

**IN THE GAUHATI HIGH COURT  
[THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND  
ARUNACHAL PRADESH]**

**1. WP (C) 316(AP) 2014**

Shri Tarin Dakpe  
S/O Lt. Rade Dakpe,  
Working as Director, Rural Development,  
Govt. of Arunachal Pradesh, Itanagar,  
P.O/P.S. Itanagar, District- Papum Pare,  
Arunachal Pradesh.

*.....Petitioner*

**– Versus –**

1. The Election Commission of India, represented by its Secretary, Nirvachan Sadan, Ashoka Road, New Delhi, 110001.
2. The State of Arunachal Pradesh represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.
3. The Commissioner (Personnel), Government of Arunachal Pradesh, Itanagar.

*..... Respondents*

Advocate for the Petitioners:

Mr. P. Taffo.  
Ms. J. Doji  
Mr. R. Singhi  
Ms. B. Yari  
T. Lamgu  
Mr. J. Singhi

Advocates for the Respondents:

Mr. Ajin Apang, S/C (Election Commission)  
Ms. Geeta Deka, Sr. Govt. Advocate

**2. WP (C) 459(AP)2014**

Shri Tarin Dakpe  
S/O Lt. Rade Dakpe,  
Working as Director, Rural Development,  
Govt. of Arunachal Pradesh, Itanagar,  
P.O/P.S. Itanagar, District- Papum Pare,  
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1. The Election Commission of India, represented by its Secretary, Nirvachan Sadan, Ashoka Road, New Delhi, 110001.
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3. The Commissioner (Personnel) of Government of Arunachal Pradesh, Itanagar.

..... *Respondents*

Advocates for the Petitioners:

Mr. P. Taffo  
 Mr. S. Tsering  
 Ms. J. Doji  
 Ms. B. Yari  
 T. Lamgu  
 Mr. J. Singhi  
 Mr. R. Singhi  
 Mr. T. Yangzon

Advocates for the Respondents:

Mr. Ajin Apang, S/C (Election Commission)  
 Ms. Geeta Deka, Senior Govt. Advocate

**B E F O R E**  
**HON'BLE JUSTICE MRS. RUMI KUMARI PHUKAN**

Date of hearing : 11.03.2015  
Date of Judgment & Order : 09.04.2015

**JUDGMENT & ORDER [CAV]**

Heard Mr. Pritam Taffo, learned Counsel for the petitioner. Also heard Mr. Ajin Apang, Learned counsel appearing for Respondent No. 1(Election Commission of India) and Ms. Geeta Deka, learned Senior Government Advocate, appearing for State Respondents No. 2 and 3.

**2].** Both these writ petitions have been taken-up together for disposal since same petitioner in both the cases, one Sri Tarin Dakpe, who is presently holding the post of Director, Rural Development Department, Govt. of Arunachal Pradesh, Itanagar, has challenged two directions of the Election Commissioner

pertaining to his duty performed during Assembly Election held on 09.04.2014 as Returning Officer.

**3].** In WP(C) 316 (AP) 2014, the case of the petitioner is that before joining the present post, he was the Deputy Commissioner of East Kameng District, Seppa, and while discharging the duties of Deputy Commissioner, he was conferred with the power of Returning Officer of East Kameng District, Seppa, during the last State Assembly Election which was notified in the month of March, 2014. That while performing as Returning Officer, Seppa, one of the candidate from 12 Pakke-Kessang Assembly Constituency Sri Atum Welly withdrew his candidature, on 26.03.2014, through an authorized representative, by filling-up Form-5. The said withdrawal was duly accepted by the petitioner on *bona fide* belief that it was legal and as such, the other candidate in the fray, Sri Kameng Dolo, was declared elected un-opposed. Though the said candidate was very persuasive for withdrawal of his candidature, but, after the declaration of the result, the same candidate Sri Welly, filed a complaint before the Election Commission of India and other authorities that he has not withdrawn his candidature and it was done through forgery. Basing upon the said complaint, the Election Commission of India vide letter dated 09.05.2014, directed the Chief Electoral Officer, Arunachal Pradesh, immediately suspend the petitioner and to impose major penalty.

**4].** On receipt of the direction from the Election Commission of India, New Delhi, the Chief Secretary, Govt. of Arunachal Pradesh, vide order dated 09.05.2014, suspended the petitioner, with immediate effect. When the petitioner received his suspension order, he filed several representations before the authority concerned to revoke his suspension order dated 09.05.2014. In the said representations, the petitioner has clearly stated that he was no more the then Deputy Commissioner of East Kameng District, Seppa. After receipt of such representations, the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar, vide order dated 18.07.2014, revoked the order of suspension of the petitioner. After revocation, the State respondents allocated the post of Director, Rural Development Department, vide order dated 01.08.2014 to the petitioner, who, accordingly joined his duties on 07.08.2014 as Director, Rural Development Department. While the petitioner was performing his duties as the Director, a further direction was issued by the Election Commission of India vide impugned letter dated 20.08.2014, directing the State authority to re-

suspend the petitioner and initiate disciplinary proceedings. Basing upon the said, the State authority initiated necessary disciplinary proceedings vide Memorandum dated 28.08.2014.

**5].** The petitioner is not aggrieved by the initiation of Departmental Proceedings against him, however, the direction of the respondent/Election Commission of India, for re-suspension of petitioner, is illegal *ab initio*. The petitioner has further stated that once the suspension order is revoked by the competent authority after due application of mind, he cannot be directed to be re-suspended for the same action for which he was previously suspended once. Challenging such directions of the Election Commissioner, the present writ petition was filed.

**6].** The petitioner has filed the subsequent writ petition viz. WP (C) 459 (AP) 2014 challenging the impugned directions of Election Commissioner as contained in letter dated 08.05.2014, for awarding major penalty upon the petitioner with the contention that Election Commissioner has no power to dictate the disciplinary authority, as to what penalty should be imposed upon the petitioner.

The said letter dated 08.05.2014(Annexure-1) is quoted, hereinbelow:

**"Election Commission of India Nirvachan Sadan,  
Ashoka Road, New Delhi-110001  
No. 61/ARUN/2014(P.II) Dated 8<sup>th</sup> May, 2014.**

**To,**

**The Chief Electoral Officer  
Arunachal Pradesh, Itanagar.**

**Sub: General Election to the Lok Sabha and Legislative Assembly of Arunachal Pradesh, 2014- Withdrawal of nomination of Sri Atum Welly contesting candidate, BJP for AC-12 Pakke-Kessang(ST) of Arunachal Pradesh regarding.**

**Sir,**

**I am directed to refer to your letter No. EN/OP/CE-7/2014 dated 28.01.2014 on the subject cited and to state that the Commission has directed as under:**

- (a) Immediate suspension of the then Returning Officer of 12 Pakke Kessang (ST) AC, Sri Tarin Dakpe and action for disciplinary proceedings for major penalty against him.**
- (b) Police action against the person who submitted the withdrawal application along with allegedly forged authorization letter before the Returning Officer in the case.**

**2. You are requested to ensure compliance of above mentioned directions of the Commission and furnish the compliance report to the Commission at the earliest.**

**Yours faithfully  
Sd/-  
(Krishna Kumar)  
Under Secretary"**

**7].** It is the case of the petitioner that the disciplinary authority acts as a quasi judicial body and after due proceedings, it will come to its conclusion based on the materials found against the delinquent officer. The direction of the Chief Election commission to the State respondents to impose major penalty on the petitioner will immensely prejudice the petitioner as it will have a bearing on the officer conducting the disciplinary proceeding. Such a direction from the Chief Election Commission of India to impose major penalty on the petitioner even before the proceeding has begun, is unjust and illegal and as such, the same is liable to be set aside and quashed.

**8].** Learned counsel for the petitioner Mr. Taffo, has submitted that the Chief Secretary to the Govt. of Arunachal Pradesh, acting as a quasi-judicial body, is to act independently without being guided by any direction passed from any quarter and arrive at a just and fair conclusion and not to be influenced by the direction so issued by the Election Commission of India vide letter dated 08.05.2014. The contention of the petitioner, in this case, is that the disciplinary authority after conclusion of the disciplinary proceeding may impose either major penalty or minor penalty or may even discharge the petitioner, basing on the materials placed before it and as such, the direction given by the Election Commission of India directing imposition of major penalty on the petitioner is pre-emptive and biased, and the same cannot stand the test of law. To bolster his argument, the learned counsel for the petitioner has relied upon the case law reported in **1998 2 SCC 505, Dr. Ashok Kumar Maheshwari-vs- State of U.P. and Another**, wherein it has been held that **"the authority to which discretion is vested can be compelled to exercise his discretion but not to exercise in a particular manner. In general, discretion must be exercised by the authority to which it is committed."**

**9].** The stand of the State Respondents No. 2 and 3, as reflected in the counter affidavit filed in WP(c) 316(AP)2014, is that, they are duty bound to obey the instructions of the Election Commission of India with regard to matters related to election related irregularities, if any. As such, they have initiated the disciplinary

proceedings against the petitioner vide order dated 09.05.2014 and necessary Memorandum was served on the petitioner on 28.08.2014 as a party to disciplinary proceedings in pursuance to order dated 09.05.2014 of the Election Commission of India. That apart, the State Respondents No. 2 and 3 have requested the Chief Electoral Officer to forward a detailed report on the issue so as to enable the respondent authorities to frame necessary charge sheet against the petitioner, as per Rules.

**10].** It has been contended by the learned counsel for the Election Commission that the order of re-suspension is a continuing one even though it was issued after the conclusion of the election, and there is no illegality in the said order for re-suspension. Equally, it is also assailed that the Election Commission has power and control over the Election Officer and for maintaining the discipline of the election, such direction can be passed by the Election Commission in maintaining the dignity and decorum of the election process, as such, order for imposing major penalty upon petitioner is just and proper.

**11].** The respondent Election Commission did not file any affidavit-in-opposition and learned counsel has delivered his argument on legal aspect. In order to buttress his case, the following citation has been relied upon by Mr. Apang, learned Standing counsel, Election Commission of India, as under:-

***1993 Supp. (3) SCC 483 [U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. v. Saniv Rajan] wherein it has been held by the Apex Court that there is no restriction of competent authority to pass a second suspension order after the first order was quashed by the Court.***

**12].** I have considered the rival contentions of both the parties and the case law relied upon by the respondents. In the given case, admittedly, the Election in question was held on 9<sup>th</sup> April, 2014, result was declared on 16<sup>th</sup> May, 2014, and election process was completed by 20<sup>th</sup> May, 2014. As per the direction of the Election Commissioner, by letter dated 08.05.2014, the petitioner was suspended on 09.05.2014, and the suspension of the petitioner was revoked by the authority by applying its mind, on 18.07.2014 i.e. after 2 months when the election process was over. In the meantime, the petitioner was transferred and posted in different capacities as Director, RD Dept., Government of Arunachal Pradesh. Thereafter, on 20.08.2014, the Election Commissioner sent another direction for re-suspension of the

petitioner and also for drawing disciplinary action against him and by virtue of the said order, the respondent authorities have drawn disciplinary proceeding as per Rule but the order of re-suspension was stayed by the order of this Court as the petitioner has moved before this Court, against the notice issued him for second time suspension. Now the prayer of the petitioner is two folds – one is that once his suspension has been revoked by the proper authority then second suspension order is not at all legal and is against the principle of natural justice and the second prayer is that the direction of the Election Commission for imposing major penalty by the disciplinary proceeding is against the legal parameters and norms and is in excess of the jurisdiction of the Election Commission. As such, the petitioner has prayed for issuance of *writ of certiorari* for quashing the directions of the Election Commission in both the aspects, in the above-mentioned two cases.

**13].** Now, the *writ of certiorari* is an extraordinary common law remedy and it is not a writ of right but one of discretion. The object of writ is to curb the excess of jurisdiction to keep the inferior Courts, Tribunals and other authorities, within their bounds. Its purpose is to bring for review before the Superior Court, the proceedings and judgment of inferior Courts, Tribunals, etc., clothed with authority to act judicially, where no appeal or other adequate remedy is available and is appropriate in all such cases where substantial rights of an applicant have been so far invaded as to prejudicially effect him.

**14].** I have also considered the case law referred by the Election Commission that second suspension can be handed down to the petitioner by the competent authority but it is to be noted that the case in hand is totally different as referred above in **1993 supp.(3) SCC 483**(supra) where the charge of defalcation of government money or embezzlement of funds against employees has been dealt with, which is not the case in hand. So the ratio laid down in the said case, is not applicable in this matter.

**15].** The contention of the respondents Election Commission that they are empowered by of Article 324 of the Constitution *read with* Section 28A of the RP Act, to issue such direction for the smooth functioning of the election, is considered but the provision of law is to be appreciated in this regard. In the case of **Laxmi Charan Sen v. A K M Hussain Ujjaman; AIR 1985 SC 1233**, it has been observed by the Hon'ble Apex Court that the direction issued by the Election Commission to the

electoral officers are binding upon such officers but such direction have no force of law as to create rights and liabilities between the contestants of the election. The Hon'ble court has explained the relevant provision, which is as follows:

***“There is no provision in any statute which would justify the proposition that the directions given by the election commission have the force of law. Election laws are self-contained Codes. One must look to them for identifying the rights and obligations of the parties. In absence of a statutory provision, the directions issued by the election commission cannot be equated in law. These directions are binding on those officers but their violation cannot create rights and obligations unknown to the election law.”***

**16].** Article 324 of the Constitution is geared to the accomplishment of free and fair elections expeditiously. However, the commission needs to exercise its powers with fairness and not arbitrarily. Unchecked power is alien to our system. The discretion vested in the Commission is to be exercised properly not perversely, not mindlessly nor mala fide nor arbitrarily but keeping with the guidelines the rules of law. In ***Chandan Kr. Sarkar v. Chief Election Commissioner AIR 1985 Gau 61***, it has been held ***“that once the election results are declared the commission has no jurisdiction in respect to the election. The functions of the Election Commission ends with the declaration of the election result”***. Similar view was endorsed in the case of ***Pon Paramaguru & ors. v. Chief Election Commissioner, State of T. N. & ors.***, reported in **2006(2) CTC 241** wherein it has been held that ***“question of exercising any disciplinary control can be only during the period in which officers, staff and police are deputed to perform duties not otherwise”***.

**17].** In view of legal pronouncement and the proposition of law, in terms of Article 324 of the Constitution and read with Section 28 A of the RP Act, it can be held that the further direction of the Election Commissioner for re-suspension of the present petitioner after several months of conclusion of election process, is bad in law and cannot be maintained. Further, the fact that the petitioner has already been once suspended and revoked by the appropriate authority, then the second suspension is unwarranted in view of the fact that the petitioner is no more in the same capacity and disciplinary proceeding has already been drawn up by the authority concerned as directed by the Election Commission. On the next, the disciplinary authority is a quasi-judicial authority to decide the matter of fact and direction of the election petitioner to impose major penalty upon the petitioner is also against the principles of laid down

law and it has been applied arbitrarily, which will have a negative impact on the disciplinary authority to arrive at a proper and just decision. They may be under pre-occupied notion about the case of the petitioner in view of the directions of the superior authority which will affect the case of the present petitioner and he will be deprived of proper hearing as required under the principles of natural justice.

**18].** Situated thus, the petitioner is allowed to place his case properly before the Disciplinary Authority/proceeding without having any apprehension in his mind about the pre-imposed condition of penalty upon him. Equally, the disciplinary authority should also conduct the proceeding with free and fair mind without being influenced by the strict directions given by the Election Commission. It is also hereby directed that the petitioner need not be re-suspended by the respondent authorities.

**19].** With the directions as made above, both the writ petitions stand allowed to the extent indicated above and disposed of, by this common judgment and order.

**20].** No costs.

**JUDGE**

*Bhask*