

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM; NAGALAND; MEGHALAYA;
MANIPUR; TRIPURA; MIZOAM AND ARUNACHAL PRADESH)

Writ Appeal No. 13(AP) of 2010

Toko Lalin (ASM Talo),
Resident of village Talo,
Dist. Lower Subansiri,
Arunachal Pradesh.

- Appellant

- Versus -

1. **The Deputy Commissioner,**
District Lower Subansiri, Ziro,
Arunachal Pradesh.
2. **The District Election Officer,**
Ziro, Lower Subansiri District,
Arunachal Pradesh.
3. **Padi Hinda,**
Vice-President, Arunachal Pradesh Congress
Committee (APCC),
Rajiv Gandhi Bhawan, F-Sector, Itanagar,
Arunachal Pradesh.
4. **The State of Arunachal Pradesh,**
Through the Secretary, Department of Panchayat Raj,
Government of Arunachal Pradesh, Itanagar.

- Respondents

BEFORE
THE HON'BLE MR. JUSTICE I A ANSARI
THE HON'BLE MRS. JUSTICE ANIMA HAZAIKA

Advocates present:

For the Appellant

: Mr. P. K. Tiwari,
Mr. L. Tenzin,
Mr. K. Sexena

For the respondents

: Mr. R. H. Nabam,
Sr. Government counsel,
Mr. B. C. Das,
Mr. D. Majumder,
Mr. N. Ratan,
Mr. M. Kato,
Mr. D. Padu,
Mr. K. Tasso,
Mr. G. Kato,
Mr. S. Appa.

Date of hearing

: **09.05.2012**

Date of judgment and order

: **28.08.2012**

JUDGMENT & ORDER

(I. Ansari,J)

Aggrieved by the judgment and order, dated 17.08.2010, passed, in WP(C) 123(AP)/2010, dismissing the writ petition, the writ petitioner has preferred this appeal.

2. We have heard Mr. P. K. Tiwari, learned counsel for the writ petitioner-appellant, and Mr. R. H. Nabam, learned Senior Government counsel, appearing for respondent Nos. 1 and 2. We have also heard Mr. B. C. Das, learned counsel, appearing for respondent No. 3.

3. The case of the appellant may, in brief, be set out as under:

(i) In the Panchayati Raj Elections, held in the year 2008, in the State of Arunachal Pradesh, the appellant herein was elected on an Indian National Congress ticket (in short, 'INC') as an Anchal Samiti Member (hereinafter referred to as 'ASM'), Talo, within the 16 Yachuli (ST) Assembly Constituency, his term, as ASM, being for five years, which would expire in the year 2013.

(ii) On 18th September, 2009, the Election Commission issued a Notification announcing Schedule for General Elections to the Legislative Assembly of Arunachal Pradesh. As per Schedule, the last date for submission of *nomination* was 25th September, 2009, the polling was to be held on 13.10.2009 and the counting was fixed on 22.10.2009.

(iii) On issue of notification for General Elections, the General Secretary (Election), Arunachal Pradesh Congress Committee (in short, 'APCC'), issued, on the same day, i.e., 18.09.09, a direction to all Panchayat leaders, elected on the INC ticket, to work for the victory of INC nominees in the State Assembly Elections, 2009.

(iv) For 16 Yachuli (ST) Assembly Constituency, three candidates filed nomination papers, one of whom one was from All India Trinamool Congress (in short, AITMC) and another was from the Indian National Congress (INC). In the nomination paper filed by the candidate of AITMC, the appellant acted as *'proposer'* within the meaning of Section 33 of the Representation of People Act, 1951.

(v) Immediately after polling, held on 16.10.2009, but before the commencement of counting, an order of expulsion was published, under the authority of the Vice President, APCC, Shri Padi Hinda (respondent 3), in the local daily 'Arunachal Times', expelling the appellant herein alongwith many other Panchayat leaders of 16 Yachuli (ST) Assembly Constituency, with immediate effect, from the INC party for a period of six years on the ground of involvement in *'anti-party activities'*.

(vi) On the very day of publication of the order of expulsion, i.e., 16.10.2009, respondent 3 made a complaint, in writing, to the Member-Secretary under Section 6(1) of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003 (hereinafter referred to as the 'Prohibition of Defection Act'), requesting the latter to disqualify the present appellant and some others in terms of the provisions of the Prohibition of Defection Act. Alongwith the complaint, a list of 46 (forty six) Panchayat leaders, including the appellants, was enclosed, who, according to the complainant, had attracted disqualification under the Prohibition of Defection Act, because they had acted in violation of party direction/whip to discharge their duties for the victory of INC candidates in 16 Yachuli (ST) Assembly Constituency and indulged in *anti party activities* against the official INC candidate.

(vii) Five days after the filing of the complaint and publication of the said expulsion notice, dated 16.10.2009, the counting of votes took place on 22.10.2009, wherein the appellant acted as the counting agent of AITMC candidate in 16 Yachuli (ST) Assembly Constituency.

(viii) On receiving the complaint, dated 16.10.2009, the Deputy Commissioner, District Lower Subansiri, Ziro, who is the competent authority, issued a message, dated 20.11.09, to the Circle Officer, Yachuli, to direct the Panchayat Members concerned, including the present appellant, to attend hearing on the complaint, in question, relating to *anti-defection* matter, on 14.12.09. The Circle Officer, Yachuli, issued accordingly a message, dated 30.11.09, to all the Panchayat members concerned and the complainant to attend hearing on 30.11.09.

(ix) In the disqualification case, the appellant herein filed his affidavit, dated 15.12.2009, wherein he contended, *inter alia*, that the complaint, in question, contained vague allegations against him and other Panchayat leaders without expressly indicating the nature of *anti-party activities* and the manner in which they had violated the party direction or whip to work for the victory of the INC candidate in the State Assembly Election. In the disqualification case, the appellant filed his affidavit, dated 15.12.09, wherein he denied the allegations of his having indulged in *anti-party activities* made in the complaint and stated that the complaint did not contain details of his so called *anti-party activity* or of any action in violation of the direction of the party. The hearing accordingly took place on 15.12.2009, before the Deputy Commissioner concerned, who, on completion of the hearing, kept his order reserved.

(x) Thereafter, an affidavit was filed, on 24.12.2009, on behalf of respondent 3 (the complainant). In the affidavit, averments were made to the effect that the appellant, who was expelled from the INC, had acted as '*counting agent*' of the AITMC candidate in 16 Yachuli (ST) Assembly Constituency and that he could not have acted in the manner as he had done, without giving up his membership of the INC party and joining the AITMC party. On the said basis, it was urged that it was evident from the conduct of the expelled Panchayat leader (i.e., the present appellant) that he had given up the membership of the INC party voluntarily and joined the AITMC party and only thereafter, he could have acted and did act as '*counting agent*' of the AIMTC candidate in 16 Yachuli (ST) Assembly Constituency.

(xi) The copy of the affidavit aforementioned, filed on behalf of respondent 3 (the complainant), on 24.12.09, was sent to the advocate of the appellant and, on 04.02.2010, the appellant, along with other expelled Panchayat leaders, filed a common *rejoinder affidavit* against the same. In the *rejoinder affidavit*, it was stated by the appellant that he never wished to give up his membership of the INC and that even after his expulsion he did not join the AITMC party or any other party.

(xii) After exchange of affidavits between the parties concerned during the period, when the order of Deputy Commissioner was lying reserved, no fresh hearing was held and the learned Deputy Commissioner, Ziro, passed a common order, dated 21.04.10, holding that 12 (twelve) expelled Panchayat leaders, including the appellant herein, having acted as '*proposers*' and '*counting agents*' of the AITMC candidate, in the Assembly Elections, 2009, had violated the direction of their party (i.e., INC)

and indulged in *anti-party activity* and their conduct showed that they had given up their membership of the INC party, and, hence, they attracted disqualification under Section 3(1)(a) of the Prohibition of Defection Act. In the common order, it was also held that the concerned Panchayat members could not have acted as '*proposers*' and '*counting agents*' of AITMC candidate without giving up their membership of the INC Party and that there is no material to show that they were forced by the INC to give up the membership of the INC. Thus, 12 (twelve) expelled Panchayat leaders, including the present appellant, were disqualified and the seats held by them were treated vacant.

(**xiii**) The legality of the common order, dated 21.04.10, aforementioned, passed by the Deputy Commissioner, Ziro, was put to challenge by the affected twelve Panchayat leaders, including the present appellant, in a common writ petition, made under Article 226 of the Constitution of India, which gave rise to W.P.(C) 123(AP)/2010. Aggrieved by the dismissal of their writ petition by the impugned common judgment and order, dated 17.08.10, the appellant, as indicated above, has preferred the present Appeal.

4. The prime contentions of Mr. Tiwari, learned counsel for the appellant, while challenging the legality of the impugned order, dated 21.04.2010, whereby the appellant was disqualified, are as under:

“The Deputy Commissioner failed to appreciate that complaint did not disclose the conduct of the appellants amounting to the anti party activity on which a reasonable inference could be drawn that the appellants had shifted their loyalty from the INC party to the AITMC and such act and conduct amounted to voluntarily giving up memberships of the

INC party within the meaning of 3(1)(a) of the Arunachal Pradesh Local Authorities (Prohibition of Defection) Act, 2003.

The Deputy Commissioner failed to appreciate that non-disclosure of such relevant facts (nature of anti-party activities of the appellants from which an inference could be drawn that the appellants had shifted their loyalty from INC to AITMC) in the complaint, denied appellants the opportunity of effective rebuttal.

The Deputy Commissioner failed to appreciate that the appellant acted as counting agent of AITMC candidate only after his expulsion from the INC and making of complaint against him for his disqualification. Hence, the factum of appellant acting as counting agent of AITMC candidate could not have been the basis of his expulsion from the INC and complaint for his disqualification.

The Deputy Commissioner had no jurisdiction to decide the issue of appellant's disqualification on the basis of facts other than what had been indicated in the complaint. Applicant acted as a counting agent for AITMC candidate only after his expulsion from the INC and complaint against him for his disqualification. The factum of appellant acting as counting agent was brought before the Deputy Commissioner as an afterthought through a common affidavit (wherein cases of the concerned Panchayat leaders were dealt with in a sweeping manner and the case of appellant was not specifically and separately dealt with) much after the conclusion of hearing before the Deputy Commissioner in the disqualification proceeding and as such the same could not have formed the basis for disqualification of the appellant.

*If the ratio of **G.Vishwanathan & ors Vs Hon'ble Speaker, Tamil Nadu Legislative Assembly: (1996) 2 SCC 353** is applied, the appellant incurred disqualification under the Act on the day he was expelled by his INC party. Hence the reasons for appellant's expulsion from the INC could only be the reason for appellant's disqualification. Therefore, Deputy Commissioner committed serious error by giving a finding regarding appellant's disqualification on the*

basis of his conduct subsequent to the date on which the appellant incurred disqualification.

Moreover in view of the mandate of section 6(1)(a) of the Act as the appellant incurred disqualification prior to the complaint for initiation of disqualification proceeding was made against him, therefore, the issue of his disqualification ought to have been decided on the fact situation prevailing when the expulsion took place and the complaint made. The issue of appellant's disqualification could not have been decided on the basis of the appellant's conduct subsequent to his expulsion from the INC party and making of complaint against him for initiation of disqualification proceeding.

The order of Deputy Commissioner was in violation of the principles of natural justice. The Deputy Commissioner followed a strange procedure when he allowed the complainant to file additional affidavit, after conclusion of hearing, to improve upon a case made out in the complaint. Without providing appellant an opportunity of hearing and adducing evidence to show his bonafide conduct, the Deputy Commissioner passed the impugned order on consideration of materials which are produced by the complainant alongwith the additional affidavit.”

5. Before commenting on the grievances, which have been expressed on behalf of the appellant, what is worth noticing is that there are three specific circumstances, as mentioned in Section 3 of the Prohibition of Defection Act, whereunder a person may become disqualified from being a member of a political party, namely, **(a)** if he has voluntarily given up his membership; **(b)** if he votes or abstains from voting in, or intentionally remains absent from, any meeting of Zila Parishad or Anchal Samiti or Gram Panchayat contrary to any direction issued by the political party to which he belongs; and **(c)** under Section 3(2), a member elected, as an independent candidate, shall stand disqualified if he subsequently joins any political party.

6. Whether a member has or has not voluntarily given up the membership of his political party can be inferred not only when the person concerned resigns or pronounces that he has given up membership of his political party, but also from the conduct of the person concerned, if the conduct of the person concerned indicates that the person concerned has acted not only contrary to the interest of the political party, which he belongs to, but that he could not have so acted against the interest of his party without delinking, disassociating and/or snapping his ties with his own party.

7. The purpose of the Anti Defection Laws will stand defeated if any rider is added to Clause (a) of Sub-Section (1) of Section 3 of the Prohibition of Defection Act. The expression, "*if he has voluntarily given up his membership*" is an expression, which merely conveys the conclusion, which one may reach. This conclusion can be reached, when a person voluntarily resigns from his political party or when he announces, without submitting his resignation, or otherwise, that he has given up his membership of a political party without any compulsion, or when his conduct is such that leads one to no inference other than the inference that he has voluntarily given up his membership of the political party concerned.

8. Mr. Tiwari, learned counsel for the appellant, has contended that there must always be direct evidence of resignation having been submitted by a member concerned, or announcement made by him, to the effect that he has given up the membership of his political party. While considering the submissions, so made on behalf of the appellant, we deem it appropriate to mention, at this juncture, that it also the duty of the court to endeavour that the

democratic institutions of this country are safeguarded from every kind of defections and that the endeavour to save the democratic institutions from the vice of defection would stand strengthened and stabilized if the expression, "*if he has voluntarily given up his membership*" is, as indicated hereinabove, interpreted to mean that when there are materials on record, which reasonably give rise to the inference that the member concerned has voluntarily given up his membership of the political party, which he belonged to, then, it is not mandatory that there must be direct evidence of resignation having been submitted by a member concerned. In such a situation, there is no impediment, in law, in holding such a person disqualified from continuing with the membership of the political party.

9. In the present case, when there was specific instructions, issued by the INC, that all the members of the INC shall work for the victory of their candidate in the Legislative Assembly Election of Arunachal Pradesh, it logically follows that a candidate, who was set up by the INC, was to be supported by each and every member of the INC. If any member of the INC was found to have done an act or omitted to do an act, which would reveal that he intended to defeat the nominee of the INC in the Legislative Assembly Election, such a member could not have escaped the wrath of disqualification from membership of the INC inasmuch as such a member, in the circumstances aforementioned, ought to be held as having given up voluntarily the membership of his political party (i.e., the INC) or else, he could not have acted contrary to the interest of the candidate of the INC, particularly, because the candidate of the INC was really the candidate of each and every member of the INC.

10. In the present case, the appellant had, admittedly, become a '*counting agent*' for a candidate, who had been set up by a rival political party, to defeat the official nominee of the INC. A person, who acts as a '*counting agent*' of a candidate of a rival political party, cannot be heard to say that he did not want the person, in whose favour he had acted as a '*counting agent*', to be elected to the Legislative Assembly.

11. In the present case, when the appellant had become the '*counting agent*' for the AITMC candidate, who was to contest the official nominee of the INC, there can be no escape from the conclusion, in the absence of anything showing to the contrary, that the appellant had not merely acted as the '*counting agent*' of the AITMC candidate, but he was not inclined, and did not want, the INC candidate to win; rather, the appellant wanted the candidate, belonging AITMC, to win.

12. When, therefore, in the facts and attending circumstances of the present case, the appellant wanted the AITMC candidate to win, it cannot but be inferred, which is the only logical inference, that the appellant wanted the official nominee of the INC to be defeated at the hands of the AITMC candidate, whose '*counting agent*' the appellant had chosen to become. Being a member of the INC, the appellant could not have been rationally inferred to have not supported the candidature of the AITMC. The lone and irresistible conclusion, in the present case, was that the appellant had voluntarily given up the membership of the INC, or else, he could not have become the '*counting agent*' for a candidate, who was to contest the official nominee of the INC.

13. The question, now, is: whether the procedure, which has been resorted to, in the present case, made the impugned order of

disqualification, passed by the Deputy Commissioner, Ziro, not maintainable in law ?

14. While considering the question with regard to the maintainability of the impugned order, it needs to be noted that the complaint, against the present appellant, had been, admittedly, made by the Vice-President, of the APCC, contending to the effect, *inter alia*, that the appellant had indulged in *anti-party activities* against the official candidate of the INC and attracted, therefore, disqualification under the Prohibition of Defection Act. True it is that it had not been mentioned, in the complaint, as to what *anti-party activities* the appellant had indulged in. When, however, the notice for hearing was given to the appellant, the appellant submitted affidavit, wherein he had denied that he had indulged in *anti-party activities* and had, in any way, attracted the consequences, which were contemplated by Section 3 of the Prohibition of Defection Act.

15. As a rejoinder to the affidavit, which had been so filed by the appellant, respondent No. 3 filed an affidavit, wherein he clearly brought out that the appellant had become the '*counting agent*' of the AITMC candidate and instead of, thus, working for the official nominee of the INC, had worked for the victory of the AITMC candidate. Though it was claimed by the appellant that true copies of this affidavit had not been served individually on the appellant, the fact remains that the copy of the affidavit was, admittedly, served on the counsel for the appellant. The service of the copy of the affidavit on the counsel of the appellant shall be treated as service on the appellant inasmuch as the appellant, it is an admitted position, did file a rejoinder, wherein he did not deny that he had become the '*counting agent*' of the AITMC candidate as

against the official candidate of the INC, i.e., the political party, which the appellant belonged to. The affidavit, which was filed by the respondent No. 3, on 24.02.2009, must be treated as a part of the complaint, particularly, when Section 6(1)(a) of the Prohibition of Defection Act does not specify any period of limitation for making a complaint inasmuch as it is only Section 3(1)(b), which requires that in a case, which falls under Clause (b) of Sub-Section (1) of Section 3, the complaint shall be made after expiry of a period of 15 (fifteen) days. There is, as Section 6(1) reveals, no outer limit for making a complaint. The only condition is that the making of the complaint is not possible before the member gives up the membership of the political party.

16. Coupled with the above, it is also worth pointing out that the appellant has not suffered any prejudice inasmuch as having received the affidavit, which had been filed by respondent No. 3, the appellant submitted his rejoinder-affidavit, wherein, as indicated above, he did not deny that they had been the '*counting agent*' of the AITMC candidate; on the contrary, he admitted that he had become the '*counting agent*' of the AITMC candidate. In the face of the common affidavit, which was so filed by the appellant, a re-hearing by the Deputy Commissioner was, really, not called for, when the facts were admitted and, what was required to be done was only to take a decision by the Deputy Commissioner concerned; and this is what has been precisely done in the present case.

17. The principles of natural justice are required to be adhered to in order to avoid prejudice to the party, which is proceeded against. If no prejudice is caused to the party concerned, mere denial of opportunity would not be sufficient to make a court

interfere with an act of an authority concerned if the act has, otherwise, been legally performed by a competent authority.

18. In the present case, Deputy Commissioner, Ziro, did not offer any opportunity of hearing to the appellant on his disqualification after affidavit had been filed by respondent No. 3. Nonetheless, when the appellant himself admitted, in his rejoinder-affidavit, that he had become the '*counting agent*' of the AITMC candidate, who was to contest the official candidate of his own political party, i.e., INC, the appellant cannot be heard to say that he suffered from any prejudice or that he had not voluntarily given up the membership of INC, or that he had become the '*counting agent*' of the AITMC candidate except for the purpose of seeing him victor and thereby waiting to see his own official candidate defeated at the hands of the AITMC candidate in whose favour he worked as a '*counting agent*'.

19. Referring to the decision, in **D. Sudhakar(2) & ors. vs. D. N. Jeevaraju & ors**, reported in **(2012) 2 SCC 708**, though Mr. Tiwari, learned counsel for the appellant, has contended, that had opportunity been provided to the appellant, the appellant could have urged that a solitary instance of acting as '*counting agent*' of the AITMC candidate ought not to be considered to mean that the appellant had shifted his allegiance from INC to AITMC, suffice it to point out that when the acts of the appellant speak for themselves, the fact that no further opportunity was given is really immaterial.

20. In the present case, the solitary instance of the appellant becoming '*counting agent*' of the AITMC candidate was sufficient to give rise to a reasonable inference that the appellant had, indeed, given up the membership of his own party; otherwise, he could not

have acted as the 'counting agent' of AITMC candidate desiring to make the AITMC candidate victor. There is nothing to show that the appellant wanted the AITMC candidate to be defeated though he had become the 'counting agent' of the AITMC candidate. The case of the **D. Sudhakar(2)** (supra), therefore, does not help the case of the appellant. This apart, the view, which the learned Single Judge has taken, cannot be said to be wholly irrational and unacceptable. We must bear in mind, in this regard, that a writ appeal is really not a statutory appeal preferred against the judgment and order of an inferior court to the superior Court. The appeal *inter-se* in a high Court from one Court to another is really an appeal from one coordinate Bench to another co-ordinate Bench and it is for this reason that a writ cannot be issued by one Bench of the High Court to another Bench of the High Court nor can even the Supreme court issue writ to a High Court. Thus, unlike an appeal, in general, a writ appeal is an appeal on principle and that is why, unlike an appeal, in an ordinary sense, such as a criminal appeal, where the whole evidence on record is examined anew by the appellate Court, what is really examined, in a writ appeal, is the legality and validity of the judgment and/or order of the Single Judge and it can be set aside or should be set aside only when there is a patent error on the face of the record or the judgment is against the established or settled principle of law. If two views are possible and a view, which is reasonable and logical, has been adopted by a single Judge, the other view, howsoever appealing such a view may be to the Division Bench, it is the view adopted by the Single Judge, which should, normally, be allowed to prevail. Hence, the impugned judgment of the learned Single Judge cannot be completely ignored and this Court has to consider the judgment

and order in its proper perspective and if this Bench, sitting as an appellate Bench, is of the view that the decision has been arrived at by the learned Single Judge without any material error of fact or law, then, the judgment, in question, should be allowed to prevail. Reference may be made, in this regard, to the case of **Tractor & Farm Equipment Ltd. vs. Secretary to the Govt. of Assam, Deptt. Of Agriculture & ors., 2004 (1) GLT 117.**

21. Though Mr. Tiwari, learned counsel for the appellant, rightly points out that, although the learned Single Judge has placed reliance on the case of **G. Viswanathan vs. Hon'ble Speaker, Tamilnadu Legislative Assembly, Madras and another**, reported in (1996) 2 SCC 353, the ratio, in **G. Viswanathan's** case (supra), has been doubted in the case of **Amar Singh vs. Union of India**, reported in (2011) 1 SCC 210, and the matter has been referred to a larger Bench, the fact of the matter remains that even if the decision, in **G. Viswanathan's** case (supra), has not been agreed to by the Supreme Court, in **Amar Sing's** case (supra), the scenario of law, relevant thereto, do not, in the present case, change inasmuch as in the facet of the materials on record, there could have been no escape from the conclusion that the appellant had voluntarily given up his membership from INC; or else, he could not have acted as the '*counting agent*' of the AITMC candidate.

22. Referring to the case of **Ravi S. Naik vs. Union of India and others**, reported in 1994 Supp (2) 641, which has been relied upon by the learned Single Judge, Mr. Tiwari, once again, correctly points out that, in **Ravi S. Naik's** case (supra), there were series of acts, which showed that the persons concerned had voluntarily given up the membership of their party; whereas, in the case at

hand, there was only one act, and the act was of acting as the 'counting agent' of the AITMC candidate.

23. While dealing with the above aspect of the case, it needs to be noted that the question is not whether there is a series of acts or a single act; rather, the question is as to whether the act done gives rise to reasonable interference that the membership of the party has been voluntarily given up by the appellant.

24. In the backdrop of the discussions, held above, one cannot but conclude that the appellant was clearly proved to have, by acting as 'counting agent' of the AITMC candidate, acted against the official nominee of the INC and he wanted, in the absence of anything showing to the contrary, the AITMC candidate to win and the official candidate of the INC to lose and the appellant could not have acted as 'counting agent' of the AITMC candidate except involuntarily giving up the membership of the INC.

25. In support of the appellant's case, Mr. Tiwari has further submitted as under:

“Had the conduct of the appellant of acting as counting agent for AITMC candidate been the subject matter of complaint for disqualification, the appellant would have adduced evidence before the Deputy Commissioner to demonstrate that his conduct of acting as counting agent for AITMC candidate did not mean support for the AITMC party and the same was only a goodwill gesture towards the AITMC candidate on account of various factors like social affinity and tribal kinship. The appellant would have also adduced evidence to show that he acted as counting agent for AITMC candidate because he was given legal advice that under section 47 of the Representation of Peoples Act, 1951, one was not required to be the member of the particular political party to act as the counting agent of the candidate of the said party and that on account of personal affinity and tribal

kinship appellant could act as the counting agent without attracting and/or incurring disqualification under the Act. The appellant could not effectively defend himself and adduce evidence to show his bonafide conduct, only because complaint against him was silent on material facts and was general, sweeping and vague.

The conduct of the appellant of acting as counting agent of the AITMC candidate in the Arunachal Pradesh Legislative Assembly Election 2009 was an isolated solitary incident. Moreover the appellant acted in the said capacity only after the expulsion from the INC party. His conduct of acting in the said manner was bonafide and had opportunity been provided to him to explain such conduct, he would have adduced evidence as indicated in para 5.2 above. Hence it is unreasonable to draw inference from such a solitary incident that the appellant intended to leave the INC party and join the AITMC.”

26. While dealing with the above contention of Mr. Tiwari, it needs to be noted that the appellant had, admittedly, filed rejoinder to the affidavit, which had been filed by respondent No. 3. In the rejoinder, he did not even whisper about any written legal advice; rather, he asserted that, under Section 33, since there was no necessity for a person to be a member of any political party to act as a ‘*counting agent*’ of a person, who becomes a candidate of another political party, he acted as a ‘*counting agent*’ of the AITMC candidate, because of his personal affinity, tribal kinship and also social affinity. No such evidence in support of such defence was laid in the rejoinder-affidavit, which had been filed by the appellant. It is, therefore, too late for the appellant, now, to contend that he had been legally advised, or that he had a cause of personal affinity or tribal kinship to act in favour of the AITMC candidate as ‘*counting agent*’. This apart, even tribal kinship or

personal affinity could not have permitted the appellant to act as a 'counting agent' of the AITMC candidate, who was to contest the official candidate of the political party to which the appellant belonged at the relevant point of time.

27. Because of what have been discussed and pointed out above, this Court does not find that the decision of the Deputy Commissioner, Ziro, holding the appellant as disqualified, suffers from any infirmity, legal or factual. The learned Single Judge was, therefore, correct in upholding the impugned order of the Deputy Commissioner, Ziro, and in dismissing the writ petition filed by the appellant challenging the order of the Deputy Commissioner.

28. This Court does not find any merit in the appeal and this appeal, therefore, stands dismissed.

JUDGE

JUDGE

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