



# OFFICE OF THE CHIEF ELECTORAL OFFICER

Union Territory of Jammu & Kashmir

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## ORDER

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**Subject:- Application/reference titled Ramesh Kumar V/s Naresh Kumar under Section 18-A of Municipal Act, 2000 for disqualification of respondent on the ground of defection.**

Order No. CEO/ME/2021/174

Dated: 10-12-2021

The reference/application titled Ramesh Kumar V/s Naresh Kumar has been filed by Shri Ramesh Kumar President Municipal committee Arnia (herein after referred as applicant/petitioner) under section 18-A of J&K Municipal Act, 2000 seeking disqualification of Shri Naresh Kumar Municipal councilor ( herein after referred as Respondent) on the ground of defection. Notice was issued to the respondent who submitted objections/reply to the application. The applicant has pleaded that the Election of Municipal Committees and Municipal Council were held in erst -while state of J&K in the year 2018 which include election of Municipal Committee Arnia .the returning officer declared the result and 13 members in Municipal committee Arnia were elected. Out of 13 elected members, 7 belong to BJP , 5 were independent and 1 from Congress. The applicant and respondent both belong to BJP. The applicant was declared as elected President of Municipal Committee Arnia vide notification dated 13-12-2018. That on 29-03-2021 a resolution of No-Confidence Motion came to be moved by some Independent members in which respondent was one of the signatory ( annexure iv) though he belonged to BJP, and joined hands with others, however, No-Confidence Motion failed. That again one more motion/ resolution of No-Confidence dated 22-04-2021 came to be initiated against the petitioner in which respondent defected from Party lines and became signatory to this resolution of No-Confidence (annexure v). The Respondent notwithstanding the elected member on the mandate of BJP voted in a resolution against the president (Petitioner) of his party (BJP). The Respondent without any mandate/permission or whip from the party has proceeded against his party president and chosen a line which goes against his own party as such the action of the Respondent attracts Section 18-A (1) sub Section( b) which is reproduced as under:

(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”.

The petitioner has also submitted that the action of Respondent is not condonable by any reason as he has repeatedly undergone against the party line by voting in resolution of motion of No-confidence and prayed that respondent may kindly be disqualified for being a member of Ward No. 2 Municipal Committee Arnia on the ground of defection.

In opposition to the application the Respondent in preliminary objections has submitted that present petition is not maintainable as petitioner has not come with clean hands. The petitioner has concealed material facts and section 18-A of Municipal Act, 2000 is not attracted, hence petition is not maintainable. It has been submitted that a resolution dated 29.03.2021 was just prepared and produced but the said no confidence motion was not held due to certain unavoidable reasons hence there was no question of failing of said motion as it was just moved and not held for voting, and the resolution dated 22.4.2021 was just prepared but no voting for no confidence motion took place, as the petitioner herein had challenged the resolution of no confidence motion before the Hon'ble Special Tribunal and Special Tribunal vide order dated 28.4.2021 has stayed the resolution and finally vide Order dated 02.08.2021 set-aside the No- confidence motion hence this motion could not take place as such the provisions of section 18-A of Municipal Act are not attracted, However the Hon'ble High court vide order dated 04-10-2021 has stayed the order dated 02-08-2021 passed by Special Tribunal. The respondent has not acted against the provisions of law and the No-confidence motion could not be held both times, in fact there was lot of resentment against the petitioner due to malpractices and bungling in M.C. Arnia and the respondent with other members was raising voice against the malpractice and bungling due to which the image of BJP was getting tarnished among the people especially of Hon'ble PM Mr. Narinder Modi for which petitioner never bothered. The respondent has prayed that present reference /application be dismissed with costs.

The following issues emerge out of the case:-

- a. Whether on the motion / resolution dated 29.3.2021 the voting/proceeding against the president and vice president was held or not.
- b. Whether mere signing of motion/ resolution which has not led to voting/proceedings attracts disqualification under section 18-A of the Act.
- c. Whether there was any direction/whip issued by the BJP which has been violated by the respondent.
- d. Whether motion /resolution dated 22.4.2021 led to voting/proceedings for removal of the applicant or not.

The learned counsel for the applicant has argued that the respondent has signed the resolution of no-confidence against the petitioner and made all efforts for removal of

petitioner from the post of president notwithstanding the fact that both belong to BJP as such deserve to be disqualified on the ground of defection.

The learned counsel for the respondent argued that resolution of no confidence was only prepared both the times and no proceedings could be held on these resolutions for one or the other reason. the application is premature as no voting/proceedings were held on this resolution as such petition deserves to be dismissed.

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.

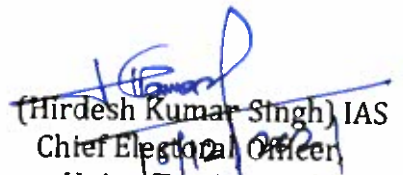
**Explanation:-** for the purposes of this section,-

- (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.

It is an admitted fact that the motion/ resolution of no confidence dated 29.3.2021 was signed by the respondent which was never moved and no proceedings /voting took place against president or vice - president. As is evident from the records that the second time, the

motion/ resolution of no confidence dated 22.4.2021 though signed by the respondent, became subject matter before the Special Tribunal and Special Tribunal Vide order dated 02.08.2021 has set aside resolution dated 22.4.2021 as such no proceedings /voting has been held on this resolution as well. Disqualification under Sub-section (b) of section 18-A is attracted only if any member votes or abstains from voting in such Municipality contrary to any direction issued by the political Party to which he belongs and in this case neither voting has taken place nor the political party BJP has issued any direction/whip which has been violated by the respondent.

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

  
 (Hirdesh Kumar Singh) IAS  
 Chief Electoral Officer  
 Union Territory of  
 Jammu and Kashmir and  
 Ladakh.

No:- 303/CEO/ME/2021/42-49

Dated :- 10-12-2021

Copy to :-

1. Principal Secretary to Government, Housing and Urban Development Department, Civil Secretariat Jammu/ Srinagar.
2. Deputy Commissioner, Jammu.
3. Director, Urban Local Bodies, Jammu.
4. Executive officer Municipal committee Arnia.
5. Shri Ramesh Kumar S/o Shri Faqir Chand R/O W.No 10 Arnia.
6. Shri Naresh Kumar Municipal Councilor ward No 2 Municipal committee Arnia.
7. Incharge IT section
8. Office file .