



OFFICE OF THE CHIEF ELECTORAL OFFICER

Union Territory of Jammu & Kashmir

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"Greater participation for a Stronger Democracy"



ORDER

Subject:- Application/reference titled Dr. Shahid Rehman Mughal V/s Mohd Akbar & others under Section 18-A of Jammu & Kashmir Municipal Act, 2000 for disqualification of respondents on the ground of defection.

Order No. CEO/ME/2022/201

Dated: 09-02-2022

The reference/application titled Dr. Shahid Rehman Mughal V/s Mohd Akbar and others has been filed by Dr. Shahid Rehman Mughal President Municipal committee Bhaderwah (herein after referred as applicant/petitioner) under section 18-A of J&K Municipal Act ,2000 seeking disqualification of four councilors/members of Municipal Committee Bhaderwah namely Shri Mohd Akbar councilor ward No 13, Shri Shamim Ahmed councilor ward No 9, Shri Shabir Hussain Sheikh councilor ward No12, Mrs Seema Tabassum Malik councilor ward No 7 (herein after referred as respondents) on the ground of defection. Notice was issued to the respondents who submitted objections/reply to the application.

The applicant has pleaded that he is elected member/ Councilor from Ward No. 8 of Municipal Committee Bhaderwah and consequently was elected as President of Municipal Committee Bhaderwah, as such can file the application/reference under section 18-C of the Act. It has been pleaded that respondent No. 1 to 4 have contested the Municipal elections 2018 on the mandate given to them by Indian National Congress which is a National Political Party and were elected councilors from Ward No. 13, 9, 12 and 7 respectively . The respondents 1 to 4 after lapse of more than 2 years have recently on last Thursday or Friday i.e 1st or 2nd April, 2021 voluntarily given up their membership of Indian National Congress and joined another Political Party i.e JK Apni Party which is evident from News Clippings and social media posts annexed with the application, The respondents have voluntarily opted to give up the membership of the Indian National Congress ,as such have incurred disqualification under 18(A) (1) of the Municipal Act 2000. It has also been pleaded that the proviso/exception to disqualification on the ground of defection as mentioned under section 18-B of the Act is not available to respondents by which they could claim to be immune from incurring disqualification as per the provisions

of the Act. It is a fact that Indian National Congress which is a national political party was the original political party of the respondents 1 to 4 which has not merged with JK Apni Party i.e new political party of the respondents nor 2/3rd of members of Indian National Congress merged with the new political party. There can't be an argument in favour of respondents that being erstwhile members of National Party they some how constitute the total strength of its 2/3rd members under Section 18-B of the Act. There must not be any confusion or ambiguity in distinguishing between party at Municipal level and a party at National level or State level which would mean original political party. Even if the complete strength of Indian National Congress at Municipal Level or even District level was to have joined JK Apni Party the same would still not have sufficed in respect to the criteria required for immunity against disqualification on the ground of defection as mandated under the Act. Hence the respondents are liable to be disqualified from the membership of Municipal Committee Bhaderwah. The applicant has prayed that respondent No. 1 to 4 be disqualified on the ground of disqualification under Section 18 (A) (1) and respondent be expelled from the membership of Municipal Committee Bhaderwah with immediate effect, besides prayed for any order which is necessary in light of justice.

In opposition to the application, the respondents have submitted objections/reply wherein it has been pleaded that the present reference/petition under section 18-C of Jammu & Kashmir Municipal Act is misconceived, filed with oblique motives. The petition deserves to be dismissed for the reason that the alleged affixed signatures on the first four pages of the petition are not matching each other which is clearly discernible with naked eye and shows forgery of the signatures of the petitioner committed on various pages of the petition which warrants lodging of criminal action against the petitioner and others involved in it . It has also been pleaded that the answering respondents are the members of the Indian National Congress and contested the election on the mandate given to them by the Indian National Congress and were elected as councilors from different wards and are still the members of the Indian National Congress as there is no question of giving up the membership of the Indian National Congress voluntarily as has been alleged. It is totally incorrect that answering respondents have joined another political party i.e JK Apni Party. The answering respondents have never given up the membership of Indian National Congress nor have joined JK Apni Party. The news clippings/social media posts have been illegally manufactured/managed on the instance of petitioner for the oblique motives. It has been submitted that no such meeting has ever taken place as has been allegedly reported. The news clippings/social media posts have no evidentially value and cannot be relied upon. The answering respondents are following the law in discharge of their duties and have never given up the membership of Indian National Congress as such cannot be disqualified on the ground of defection.

The respondents have prayed that the petition/application be dismissed and criminal proceedings be initiated against the petitioner and all those who are involved in the commission of offences of forgery and fraud.

The applicant has submitted rejoinder to the reply filed by the respondent wherein it has been pleaded that the paras of the reply are false and incorrect and accordingly denied. The respondents who were elected on the mandate given to them by Indian National Congress party have defected from their original political party and have joined J&K Apni Party. The Act of joining a new political party (JK Apni Party) has incurred disqualification as per section 18-A of the Act as such the petition is maintainable. The official press releases by J&K Apni Party dated 03.07.2021 published in news paper Daily Excelsior, State Times as well as on official facebook page of J&K Apni Party along with certificate under Section 65-B of evidence Act are annexed. Consequent to the publication of said press release no denial of same have ever till date been issued by the respondents nor in their reply to petition respondents addressed or denied these reports/press releases. The press releases are official statements of the J&K Apni Party and are not speculative news articles. It has also been pleaded that the contents of the paras of the reply are absurd, the Act does not require the petitioner to sign each and every page of the petition, the petition carry only initials of the petitioner on the first few pages whereas the affidavit verification has been duly signed by the petitioner and notarized as such the objections raised are absurd. The respondents defection along with one Suhail Malik from Indian National Congress to J&K Apni Party stands acknowledged by the J&K Apni Party itself and has been brought on record through its official press release and consequent to the said defection Mr. Suhail Malik has been appointed as Senior Vice President of J&K Apni Party (Doda) and Mr. Mohammad Akbar i.e respondent No 1 has been appointed as Block President of Bhandarwah. The Indian National Congress consequent to the defection of said respondents has also held a press conference and the same is still available on the web link. The said press conference conclusively proves the fact about defection of respondents. The petitioner has also denied the averments of fraud, forgery etc. In fact the District President of Indian National Congress has addressed a communication on 01.11.2021 to applicant wherein joining of respondents with J&K Apni Party has been brought on record. The respondents cannot pull wool over the eyes of this Hon'ble Office by deliberately making incorrect statements on oath to subvert the due process of law. The applicant has prayed for disqualification of respondents and initiating proceedings for commenting the forgery against the respondents.

The learned counsel for the applicant argued that the respondents have contested the elections on the party ticket of Indian National Congress which is their original political party and after more than two years they have voluntarily given up the Indian National Congress and joined J&K Apni Party which is being evidenced by the press releases/News paper clippings and social- media posts issued from the official page of the

J&K Apni Party. Under Section 65A of the evidence Act, it is admissible as the applicant has already placed the certificate in prescribed format on record. Neither the J&K Apni Party has issued any corrigendum to such press releases nor Indian National Congress party has issued any statement to the contrary. The applicant has already submitted the hyperlinks of the official press releases which are prima facie proving that respondents have defected from Indian National Congress and joined J&K Apni Party. The learned counsel has vehemently argued that the initials and the signature on the petition/application are those of the petitioner and the contents of the petition are admitted by the petitioner as such respondents have no right to dispute the signatures of the petitioner.

The learned counsel for the respondents argued that the initials on pages of the petition do not match each other as such are forged. The respondents are the members of the Indian National Congress and continue to be members of Indian National Congress, they have not joined the J&K Apni Party. The press releases/Newspaper clippings and the social-media posts have been manufactured with malicious intentions and have no legal sanctity as such the petition deserve to be dismissed. The press releases/ News-clippings and the social-media posts cannot be relied upon as they are not admissible in evidence and have no evidential value. The Indian National Congress has neither filed any application /reference against the respondents nor expelled them from the party which prima-facie reveal respondents have not defected at all and continue to be members of Indian National Congress.

Heard the arguments of the parties and perused the record. A member of the Municipality can be disqualified on the ground of defection under section 18-A of Jammu and Kashmir Municipal Act,2000. Section 18-A is reproduced as under:-

18-A. Disqualification on the ground of defection.

(1)A member of a Municipality belonging to any political party shall be disqualified for being a member of the Municipality:-

- (a) if he has voluntarily given up his membership of such political party; or
- (b) if he votes or abstains from voting in such Municipality contrary to any direction issued by the political Party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case the prior permission of such political party, person or authority and such voting or abstention has not been condoned in writing by such political party, person or authority within 15 days from the date of such voting or abstention”.

(2) Notwithstanding anything contained in sub-section (1), a person who on the commencement of the Jammu and Kashmir Municipal laws (Amendment)Act,2005 is a member of a Municipality (whether elected or nominated as such) shall, where he was a member of a political party, immediately before such commencement be deemed, for the

purposes of sub-section(1), to have been elected as a member of such Municipality as a candidate set up by such political party.

Explanation:- for the purposes of this section,-

- (a) An elected member of a Municipality 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 or which he joins after such election; and
- (b) a nominated member of a Municipality shall,-
 - (i) Where he is a member of any political party on the date of his nomination as such member be deemed to belong to such political party
 - (ii) In any other case, be deemed to belong to the political party of which he becomes, or , as the case may be, first becomes a member.

A member of the Municipality can be disqualified for being a member of the Municipality if he has voluntarily given up his membership of such political party or if he votes or abstains from voting in such Municipality contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned in writing by such political party, person or authority within fifteen days from the date of such voting or abstention. In the present case the Indian National Congress has not issued any whip/direction which has been defied by the respondents, there is also no evidence to prove that respondents have voluntarily given up their political party ie Indian National Congress and in contrast to it the respondents are repeatedly making their claim that they continue to be the members of Indian National Congress. The applicant is relying on the communication of President District Congress Committee Doda addressed to president Municipal Committee Bhaderwah with a copy to Executive Officer Municipal Committee Bhaderwah which reads as under:-

“ In reference to the whip issued on 12-8-2021 by the Indian National Congress (INC) I here by want to inform your office through Mohammad Shafi Hon'ble Councilor ward No 5 and leader of INC in the House that some reports and documents have surfaced claiming that some committee members belonging to INC have indulge themselves in anti party activities and have joined Jammu and Kashmir Apni Party .In light of this the Disciplinary Committee of INC is conducting its internal enquiry into the matter. I want to reiterate that the whip still remains enforced .

Also, in the aftermath of the whip it has come to the notice of my office that the said members have stated before the Office of the Chief Electoral Officer Jammu and Kashmir in October 2021 that they have not given up their membership of Indian National Congress. But the reports and the Documents speak the other way round. INC has sort an

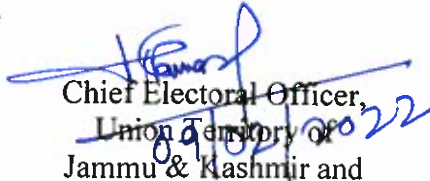
explanation from the members to clear their stand but their was no response from them till date.

In light of these facts I request you to restrict the following members/Councilors from attending the proceedings of the house or any other till the time they clear their stand with the party ie INC. Otherwise action against them under defection clause ie section 18-A of Municipal Act of 2000 shall be inevitable.

1. Mr. Mohd Akbar councilor ward No 13,
2. Mr. Shabir Hussain Sheikh councilor ward No12,
3. Mrs Seema Tabassum Malik councilor ward No 7
4. Mr. Shamim Ahmed councilor ward No 9,"

There is no report of Disciplinary Committee of Indian National Congress evidencing the fact that respondents have indulged themselves in anti- party activities and have joined Jammu and Kashmir Apni Party nor the Indian National Congress has filed any reference/application against the respondents, which clarifies that the respondents have not given up their political party and the argument of the applicant has no legal force. The respondents have not claimed immunity under merger or split but are repeatedly claiming to be the members of the Indian National Congress which is their original political party, Thus the respondents have neither defied any whip nor voluntarily given up membership of their political party.

Now, therefore , in exercise of the powers conferred under section 18-C of the Act, and on the aforesaid stated rule position, the instant reference/ application is dismissed, as there is found no merit in the reference/application.


Chief Electoral Officer,
Union Territory of
Jammu & Kashmir and
Ladakh.

No:- 301/CEO/ME/2022/55-65

Dated :- 09-02-2022

Copy to:

1. Principal Secretary, Housing and Urban Development Department, Civil Secretariat, Jammu for information.
2. Deputy Commissioner, Doda for information.
3. Director Urban Local Bodies Jammu.
4. Executive Officer ,Municipal Committee Baderwah.

5. Dr. Shahid Rehman Mughal Councilor ward No 8 (MCB)
6. Shri Mohd Akbar councilor ward No 13(MCB)
7. Shri Shamim Ahmed councilor ward No 9(MCB)
8. Shri Shabir Hussain Sheikh councilor ward No12(MCB)
9. Mrs Seema Tabassum Malik ward No 7 (MCB).
10. Incharge Website
11. Office file