extracted hereunder:

"56. Every Anchal Samiti shall consist of –

(a) One member directly elected from each Gram Panchayat territorial constituency in the manner prescribed.

106. For each constituency, there shall be an electoral roll showing the names of the persons qualified to vote. The electoral shall be prepared in accordance with the provisions of the Act and the rules made thereunder.

108. a person registered in the electoral roll for a constituency relating to a Gram Panchayat shall not be entitled to to be registered in the electoral roll for a constituency relating to any other Gram Panchayat or in the electoral roll for any municipality or notified area authority as to be established or as to be constituted under any law.

109. (1) No person shall be entitled to be registered in the electoral rolls for more than one constituency.

(2) No person shall be entitled to be registered in the electoral roll for any constituency more than once.

111. (1) A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is possession of a dwelling house, therein.

(2) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

117. If any person makes in connection with

(a) the preparation, revision or correction of electoral roll; or

(b) the inclusion or exclusion of any entry in or from an electoral roll;

a statement or declaration in writing, he either knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two months or with fine which may extend to two hundred rupees or with both.

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

(a) his or her name appears as an elector in the electoral roll of concerned constituency or 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.

24. On the other hand, Sections 2(1)(i), 2(1)(m) and 18 of the Arunachal Pradesh Municipal Elections Act, 2009, read as under:

"2(1)(i) "Municipal area" means the territorial area of a municipality.

2(1)(m) "ordinarily resident" has the same meaning as assigned in section 20 of the Representation of the People Act, 1950.

- 18. (1) Any citizen of India, who**
- (a) is not less than 18 years of age on the qualifying date, and**
 - (b) is ordinarily resident in a Municipality area**
- shall be entitled to be registered in the electoral roll for that municipal area.**
- (2) No person shall be entitled to be registered in the electoral rolls for any Municipality in more than one place.**
- (3) No person shall be entitled to be registered in the electoral roll for any Municipality if his name has already been registered as a voter in the electoral roll for any other Municipality or Panchayat.**
- (4) No person shall be entitled to be registered in the electoral rolls for any Municipality more than once.**

25. Therefore, if a person is registered in the Electoral Roll of a Constituency of a Gram Panchayat, he is not entitled to be enrolled in the Electoral Roll for any other Constituency of a Gram Panchayat or a Municipality in terms of Section 108 of the Act of 1997 as well as Section 18 of the Act of 2009. In terms of sub-Sections (1) (2) of Section 111 of the Act of 1997, even if a person owns or possesses a dwelling house in a constituency, he shall not be deemed to be an ordinarily resident of that constituency. Similar provisions are contained in the Act of 2009, which draws reference to Section 20 of the Representation of the People Act, 1950, Sub-Section (1) and (1A) whereof lay down, as follows:

"(1) A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house, therein.

(1A) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein."

Thus, if a person is an ordinarily resident in a Panchayat Constituency, he cannot be an ordinary resident in Municipal Constituency and vice versa.

The Act of 1997 and the Arunachal Pradesh Panchayati Raj(Preparation of Electoral Roll) Rules, 2002, were enacted and made prior to the enactment of the Arunachal Pradesh Municipal Elections Act, 2009. The first election to the municipalities in the State of Arunachal Pradesh was held in 2013 and the Electoral Roll of Itanagar Municipality was prepared for the first time, for the election to the Municipalities in the year 2013. The election to the 46-DAS Constituency which is in dispute, was held in the year 2013 itself. Hence, the Electoral Roll for the Itanagar Municipality at Naharlagun was a later Electoral Roll than that of the VIIth Sagalee Constituency for 46-DAS. Thus, it is the later Electoral Roll that has to be given more credence. Be that as it may, a reasonable doubt arises as to the genuineness of the entry of the respondent No. 3/Election petitioner in the Electoral Roll of Sagalee Constituency for 46-DAS. This doubt is further buttressed by unwavering and undisputed stand of the said respondent No. 3 that he is in fact enrolled in the Electoral Rolls of both the Sagalee Constituency for 46-DAS as well as in Itanagar Municipality at Naharlagun. The stand taken by the said respondent No. 3 that such dual enrolment cannot lead to rejection of his nomination by relying on the evidence of PW-2 in similar case by the same Returning Officer also goes on to confirm his dual enrolment in Panchayat constituency as well as in a Municipality constituency. It is submitted by Mr. Nair, learned counsel, that wrong administrative decision cannot be cited as a reason for repeating the same wrong decision in another case. In this context, the decision of the Hon'ble Apex Court in ***Chandigarh Administration v. Jagjit Singh*** reported in ***AIR 1995 SC 705***, at ***paragraph No. 8***, the relevant portion of which is extracted, as under:

"..... Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is

found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order...

26. In terms of Section 56 of the Act of 1997, one member of every Anchal Samiti is to be directly elected from each Gram Panchayat territorial constituency and in terms of Section 120(1)(a) of the said Act, a person shall not be qualified to be chosen to fill a seat in a constituency of an Anchal Samiti unless his name appears in the Electoral Roll of the concerned Anchal Samiti. In the instant case, as the very enrolment of the respondent No. 3, i.e. the Election Petitioner, is in the constituency of 46-DAS, as well as Itanagar Municipality, therefore, the same is illegal in terms of the bar provided in Section 108 of the Act of 1997 as well as 18 of the Act of 2009. Hence, the nomination of private respondent No. 3 was rightly rejected by the Returning Officer.

27. Mr. Pertin, learned senior counsel, for private respondent No. 3, submitted that the Arunachal Pradesh Panchayati Raj(Preparation of Electoral Roll) Rules, 2002, concerns the Electoral Rolls for the Panchayats only and the same does not bar enrolment in any Municipality. Learned Senior counsel cited Rules 10 and 11 of the said Rules of 2002, to drive home the above contention. Learned senior counsel also referred to Section 57 of the Act of 1997, which lays down the disqualifications for candidates of Panchayat elections. The learned senior counsel further refers to the case of the PW-2, wherein the nomination of his opponent candidate was not rejected on the ground of dual enrolment and submitted that the respondent No. 3 was discriminated against by the Returning Officer by arbitrarily rejecting his nomination without assigning any reasons. Learned Senior counsel, therefore, submitted that if a person votes in more than one constituency, his votes in all such constituencies shall be void as mandated by Section 119(2) of the Act of 1997. This implies

that the legislature in its wisdom, had admitted that there might be errors in Electoral Rolls. It was also submitted by the respondents that the Act of 1997 is an Act containing similar provisions to that of the Representation of the People Act 1950 and the Representation of the People Act 1951. Learned Senior counsel relied on the decision of the Hon'ble Apex Court rendered in the case of **Baburao v. Manikrao** as reported in **AIR 1999 SC 2028**, which held in **Para. 15**, as under:

"There is nothing to suggest in Section 16 of the 1950 Act that if a person's name finds a place in more than one constituency that would automatically entail disqualification from contesting in any one of the constituencies."

27. Replying to the submissions made on behalf of the respondent No. 3, Mr. Nair, learned counsel for the petitioner, submitted that Rules made under an enabling provision of an Act is subservient to the Act and cannot override the provisions of the Act. In the instant case, the Arunachal Pradesh Panchayati Raj (Preparation of Electoral Rolls) Rules 2002, were made under Section 150 of the State of Arunachal Pradesh Panchayati Raj Act, 1997, and the former have to be in conformity with the provisions of the said Act. Since Section 108 of the Act of 1997 specifically bars enrolment in a municipality with a similar provision in Section 18 of the Arunachal Pradesh Municipal Elections Act, 2009, there can be no dual enrolment in both a Panchayat Constituency as well as a Municipal Constituency and if a person is enrolled in both a Panchayat Constituency as well as a Municipal constituency, the same is illegal. A person who had resorted to illegality cannot take the benefit of that illegality to contest as a candidate in an election to a constituent body under the said Act. Hence, the nomination of the respondent No. 3/election petitioner was rightfully rejected.

29. The legislature had admitted to there being errors in Electoral Rolls by making all votes cast in more than one constituency by the same person as void in terms of Section 119(2) of the Act of 1997. In this context, Mr. Nair,
NP(O) 605(AP)2016 *Page 22 of 25*

learned counsel for the petitioner, submitted that the reasons as to why the said provision has been made, has to be examined. Mr. Nair, learned counsel for the petitioner, further submitted that the reason for the same is that even if there are errors in Electoral Rolls, a person cannot take undue advantage of the same to cast votes in more than one constituency and the legislature had imposed the penalty of making all such votes cast by the same person in more than one constituency to be void. Thus, a person cannot take any advantage of dual enrolment in Electoral Rolls.

30. Section 57 of the Act of 1997, lays down the grounds for disqualification that for contesting an election to a Panchayat, the candidate has to be first qualified. If his qualification by virtue of his enrolment in a Panchayat constituency is not beyond doubt, he cannot be said to be qualified to contest the same. In the instant case, since the respondent No. 3 is admittedly and undisputedly enrolled in both the VIIth Sagalee Constituency for 46-DAS as well as in Itanagar Municipality Constituency, he cannot contest as a candidate for the said Anchal Samiti. A conjoint reading of Rules 10 and 11 of the Arunachal Pradesh Panchayati Raj(Preparation of Electoral Roll) Rules, 2002, and Section 108 of the Act of 1997, show that dual enrolment in voters' list is prohibited and making a false declaration, in this regard, is an electoral offence punishable u/s. 117 of the Act.

31. The nomination of the opponent of PW-2 was allowed while that of respondent No. 3 was rejected in a similar case of dual enrolment. However, wrong administrative decisions cannot be taken as a ground to repeat them in other cases as held in *Chandigarh Administration's* case(supra).

32. So far the contention that no reasons were assigned while rejecting the nomination of the respondent No. 3 is concerned, reference may be made to representation, dated 06.05.2013, submitted by the respondent No. 3 prior to filing of his election petition wherein he had complained of the rejection of his

nomination on the ground of dual enrolment, clearly goes on to show that he was well-aware of the reason for such rejection.

33. With regard to the contention that the provisions of the Act of 1997 are similar to that of the Representation of the People Act 1950, and Representation of the People Act 1951, it may be pointed out that there is a fundamental difference between the Act of 1997 and Representation of the People Act 1950 and 1951, respectively, insofar as qualification for election from constituencies is concerned. Section 5 of the Representation of the People Act 1951 lays down the qualifications for membership of a Legislative Assembly. The said Section reads as follows:

"A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a State unless-

(a) In the case of a seat reserved for the Scheduled Castes or for the Scheduled Tribes of that State, he is a member of any of those castes or of those tribes, as the case may be, and is an elector for any Assembly constituency in that State;

(b) In the case of a seat reserved for an autonomous district of Assam, he is member of a Scheduled Tribe of any autonomous district and is an elector for the Assembly constituency in which such seat or any other seat is reserved for that district; and

(c) In the case of any other seat, he is an elector for an Assembly constituency in that State:

Provided that for the period referred to in clause (2) of Article 371A, a person shall not be qualified to be chosen to fill any seat allocated to the Tuensang district in the Legislative Assembly of Nagaland unless he is a member of the Regional Council referred to in that Article."

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 of 1997, clearly lays down that in order to be qualified to be chosen to fill a seat in an Anchal Samiti, the candidate's 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.

34. For the reasons set forth above, the nomination of respondent No. 3/ election petitioner was rightly rejected and to that extent, the impugned judgment and order, dated 16.11.2016, passed by the learned Election Tribunal is partly set aside.

35. So far the direction to hold fresh election is concerned, the court is not inclined to interfere, for the reasons that the Apex Court in its Judgment, dated 27.09.2013, passed in WP(c) No. 161/2004, recognized the voter's right not to vote for any of the candidates in the election fray and suggested for introducing a new provision in the ballot paper/EVMs, called "None of the above"(NOTA) and also to foster the democratic self-governance of the people, through holding of election in the rural areas

36. The writ petition accordingly stands disposed of.

JUDGE

Bikash