

Decision of the Hon'ble Speaker of the Legislative Assembly of NCT Delhi

In the matter of:

Shri Saurabh Bharadwaj (Petitioner)

Vs.

Alka Lamba (Respondent)

Petition for disqualification of Ms. Alka Lamba, Hon'ble Member, under para 2(1)(a) of the Tenth Schedule of the Constitution of India read with Article 191 (2) of the Constitution, Section 16 of the National Capital Territory of Delhi, Act, 1991 and the Members of Delhi Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1996.

1. The above mentioned Petitioner filed this petition under the provisions of the Tenth Schedule of the Constitution of India (hereinafter referred to as Tenth Schedule), read with Article 191 (2) of the Constitution, Section 16 of the National Capital Territory of Delhi, Act, 1991 and the provisions of The Members of the Delhi Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1996 (hereinafter referred to as the Rules).

The Petitioner seeks the disqualification of the Respondent under para 2(1)(a) of the Tenth Schedule on the ground that the latter has voluntarily given up the membership of her party, the Aam Aadmi Party (hereinafter referred to as AAP). The Respondent has stated that by tendering her resignation from the Aam Aadmi Party and joining the Indian National Congress (hereinafter INC), Ms. Alka Lamba has voluntarily given up her membership from the Aam Aadmi Party. Both the Petitioner and the Respondent are sitting members of the Assembly and belong to AAP.



The petition was filed on 09.09.2019. It contains a declaration that the Petitioner has satisfied himself of the existence of reasonable grounds for believing that a question has arisen as to whether the Respondent has become subject to disqualification for being a member of the House under the Tenth Schedule of the Constitution of India.

2. On receiving of the above petition it was examined in terms of the requirements of Rule 6 of the Rules and it was found that the petition complied with the requirements of the said Rule.
3. Thereafter, on 09.09.2019 a copy of the petition along with the annexures was forwarded to the Respondent as per the requirement of Rule 7(3)(a) of the Rules. A copy of the petition was also forwarded to the Leader of the Legislature Party namely the Aam Aadmi Party, Shri Arvind Kejriwal who is the Chief Minister as well as the Leader of the Legislature Party of the AAP in the Assembly in compliance with Rule 7(3)(b). A hearing was also fixed for 18.09.2019 in the matter.
4. The leader of the Legislature Party has, by his letter dated 17.09.2019 stated that he agrees with the contents of the Petition and that the AAP has no objection to the Respondent being disqualified from the membership of the Assembly.

The issue

5. The main issue that has been brought up for determination by me is the disqualification of the Respondent under Para 2 (1)(a) of the Tenth Schedule on the ground that the Respondent has voluntarily given up the membership of the Aam Aadmi Party.

Para 2 of the Tenth Schedule is as follows.

"2. Disqualification on ground of defection

1. *Subject to the provisions of Paras 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;"

The Petitioner states in his petition that the Respondent is a member of the Legislative Assembly of NCT Delhi elected from Chandni Chowk Assembly Constituency (AC No. 20) on 10 Feb. 2015. She was set up as a candidate by the Aam Aadmi Party in the said election.

The Petitioner contends that the Respondent has voluntarily given up the membership of the Aam Aadmi Party and therefore she should be disqualified. He has produced certain pieces of evidence to prove that the Respondent has voluntarily given up the membership of the Aam Aadmi Party.

6. Appraisal of the evidence

The Petitioner has cited following grounds in support of his request for disqualification of the Respondent under para 2(1)(a) of the Tenth Schedule.

The first ground is that the Respondent resigned from the primary membership of the Aam Aadmi Party on 06.09.2019. He has annexed (Annexure III of the Petition) a screenshot of the message allegedly posted by the Respondent on her verified Twitter account. The text of the tweet reads as follows.

"The time has come to say 'Good Bye' to #AAP and to resign from the primary membership of the Party. The past 6 years journey was a great learning for me. Thanks to all."

The second ground cited by the Petitioner in support of his petition for disqualification of the Respondent is that on 06.09.2019 the Respondent requested the party to accept her resignation from the Aam Aadmi Party. He has annexed (Annexure IV of the Petition) a screenshot of the message allegedly posted by the Respondent on her verified Twitter account. The text of the tweet reads as follows.



"Arvind Kejriwal Ji, your spokespersons asked me as per your desire, with the full arrogance that the Party will accept My resignation even on the Twitter. So pls Kindly accept My resignation from the primary membership of the 'Aam Aadmi Party', which is now a 'Khas Aadmi Party'."

The third ground cited by the Petitioner is that on 06.09.2019 the Respondent allegedly announced from her official verified Twitter account that she was meeting Smt. Sonia Gandhi, President of Indian National Congress and accepting the primary membership of that party. In support of his contention, the Respondent has annexed (Annexure V of the Petition) a screenshot of the message which is in Hindi. He has also annexed (Annexure VI) photographs of the subsequent meeting of the Respondent with Smt. Sonia Gandhi which was allegedly posted by the Respondent on her twitter handle. The fourth ground cited is a post on Twitter by the Respondent from her official (verified) Twitter account which stated that she stayed away from the INC for six years but she always stood by the party's ideology, She was grateful to Smt. Sonia Gandhi and Shri Rahul Gandhi (party leaders of INC) and that she will work as a party worker to strengthen the INC. In support of his contention, the Respondent has annexed (Annexure VII of the Petition) a screenshot of the message which is in Hindi.

The Petitioner has also contended that thereafter the AAP accepted her resignation from the party. He has annexed (Annexure VIII of the Petition) a letter dated 10.09.2019 of Shri Pankaj Kumar Gupta, National Secretary of AAP which states that the resignation of the Respondent from the AAP has been accepted w.e.f. 06.09.2019.

7. On the basis of these pieces of evidence the Petitioner contends that by her conduct, the Respondent has voluntarily given up her membership of her party, namely, the Aam Aadmi Party. The Petitioner also contends that the Respondent has not resigned her seat



in the Assembly. The Petitioner, therefore, prays that the Respondent be disqualified under para 2(1)(a) of the Tenth Schedule of the Constitution.

8. The evidence adduced by the Petitioner to prove that the Respondent has voluntarily given up the membership of his party, consists of the screen shots of tweets. So far as the electronic evidence is concerned under section 65A and 65B of the Indian Evidence Act, 1872, electronic evidence is admissible if it is relevant and is accompanied by a certificate contemplated in Section 65B. I find that the electronic evidence presented by the Petitioner is relevant to the issue, namely, the Respondent voluntarily giving up the membership of the party. Since the Petitioner has attached a certificate to the petition in terms of section 65B of the Indian Evidence Act, the evidence becomes admissible. Although in proceedings under the Tenth Schedule, the rules of evidence of the Indian Evidence Act, 1872 are not strictly applied. I have decided to examine the electronic evidence presented by the Petitioner in terms of section 65B of the Act. Further, I have followed the principles laid down in *Jatinder Pal Singh Vs. Krishna Kumar Bajaj* (Punjab and Haryana High Court, 24.10.2018) and "*Sonu @ Amar Vs. State of Haryana* (Criminal Appeal No. 1418 of 2013, 8 SCC 570) decided by the Supreme Court wherein it is emphasised that the electronic evidence, in order to be admitted, must be accompanied by a certificate in terms of section 65B of the Indian Evidence Act.

I have, therefore, admitted and taken on record the electronic evidence presented by the Petitioner.

Contentions of the Respondent.

9. The Respondent appeared before me in person on 18/09/2019 and stated that she was making an oral statement in lieu of written comments on the petition. In the oral statement, she made the following contentions.-



- (i) All the annexures containing screenshots of the tweets of the respondent are from her twitter handle and she had tweeted them.
- (ii) This was just a twitter war between two Members of the Assembly and if the Speaker takes serious note of this and makes it a basis of disqualification it would cause grave injustice and set a bad precedent.
- (iii) The Respondent did not send any letter of resignation addressed to the National Convenor of the AAP, Shri Kejriwal nor did she meet him in this connection.
- (iv) The twitter war took place merely because the petitioner kept challenging her to resign from the party.
- (v) The respondent was prepared to delete the handle.
- (vi) The respondent met Smt. Sonia Gandhi and Sri Rahul Gandhi, Leaders of the Indian National Congress, but did not join that party. She believes in the ideology of the Congress Party and in fact the ideology of the AAP and the Congress are the same.

The Findings

10. I have carefully gone through the contentions of the petitioner as well as the respondent.

A member of a Legislature is disqualified under paragraph 2(1)(a) when he voluntarily gives up the membership of the party to which he belongs. Giving up the membership of a party to which he belongs can arise in two ways. One, by the conduct of the Member which gives rise to a reasonable inference that the Member has voluntarily given up the membership of the party. Two, the resignation given by the member to the competent authority in the party. In the first case, the Tribunal draws a reasonable inference based on the facts and circumstances of the case. In the second case, there is no scope for any inference. The act of sending a resignation letter and the



acceptance there of, by the proper authority in the party brings a finality to the issue. In both cases an order of disqualification follows.

11. In the present case, the petitioner has produced evidence to show that the conduct of the respondent such as meeting the President of the Indian National Congress and announcing that she was accepting the primary membership of the Indian National Congress and also announcing that she will work to strengthen that party clearly indicate that the respondent has voluntarily given up the membership of the AAP to which she belongs. The petitioner has also produced the screenshot of a tweet from the respondent requesting Shri Arvind Kejriwal, the National Convenor of the AAP to accept her resignation from the primary membership of the party. The petitioner has further produced the copy of a letter from Shri Pankaj Kumar Gupta, National Secretary, AAP addressed to me stating that the respondent has resigned from the AAP and that the party has accepted the resignation with effect from 6th Sept. 2019. The letter requests me to take appropriate action in the Legislative Assembly. The original letter from the said Pankaj Kumar Gupta was received in my office which is a part of the record of this case.

12. The Tenth Schedule does not use the term resignation. However, resignation from one's original political party is subsumed in the term "voluntarily given up the Membership" used in Para 2(1)(a). Thus, when a member voluntarily resigns from his party and that resignation is accepted by the competent authority in the party, such member incurs disqualification under Para 2(1)(a). Here, the Tribunal is not required to draw any inference about the member having become subject to disqualification. The fact of resignation and its acceptance clinch the issue.



13. I consider the letter from the National Secretary, AAP dated the Tenth Sept., 2019 stating that the respondent has resigned from the AAP and the party has accepted the resignation as conclusive of the issue of resignation of the respondent for the purpose of Para 2(1)(a) of the Tenth Schedule. The Tribunal designated under the Tenth Schedule has no legal or constitutional obligation to examine whether the letter of resignation is genuine or as per the constitution of the party or whether the resignation through twitter is legally valid etc. That is a matter between the Member and the party leadership. Such issues do not come within the jurisdiction of the Tribunal deciding the question of disqualification under the Tenth Schedule. In my considered opinion, a letter accepting the resignation of a member from the party from an authorised office bearer of that party is conclusive so far as the application of Para 2(1)(a) is concerned. Thus, I have found for a fact that the respondent has resigned from the AAP and it was accepted by the party and the resignation has come into effect from the date indicated in the letter, namely, 06/09/2019. So it can be concluded that the respondent has voluntarily given up the membership of her party and thus become liable to be disqualified under Para 2(1)(a) of the Schedule.

14. In view of my above finding, it is not necessary for me to give any finding on the screenshots evidence of the respondent meeting the leaders of the Indian National Congress or her comments about strengthening the Congress etc.

15. Before I part with this, I would like to observe that the oral submissions made by the respondent before me, though very persuasive, indicate a less than serious approach towards the use of social media platforms by the legislators. I have applied my mind to the facts of this case with utmost objectivity and sense of fairness. Legislators should be aware of the legal consequences of resigning from a party on whose ticket they won the election. In law, there is no playful resignation from a party.



Once the issue comes before the Tribunal, it becomes a fait accompli and the law takes its own course. The consequences of the operation of law need to be faced by everyone.

I NOW DECLARE AS UNDER.

That Ms. Alka Lamba, the Respondent in this case, an elected Member of the Legislative Assembly of the National Capital Territory of Delhi, elected from Chandni Chowk (Assembly Constituency No. 20) has become subject to disqualification under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution. That the disqualification of said Ms. Alka Lamba takes effect from 06.09.2019.

Delhi
Date, 19.09.2019



(Ram Niwas Goel)

Speaker

Legislative Assembly,
National Capital Territory of Delhi

