

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2021

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BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.17093 OF 2021 (LB-ELE)

BETWEEN

1. SMT.PAVITHRA
W/O RAMESHA K.,
AGED ABOUT 28 YEARS
WARD NO.13, MUNICIPAL COUNCILLOR
C.M.C., KOLLEGAL, R/O NO.11/177
KODI BEEDHI, KOLLEGAL
CHAMARAJNAGAR DISTRICT – 571 440.
2. SMT.L.NAGAMANI
W/O B.GOPAL
AGED ABOUT 36 YEARS
WARD NO.2, MUNICIPAL COUNCILLOR
C.M.C. KOLLEGAL, R/O NO.1/175,
ANAND JYOTHI COLONY, KOLLEGAL,
CHAMARAJNAGAR DISTRICT – 571 440.
3. SMT.GANGAMMA
W/O VARADARAJU M.,
AGED ABOUT 30 YEARS
WARD NO.6, MUNICIPAL COUNCILLOR
C.M.C. KOLLEGAL, R/O NO.1/257
BASAVANAGUDI BEEDHI, KOLLEGAL
CHAMARAJNAGAR DISTRICT – 571 440.
4. SRI NASEER SHARIFF
S/O GAFAR SHARIFF
AGED ABOUT 45 YEARS
WARD NO.7, MUNICIPAL COUNCILLOR

C.M.C. KOLLEGAL, R/O NO.1/257
 SAMANDAGERI BEEDHI KOLLEGAL
 CHAMARAJNAGAR DISTRICT – 571 440.

5. SRI PRAKASH
 S/O PUTTAMADAIAH
 AGED ABOUT 35 YEARS
 WARD NO.21, MUNICIPAL COUNCILLOR
 C.M.C KOLLEGAL, R/O NO.195
 SHANKANAPURA, KOLLEGAL
 CHAMARAJNAGAR DISTRICT -- 571 440.
6. SRI RAMAKRISHNA N.,
 S/O NANJAIAH
 AGED ABOUT 49 YEARS
 WARD NO.25, MUNICIPAL COUNCILLOR
 C.M.C. KOLLEGAL, R/O NO.7/332
 R.M.C ROAD, KOLLEGAL
 CHAMARAJNAGAR DISTRICT – 571 440.
7. SMT.NAGASUNDARAMMA
 W/O JAGADISH S.,
 AGED ABOUT 35 YEARS
 WARD NO.26, MUNICIPAL COUNCILLOR
 C.M.C. KOLLEGAL, R/O NO.14/191-A
 SHANKANAPURA KOLLEGAL
 CHAMARAJNAGAR DISTRICT – 571 440.

... PETITIONERS

(BY SRI JAYAKUMAR S.PATIL, SR. ADVOCATE A/W
 SRI MAHAMMED TAHIR A., ADVOCATE
 (VIDEO CONFERENCING))

AND

1. THE DEPUTY COMMISSIONER/
 DISTRICT ELECTION OFFICER
 CHAMARAJNAGAR
 CHAMARAJNAGAR DISTRICT – 571 440.

2. SMT. JAYAMARI G.,
W/O SYED SAIFULLA
AGED ABOUT 50 YEARS
WARD NO.22, MUNICIPAL COUNCILLOR
C.M.C. KOLLEGAL, R/O NO.76/491
NOOR MOHALLA, KOLLEGAL
CHAMARAJANAGAR DISTRICT – 571 440.

... RESPONDENTS

(BY SRI NITHYANANDA K.R., HCGP FOR R1 (PHYSICAL HEARING)
SRI A.S.PONNANNNA, SR. ADVOCATE FOR
SRI S.B.SURESH, ADVOCATE FOR C/R2
(VIDEO CONFERENCING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR ENTIRE RECORDS IN CASE FROM THE DEPUTY COMMISSIONER, MYSORE (R2); QUASH THE ORDER DATED 06.09.2021 IN CASE PASSED BY THE R1 AT ANNEXURE-A.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners claiming to be aggrieved by the order dated 6.09.2021 passed by the 1st respondent/Deputy Commissioner disqualifying the petitioners from the membership of the City Municipal Council, Kollegal have filed the subject writ petition.

2. *Sans* details, facts in brief that are germane for consideration of the *lis* are as follows:-

The petitioners, residents of Kollegal Taluk, Chamarajnagar District were elected as councilors to Kollegal City Municipal Council ('CMC' for short) in the elections held in 2018 from Bahujan Samaj Party ('BSP' for short). The elections were held on 31-08-2018 and results were declared on 3-09-2018. Elections to the office of President and Vice-President had not been conducted for over two years of constitution of the Council. The constitution of the Council had happened on 6-09-2018. A notification notifying elections to the office of the President and the Vice-President to CMC was issued on 22-10-2020. This was presided by a notification dated 8-10-2020 depicting reservation to be followed for the election of the President and the Vice-President of all urban local bodies including the CMC.

3. When the elections to the President and the Vice-President were notified, the Block President of the BSP national party sent notices to the petitioners on 22-10-2010 to attend the meeting of the party to be held at 5 p.m. on 24-10-2020. On

24-10-2010 it is the claim of the 2nd respondent that they remained deliberately absent. The office of President of CMC was reserved for General (Woman) and the office of Vice-President was reserved for Scheduled Tribe (Woman). In the meeting held on 24-10-2020 it was also decided to issue directions/whip to all the BSP national party councilors of the CMC directing them to compulsorily attend the election to the offices of President and Vice-President of the CMC and to vote in favour of the mandate of the whip. The final meeting of the party was also held on 28-10-2020. The State unit of the BSP authorized one Sri N.Nagaiah, President of Chamarajnagar District BSP National Party to issue whip on behalf of BSP national party to be served on all the BSP national party councilors directing them to attend the meeting of the election without fail.

4. On 29-10-2020 elections were held and it transpires, as alleged, that the petitioners voted in favour of one Smt. Gangamma, rebel BSP national party candidate who consequently secured 17 votes and was declared elected as

President of the CMC. The 2nd respondent/official BSP national party candidate secured only 2 votes in view of petitioners voting in favour of the rebel candidate. On such action of the petitioners, a complaint was filed by the 2nd respondent who was a contestant to the office of President from the BSP national party seeking disqualification of the petitioners. The Deputy Commissioner, after hearing the parties, allowed the complaint and disqualified the petitioners from the membership of the Council on the ground that they had violated the direction and had defected from the party. It is this order of the Deputy Commissioner that is called in question in the writ petition.

5. Heard the learned Senior Counsel Sri Jayakumar S.Patil appearing for the petitioners, learned Senior Counsel Sri A.S. Ponnanna appearing for the 2nd respondent and the learned High Court Government Pleader Sri K.R. Nithyananda appearing for the 1st respondent/ Deputy Commissioner.

6. The learned Senior Counsel appearing for the petitioners would vehemently argue and raise the following contentions viz.,

that the whip issued was without authority of law; that the whip so issued was never served upon the petitioners; that the order of the Deputy Commissioner does not bear consideration to any of the facts obtaining in the case at hand and it is bereft of reasons.

7. On the other hand, the learned Senior Counsel Sri A.S.Ponanna would refute the submissions and urge the following contentions viz., *that the petitioners have resigned from the primary membership of the party way back on 29-02-2020 and having resigned nothing more need be examined in this petition; the admitted facts are that the petitioners have acted against the interest of the party and have defected and formed a splinter group which is also admitted; that with this admission, it is ununderstandable how the contentions of the kind that are advanced could ever be advanced are his emphatic submissions.*

8. The learned High Court Government Pleader while placing original records for the perusal of the Court has also contended that the order of the Deputy Commissioner does not

call for any interference as the petitioners had admittedly resigned from the primary membership of the party.

9. In reply, the learned Senior Counsel for the petitioners would submit that whether the petitioners have resigned or not, what is to be looked into is whether the mandate of the statute has been followed in disqualifying the petitioners from the members of the Council. He therefore submits that, there is complete failure of Sections 3 and 4 of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 ('the Act' for short).

10. I have given my anxious consideration to the respective submissions and perused the material on record including the original records placed by the learned High Court Government Pleader.

11. The subject *lis* arises out of an application/complaint being filed by the 2nd respondent invoking Section 4(1)(b) of the Act seeking disqualification of the petitioners under Section 3 of

the Act. Therefore, it is germane to notice Section 3 of the Act which reads as follows:

“3. Disqualification on the ground of defection, -

(1) Subject to the provisions of Sections 3A, 3B and 4, a councillor or a member, belonging to any political party, shall be disqualified for being such councillor or member:—

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

(b) If he votes or abstains from voting in, or intentionally remains absent from any meeting of the Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat or Taluk Panchayat, 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 the prior permission of such party, person or authority and such voting, abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting or such abstention or absence.

Explanation:For the purpose of this sub-section-

(a) a person elected as a Councillor, or as the case may be, a member, shall be deemed to belong to the political party, if any, by which he was set up as a Candidate for election as such Councillor or Member.

(b) a person elected as a Councillor or as the case may be, a member, otherwise than as a candidate set up by a political party shall be deemed

to belong to the political party of which he becomes a member before the expiry of six months from the date of commencement of this term of office, or in the case of a Councillor or Member whose terms of office has commenced on or before the date of commencement of the Karnataka Local Authorities (Prohibition of Defection) (Amendment) Act, 1995 within six months from such date.

(2) An elected Councillor, as the case may be, a member, who has been elected as such, otherwise than as a candidate set up by a political party shall be disqualified for being a Councillor or, as the case may be a member if he joins a political party after expiry of six months from the date of commencement of his term of office, or in the case of a Councillor of Member whose term of office has commenced on or before the date of commencement of the Karnataka Local Authorities (Prohibition of Defection) (Amendment) Act, 1995, after expiry of six months from such date.

(3) omitted.

4. Notwithstanding anything contained in the foregoing provisions of this section, a person who on the commencement of this Act, is a Councillor shall-

(a) Where he was a member of a political party immediately before such commencement, be deemed for purposes of sub-section (1) to have been elected as a Councillor as a candidate set up by such political party.

(b) In any other case, be deemed to be an elected Councillor who has been elected as such otherwise than as a candidate set up any political party for the purpose of sub-section (2)."

(Emphasis supplied)

It is on the bedrock of the provision, the facts are necessary to be considered.

12. The facts narrated hereinabove are not in dispute. The petitioners who are elected members of the Council had long before the elections to the office of President and Vice-President resigned from the primary membership of the party. The original records produced bear letters of resignation of the petitioners. If these letters of resignation had been disputed, it would have been a circumstance altogether different. The submission of letters of resignation is not disputed. On the other hand, they are confirmed with emphasis.

13. In a proceeding instituted by the 2nd respondent before the Deputy Commissioner invoking Section 4 of the Act seeking disqualification of the petitioners on the ground that they have defected and have voted against the interest of the party, the very petitioners filed their objections. In the objections, the contentions taken up becomes *nucleus* of the *lis*. The objections were filed by the petitioners in which a contention is taken up

with regard to maintainability of the complaint itself. It is the contention of the petitioners that the 2nd respondent has not challenged the validity of resignation letters which the complainant has chosen to produce as Annexure-19. It is their contention that, if they have voluntarily given up their membership, then the complaint is not maintainable as it falls in the exceptions carved out in terms of Section 3A of the Act. The averment in the objections of the petitioners with regard to justification of non-maintainability of the complaint reads as follows:

“Re: Maintainability:

7. *The complainant has presented this complaint purportedly under Section 4(1)(a) and (b) of the Karnataka Local Authorities Prohibition of Defection) Act, 1987 (the “Act”)*
8. *It is submitted that Section 4 of the Act, there are three distinct situations contemplated for filing of the complaint. Each type of complaint is based on a distinct type of event with distinct cause of action prescribing the time period for lodging such complaint. If the case falls under clause (a) of sub-section (1), the complaint has to be filed after the member or the councilor gives up the membership of the political party; and if the case*

falls under (b) then it is to be filed after the expiry of fifteen days specified therein.

9. *The complainant has alleged both events contemplated both under clause (a) of sub-section (1) and clause (b) therein. Hence, a single complaint is not maintainable on two causes of action.*
10. ***More importantly, the complainant has not challenged the validity of the resignation letters which the complainant has chosen to produce as Annexure No.19, which have attained finality. Hence, the present complaint is not maintainable. Hence, the same is liable to be dismissed.***
11. ***If according to the complainant the respondents have voluntarily given up their membership vide Annexure-19 (paragraphs 12 and 13), then too the complaint is not maintainable as it falls under the exceptions carved out under Section 3A of the Act. Hence, by complainant's own admission, the complaint is not maintainable ether in facts or in law.***
12. *The complainant denies that one M.Krishna Murthy claiming to be the State President has written a letter dated 12March, 2020 to this Hon'ble Authority alleging the same set of events that are alleged herein. Even presuming without admitting, the same complaint has been rejected even according to the complainant. Admittedly, the same was not challenged and was allowed to attain finality. Hence, one more complaint,*

based on the same cause of action cannot be maintained before the same authority.

13. ***Alternatively, and without prejudice, it is submitted that even if according to the complaint if Karnataka State Unit President of Bahujan Samaj Party has now reconciled to the fact of resignations of the respondents, a member of the same political party cannot maintain another complaint alleging the same facts. In other words, what is binding on the Party President is binding on the Member.***
14. ***Even according to the complainant if the resignation letters are admitted fact since 12th March, 2020. The complainant having accepted it almost for about a year now, cannot challenge the same in the present proceedings. The complaint is hopelessly belated. Hence, the same is liable to be rejected."***

(Emphasis added)

It is further contended that even according to the complaint if the Karnataka State Unit President of BSP has now reconciled to the fact of resignation of the petitioners, a member of the same political party cannot maintain the complaint alleging the same fact, as even according to the complainant resignation letters were admitted since 12-03-2020 and the complainant having

accepted the knowledge of the said resignations for over a year, cannot challenge the same in the present proceedings.

14. With these contentions in the objections filed to the complaint, what is needed to be considered is, whether the petitioners are entitled to challenge the disqualification on any other ground in the teeth of submission of their resignations and unequivocal justification of such submission?

15. In legal parlance resignation means a spontaneous relinquishment of one's own right in relation to any office. It connotes an act of giving up or relinquishing the office. Generally, resignation to get its full effect should be unconditional. The letters of resignation submitted by the petitioners on the very perusal of them depicts that they were unconditional. Therefore, once having relinquished their own right to continue as councilors, it would not lie with the petitioners to contend that they have to be disqualified in any other manner as depicted in the Act. The Apex Court in the case

of **SRIKANTHA S.M. v. BHARATH EARTH MOVERS LIMITED**¹ –

delineates what is resignation in legal parlance. Paragraph 12 in the said judgment reads as follows:

“12. Now, let us consider the controversy on merits. The term “resignation” has not been defined in the Service Rules. According to the dictionary meaning, however, “resignation” means spontaneous relinquishment of one's own right. It is conveyed by the Latin maxim Resignatio est juris proprii spontanea refutatio. (Resignation is a spontaneous relinquishment of one's own right.) In relation to an office, resignation connotes the act of giving up or relinquishing the office. “To relinquish an office” means “to cease to hold the office” or “to leave the job” or “to leave the position”. “To cease to hold office” or “to lose hold of the office” implies to “detach”, “unfasten”, “undo” or “untie” “the binding knot or link” which holds one to the office and the obligations and privileges that go with it.

In the light of the judgment of the Apex Court what implies by the act of resignation is the knocking off the binding knot which holds one to the office and the obligation and privileges that go

¹ (2005) 8 SCC 314

with it. The petitioners having resigned, cannot now be seen to contend that they are entitled to protection under the Act insofar as procedure to be followed for disqualification.

16. Therefore, Section 3(1)(a) of the Act clearly bars continuation of the petitioners as Members of the Council, as Section 3(1)(a) mandates that if a councillor has given up his Membership of such political party, he shall be disqualified on the ground of defection. Resignation is that voluntary act of the petitioners which snaps complete ties with the office that they were holding. Therefore, resignation being such voluntary act would straightaway be covered under Section 3(1)(a) of the Act (*supra*).

17. The shelter of protection that the petitioners seek is invoking Section 3A of the Act. Section 3A of the Act reads as follows:-

“3A. Disqualification on ground of defection not to apply in case of split.-Where a councillor or a Member make a claim that he and any other members of his political party constitute the group representing a faction which has arisen as

a result of split in his political party and such group consists of not less than one third of the members of such political party:

(a) he shall not be disqualified under sub-section (1) of Section 3 on the ground-

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

(ii) That he has voted or abstained from voting in, or intentionally remained absent from, any meeting of the Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat or Taluk Panchayat contrary to any direction issued by the political party to which he belongs or by any person or authorised by it in this behalf, without obtaining in any case, the prior permission of such political party, person or authority and such voting or abstention or absence has not been condoned by such political party, person or authority within fifteen days from the date of voting or such abstention or absence; and

(b) from the date of such split, such faction shall be deemed to be the political party to which he belongs for the purpose of sub-section (1) of Section 3 and to be his political party for the purpose of this Section.”

(Emphasis supplied)

Section 3A of the Act protects disqualification of a Member in case of a split in the political party. This protection to the petitioners is not available and the contention is unacceptable.

Section 2(vi) defines a “political party” and reads as follows:-

“2. Definitions.-

xx xx xx xx

(vi) **“Political party”** in relation to a councillor or members means a **political party recognised by the Election Commission of India as a National party or a State Party in the State of Karnataka under the Election symbols (reservation and Allotment) Order, 1968, and to which he belongs for the purpose of sub-section (1) of Section 3.”**

(Emphasis supplied)

A political party in relation of a councillor or a Member would mean a political party recognized by the Election Commission of India as a National party or a State party in the State of Karnataka. Therefore, the protection that the petitioners seek under Section 3A of the Act will have to be considered in terms of what is a political party.

18. The contention of the petitioners is that 7 out of 9 of them have resigned and have formed a separate splinter group within the political party. This contention, I fail to countenance, for the reason that merely coming out from a political party and forming a splinter group will not make them a political party.

They should either form a political party and seek recognition or show that they have joined a political party which is recognized by the Election Commission of India. It is only then the petitioners can claim that they are protected under Section 3A of the Act.

19. The petitioners have tendered their resignation on 29.02.2020; eight months have passed by the time the election was sought to be conducted to the office of President and Vice-President of the CMC. The petitioners have not produced even a tither of evidence to show that their splinter group is a political party recognised by the Election Commission of India as obtaining under Section 2(vi) of the Act or have joined any political party which is already recognized by the Election Commission of India. It is not that the election has taken place immediately after their resignation. In fact election has taken place 8 months after their resignation. Therefore, it is not open to the petitioners even to contend that they had no time either to

get their splinter group recognised as a separate political party or join any political party already recognized.

20. Sitting on the fence and taking up such defence is unavailable to the petitioners. Therefore, the claim of the petitioners for protection under Section 3A of the Act deserves to be rejected. It is not in dispute again that the petitioners have defected from the party and have formed a splinter group. By this admitted fact, they incur disqualification under Section 3(1)(a) of the Act as they have voluntarily given up their membership of such political party.

21. In the light of the aforesaid act of the petitioners resigning from the membership and incurring disqualification under Section 3(1)(a) of the Act, the fact whether the whip was issued by the Competent Authority or whip was served upon the petitioners would not arise and need not be considered as those contentions would become available for a circumstance under

Section 3(1)(b) of the Act where if a member votes or abstains from voting or intentionally remains absent.

22. Though contentions and contra contentions have emerged in the course of submissions with regard to whip being served or meeting notices sent by speed post to the addressees, all those contentions become superfluous and unnecessary, in the facts obtaining in the case at hand as the case of the petitioners come under Section 3(1)(a) of the Act which disqualifies them.

23. With the admitted facts by the petitioners, in my considered view, no ground urged with regard to the procedure to be followed or the order of the Deputy Commissioner bearing no consideration would arise. Acting against the political party to which they belong is always a peril to those members of the political party when acted as such. Contentions of the kind advanced, in the case at hand, will not show any light in the end of the tunnel to the petitioners as on their sheer conduct they

are disentitled to consideration of any such contentions with regard to the procedural aberrations, if any, at the hands of the Deputy Commissioner in the order impugned. The order impugned narrates all the circumstances, does consider the contentions advanced and disqualifies the petitioners on the grounds indicated, *inter alia*, on the ground of resignation. Therefore, I do not find any fault in the order impugned.

24. Insofar as the judgments relied on by the learned Senior Counsel appearing for the petitioners in the case of **SADASHIV H.PATIL v. VITHAL D.TEKE AND OTHERS** – (2000) 8 SCC 82, **N.SHIVANNA AND OTHERS v. DEPUTY CMMISIONERE, CHAMARAJNAGAR AND OTHERS** – ILR 2004 KAR.4143 or the judgment of the Co-ordinate Bench in **SMT. SAVITA v. DISTRICT PRESIDENT, BHARATIYA JANATA PARTY** – Writ Petition No.102096 of 2021 decided on 2-08-2021, they would not be applicable on the peculiar facts of the *lis*, as the petitioners, in the case at hand, have already resigned as

councilors incurring disqualification under Section 3(1)(a) of the Act as they have voluntarily given up their positions.

25. Reference to the judgment of the Apex Court in the case of **RAVI S. NAIK V. UNION OF INDIA**², in the circumstances is more apposite. The Apex Court in the said case considering an identical circumstance of voluntarily giving up membership holds as follows:

*“11. This appeal has been filed by Bandekar and Chopdekar who were elected to the Goa Legislative Assembly under the ticket of MGP. They have been disqualified from membership of the Assembly under order of the Speaker dated December 13, 1992 on the ground of defection under paragraph 2(1)(a) and 2(1)(b) of the Tenth Schedule. From the judgment of the High Court it appears that disqualification on the ground of paragraph 2(1)(b) was not pressed on behalf of the contesting respondent and disqualification was sought on the ground of paragraph 2(1)(a) only. **The said paragraph provides for disqualification of a member of a House belonging to a political party “if he has voluntarily given up his membership of such political party”. The words “voluntarily given up his membership” are not synonymous***

² 1994 Supp (2) SCC 641

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.

(Emphasis supplied)

The Apex court in the case of **RAVI S NAIK** (*supra*) holds that there can be many inferences for voluntarily giving up the membership even if one has not resigned; the case at hand is one where the petitioners have all resigned, therefore, no inference need be drawn, the impugned action is a direct result of their resignation in terms of the statute. Therefore, none of the armory from the arsenal of the learned Senior counsel appearing for the petitioners would lend any support to the contentions so advanced.

26. For the aforesaid reasons, I do not find any fault with the order dated 6-09-2021 passed by the Deputy Commissioner

disqualifying the petitioners from the membership of the CMC.

The writ petition being devoid of merit is dismissed.

**Sd/-
JUDGE**

bkp
CT:MJ