

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

**Writ Appeal No. 14(AP) of 2010**

1. **Bengia Menia** (ASM Chulyu),  
Resident of village Chulyu,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri,  
Arunachal Pradesh.
2. **Pill Yater** (ASM Yoizath),  
Resident of village Yoizath,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri,  
Arunachal Pradesh.
3. **Nabam Piju** (ASM Kebi),  
Resident of village Kebi,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri,  
Arunachal Pradesh.
4. **Techi Yajo** (ASM Takam Pasa),  
Resident of village Takam Passa,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri,  
Arunachal Pradesh.
5. **Bath Nyeri** (ASM Yazali),  
Resident of village Yazali,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri,  
Arunachal Pradesh.
6. **Taba Khoda** (ASM Rubdi),  
Resident of village Rubdi,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri,  
Arunachal Pradesh.
7. **Taw Leli** (ASM Pitapool),  
Resident of village New Pitapool,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri,  
Arunachal Pradesh.
8. **Taw Leli** (ASM Pitapool),  
Resident of village Belo,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri,  
Arunachal Pradesh.
9. **Nikh Tugu** (GPM Yachuli),  
Resident of village Yachuli,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri,  
Arunachal Pradesh.
10. **Lishi Baka** (GPM Potin),  
Resident of Potin village,  
P.O. and P.S. Yazali,  
Dist. Lower Subansiri

Arunachal Pradesh.

**- Appellants**

**- 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:**

- |                                   |   |
|-----------------------------------|---|
| <b>For the Appellants</b>         | : Mr. P. K. Tiwari,<br>Mr. L. Tenzin,<br>Mr. K. Sexena  |
| <b>For the respondents</b>        | : Mr. R. H. Nabam,<br>Sr. Government counsel,<br>Mr. B. C. Das,<br>Mr. D. Majumder,<br>Mr. N. Ratan,<br>Mr. M. Kato,<br>Mr. D. Padu,<br>Mr. K. Tasso,<br>Mr. G. Kato,<br>Mr. S. Appa. |
| <b>Date of hearing</b>            | : <b>09.05.2012</b>   |
| <b>Date of judgment and order</b> | : <b>28.08.2012</b>   |

**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 petitioners have preferred this appeal.

**2.** We have heard Mr. P. K. Tiwari, learned counsel for the writ petitioners-appellants, 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 appellants may, in brief, be set out as under:

**(i)** In the Panchayat Elections, held in the year 2008, in the State of Arunachal Pradesh, the appellants herein were elected, on Indian National Congress (in short, 'INC') ticket, as Anchal Samiti Members (hereinafter referred to as 'ASM') and Gram Panchayat Memebers (hereinafter referred to as 'GPM') of various Gram Panchayats falling under 16 Yachuli (ST) Assembly Constituency, their term being for five years, which would expire in the year 2013.

**(ii)** On 18<sup>th</sup> 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 25<sup>th</sup> September, 2009, the polling was to be held on 13.10.2009 and the counting was fixed on 22.10.2009.

**(iii)** On issuance 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 was from All India Trinamool Congress (hereinafter referred to as the 'AITMC')

and another was from the INC. In the nomination paper filed by the candidate of AITMC, the appellants acted as '*proposers*' 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 appellants alongwith many other Panchayat leaders of 16 Yachuli (ST) Assembly Constituency, with immediate effect, from the INC party for a period of six years for 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 appellants 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) 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 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.

(viii) In the disqualification case, the appellants herein filed their separate affidavits, dated 15.12.2009, wherein they contended, *inter alia*, that the complaint, in question, contained vague allegations against the appellants 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 appellants filed their separate affidavits, dated 15.12.09, wherein they denied the allegations of their having indulged in *anti-party activities* made in the complaint and stated that the complaint did not contain details of their 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.

(ix) 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 expelled Panchayat leaders acted as proposers and counting agents of the AITMC candidate in 16 Yachuli (ST) Assembly Constituency and that they could not have acted in the manner as they had done, without

giving up their 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 leaders that they had given up the membership of the INC party voluntarily and joined the AITMC party and only thereafter, they could have acted and did act as proposers and counting agents of the AIMTC candidate in 16 Yachuli (ST) Assembly Constituency.

(x) 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 appellants and, on 04.02.2010, the appellants, along with other expelled Panchayat leaders filed a common *rejoinder affidavit* against the same. In the *rejoinder affidavit*, it was stated by the appellants that they never wished to give up their membership of the INC and that even after their expulsion they did not join the AITMC party or any other party.

(xi) 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 appellants 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' 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 appellants, were disqualified and the seats held by them were treated vacant.

**(xii)** 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 appellants, 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 appellants, as indicated above, have preferred the present Appeal.

**4.** The prime contentions of Mr. Tiwari, learned counsel for the appellants, while challenging the legality of the impugned order, dated 21.04.2010, whereby the appellants were 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 had no jurisdiction to decide the issue of appellants' disqualification on the basis of facts other than what had been indicated in the complaint. Even though the appellants acted as proposers for the AITMC candidate prior to their expulsion from the INC party and the making of complaint against them for their disqualification, but their conduct of acting as proposers was not disclosed in the complaint. The appellants could not have been expected to explain their conduct of acting as proposers on their own without their being any whisper of the same in the complaint. The factum of appellants acting as proposers was brought before the Deputy Commissioner as an afterthought through a common affidavit, much after the conclusion of hearing when the order was reserved. Though the appellants submitted their rejoinder affidavit against the common affidavit but they were denied the opportunity of adducing evidence that their conduct of acting as proposers was bonafide and was an outcome of certain belief and mistakes about the role and status of proposers. The appellants were also not provided personal hearing after they submitted their rejoinder affidavit and the Learned Deputy Commissioner by the impugned order disqualified the appellants on the basis of the facts disclosed in the common affidavit and the records placed along with it.*

*Before the Learned Deputy Commissioner, no arguments could be advanced at the stage of hearing on the role and conduct of appellants of acting as proposers of the AITMC candidate because on the day of hearing the arguments were made only over the sweeping and vague nature of the complaint which did not disclose the form and nature of anti-party activities from which inference could be drawn of appellants voluntarily resigning from the INC party and shifting their loyalty to another party. It was only when the complainant was confronted with the vague allegations made in the complaint at the stage of hearing that the complainant after conclusion of hearing during the period when the order was reserved filed a common affidavit along with the record showing the culpability of appellants of having acted as proposers of AITMC candidate. The appellants could only file a rejoinder affidavit against the said common affidavit but they were denied the opportunity of personal hearing and of adducing evidence to show and explain*

*that by such conduct they never intended to shift their loyalty and allegiance from the INC party. Had such an opportunity been provided, the appellants would have also explained the circumstances under which and the reasons for which they acted as proposers for AITMC candidate. and also the facts and circumstances under which they acted as proposers of AITMC candidate.*

*Because of the aforementioned strange procedure adopted by the Learned Deputy Commissioner in conducting the disqualification proceeding, the appellants who were represented by their counsel, were also denied the opportunity of advancing legal arguments on the implication of appellants having acted as proposers of the AITMC candidate. Had such an opportunity been provided to the appellants, the counsel for the appellants would have placed reliance on **D. Sudhakar (2) & Ors Vs D. N. Jeevaraju & Ors (2012) 2 SCC 708** and would have urged that an isolated incident of acting as proposers of AITMC candidate should not be construed to mean that the appellants had shifted their allegiance from INC to AITMC and that the conduct of the appellants for acting as proposers of AITMC candidate was guided by other factors other than allegiance to the INC party.”*

**5.** Before commenting on the grievances, which have been expressed on behalf of the appellants, 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 appellants, 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 appellants, 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 endeavor 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 appellants had, admittedly, become the '*proposers*' for a candidate, who had been set up by a rival political party, to defeat the official nominee of the INC. A person, who '*proposes*' the name of another person, cannot be heard to say that he did not want the person, whom he had '*proposed*' to be elected to the Legislative Assembly.

**11.** In the present case, when the appellants had become the '*proposers*' 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 appellants had not merely proposed the name of the AITMC candidate, but they were not inclined, and did not want, the INC candidate to win; rather, the appellants wanted their proposed candidate, belonging AITMC, to win.

**12.** When, therefore, in the facts and attending circumstances of the present case, the appellants wanted the AITMC candidate to win, it cannot but be inferred, which is the only logical inference, that the appellants wanted the official nominee of the INC to be defeated at the hands of the AITMC candidate, whose '*proposers*' the appellants had chosen to become. Being members of the INC, the appellants 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 appellants had voluntarily given up the membership of the INC, or else, they could not have become the '*proposers*' 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 appellants, had been, admittedly, made by the Vice-President, APCC, contending to the effect, *inter alia*, that the appellants 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 appellants had indulged in. When, however, the notice for hearing was given to the appellants, the appellants submitted individual affidavits, wherein they had denied that they 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 affidavits, which had been so filed by the appellants, respondent No. 3 filed an affidavit, wherein he clearly brought out that the appellants had become the '*proposers*' 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 appellants that true copies of the said affidavit had not been served individually on each of the appellants, the fact remains that the copy of the affidavit was, admittedly, served on the counsel for the appellants. The service of the copy of the affidavit on the counsel of the appellants shall be treated as service on the appellants inasmuch as the appellants, it is an admitted position, did file a common rejoinder, wherein they did not deny that they had become the

*'proposers'* of the AITMC candidate as against the official candidate of the INC, i.e., the political party, which the appellants 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 appellants have not suffered any prejudice inasmuch as having received the affidavit, which had been filed by respondent No. 3, the appellants submitted their rejoinder-affidavit, wherein, as indicated above, they did not deny that they had been the *'proposers'* of the AITMC candidate; on the contrary, they admitted that they had become the *'proposers'* of the AITMC candidate. In the face of the common affidavit, which was so filed by all the appellants, 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 appellants on their disqualification after affidavit had been filed by respondent No. 3. Nonetheless, when the appellants themselves admitted, in their rejoinder-affidavit, that they had become the '*proposers*' of the AITMC candidate, who was to contest the official candidate of their own political party, i.e., INC, the appellants cannot be heard to say that they suffered from any prejudice or that they had not voluntarily given up the membership of INC, or that they had become the '*proposers*' of the AITMC candidate except for the purpose of seeing him victor and thereby waiting to see their own official candidate defeated at the hands of the AITMC candidate '*proposed*' by them.

**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 appellants, has contended, that had opportunity been provided to the appellants, the appellants could have urged that a solitary instance of acting as proposers of the AITMC candidate ought not to be considered to mean that the appellants had shifted their allegiance from INC to AITMC, suffice it to point out that when the acts of the appellants speak for themselves, the fact that no further opportunity was given is really immaterial.

**20.** In the present case, the solitary instance of the appellants becoming the '*proposers*' of the AITMC candidate was sufficient to give rise to a reasonable inference that the appellants had, indeed,

given up the membership of their own party; otherwise, they could not have become the '*proposers*' of AITMC candidate desiring to make the AITMC candidate victor. There is nothing to show that the appellants wanted the AITMC candidate to be defeated though they had become the '*proposers*' of the AITMC candidate. The case of the **D. Sudhakar(2)** (*supra*), therefore, does not help the case of the appellants. 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 appellants, 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 Singh'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 appellants had voluntarily given up their membership from INC; or else, they could not have become the '*proposers*' 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 becoming the 'proposer' 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 appellants.

**24.** In the backdrop of the discussions, held above, one cannot but conclude that the appellants were clearly proved to have, by becoming the 'proposers' of the AITMC candidate, acted against the official nominee of the INC and they 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 appellants could not have succeeded in achieving except involuntarily giving up the membership of the INC.

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

*"Had the conduct of the appellants of acting as proposers for AITMC candidate been the subject matter of complaint for disqualification, the appellants would have adduced evidence before the Deputy Commissioner to demonstrate that their conduct of acting as proposers 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 appellants would have also adduced evidence to show that they acted as proposers for AITMC candidate because they were given legal advice that under Section 33 of the Representation of Peoples Act, 1951, there was no requirement to be the member of the particular political party to act as proposers of the candidate of the said party and that on account of personal affinity and tribal*

*kinship appellants could act as proposers for the candidate of a different political party without attracting and/or incurring disqualification under the Act. The appellants could not effectively defend themselves and adduce evidence to show their bonafide conduct, only because complaint against them was silent on material facts and was general, sweeping and vague. Even at this stage, if the Hon'ble Court remands the case to the Deputy Commissioner for holding the disqualification proceeding afresh, the appellants are willing to adduce necessary evidence to show that by acting as proposers of AITMC candidate they never intended to shift their allegiance to the AITMC party.”*

**26.** While dealing with the above contention of Mr. Tiwari, it needs to be noted that the appellants had, admittedly, filed rejoinder to the affidavit, which had been filed by respondent No. 3. In the rejoinder, they did not even whisper about any written legal advice; rather, they 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 ‘*proposer*’ of a person, who becomes a candidate of another political party, they became ‘*proposers*’ of the AITMC candidate because of their 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 appellants. It is, therefore, too late for the appellants, now, to contend that they had been legally advised, or that they had a cause of personal affinity or tribal kinship to support the AITMC candidate as ‘*proposers*’. This apart, even tribal kinship or personal affinity could not have permitted the appellants to become ‘*proposers*’ of the AITMC candidate, who was to contest the official candidate of the political party to which the appellants 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 appellants 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 appellants 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

*rk*