



OFFICE OF THE CHIEF ELECTORAL OFFICER

Union Territory of Jammu & Kashmir

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"Greater participation for a Stronger Democracy"



Subject:-

Application/ Reference titled :

1. **Basharat –Bin -Qadir V/s Shafat Gaffar & others under section 34-C of Jammu & Kashmir Municipal Corporation Act,2000 for setting aside election of respondents on the ground of defection.**
2. **Mohammad Aqib Renzu V/s Shafat Gaffar & others under Section 34-C of Jammu and Kashmir Municipal Corporation Act,2000 for setting aside election of respondents on the ground of defection**

Order No.CEO/ME/2020/203

Dated: 10/02/2022

The Application/ reference titled Basharat –Bin- Qadir V/s Shafat Gaffar & others has been filed by Shri Basharat –Bin- Qadir Councillor ward No 24 Chattabal (herein after referred as applicant/Petitioner) under section 34-C of Jammu & Kashmir Municipal Corporation Act, 2000 for setting aside election of Councillors / Corporaters namely 1. Shafat Gaffar Ward No 21 Zirayat Batamaloo, 2. Mst Sara Bilal Ward No 64 Dal Lake, 3. Mst Shameema Khan Ward No 26 Bemina, 4. Zahoor Ahmed Rather Ward No 17 Hamdania Colony , 5. Farooq Ahmed Dar Ward No 11 Chanapora, 6. Mst. Haseena ward No 73 Chatterhama, 7. Mst Syeda Ward No 22 Shaheed Gung, 8. Gh. Rasool Hajam Ward No 30 Zainakot, 9. Mst Gulshan Bilal Ward No 34 Syed Ali Akbir, 10. Showket Ahmed Kak Ward No 41 Makhdoom Sahab, (herein after referred as respondents) on the ground of defection.

Another Application/ reference titled Mohammad Aqib Renzu V/s Shafat Gaffar & others has been filed by Mohammad Aqib Renzu Councillor Ward No 3 Brein Nishat (herein after referred as applicant/Petitioner) under section 34-C of Jammu & Kashmir Municipal Corporation Act, 2000 for setting aside election of Councillors / Corporaters namely 1. Shafat Gaffar Ward No 21 Zirayat Batamaloo, 2. Mst Sara Bilal Ward No 64 Dal Lake, 3. Mst Shameema Khan Ward No 26 Bemina, 4. Zahoor Ahmed Rather Ward No 17 Hamdania Colony , 5. Farooq Ahmed Dar Ward No 11 Chanapora, 6. Mst. Haseena ward No 73 Chatterhama, 7. Mst Syeda Ward No 22 Shaheed Gung, 8. Gh. Rasool Hajam Ward No 30 Zainakot, 9. Mst Gulshan Bilal Ward No 34 Syed Ali Akbir, 10. Showket Ahmed Kak Ward No 41 Makhdoom Sahab, (herein after referred as respondents). on the ground of defection.

Since the pleading and the subject matter of both the applications/references is identical, the same were clubbed and heard together, being pleaded by the same advocates. Thus both the applications/references are being disposed of by this order.

Notice was issued to the respondents who submitted objections /reply to the application/reference. The applicant has pleaded that the respondents were members of political party Indian National Congress and contested Srinagar Municipal Elections 2018, On the party ticket of Indian National Congress. The Election of Mayor for Srinagar Municipal Corporation was scheduled on 25.11.2020 and Chief Whip of Indian National Congress on 23.11.2020 issued a whip whereby all the councilors of Indian National Congress were directed to attend the session and cast their vote in favour of Mr. Sheikh Mohammad Imran on 25.11.2020, all the councilors were having full knowledge of the whip dated 23-11-2020 still respondents defied the whip and cast their vote in favour of Mr. Junaid Azam Matoo instead of Mr. Sheikh Mohammad Imran against the directions of Indian National Congress party. That on 25-11-2020 when the meeting for election of Mayor Srinagar Municipal Corporation commenced, Commissioner, Srinagar Municipal Corporation informed the Presiding authority that he has received a communication from Syed Riyaz Hussain, Advocate wherein it has been claimed that 11 councilors have formed a separate group and while disclosing the names of councilors Mst. Shaheena Councilor Ward No. 7 Rajbagh figuring at S.No.10 in the said communication denied to be part of any separate group and stated that her signatures have been forged, as she has neither signed the affidavit nor the representation which is evident from the minutes of the meeting issued by Commissioner SMC on 26-11-2020 . It has also been pleaded that applicant has obtained the details of votes of Indian National Congress councilors in the Election of Mayor wherein it has been unambiguously reflected that 10 Councilors of Indian National Congress voted in favour of Mr. Junaid Azim Matoo, as the procedure for casting of votes for Mayor Srinagar Municipal Corporation was through open ballot system, therefore, the position which emerged after the conclusion of the election is that the above named 10 councilors have defied the whip issued on 23-11-2020, as such are liable to be disqualified from the membership of Srinagar Municipal Corporation in view of the mandate contained under Section 34-A of Municipal Corporation Act, 2000. It has also been pleaded that the above named councilors have attempted to save themselves from disqualification by claiming that they have formed a separate group by split and formed a separate group within the meaning of Section 34-BB (amendment dated 26-10-2020) but have miserably failed in establishing the fact. Section 34-BB provides as under:-

"34-BB.- (1) A member of a Corporation shall not be disqualified under sub-section (1) of Section 34-A where he and any other member of his original political party constitute the group representing a faction which has arisen as a result of split in his original political party and from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub section (1) of section 34-A and to be his original political party for the purposes of this sub-section.

(2) For the purpose of sub-section (1), the split of the original political party of a member of a Corporation shall be deemed to have taken place if and only if not less than two third of the members of the political party concerned have agreed to such split."

It has further been pleaded that for attracting provision of Section 34-BB and claiming formation of separate group there should be a split in the original political party and 2/3rd members of original political party should have consented for formation of a group, but in the instant case 10 councilors of Indian National Congress party out of 16 councilors defied the clear directions of the party while casting their vote in favour of Junaid Azim Matoo, therefore, are subject to disqualification as envisaged under section 34-A of the Act. And there is also one more disqualification petition pending against three of the respondents for defying whip issued on 18-01-2020 .The defying of the clear cut directions of the Indian National Congress party and the whip issued by the whip chief has not been condoned by the Indian National Congress party .The applicant has prayed that application/reference under section 34-C be accepted and the election of above mentioned councilors of Srinagar Municipal corporation be set aside.

In opposition to the application, the respondents in their objections/reply have pleaded that application/reference is not maintainable as the Election Commission of India is already in-know of the issue of formation of a group as per the provisions of Section 34-BB. The respondent councilors have formed a legitimate group and are empowered by the governing act to exercise their franchise independent of any influence or dictates of their former party. The respondent councilors have thoroughly followed the procedure of law and through this procedure are in process of getting their group recognized by Election Authority. The present applicant has no locus/authority to submit the application under reference as he is not a validly appointed chief whip of Indian National Congress party in Srinagar Municipal Corporation and as a matter of fact Respondent No.1 has been appointed as Chief Whip in SMC and continued to be holding the post of Chief whip immediately prior to the split of the party which is evident from the email sent from the official email address of Secretary, Pradesh Congress Committee Chief J&K confirming the position of answering respondent No.1 as Chief Whip. The alleged whip has been issued by Bharasat-Bin-Qadir as Chief whip, which is disputed contention and this dispute is under consideration of Hon'ble High Court and also under Hon'ble Chief Electoral Officer which has not been settled yet. It has been pleaded that as per the amendment in Section 34-BB dated 26-10-2020, a councilor is immune from disqualification if a split takes placed in the political party to the effect that 2/3rd of the members decide to constitute a new group. It has been mentioned that Indian National Congress Party originally had 16 councilors in Srinagar Municipal Corporation and prior to the Election to the post of Mayor which was held on 25-11-2020 out of these 16 members, 11 members including answering respondents addressed a communication/application to Election Commission of India supported by the affidavits communicating to the Election Commission of India that they

have formed a new group as per the provisions of section 34-BB and requested to be recognized as a separate group in the Srinagar Municipal Corporation and the said communication is under consideration and is expected to take a decision on the said application . Assuming Mrs. Shaheena has disputed her signatures on the application and affidavit the same can be verified by getting signatures and the thumb impressions of the councilor scrutinized by an expert agency and in case the signatures are verified to be her she be reprimanded and legal action be initiated against her. It has been also pleaded that there is no valid binding whip which would prevent respondents from forming a separate group. The Indian National Congress is one of the oldest parties of country with wide spread membership and has its presence at every level of the political spectrum ranging from block level elections to national elections. To suggest an interpretation of section 34-BB which entails a 2/3rd of split of entire political party is to suggest that the party itself will split right from the national level to the block level is ludicrous. The split has been provided by Section 34-BB merely applies to members of the political party in the relevant corporation and not primary membership of the party. The respondents have prayed that application/reference may kindly be dismissed with heavy costs for making frivolous application and wasting the time of this Hon'ble Forum.

Advocate Shuja-ul-Haq learned Counsel for the applicant has argued that INC is a National Party and the respondents were members of INC and have contested the Srinagar Municipal election on the Party ticket of INC. The Election of Mayor was scheduled on 25-11-2020 for which Chief Whip issued Whip to all the Councilors of INC to cast their vote in favour of Sheikh Mohammad Imran but the respondents defied the Whip and voted in favour of Junaid Azim Matoo as such are liable for disqualification under Section 34-A of J&K Municipal Corporation Act, 2000, and referred to the judgment titled Asif Jehan Gattoo VS Executive officer Municipal committee Doda 2008(2)JKJ 748. The learned counsel vehemently argued that respondents cannot claim immunity from disqualification by pleading that they have formed a separate group of 10 to 11 Councilors at Corporation level and made split in terms of Section 34-BB. because, it is the requirement of law under Section 34-BB that split should be of the original Political Party i.e. INC as the expression original Political Party has been used six times and member of Corporation has to show there was split in his original political Party, as there has been no split of original political Party (INC) the respondents are liable to be disqualified. The learned counsel argued that the respondents have admitted that they have formed a separate group which implies that they have voluntarily given-up their membership of Indian National Congress and have defied the Whip. The issue in the instant case is not as to the number of members who claim to have formed a separate group, because, there is no magic number which could save them from disqualification, but the issue is as to whether there had been split in the original political party of respondents, the respondents have failed to show split of Indian National Congress by whom they were set up for election in Srinagar Municipal Corporation, as such are liable to be disqualified. The learned Counsel in support of his argument has cited Jagjit

Singh V/S State of Haryana (2006)II SCC 1, Rajendra Singh Rana VS Swami Prasad Maurya &Others (2007) 4 SCC 270, Mayawati Vs Markandeya Chand & others.

Advocate S.R. Hussain learned Counsel for respondents argued that as per amendment in section 34-BB dated 26-10-2020 a councilor is immune from disqualification if a split in the political Party to the effect that 2/3rd of the members of the Political Party within the Municipal Corporation decide to constitute a new group. The INC Party originally had 16 elected Councilors in SMC and prior to the election to the post of Mayor on 25-11-2020, out of these 16 members, 11 members which include respondents addressed a communication to Election Commission of India (ECI) supported by individual affidavits with a copy to Chief Electoral Officer, communicating to authorities that a new group has been formed by 11 Councilors of Indian National Congress and requested to be recognized as a separate group/ split group in INC. Learned Counsel submitted that it is an absurd argument on the part of applicant that under Section 34-BB 2/3rd split in entire Political Party (original Political Party) at national level has to occur such interpretation cannot be accepted as it amounts to striking off a statutory provision included by legislature in their wisdom. The learned Counsel also submitted that applicant is not Chief Whip of INC, in fact it is respondent No. 1 who was the Chief Whip of INC prior to split and has not issued any Whip. The learned Counsel in support of his arguments has referred to judgment passed by the Division Bench of Bombay High Court in Dr. Wilfred A. De Souza V/S Shri Tomazinho Cardozo and others 1998 SCC online Bombay 400 and judgment passed by the three judge Bench of Allahabad High Court in Swami Prasad Maurya V/S Speaker & Others, and prayed that application be dismissed.

The learned Counsel for applicant in rebuttal submitted that the Counsel for respondents is blowing hot and cold by claiming formation of separate group on one side and to be Chief Whip of INC on other side, which is contradictory stand.

Heard the arguments of the parties and also perused the documents on records. The extant legal provision related to the disqualification on grounds of defection of a member of a Municipal Corporation in the UT of Jammu and Kashmir can be summarized as under:

"Section 34A: Disqualification on ground of defection.

A member of a Corporation belonging to any political party shall be disqualified for being a member of the Corporation -

If he has voluntarily given up his membership of such political party ; or

If he votes or abstains from voting in such Corporation 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.

(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 Corporation (whether elected or nominated as such) shall, where he was a member of a political party, immediately before such commencement be deemed, for the purpose of sub-section (1), to have been elected as a member of such Corporation as a candidate set up by such political party.

Explanation:- for the purpose of this section,-

An elected member of a Corporation 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

A nominated member of a Corporation shall, -

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;

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.

Section 34-BB:- Disqualification on the ground of defection not to apply in case of split:-

(1) A member of a corporation shall not be disqualified under sub-section (1) of section 34-A where he and any other member of his original political party constitute the group representing a faction which has arisen as a result of split in his original political party and from the time of such split, Such faction shall be deemed to be the political party to which he belongs for the purposes of sub-section (1) of section 34-A and to be his original political party for the purposes of this sub-section.

(2) For the purposes of sub-section (1), the split of the original political party of a member of a corporation shall be deemed to have taken place if and only if not less than two-third of the members of the political party concerned have agreed to such split.

It is an admitted fact that the applicant and the respondents have contested the Municipal Elections 2018 on the party ticket of Indian National Congress and the total elected councillors of INC in Srinagar Municipal Corporation is 16, out of which 11 councillors claim to have formed a new group/split as per section 34-BB for which they have submitted an application/representation duly supported by an affidavit to the Election Authorities for recognition of separate group/split.

At this stage, it would be prudent to go into the history of anti-defection law, both at the national level with reference to the Parliament and the State Legislatures and in Jammu and Kashmir with reference to the Urban Local bodies.

For the Parliament and State Legislatures, genesis of Anti defection law is the 10th Schedule of the Constitution of India which was introduced through 52nd Amendment in the year 1985, and further amended in 2003 and at present reads as under:

[TENTH SCHEDULE

[Articles 102(2) and 191(2)]

Provisions as to disqualification on ground of defection

1. Interpretation. — In this Schedule, unless the context otherwise requires, —

(a) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(b) "legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(c) "original political party", in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

(d) "paragraph" means a paragraph of this Schedule.

2. Disqualification on ground of defection.—(1) Subject to the provisions of [paragraphs 3, 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of the House—

(a) if he has voluntarily given up his membership of such political party; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised 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 by such political party, person or authority within fifteen days from the date of such voting or abstention.

Explanation. — For the purposes of this sub-paragraph, —

(a) 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;

(b) a nominated member of a House 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 before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,—

(i) where he was a member of political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

3. Disqualification on ground of defection not to apply in case of split.—Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party,—

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground—

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.

4. Disqualification on ground of defection not to apply in case of merger.—(1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2

where his original political party merges with another political party and he claims that he and any other members of his original political party—

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

5. Exemption.—Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,—

(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or

(b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

6. Decision on questions as to disqualification on ground of defection.—(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the

case may be, proceedings in the Legislature of a State within the meaning of article 212.

7. Bar of jurisdiction of courts.—Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

8. Rules.—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for—

(a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;

(b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(c) the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished; and

(d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.]

As apparent from above there were two types of savings from application of disqualification due to defection, viz; Formation of a group by way of split in terms of paragraph 3, and Merger of the original political party in terms of paragraph 4.

However, in the year 2003, by way of 91st Amendment to the Constitution of India, the provision related to the Split was omitted from the 10th Schedule.

On the contrary, the anti-defection provisions though introduced in the Municipal Corporation Act 2000 in the year 2005 vide Act No. 2005 w.e.f. 10-05-2002, the provision for Formation of separate group by way of split did not exist in the law. It was only in the year 2020, vide vide SO. 3809 dated 26.10.2020, Section 34-BB had been added to the existing provisions on defection in the Municipal laws by the Government.

Thus the intent of legislation with reference to the Urban Local Bodies is quite explicit in the case of UT of Jammu and Kashmir where the provision for split has been added recently inspite of the same having been omitted from the Central law in 2003.

In light of the above background, we now try to attempt the question arising here "Whether the expression '**2/3rd of the members of the political party concerned**' in Section 34-BB of the Municipal Corporation Act 2000 means 2/3rd of the elected members of the concerned political party in the Municipal Corporation? "

For this, there is a need to refer to sub-para 2 of the para 4 read along with the definition of 'legislature party' mentioned in Para 1 of Schedule 10 quoted above. Sub-Para 2 pf Para 4 read as under:

*"(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than **two-thirds of the members of the legislature party concerned have agreed to such merger.**"*

The reference here is very clear that when we deem a Merger to have taken place, the head count for 2/3rd of the members is with reference to the legislature party, and the definition of 'legislature party' is given in Para 1 of Schedule 10 which reads as under:

*(b) 'legislature party', in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be paragraph 4, means the **group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;***

Thus it is very clear that when head count is to be done for deciding the merger (and a split earlier, prior to 2003) the Schedule 10 also refers to **the group consisting of all the members of that House for the time being belonging to that political party.**

Corollary to the same, in the Municipal Corporation Act 2000 also the expression 2/3rd of the members for a split to have taken place shall mean 2/3rd of the member of the political party under reference.

At the time of election, there were 16 members of the Indian National Congress elected to the Srinagar Municipal Corporation and thus **a valid claim of Split would mean at least 11 out of them would have claimed to be forming a separate group in terms of Section 34-BB of the Municipal Corporation Act, 2000.**

Coming to the next issue raised during the proceedings related to the dispute of signatures of one of the councillor Ms Shaheena on the claim of forming a separate group. in order to ascertain the genuiness of the signatures of Ms Shaheena, Commissioner Srinagar Municipal Corporation through various communications was requested to ascertain the genuiness of signatures from Forensic Laboratory Srinagar and submit report to this office. The commissioner Srinagar Municipal Corporation submitted his report vide letter No: SMC/PS/SECY/1302 dated 13-11-2021 wherein he has narrated a series of steps taken by him for completing the formalities asked by the Forensic Laboratory Srinagar.

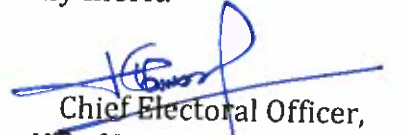
Meanwhile, during the course of proceedings, Ms. Shaheena personally appeared and submitted an Affidavit duly attested by (Judge Small Causes) judicial Magistrate First Class Srinagar, wherein it has been mentioned that she along with other 10 councillors of INC have moved an application/representation before the concerned authorities communicating them that a split as provided in section 34-BB has taken place in INC and the application/representation has been duly signed by her, the signatures/thumb impression on the application/ representation/affidavit have been affixed by her on her own volition. However, on 25-11-2020 when election of Mayor was scheduled, she was pressurized, coerced by her colleagues to make a statement that she had not signed the application/representation/affidavit. Fearing for her life and well-being she made the statement in the meeting that her signatures have been forged. The statement in the meeting has been made under threat, intimidation, tremendous pressure and influence.

Once Ms. Shaheena has admitted that she has signed the application/representation/Affidavit along with other 10 councillors and submitted the same to concerned authorities communicating them that a split as provided in section 34-BB has taken place in Srinagar Municipal Corporation, **the signatures are thus genuine and the issue stands decided accordingly.**

In view of the findings at para 22 and para 25 supra, and the facts of the case presented in the form of pleadings as well as the physical records, **it is established that a split has taken place in the Indian National Congress in the Municipal Corporation Srinagar**, as the requisite number i.e. 11 out of 16, have formed a separate group in terms of Section 34-BB of the Jammu and Kashmir Municipal Corporation Act 2000 on 18.11.2020 and thus provisions of Section 34-A are not applicable on them and thus, the 'Whip' on the members who have voted in favour of Sh. Junaid Mattoo and are the respondents in the case becomes in-fructuous, as the 'whip' has been issued on 23.11.2020, whereas the application along with duly sworn in affidavits for the formation of separate group has been made by

the respondents on 18.11.2020 and subsequent to this date no whip of INC is applicable on them.

Now therefore, in exercise of the powers conferred under section 34-C of the Jammu and Kashmir Municipal Corporation Act 2000, and in view of the aforesaid findings, the instant references/ applications, are **dismissed, being devoid of any merit.**


Chief Electoral Officer,
UT of Jammu and Kashmir

No:- 2188/CEO/ME/2020/75-91

Dated :-10-02-2022

Copy to:

1. Principal Secretary, Housing and Urban Development Department, Civil Secretariat, Jammu for information.
2. Deputy Commissioner, Srinagar for information.
3. Commissioner, Srinagar Municipal Corporation for information.
4. Sh. Basharat Bin Qadir, Councilor Ward No. 24 Chattabal,
5. Sh. Mohammad Aqib Renzu, Councilor Ward No. 03, Brein Nishat,
6. Sh. Shafat Gaffar Mir, Councilor Ward No. 21 Batamaloo,
7. Mst Sara Bilal, Councilor, Municipal Ward No. 64, Lakut Dal,
8. Mst. Shameema Khan councillor ward No 26-Bemina East
9. Sh. Zahoor Ahmed Rather, Councilor ward-No 17-Hamdania Colony
10. Sh. Farooq Ahmed Dar Ward NO 11 Chanapora,
11. Mst. Haseena ward No 73 Chatterhama,
12. Mst Syeda Ward No 22 Shaheed Gung,
13. Gh. Rasool Hajam Ward No 30 Zainakot,
14. Mst Gulshan Bilal Ward No 34 Syed Ali Akbir,
15. Sh. Showket Ahmed Kak Ward No 41 Makhdoom Sahab,
16. Incharge Website
17. Office file