

MANIPUR LEGISLATIVE ASSEMBLY

BEFORE THE SPEAKER'S TRIBUNAL
(AS CONSTITUTED UNDER THE TENTH SCHEDULE TO THE
CONSTITUTION OF INDIA)

1. Disqualification Case No. 1 of 2018

Shri T.N. Haokip,

President of the Manipur Pradesh Congress Committee,
Congress Bhavan, B.T. Road, P.S. City, Imphal West District,
Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh,
Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District,
Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister
Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City,
Imphal West District, Manipur.

....Respondent

With

2. Disqualification Case No. 2 of 2018

Shri Md. Fazur Rahim, S/o Md. Fajur Rahaman, Irong Chesaba
Mathak, Thoubal District, Manipur. At present:- Babupara, Imphal
West District, Manipur, Hon'ble M.L.A, 36-Wabagai A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

3. Disqualification Case No. 3 of 2018

Shri Keisam Meghachandra Singh, S/o (Late) K. Kulabidhu, Yairipok Bisnu Naha, Thoubal District, Manipur, Hon'ble M.L.A. 32-Wangkhem A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

4. Disqualification Case No. 4 of 2018

Shri R.K. Imo Singh, S/o (Late) R.K. Jaichandra Singh, Sagolband Bijoy Govinda, P.O. & P.S. Imphal, Imphal West District, Manipur, Hon'ble M.L.A. 11-Sagolband A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

5. Disqualification Case No. 5 of 2018

Shri Dr. Chaltonlien Amo, S/o (Late) Dr. Thuoma, Patpuihmun Village, At Present : Lamphel Quarter, Imphal West District, Manipur, Hon'ble M.L.A. 55-Tipaimukh A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

6. Disqualification Case No. 6 of 2018

Shri Yamthong Haokip, S/o Holkhathang, Mantripukhri, Imphal East District, Manipur, Hon'ble M.L.A., 46-Saikul A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

7. Disqualification Case No. 7 of 2018

Shri Kangujam Ranjit Singh, S/o (late) K. Muhori Singh, Serou Bazar. At present :- Babupara, Imphal West District, Manipur, Hon'ble M.L.A., 39-Sugnu A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

8. Disqualification Case No. 8 of 2018

Md. Abdul Nasir, S/o Md. Abdul Hamid, Lilong Chaobok Mairenhun, Thoubal District, Manipur, Hon'ble M.L.A. 30-Lilong A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

9. Disqualification Case No. 9 of 2018

Shri Kh. Joykisan Singh, S/o (Late) Th. Ingocha, Thangmeiband Khuyathong, Imphal West District, Manipur, Hon'ble M.L.A, 9-Thangmeiband A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

10. Disqualification Case No. 10 of 2018

Shri D.D. Thaisii, S/o H. Dio, At Present:- Quarter No. 1, Type-VII, CP-Lamphel, Imphal West District, Manipur, Hon'ble M.L.A., 47-Karong A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

11. Disqualification Case No. 11 of 2018

Shri Okram Henry Singh, S/o (Late) O. Lukhoi Singh, Mantripukhri, Imphal East District, Manipur, Hon'ble M.L.A, 15-Wangkhei A/C, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

12. Disqualification Case No. 12 of 2018

Surjakumar Okram, S/o O. Ibobi Singh of Thoubal Athokpam Thoubal District, at present Babupara, Imphal West District, Manipur, Hon'ble M.L.A, 35-Khangabok Assembly Constituency, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

13. Disqualification Case No. 13 of 2018

A.K. Mirabai Devi, D/o (late) Ak Ibocha Singh of Tabungkhok Awang Leikai, Imphal West District, Manipur, Hon'ble M.L.A, 19-Patsoi Assembly Constituency, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

14. Disqualification Case No. 14 of 2018

Alfred Kanngam Arthur, aged about 43 years, S/o A.S Arthur of Sangshak Kn. P.S. Sangshak at present Poumai Colony, Chingmeirong, Imphal East District, Manipur, Hon'ble M.L.A., 44-Ukhrul Assembly Constituency, Manipur.

...Petitioner

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent

With

15. Disqualification Case No. 15 of 2018

Konthoujam Govindas, S/o (Late) K. Gajendra Singh of Ningthoukhong Ward No. II, P.O. & P.S. Bishnupur, Bishnupur District, at present residing at Babupara Qtr. No. III, Type-IV, Imphal West District, Manipur, Hon'ble M.L.A, 26-Bishnupur Assembly Constituency, Manipur.

...Petitioner.

-Vrs-

Shri Thounaojam Shyamkumar, S/o (late) Th. Binoykumar Singh, Yairipok Yambem Mathak Leikai, P.S Andro, Imphal East District, Hon'ble M.L.A. 7-Andro A/C, Manipur. At present : Minister Quarter Type-VII Quarter No. 2 near Kangla Park, P.S. City, Imphal West District, Manipur.

....Respondent.

BEFORE

SHRI YUMNAM KHEMCHAND SINGH

HON'BLE SPEAKER, MANIPUR LEGISLATIVE ASSEMBLY.

For the Petitioners : Shri N. Ibotombi, Ld. Sr. Advocate, assisted by Rommel A. and Boboy P., Ld. Advocates and Shri S.G. Hasnain, Ld. Sr. Advocate, assisted by Md. Fazal, Ld. Advocate.

For the Respondent : Shri H.S. Paonam, Ld. Sr. Advocate, assisted by A. Arunkumar Singh and S. Gunabanta Meitei, Ld. Advocates.

Date of Hearing : 04-02-2020

Date of Order : 28-03-2020

O R D E R
Dt.28-03-2020

1. Heard Shri N .Ibotombi Singh, Ld. Sr. Advocate, assisted by Rommel A. and Boboy P., Ld. Advocates and Shri S.G. Hasnain, Ld. Sr. Advocate, assisted by Md. Fazal, Ld. Advocate, on behalf of the Petitioners. Also heard Shri H.S. Paonam, Ld. Sr. Advocate, assisted by A. Arunkumar Singh and S. Gunabanta Meitei, Ld. Advocates, on behalf of the Respondent.

2. Altogether 15 (fifteen) Hon'ble Members of 11th Manipur Legislative Assembly have filed 1 (one) disqualification case each before the Speaker's Tribunal constituted under the Tenth Schedule to the Constitution of India, against Shri Thounaojam Shyamkumar,

Hon'ble MLA, 7-Andro A/C as Respondent, praying for passing an appropriate order declaring that the Respondent stands disqualified under Article 191(2) of the Constitution of India and para 2(1)(a) of the Tenth Schedule to the Constitution of India read with Rule 6 of the Members of Manipur Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986 and further to declare the seat as vacant.

3. All the above noted Petitions, being Disqualification case Nos.1 to 15 of 2018, were clubbed together by an order of this Tribunal dated 27-07-2019 as all the cases are similar in nature, arising out of similar facts and circumstances and involving common questions of law. Accordingly, the said 15 Disqualification cases are being considered and disposed of by this common order.

4. All the above noted 15 Disqualification cases were filed between 07-04-2017 and 01-08-2017. Shri T.N. Haokip, who was the then President of the Manipur Pradesh Congress Committee, filed Disqualification Case No.1 of 2018 on 07-04-2017 and just after filing of the said Disqualification Case, he also filed a Writ Petition being W.P.(C) No. 353 of 2017 on 11-05-2017 before the Hon'ble High Court of Manipur praying for issuing a direction to the Speaker of the Manipur Legislative Assembly to dispose of the Disqualification Case within a time frame. Md. Fajur Rahim and Shri Keisham Meghachandra Singh, who are Petitioners in Disqualification Case No. 2 & 3 of 2018, also filed 2 (two) Writ Petitions, i.e., W.P.(C) No. 69 of 2018 and W.P.(C) No.70 of 2018 on 29-01-2018 before the Hon'ble High Court of Manipur praying for disqualifying Shri Th.Shyamkumar under Article 191(2) of the Constitution of India and para 2(1)(a) of the Tenth Schedule to the Constitution of India read with Rule 6 of the Members of Manipur

Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986 coupled with a prayer for issuing a Writ of Quo Warranto for removing Shri Th.Shyamkumar from the post of Minister.

5. The aforesaid 2 (two) Writ Petitions were disposed of by the Hon'ble High Court of Manipur by a common judgment and order dated 23-07-2019 by expressing, inter alia, its inability to disqualify the Respondent in view of the pendency for consideration of the same issue by a Constitution Bench of the Hon'ble Supreme Court of India.

6. Just after disposal of the aforesaid Writ Petitions, the Respondent filed preliminary objections on 26-07-2019 raising the question of maintainability of the Disqualification Cases. The said preliminary objections regarding maintainability of the Disqualification Cases as raised by the Respondent were heard on the next day, i.e., on 27-07-2019, and orders were announced on 03-08-2019 rejecting the preliminary objections raised by the Respondent. On the same day, the Respondent was granted a last opportunity to file his written objection/reply to the Disqualification Cases on or before 17-08-2019.

7. On 06-08-2019, the Respondent filed two Writ Appeals, viz., Writ Appeal No.44 and 45 of 2019 before the Hon'ble High Court of Manipur Challenging the Judgment and Order dated 23-07-2019 passed in W.P. (C) No. 69 and 70 of 2019. The petitioners in Disqualification Nos. 2 and 3 of 2018 also filed one each Civil Appeal, viz., C.A. No. 547 and 548 of 2020 before the Hon'ble Supreme Court. This Tribunal through the Secretary, Manipur Legislative Assembly, also filed two Civil Appeals, viz., C.A. No. 549 and 550 of 2020 before the Hon'ble Supreme Court. The Respondent also filed another Writ Petition being W.P.(C) No. 642 of 2019 on 16-08-2019 before the Hon'ble High Court

of Manipur challenging the order dated 03-08-2019 rejecting the preliminary objection raised by the Respondent regarding maintainability of the Disqualification Cases.

8. On 17-08-2019, the Respondent filed an application praying for deferring the last date of filing Written Statement/reply in view of the pendency of cases in connection with the present Disqualification Cases before the Hon'ble High Court of Manipur and Hon'ble Supreme Court of India. The Petitioners also filed their objections to the said application on 11-09-2019 and the Respondent filed his Rejoinder on 13-09-2019. The said application was heard on 13-09-2019 and the same were rejected. However, as prayed for by the Respondent, he was again given a last opportunity to file his Written Statement on or before 21-09-2019. Only on 30-11-2019, the Respondent filed his Written Statement in all the 15 Disqualification Cases along with an application to allow him to file his said Written Statement. After considering the matter, and in the interests of justice, the Respondent was allowed to file his Written Statement. Thereafter, the Petitioners filed their Rejoinders dated 06-01-2020 in reply to the Written Statement filed by the Respondent.

9. The Hon'ble Supreme Court of India in its Judgment dated 21-01-2020 passed in Civil Appeals No.547, 548, 549, and 550 of 2020 filed by some of the parties in the present Disqualification Cases, has held that the Speaker in acting as a Tribunal under the 10th Schedule is bound to decide Disqualification Petitions within a reasonable period. What is reasonable period will depend on the facts of its case, but absent exceptional circumstances for which there is good reason, a period of 3 (three) months from the date on which the Petition is filed is the outer limit within which Disqualification Petition filed before the

Speaker must be decided if the Constitutional objective of Disqualifying person who have infringed the 10th Schedule is to be adhered to.

The Hon'ble Apex Court further held that the only relief that can be given in the said 4 (four) Civil Appeals is that the Speaker of Manipur Legislative Assembly be directed to decide the Disqualification Petitions pending before him within a period of 4 (four) weeks from the date on which the Judgment of the Apex Court is intimated to him.

10. After all the parties have completed filing of their respective pleadings; all the 15 Disqualification Cases were fixed for final hearing on 04.02.2020. In view of the aforesaid directions of the Hon'ble Supreme Court of India and as fixed earlier, all the 15 (fifteen) Disqualification Cases were heard jointly at length on 04-02-2020.

11. Shri N. Ibotombi, Sr. Advocate and Shri S.G. Hasnain, Sr. Advocate, appearing for the petitioners submit that the petitioners and the respondent were elected as MLAs to the 11th Manipur Legislative Assembly in the last general election held in the month of March, 2017 as candidates nominated and set up by the Indian National Congress, a national political party under paragraph 13 of the Election Symbols (Reservation) and Allotment Order, 1968. In pursuance of Section 73 of the Representation of People Act, 1951, the Election Commission of India issued a notification dated 14-03-2017 notifying the names of the members of the elected for those Assembly constituencies, along with their party affiliation in the Schedule appended to the said notification. In the said Schedule the respondent is shown to be elected as a member of the 7-Andro Assembly Constituency as a candidate of the Indian National Congress.

12. The Learned Senior Counsel further submitted that though the Congress Party was the single largest party, 3 (three) short of majority in a house having a total of 60 members as on 14-03-2017, the Hon'ble Governor of Manipur was pleased to invite the group led by BJP to form the Government in the State. Preceding the aforesaid invitation, BJP leaders, its elected legislators, legislators of smaller parties and an elected Independent Candidate alongwith the Respondent met the Hon'ble Governor in full view of the Media and the Respondent exhibited himself alongwith BJP leaders by extending his support to the claim for formation of Government and this was displayed both in print and electronic media. At no point of time, the Respondent was authorised by the Congress Party to support and be part of the claim made by the BJP nor did he seek any approval for extension of such support from the Congress Party and the Congress Party all along remain opposed to the formation of Government by the group led by the BJP.

13. It was also submitted that in a letter dated 15-03-2017 submitted by the Chief Minister designate of Manipur to the Hon'ble Governor of Manipur, recommending for giving oath as a Minister to 8 (eight) elected MLAs, the name of the Respondent was shown as Indian National Congress MLA representing 7- Andro Assembly Constituency. The Respondent was thus sworn in by the Hon'ble Governor as a Minister of BJP led Government. Thereafter, a Gazette Notification dated 15-03-2017 was issued by the Government of Manipur appointing the Respondent as one of the Ministers in the Council of Ministry led by BJP. Later on, the Respondent was allotted portfolios of MAHUD, Town Planning, Forest & Environment and Horticulture & Soil Conservation in the capacity of a Cabinet Minister in the Ministry led by BJP. Since then, the Respondent has been functioning and discharging the duty as a

Minister in respect of the Departments allotted to him by presiding/inaugurating various Government Scheme/ Programme and he is still continuing to do so. The Respondent, as a Minister explains and answers questions relating to the Departments allotted to him in the House in all the assembly session held in the Manipur Legislative Assembly till the last session.

14. It was also submitted on behalf of the petitioners that by an order dated 15-03-2017 issued by the Secretary (Admn.), MPCC, the Respondent was expelled from the primary membership of INC for his anti-party activities for a period of 6 years or until further order w.e.f. the afternoon of the date of the said order. However, just on the next day, i.e., on 16-03-2017, the Secretary (Admn.), MPCC recalled/revoked the said expulsion order, vide order dated 16-03-2017.

15. The Learned Senior Counsel forcefully submit that the facts submitted by them in paragraphs 11 to 14 hereinabove have never been disputed nor denied by the respondent in the present disqualification proceedings or in the proceedings before the Hon'ble High Court of Manipur as well as the Hon'ble Supreme Court of India relating to the present disqualification cases between the petitioners and the respondent. It was also contended that the Hon'ble High Court of Manipur and the Hon'ble Supreme Court of India had already taken cognizance of the above stated facts.

16. The Learned Senior Counsel submitted that the act of the respondent in giving support to Shri N. Biren Singh of BJP for purpose of forming a government led by the BJP and swearing as a Minister of the BJP led government and also functioning and discharging the duty as a Minister in respect of the departments allotted to him and also by

presiding/ inaugurating various government schemes/programmes till date amount to defection under Para 2(1)(a) of the Tenth Schedule to the Constitution of India

17. In support of their cases the petitioners have relied on the following Judgments of the Hon'ble Supreme Court of India:-

(a) Kihoto Hollohan –versus- Zachillhu and others, reported in 1992 Supp(2) Supreme Court Cases 651 as follows:-

“The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the government intended to introduce in the current session of Parliament an anti-defection Bill. The Bill is meant for outlawing defection and fulfilling the above assurance”.

The observation of the Apex Court at Para 13 of the Hollohan case (Supra):

“13. These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of Paragraph 2(1)(a) proceed on the premises that political

propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election.”

(b) *Ravi S Naik –versus- Union of India & Ors., reported in 1994 Supp. (2) SCC 641* the Hon’ble Apex Court in para No. 11 has held as follows :

“11..... The words ‘voluntarily given up his membership’ are not synonymous with ‘resignation’ and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

(c) *G. Vishwanathan –versus- Hon’ble Speaker, Tamil Nadu Legislative Assembly, Madras, reported in 1996 (2) SCC 353*, the Hon’ble Supreme Court has held as follows:-

“11. It appears that since the explanation to para 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by

which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'. The further question is when does a person "voluntarily give up" his membership of such political party, as provided in para 2(1)(a)? The act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member.

"12. We are of the view that labeling of a member as 'unattached' finds no place nor has any recognition in the Tenth Schedule. It appears to us that the classification of the members in the Tenth Schedule proceeds only on the manner of their entry into the House, (1) one who has been elected on his being set up by a political party as a candidate for election as such member; (2) one who has been elected as a member otherwise than as a candidate set up by any political party - usually referred to as an 'independent' candidate in an election; and (3) one who has been nominated. The categories mentioned are exhaustive. In our view, it is impermissible to invent a new category or clause other than

the one envisaged or provided in the Tenth Schedule of the Constitution. If a person belonging to a political party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion from the party or otherwise, he voluntarily gives up his memberships of the political party and incurs the disqualification. Being treated as 'unattached' is a matter of mere convenience outside the Tenth Schedule and does not alter the fact to the assumed under the explanation to para 2(1). Such an arrangement and labeling has no legal bearing so far as the Tenth Schedule is concerned. If the contention urged on behalf of the appellant is accepted it will defeat the very purpose for which the Tenth Schedule came to be introduced and would fail to suppress the mischief, namely, breach of faith of the electorate. We are, therefore, of the opinion that the deeming fiction must be given full effect for otherwise the expelled member would escape the rigour of the law which was intended to curb the evil of defections which has polluted our democratic polity."

(d) *Rajendra Singh Rana and Ors. –versus- Swami Prasad Maurya and Ors., reported in 2007 (4) SCC 270*, the Hon'ble Supreme Court has held as follows:-

" 48. The act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected. Be it noted that on 26-08-2003, the leader of the their party had recommended to the Governor, a dissolution of the Assembly.

The first eight were accompanied by Shivilal Singh Yadav, The General Secretary of the Samajwadi Party. In Ravi Naik this Court observed: (SCC p.649, para 11)

“A person may voluntarily give up membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up membership of the political party to which he belongs.”

“49. Clearly, from the conduct of meeting the Governor accompanied by the General Secretary of the Samajwadi Party, the party in opposition and the submission of letters requesting the Governor to invite the leader of that opposition party to form a Government as against the advise of the Chief Minister belonging to their original party to dissolve the assembly, an irresistible inference arises that the 13 members have clearly given up their membership of the BSP. No further evidence or enquiry is needed to find that their action comes within para 2(1)(a) of the Tenth Schedule. Then the only question is whether they had shown at least prima facie that a split had occurred in the original political party on 26/08/2003 and they had separated from it along with at least 24 others, so as to make up one-third of the legislature party.

(e) *Rupa Ashok Hurra –versus- Ashok Hurra & Ors.*, reported in 2002(4) SCC 388, the Hon’ble Apex Court in para No. 24 observed :

“24. There is no gainsaying that the Supreme Court is the court of last resort - the final court on questions both of fact and of law including constitutional law. The law declared by this Court is the law of the land; it is precedent for itself and for all the courts/tribunals and authorities in India.”

(f) *Shrimanth Balasaheb Patil –versus- Hon’ble Speaker, Karnataka Legislative Assembly*, decided on 13-11-2019 by the Hon’ble Apex Court in W.P.(C) No. 992 of 2019 has held as follows:-

“163.(e) Disqualification relates back to the date when the act of defection takes place. Factum and taint of disqualification does not vaporise by tendering a resignation letter to the Speaker. A pending or impending disqualification action does not become infructuous by submission of the resignation letter, when act(s) of disqualification have arisen prior to the member’s resignation letter.

18. Shri HS Paonam, learned Sr. Advocate, submits that Article 188 of the Constitution of India clearly mandates that till an oath or affirmation as contemplated is taken, an elected member does not become a member of the legislative assembly or is not qualified to hold the office of member of the legislative assembly. In the present cases the respondent took oath as member of the Manipur Legislative Assembly on 19-03-2017 and he becomes a member of the Manipur Legislative Assembly only from 19-03-2017. In all the disqualification cases only two incidence or acts committed by the respondent for incurring disqualification are mentioned, i.e., show of support to Shri N. Biren Singh in the meeting with the Governor of Manipur while staking claim for government formation on 12-03-2017 and swearing as a

Minister on 15-03-2017. Such incidence or acts took place well before the respondent took oath on 19-03-2017 and become a Member of the Manipur Legislative Assembly. Relying on the judgment and order dated 13-11-2019 passed by the Hon'ble Apex Court in W.P.(C) No. 992 of 2019(Shrimanth Balasahib Patil V/s. Hon'ble Speaker, Karnataka Legislative Assembly), the learned senior counsel contended that the date or period on which allegation of incurring disqualification is important for considering a disqualification case under para 2(1)(a) of the Tenth Schedule of the Constitution of India. He accordingly submits that, In the present cases, as the incidence or acts committed by the respondent for incurring disqualification took place prior to his becoming a member of the Manipur Legislative Assembly, the provisions of the Tenth Schedule to the Constitution of India would not apply to the respondent in terms of the latest law prevailing in the field. To substantiate his argument the learned senior counsel heavily relied on paragraphs 47, 48, 49, 51 52 and 54 of the judgment and order rendered in Shrimanth Balasahib Patil V/s. Hon'ble Speaker, Karnataka Legislative Assembly(supra).

19. The learned senior counsel further submits that, in all the disqualification cases, there is not even a whisper about any direction or whip in any form prohibiting the respondent from giving support to Shri N. Biren Singh in the Government formation. Therefore, it would wholly misconstrued assumption on the part of the petitioners. It was further contended that if the party feels that the respondent has done something which amount to act/conduct which is against the party, the party authority i.e. MPCC or whip of the party has to take appropriate action in accordance with law or the Constitution. Such action is well contemplated under the Indian Constitution and hence, in absence of

such whip or direction any action including disqualification of the Respondent would be inappropriate.

20. The learned senior counsel also submitted that the respondent did not voluntarily give up his party but he was expelled from the Indian National Congress vide notification dated 15-03-2017 for a period of six years. The respondent was sworn as a minister before being sworn as an MLA at the time he was expelled from his original party thereby rendering his position to the position of an un-attached member and accordingly, he is entitled to protection from any adverse action including disqualification proceedings from original party as decided in the case of "Amar Singh V/s. Union of India" reported in 2011(1) SCC 210. The learned senior counsel submitted that even though the case of Amar Singh(supra) had been disposed of by the Hon'ble Apex Court on 03-08-2016 without answering any of the issues referred to the larger bench, a subsequent case being W.P.(C) No. 240 of 2017 filed by Amar Singh on the same issue is now pending before the Hon'ble Supreme Court of India. In the said case the Hon'ble Supreme Court by an order dated 17-04-2017 has again referred the issues or questions framed by the Hon'ble Apex Court in the earlier Amar Singh case before a larger bench for consideration and the issues are yet to be decided.

Accordingly, the learned senior counsel submits that in view of the reference of the status of an expelled/unattached member to the Constitution Bench of the Hon'ble Supreme Court of India, Hon'ble Tribunal may not pass any order to pre-empt the decision that may be arrived at by the appropriate Constitution Bench and the present case of the respondent would be entitled with a protection for being immune from disqualification under the Tenth Schedule of the Constitution of

India taking into consideration of the fact that his original political party has expelled him from primary membership and he is in the status of an unattached member and therefore, an expelled unattached member shall not be disqualified from being a member under Tenth Schedule of the Constitution of India.

21. The learned senior counsel strenuously submitted that the most important ingredient of disqualification under Tenth Schedule of the Constitution of India under para 2(1)(a) is that the alleged member should voluntarily given up his membership of his political party. The case of the respondent of giving up membership of his original political party is not voluntary but involuntary as he has been expelled from his original political party by issuing specific orders. It is a perfect case of throwing out from the party and such cases would have to remain away from disqualification under para 2(1)(a) of the Tenth Schedule of the Constitution of India.

It was also further submitted that in case of voluntarily given up of party the conduct/action must be out of free will of the respondent in leaving the party but in the case of the respondent, he was thrown out of the party and compelled to leave the party by expulsion which is not voluntarily given up the party but on the involuntarily event of expulsion and hence, it is a pure case of not voluntarily given up of party and the case of the respondent would not come within the ambit of voluntarily given up of the party under the Tenth Schedule of the Constitution of India.

22. After hearing the learned senior counsel of the parties and after perusal of the pleadings and documents filed by the parties the undisputed facts that emerges are that the petitioners and the respondent were elected as MLAs to the 11th Manipur Legislative

Assembly in the last general election held in the month of March, 2017 as candidates nominated and set up by the Indian National Congress, a national political party under paragraph 13 of the Election Symbols(Reservation) and Allotment Order, 1968. In pursuance of Section 73 of the Representation of People Act, 1951, the Election Commission of India issued a notification dated 14-03-2017 notifying the names of the members of the elected for those Assembly constituencies, along with their party affiliation in the Schedule appended to the said notification. In the said Schedule the respondent is shown to be elected as a member of the 7-Andro Assembly Constituency as a candidate of the Indian National Congress.

Though the Congress Party was the single largest party, 3 (three) short of majority in a house of 60 members as on 14-03-2017, the Hon'ble Governor of Manipur was pleased to invite the group led by BJP to form the Government in the State. Preceding the aforesaid invitation, BJP leaders, its elected legislators, legislators of smaller parties and an elected Independent Candidate alongwith the Respondent met the Hon'ble Governor on 12-03-2017 in full view of the Media and the Respondent exhibited himself alongwith BJP leaders by extending his support to the claim for formation of Government and this was displayed both in print and electronic media. At no point of time, the Respondent was authorised by the Congress Party to support and be part of the claim made by the BJP nor did he seek any approval for extension of such support from the Congress Party and the Congress Party all along remain opposed to the formation of Government by the group led by the BJP.

In a letter dated 15-03-2017 submitted by the Chief Minister designate of Manipur to the Hon'ble Governor of Manipur

recommending for giving oath as a Minister to 8 (eight) elected MLAs, the name of the Respondent was shown as Indian National Congress MLA representing 7-Andro Assembly Constituency. The Respondent was thus sworn in by the Hon'ble Governor as a Minister of BJP led Government. Thereafter, a Gazette Notification dated 15-03-2017 was issued by the Government of Manipur appointing the Respondent as one of the Ministers in the Council of Ministry led by BJP. Later on, the Respondent was allotted portfolios of MAHUD, Town Planning, Forest & Environment and Horticulture & Soil Conservation in the capacity of a Cabinet Minister in the Ministry led by BJP. Since then, the Respondent has been functioning and discharging the duty as a Minister in respect of the Departments allotted to him by presiding/inaugurating various Government Scheme/ Programme till 18-03-2020 on which day the Hon'ble Supreme Court of India, vide its order dated 18-03-2020 passed in Misc. Application No. 820/2020 in Civil Appeal No. 547/2020 with Misc. Application No. 822/2020 in Civil Appeal No. 548/2020 and Misc. Application No. 821/2020 in Civil Appeal No. 547/2020, was pleased to cease the Respondent to be a Cabinet Minister. The Respondent, as a Minister was explaining and answering questions relating to the Departments allotted to him in the House in all the assembly session held in the Manipur Legislative Assembly till the last Budget Session.

By an order dated 15-03-2017 issued by the Secretary (Admn.), MPCC, the Respondent was expelled from the primary membership of INC for his anti-party activities for a period of 6 years or until further order w.e.f. the afternoon of the date of the said order. However, just on the next day, i.e., on 16-03-2017, the Secretary (Admn.), MPCC recalled/revoked the said expulsion order, vide order dated 16-03-2017.

The aforesaid facts were never disputed or denied by the respondent in the proceedings before the Hon'ble High Court of Manipur as well as the Hon'ble Supreme Court of India relating to the present disqualification cases between the petitioners and the respondent and that the Hon'ble High Court of Manipur and the Hon'ble Supreme Court of India had already taken cognizance of the above stated facts.

23. The first ground of defence taken on behalf of the respondent that since he took oath as a member of the Manipur Legislative Assembly only on 19-03-2017 as provided under Article 188 to the Constitution of India and become an MLA only from 19-03-2017 the provisions of the Tenth Schedule to the Constitution of India would not apply to him inasmuch as the alleged incidence or acts committed by him for incurring disqualification took place prior to his becoming a member of the Manipur Legislative Assembly cannot be accepted for the following reasons-

(a) Article 170(1) of the Constitution of India provides as under-

“170(1). Subject to the provisions of Article 333, the Legislative Assembly of each state shall consist of not more than five hundred, and not less than sixty, members chosen by direct election from territorial constituencies in the State”

Section 73 of the Representation of the People Act, 1951 provides that –

“73. Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative assembly, there shall be notified by Election Commission in the Official Gazette, as soon as may be after

the results of the elections in all the constituencies other than these in which the poll could not be taken for any reason on the date originally fixed under clause(d) of section 30 or for which the time for completion of the election has been extended under the provisions of section 153 have been declared by the returning officer under the provision of section 53 or, as the case may be, section 66, the names of the members elected for those constituencies and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted.”

A combined reading of the provisions of Article 170 of the Constitution of India and Section 73 of the Representation of the People Act, 1951, would clearly reveal that a member of the legislative assembly of a state is chosen by direct election from the territorial constituencies in the state and that he become a member of the legislative assembly upon notification of the names of the members elected for those constituencies by the Election Commission of India, which was duly notified by the Election Commission of India in case of Manipur Legislative Assembly on 14-03-2017.

In the case of Pashupati Nath Sukul –versus- New Chandra Jain reported in 1984(2) SCC 404, the Hon'ble Apex Court has held that an elected member of the assembly who has not taken oath but whose name appears in the notification under Section 73 of the Representation of the People Act, 1951, is entitled to all the privileges, salaries and allowances of a member of the legislative assembly. In such view of the matter it cannot be said that the alleged incidence or acts committed by the respondent for incurring disqualification cannot be said to take place prior to his becoming an MLA;

(b) Even assuming for arguments sake that the respondent become an MLA only from 19-03-2017, the fact still remains that he continued to support the BJP led government by being a Cabinet Minister in the government led by the BJP, which amounts to voluntarily giving up his membership of Indian National Congress.

24. The next contention made on behalf of the respondent that in all the disqualification cases, there is not even a whisper about any direction or whip in any form prohibiting him from giving support to Shri N. Biren Singh in the government formation and in the absence of such whip or direction any action including disqualification of the respondent would be inappropriate is wholly fallacious and misconceived in view of the uncontroverted statement made by the petitioners that the respondent was, at no point of time, authorised by the Congress party to support and be part of the claim made by the BJP nor did the respondent seek any approval for extension of such support from the Congress party and the Congress party all along remain oppose to the formation of government by the group led by the BJP. The respondent has voluntarily on his own gave support to the formation of the government led by BJP and such actions amounts to voluntarily giving up his membership of the Indian National Congress.

25. The contentions on behalf of the respondent that he did not voluntarily give up his party but he was expelled from the Indian National Congress on 15-03-2017 for a period of six years by issuing specific order and rendering his position as an unattached member and therefore protected from proceedings under para 2(1)(a) of the Tenth Schedule is totally erroneous and not sustainable in view of the undisputed facts and circumstances of the present case and law laid down by the Hon'ble Supreme Court of India in the case of G.

Vishwanathan –versus- Hon’ble Speaker, Tamil Nadu Legislative Assembly, Madras, reported in 1996 (2) SCC 353, Ravi S Naik –versus- Union of India & Ors., reported in 1994 Supp. (2) SCC 641 and Rajendra Singh Rana and Ors. –Versus- Swami Prasad Maurya and Ors., reported in 2007 (4) SCC 270(supra) and also law laid down by the Hon’ble Gauhati High Court in the case of W. Nipamacha Singh and Ors. -Versus- Hon’ble Speaker, Manipur Legislative Assembly, reported in AIR 2002 Gau 7 and in the case of Y. Erabot & another -versus- Hon’ble Speaker, Manipur Legislative Assembly, reported (2004)1 GLR 236.

26. The last contentions of the respondent that in view of the pendency of a case wherein a two judges bench of the Hon’ble Supreme Court of India had referred the question of the status of an unattached member for deciding by a larger bench, this Tribunal may not pass any order to pre-empt the decision that may be arrived at by the appropriate constitution bench and that the respondent is entitled to protection from disqualification under the Tenth Schedule of the Constitution of India cannot be accepted for the following reasons-

- (a) In the order dated 17-04-2017 passed by the Apex Court in W.P.(C) No. 240/2017 referring the question about the status of an expelled/unattached member for deciding by a larger bench, no interim relief had been granted and accordingly, the respondent cannot claim any protection under the said order of the Apex Court;
- (b) In view of the undisputed facts and circumstances of the present case it can be safely concluded that the case of the respondent is squarely covered by the law laid down by the Hon’ble Apex Court in the case of G. Vishwanathan –versus-

Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras, reported in 1996 (2) SCC 353, Ravi S Naik –versus- Union of India & Ors., reported in 1994 Supp. (2) SCC 641 and Rajendra Singh Rana and Ors. –versus- Swami Prasad Maurya and Ors., reported in 2007 (4) SCC 270(supra). Since the law laid down by the Hon'ble Apex Court in the said cases still holds the field, it is precedent and binding to this Tribunal;

- (c) As the Hon'ble Supreme Court of India in its judgment dated 21-01-2020 passed in Civil Appeals No. 547-550 of 2020 had directed this Tribunal to decide the present disqualification cases within a period of four weeks from the date on which the judgment of the Hon'ble Apex Court is intimated, this Tribunal is duty bound to carry out the direction of the Hon'ble Apex Court and to decide the present disqualification cases as early as possible.

27. Having considered the rival submissions of the parties, the undisputed facts of the present cases and the citations of the Hon'ble Supreme Court of India, which are clearly applicable to the facts and circumstances of the present cases, it is established beyond doubt that the respondent had voluntarily given up the membership of the Indian National Congress. Hence, this Tribunal came to the conclusion that the respondent had clearly violated the provision of the Tenth Schedule of the Constitution of India and is liable to be punished as per the provision of the Constitution to uphold the dignity of democracy and the mandate of the people. I, therefore, hold that the respondent Shri Thounaojam Shyamkumar, Member of the Manipur Legislative Assembly, 7-Andro Assembly Constituency, Manipur had incurred disqualification for being a member of the Manipur Legislative Assembly in terms of paragraph

2(1)(a) of the Tenth Schedule of the Constitution of India read with Article 191(2) of the Constitution of India.

The respondent, thus, ceases to be a member of the Manipur Legislative Assembly with immediate effect from this date, i.e., 28-03-2020 till the expiry of the term of this assembly, i.e., 11th Legislative Assembly of Manipur.

Sd/-
(Y. Khemchand Singh),
Speaker,
Manipur Legislative Assembly.
