

(2017) 07 GAU CK 0011
In the Gauhati High Court
Case No : 124 (K) of 2017

Dr. Shurhozelie Liezietsu

APPELLANT

Vs

Nagaland Legislative Assembly & Anr

RESPONDENT

Date of Decision : 18-07-2017

Acts Referred:

Constitution of India, Article 163, Article 208, Article 174 - Council of Ministers to aid and advise Governor — Rules of procedure - Sessions of the State Legislature, pr

Citation : (2017) 07 GAU CK 0011

Hon'ble Judges : L.S. Jamir

Bench : SINGLE BENCH

Advocate : Meenakshi Arora, Ananya Ghose, Gautam Talukdar, S.S. Dey, Limawapang, N. Longkumer, C.S. Vaidyanathan, Bharat Sood, A. Zho, Zhevi Swu, Taka Kichu

Final Decision : Dismissed

Judgement

1. The present writ petitioner is the Chief Minister of Nagaland and he has filed this writ petition challenging the letter dated 13-07-2017 by which the Governor of Nagaland has requested the petitioner to positively prove his majority by obtaining vote of confidence on the floor of the Nagaland Legislative Assembly on or before 15-07-2017. A further prayer has been made to allow time to the petitioner to obtain the vote of confidence on the floor of the House after the bye-election to the 10th Northern Angami-1 Assembly Constituency which is to be held on 29-07-2017. 2. Initially, the writ petition was filed with the Speaker of the Nagaland Legislative Assembly as the sole representative. The writ petition was moved unlisted on 14-07-2017 and on which date, after considering the case of the petitioner, this Court passed an interim order staying the letter dated 13-07-2017 till 17-07-2017. When the matter was called up on 17-07-2017, objections were made for non-impleadment of Shri T.R. Zeliang along with his supporters by the respondent No.1. After considering the matter, learned senior

counsel for the petitioner made an oral submission for impleading Shri T.R. Zeliang as respondent No. 2 which was not objected to. There upon, Mr. C.S. Vaidyanathan, learned senior counsel immediately entered appearance on behalf of the newly impleaded respondent No. 2. It was also the contention of the learned senior counsels appearing for the respondent Nos. 1 and 2 that they will not file any affidavit in the matter inasmuch as, the facts are not disputed and the arguments would be made only on the questions of law. Accordingly, instead of considering the interim as directed by this Court on 14-07-2017, the parties have agreed to go for a final disposal of the matter on merits. 3. The Nagaland Legislative Assembly consists of 60 elected members. At present, 1 (one) seat is vacant and 1 (one) seat is held by the Speaker of the Nagaland Legislative Assembly. The Government has been formed by the Democratic Alliance of Nagaland (for short "DAN") which initially consisted of elected members from the Naga Peoples Front (for short " NPF"), Bharatiya Janata Party (for short " BJP") National Congress Party (for short " NCP"), Janata Dal (U) and Independent. Thereafter, the elected members consisting of 1 (one) from Janata Dal (U) and 4 (four) from the NCP merged with the NPF. It is important to note that in the present Nagaland Legislative Assembly there is no opposition in the House. 4. On 20-02-2017 in a meeting of the NPF legislature party, a resolution was passed electing the petitioner unanimously as the new leader of the NPF legislature party with immediate effect. On the same date, i.e 20-02-2017, the DAN legislature party passed a resolution unanimously electing the petitioner as the new leader of the DAN legislature party with immediate effect. Thereafter, the petitioner took over as the Chief Minister replacing the then Chief Minister Shri T.R. Zeliang/respondent No. 2. 5. A meeting of the NPF legislature party was held at Dimapur on 02-07-2017 wherein, amongst others, it was resolved to empower the respondent No. 2 to form a new DAN Government forthwith and he was also empowered to stake claim before the Governor in that behalf. Accordingly, the respondent No. 2 wrote a letter to the Governor of Nagaland on 08-07-2017 stating that at the meeting of the Legislature Party of the NPF held on 04-07-2017 at his residence at Dimapur, 35 NPF MLAs, including him, out of 47 supported the respondent No. 2 to continue as the leader of the Legislature Party of the NPF and also authorized him to stake claim to form a new NPF led DAN Government in Nagaland. In the said letter, it was also stated that the MLAs also urged the present Chief Minister who is a non-MLA to resign and pave way for the respondent No. 2 to take over as the Chief Minister. He, therefore, requested to be invited to form a new NPF led DAN Government at the earliest. Further, two more letters dated 09-07-2017 and 10-07-2017 were also written to the Governor of Nagaland on the same lines. 6. Thereafter, the Governor of Nagaland wrote a letter to the petitioner stating that he has received three letters from the respondent No. 2 dated 08-07-2017, 09-07-2017 and 10-07-2017 stating that he commands support of 37 NPF MLAs and 7 Independent MLAs in the Legislative Assembly with the current strength of 59. The Governor also stated that since majority should be tested on the floor of the Legislative Assembly, the petitioner was asked to obtain vote of confidence on or

before 15-07-2017. On the same day, the petitioner by DO letter dated 11-07-2017 wrote back to the Governor of Nagaland stating that the Council of Ministers in its meeting held on 11-07-2017 felt that the claim of the support of 37 MLAs and 7 Independent MLAs made by the respondent No. 2 is an internal party matter to be discussed and resolved in the official meeting of the NPF Legislature Party and not on the floor of the State Legislative Assembly. It was also stated that the Council of Ministers also noted that with the official notification having been issued for holding of bye-election to the 10th Northern Angami-1 Assembly Constituency and the model code of conduct being in force and the petitioner having filed his nomination to contest the bye-election, it would not be proper for the Council of Ministers to recommend the summoning of a special session of the State Assembly during the election period. Lastly, in the letter dated 11-07-2017, the petitioner stated that the Council of Ministers does not find any justification for the summoning of a special or emergent Assembly session at this time. 7. The petitioner also wrote another DO letter dated 11-07-2017 to the Speaker of the Nagaland Legislative Assembly/respondent No. 1 stating that the Governor desires that the State Legislative Assembly be convened on or before 15-07-2017 for a floor test based upon the request submitted to him by a group of Legislators led by the respondent No.2. It was also stated that the Council of Ministers headed by the petitioner has not advised the Governor to summon the State Legislative Assembly. Thereafter, on 13-07-2017, another letter was written by the Governor of Nagaland to the petitioner requesting him to positively prove his majority by obtaining a vote of confidence on the floor of Nagaland State Assembly on or before 15-07-2017. Being aggrieved, the present writ petition. 8. Heard Ms. Meenakshi Arora, learned senior counsel assisted by Ms. Ananya Ghose and Mr. Gautam Talukdar, learned counsel appearing for the petitioner. Also heard Mr. S.S. Dey, learned senior counsel assisted by Mr. Limawapang and Mr. N. Longkumer, learned counsel appearing for the respondent No. 1 as well as Mr. C.S. Vaidyanathan, learned senior counsel assisted by Mr. Bharat Sood and Mr. A. Zho, learned counsel appearing for the respondent No.2 9. Ms. Meenakshi Arora, learned senior counsel for the petitioner forwarded her arguments mainly on three grounds. Firstly, that the Governor could not have acted upon the letter dated 08-07-2017, 09-07-2017 and 10-07-2017 written by the respondent No. 2 without the aid and advice of the Council of Ministers headed by the Chief Minister. Secondly, that from the fact situation of the case, it clearly projects that it is purely an internal issue of the members of the NPF and therefore, the Governor could not have called upon the petitioner to have a floor test in the Nagaland Legislative Assembly to prove his majority. The 3rd ground taken is that the time frame given by the Governor to the petitioner to obtain vote of confidence on or before 15-07-2017 by the letter dated 11-07-2017 was not a reasonable period to permit the petitioner to have a floor test. 10. Learned senior counsel for the petitioner submits that the petitioner was elected by the NPF Legislature Party in February, 2017 and thereafter, he had taken over as the Chief Minister of Nagaland. The respondent No. 2 had paved way in favour of the

petitioner to take over as the Chief Minister of Nagaland. The resolution of the NPF Legislature Party as well as that of the DAN Legislature Party in its meetings both held on 20-02-2017 clearly indicates that the petitioner was unanimously elected as the new leader of the NPF Legislature Party and the DAN Legislature Party. Thereafter, the respondent No. 2 had written a letter dated 08-07-2017 to the Governor claiming to have the support of 34 NPF MLAs and staking claim to form a new NPF led DAN Government in Nagaland basing on a purported resolution that was passed in the meeting of the NPF Legislature Party held at Dimapur in the residence of the respondent No. 2 on 04-07-2017. From a perusal of the minutes of the meeting held on 04-07-2017, it would indicate that the said meeting was held at the residence of the respondent No. 2 at Dimapur and not in the party office at Kohima as it is usually done. The correspondences made to the Governor by the respondent No. 2 would also clearly indicate that the same is an intra-party tussle and therefore, the Governor could not have asked the petitioner to have a vote of confidence on the floor of the house to prove his majority. Learned senior counsel submits that a perusal of the minutes of the emergent meeting of the Cabinet held in the residential office of the Chief Minister of Nagaland on 11-07-2017 would clearly indicate that the current dissidents in the NPF Legislature Party is purely an internal party affair which is to be resolved within the party itself and not in the floor of the house. It is also submitted that the by-election to the 10th Northern Angami-1 Assembly Constituency has been notified and the model code of conduct being already in force, it would not be proper for the Cabinet to advise the Governor to summon the State Assembly during the election period and therefore, the petitioner had rightly written the letter dated 11-07-2017 indicating the same to the Governor.

11. She submits that the Governor can summon, prorogue and dissolve the house only on the aid and advice of the Council of Ministers with the Chief Minister as the head and not at his own. The interpretation of Article 174 of the Constitution has already been settled in the case of *Nabam Rebia & Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly and Others* which has been reported in (2016) 8 SCC 1. Placing strong reliance in the case of *Nabam Rebia* (supra), she submits that the Governor is an executive nominee and such nominee could not have overwriting authority over the representative of the people, constituting the House or the Houses of the State Legislature and or even the executive Government functioning under the Council of Ministers with the Chief Minister as the head. She also submits that the Justice Sarkaria Commission Report on "Centre-State Relations" and the Justice M.M. Punchhi Commission Report on "Constitutional Governance and the Management of Centre-State Relations" has observed the limited role under which the Governor may exercise certain function in his discretion under Article 163 of the Constitution. The same has been extensively dealt with in the case of *Nabam Rebia* (supra) and the Hon"ble Supreme Court had endorsed and adopted the same as a correct expression of the constitutional interpretation. In the present case, instead of allowing the matter to be resolved within the party as the same being an intra-party issue, the Governor had instead exceeded his jurisdiction

and had asked the petitioner to call for a floor test which is not tenable in law more particularly, when there was no aid and advice of the Council of Ministers with the Chief Minister as head. 12. Learned senior counsel further submits that assuming but not admitting that the petitioner has to prove his majority in the floor of House, a consideration of the letter dated 11-07-2017 written by the Governor would clearly indicate that no reasonable time was given to the petitioner to allow him to prove his majority. The petitioner was allowed four days time by the letter dated 11-07-2017 to have a vote of confidence which is absolutely unfair and arbitrary. It is also submitted that the letter of the Governor dated 13-07-2017 was received only at about 9:30 P.M giving the petitioner absolutely no time to have a floor test. 13. Learned senior counsel also submits that the Rules and Procedure and Conduct of Business in Nagaland Legislative Assembly (hereinafter referred to as "the Conduct of Business") has been enacted under Article 208 of the Constitution of India wherein, Rule 3 provides that the Secretary shall issue a summon to each member specifying the date and place for a session of the House provided that when a session is called at short notice or emergently, summons may not be issued to each member separately but an announcement of the date and place of the session shall be published in the Gazette and made in the press, and members may be informed by telegram. The said Rule 3 of the Conduct of Business has also been violated by the Governor inasmuch as, till date, there has been no notification published in the Gazette and in the press. It is submitted that a perusal of the letter dated 11-07-2017 would indicate that the said letter was written only at the instance of the letters dated 08-07-2017, 09-07-2017 and 10-07-2017 written by the respondent No. 2 to the Governor staking claim to form a new Government. The letter of the Governor dated 11-07-2017 would demonstrate that the same was written without any application of mind and that the Governor has embroiled himself by entering into a political thicket of the intra-party dispute of the NPF Legislature. The petitioner having already filed his nomination for the forthcoming by-election to the 10th Northern Angami-1 Assembly Constituency has been extremely prejudiced when the Governor has asked him to have a vote of confidence in the floor of the House. It is also submitted that in the impugned letter dated 13-07-2017, the Governor has indicated the respondent No. 2 to be the leader of the NPF Legislature Party and Chairman, DAN which is absolutely not correct. This would indicate that the Governor was already prejudiced and that he has acted in a most unconstitutional manner and therefore, the impugned letter dated 13-07-2017 should be set aside and quashed. 14. Mr. C.S. Vaidyanathan, learned counsel appearing for the respondent No. 2, on the other hand, submits that a reading of the letter dated 11-07-2017 and 13-07-2017 of the Governor would clearly indicate that the respondent No. 2 has never been invited by the Governor to form a new Government nor has the petitioner been displaced by the same. The Governor has not usurped any power and has in fact, given the petitioner to face a vote of confidence. Further, a consideration of the letter dated 11-07-2017 written by the petitioner to the Governor of Nagaland would clearly demonstrate that the petitioner has never disputed with regard to

the support of 37 NPF MLAs and 7 Independent MLAs in favour of the respondent No.2. The whole intention of the petitioner in filing the instant writ petition is to use the office of the Chief Minister as a crutch to approach the electorates which is against constitutional morality and the refusal of the petitioner to hold an Assembly Session is also not constitutional. Further, despite the letter dated 11-07-2017 written by the Governor to the petitioner to obtain a vote of confidence on or before 15-07-2017, the petitioner has not done the same and therefore, another letter was written on 13-07-2017 requesting the petitioner to positively prove his majority by obtaining a vote of confidence on the floor of the Nagaland State Assembly on or before 15-07-2017. In fact, by the letter dated 13-07-2017, the Governor has given another opportunity to the petitioner and has not dismissed the petitioner. It is submitted that the respondent No. 2 has the majority support of the party and therefore, claim representation of the party. Therefore, the Governor has the right to call for a floor test under Article 174 of the Constitution. It is submitted that the Chief Minister and his Council of Ministers have lost their right to aid and advise of the Governor, to summon or prorogue or dissolve the House when the issue of the Government supported by the majority of the members of the House has been rendered debatable. In the present case, it is abundantly clear that the petitioner has lost the confidence of the house and therefore, the issue of his Counsel of Ministers giving aid and advice to the Governor becomes completely irrelevant. In the present situation, when the Governor has reasons to believe that the petitioner and his Council of Ministers have lost the confidence of the house, it is open to the Governor to require the petitioner and his Council of Ministers to prove their majority in the house by a floor test more particularly, when the petitioner has at no point of time asserted having majority in the house. Therefore, he contends, that the Governor has not entered into any political thicket but by writing the letters dated 11-07-2017 and 13-07-2017 has in fact avoided entering into any political thicket. Further, the prayer of the petitioner for giving him sufficient time to have a floor test in the House is purely an argument of desperation which is not tenable in law. He also submits that the allegation of violation of Rule 3 of the Conduct of Business in Nagaland Legislative Assembly is not tenable inasmuch as, the situation has not come for invoking Rule 3 of the Conduct of Business.

15. Mr. S.S. Dey, learned senior counsel appearing on behalf of the respondent No. 1 submits that the fact situation of the case of Nabam Rebia (*supra*) is different from the present case. It is submitted that the Governor was well within his right to request the petitioner to have a vote of confidence in the floor of the House inasmuch as, the Governor had reasons to believe that the petitioner had lost the confidence of the House. He submits that as long as the petitioner and his Council of Ministers enjoy the confidence of the House, the aid and advise of the Council of Ministers is binding on the Governor. However, the position has been altered after the Government in power headed by the petitioner has lost the confidence of the House and therefore, when the petitioner does not enjoy the support from the majority of the House, it is open to the Governor to act at his own without any aid and advise from the Council of Ministers headed by the

petitioner. It is submitted that in the absence of any act being done, the question of judicial review does not arise at this stage. Further, considering the prayer made by the petitioner in the writ petition, this Court under Article 226 of the Constitution cannot consider such prayer and therefore, the writ petition being not maintainable in the present form is liable to be dismissed. He also submits that there is no time limit prescribed for obtaining a vote of confidence in the House and that the reliance made by the petitioner with regard to the report of Justice Sarkaria Commission is not correct and therefore, the Governor has not erred in asking the petitioner to have a vote of confidence on or before 15-07-2017. In his support, learned senior counsel has placed reliance in the cases of (i) Jagdambika Pal v. Union of India and Ors, reported in (1999) 9 SCC 95, Union of India (UOI) v. Harish Chandra Singh Rawat and Ors, reported in 2016 (4) Scale 607, and in the case of Anil Kumar Jha v. Union of India (UOI) and Ors, reported in AIR 2005 SC 4255, to contend that there is no prescribed time limit for having a vote of confidence in the floor of the House. 16. I have considered the submissions forwarded by the learned counsel for the parties. 17. For proper appreciation of the matter in hand, the minutes of the meeting of the NPF Legislature Party held at Dimapur on 04-07-2017 is reproduced herein below :- "Minutes of The Meeting of The NPF Legislature Party Held At Dimapur on The 4th July, 2017. In pursuance of the Notice No. NPF/LP/30/6/2017 dated 30.6.2017 issued by Shri T.R. Zeliang, Leader of the NPF Legislature Party, a meeting of the NPF Legislature Party was held at 11 00 hours on 4.7.2017 at the residential office of Shri T.R. Zeliang at Dimapur, Nagaland. After due deliberations, the following resolutions were passed at the Meeting: (1) Resolution for amendment of Resolution dated 20.2.2017 "Resolved that the words in the NPF Legislature Party's Resolution dated 20.2.2017" unanimously elect Dr. Shurhozelie Liezietsu as the new Leader of NPF Legislature Party with immediate effect" be substituted by the words" unanimously recommend to the Governor the appointment of Dr. Shurhozelie Liezeitsu, a non-MLA, as the Chief Minister of Nagaland vice Shri T.R. Zeliang, who resigned from the office of the Chief Minister of Nagaland, for the time being" and further resolved that such substitution of words shall be deemed to have taken effect from the date of passing of the original resolution i.e. from 20.2.2017, since a non-MLA cannot be elected as Leader of the Legislature Party." (Original Resolution of NPF Legislature Party dated 20.2.2017 appended to these minutes) (2) Resolution for reaffirmation and continuance of Shri T.R. Zelaing as the Leader of NPF Legislature Party. "Resolved, after appreciating the legal fact that Shri T.R. Zeliang, who was elected as Leader of the NPF Legislature Party on 17.5.2014 (i) neither tendered his resignation from the office (ii) nor any other NPF MLA had been elected so far at a NPF Legislature Party Meet to replace him, reaffirmed their trust in Shri T.R. Zeliang and further resolved that he continue as the Leader of the NPF Legislature Party" (Original Resolution of NPF legislature Party dated 17.6.2014 appended to these minutes) (3) Request to Dr. Shurhozelie Lezietsu, the Chief Minister of Nagaland, to resign and pave way for Shri T.R. Zeliang, the Leader of the NPF Legislature Party to stake claim to form a new

DAN Government in Nagaland in accordance with established Parliamentary conventions "Resolved, after considering all the circumstance, to request Dr. Shurhozelie Liezietsu to resign and pave way for Shri T.R. Zeliang, the leader of the NPF Legislature Party to form a new DAN Government in Nagaland in accordance with established Parliamentary conventions for a peaceful transition." (4) Empowerment of Shri T.R. Zeliang to stake claim to form a new DAN Government in Nagaland "Resolved to empower Shri T.R. Zeliang, the Leader of the NPG Legislature Party, to form a new DAN Government forthwith and for the purpose empowered him to stake claim before the Governor in this behalf" (5) Appointment of whip of NPF " Resolved that, in order to strengthen cohesion amongst the majority of the NPF MLAs, Shri T.R. Zeliang, Leader of the NPF Legislature Party be appointed as the person authorized to issue directions to the NPF MLAs (whip) for all activities on the floor of the Nagaland Legislative Assembly, under paragraph 2(1)(b) of the Tenth Schedule to the Constitution of India." 3. In token of having unanimously passed the above four Resolutions at the NPF Legislature Party meeting held at 11:00 hours on the 4th July, 2017 at the residential office of its Leader, Shri T.R. Zeliang, at Dimapur, Nagaland, the following members of the NPF Legislature Party (NPF MLAs) hereby affixed their signatures:" 18. Thereafter, the respondent No. 2 wrote to the Governor on 08-07-2017 taking claim to form a new NPF led DAN Government. The same is reproduced herein below:- "Office of The Leader of The Legislature Party of The Naga People's Front (NPF). No. NPF/LP/Claim/2017/1 Kohima, the 8th July, 2017 To, The Hon"ble Governor, Raj Bhavan, Kohima, Nagaland Sir, At a meeting of the Legislature Party of the Naga People's Front (NPF) held on 04.7.2017 at my residence at Dimapur, 34 NPF MLAs (including me) out of 47, supported me to continue as the Leader of the Legislature of Party of the NPF and also authorized me to stake claim before the Hon"ble Governor to form a new NPF led DAN Government in Nagaland. The MLAs also urged the present Chief Minister, who is a non-MLA, to resign and pave way for me to take over as the Chief Minister. A copy of the minutes duly signed by these 34 NPF MLAs is enclosed. 7 Independent MLAs have also affirmed their support in favour of me taking the tally to 41 out of 59 in support of me. The support resolution of Independent MLAs is also enclosed. 2. The above has proved that the Council of Ministers of the incumbent Chief Minister Dr. Shurhozelie Liezietsu has been reduced to a minority. 3. In view of the above, I request that I may be invited to form a new NPF led DAN Government in Nagaland at the earliest. Yours faithfully, (T.R. Zeliang) Leader, NPF Party & Chairman, Dan Copy to : (1) Dr. Shurhozelie Liezietsu, Chief Minister for due compliance with the wishes of the majority of 34 NPF MLAs and 7 Independents. (2) Hon"ble Speaker, Nagaland Legislative Assembly" 19. The letter dated 11-07-2017 written by the Governor of Nagaland to the petitioner, is reproduced herein below :-

"P.B. Acharya Raj Bhavan

Governor of Nagaland Kohima-797001

No. G-03/1-03/13/FM (Pt.II) July 11, 2017 Dear Chief Minister, I have received three letters from Shri T.R. Zeliang, former Chief Minister of Nagaland dated 08/07/17, 09/07/17 and 10/07/17 stating that he commands supports of 37 NPS MLAs and 7 Independent MLAs in the Legislative Assembly with current strength of 59. You will agree that the atmosphere of political instability is not good for smooth functioning of State Government in accordance with Constitution of India. Since majority should be tested on the floor of the Legislative Assembly, you may therefore obtain vote of confidence on or before 15th July, 2017. Yours sincerely, (P.B. Acharya) Dr. Shurhozelie Liezietsu, Hon"ble Chief Minister, Nagaland, Kohima Copy to : 1. Dr. Imtiwapang Aier, Hon"ble Speaker, Nagaland Legislative Assembly for necessary action regarding convening of Legislative Assembly session on or before 15th July, 2017 (P.B. Acharya)" 20. The minutes of the emergency Cabinet meeting held on 11-07-2017 is reproduced herein below:- "Minutes of the emergency Cabinet meeting held in the residential office of the Chief Minister, Nagaland, Kohima at 1900 hrs on 11th July, 2017. Agenda No.1: Consideration of D.O letter dated 11-07-2017 received from the Hon"ble Governor of Nagaland by the Chief Minister, Nagaland, directing the Chief Minister of Nagaland to obtain vote of confidence on the floor of the Nagaland Legislative Assembly on or before the 15th July, 2017. The Council of Ministers discussed at length and considered the D.O letter dated 11.7.2017, sent by the Hon"ble Governor of Nagaland to the Chief Minister of Nagaland, directing the Chief Minister to obtain a vote of confidence on the floor of the Nagaland Legislative Assembly before the 15th July, 2017. The following are the considered views and stand of the Cabinet on the matter. 1. The current dissidence in the NPF Legislature Party, caused by dissident MLAs demanding change of leadership is an internal party affair. There is no split within NPF party, and the NPF Party fully supports the present Council of Ministers headed by Dr. Shurhozelie Liezietsu, the Chief Minister. It is also an ongoing endeavour of the NPF Party as well as the Council of Ministers to resolve the current internal party problem. 2. The group of dissident Legislators from the NPF Party, now reportedly camping at Kaziranga under the leadership of Shri T.R. Zeliang, who are demanding change of leadership still belong to the NPF Party. Though as many as 10 (ten) of them have been suspended from the Party, they are still bound by their membership of the NPF Party. They have no separate legal identity in the State Legislative Assembly apart from being members of the NPF Legislative Party. Therefore, they have no legal right whatsoever to make any demand upon the Governor for effecting change of leadership, which can be taken up only in the official meeting of the NPF Legislature Party. They cannot also demand the summoning of a special session of the Assembly to resolve the internal party matters. 3. With regard to the directive of the Hon"ble Governor for summoning the Legislative Assembly, the Cabinet is of the firm opinion that there is no justification for summoning an emergent session of the Assembly to discuss or to resolve the internal affairs of the NPF Party. 4. Further, with regard to summoning of the Legislative Assembly on or before 15th July, the Cabinet like to make a reference to the ruling of the Hon"ble Supreme Court, at paragraph 162 of the said

judgment, had stated: ".....In such view of the matter, we are satisfied in concluding that the Governor can summon, prorogue and dissolve the house, only on the aid and advice of the Council of Ministers with the Chief Minister as the head. And not at his own" 5. The Cabinet noted that the bye-election to 10th Northern Angami-1 Assembly Constituency has been notified and the model code of conduct is in force. And as the Chief Minister has already filed his nomination to contest the said by-election, it would not be legally proper for the Cabinet to advise the Governor to summon the State Assembly during this election period. 6. In view of all the above facts and circumstances, it is the considered opinion of the Council of Ministers that it would not be proper to summon the House at this juncture. Agenda No. 2: Loss of lives and injury to persons due to collapse of the bridge at 4th Mile near Referral Hospital, Dimapur. The Cabinet expressed shock and profound grief over the loss of four precious lives and injuries to others. The Cabinet directed payment of exgratia to the next of kin of the deceased and also to the injured. The Cabinet also directed that an inquiry be conducted by the Secretary (Justice & Law) into the circumstances leading to the collapse of the bridge and loss of lives and injuries, and recommend suitable measures for prevention of such incidents in future.

(Dr. Shurhozelie Liezietsu) (Pankaj Kumar)

CHIEF MINISTER Cabinet Secretary"

21. The two letters both dated 11-07-2017 written by the petitioner to the Governor of Nagaland and to the respondent No. 1 are also reproduced herein below:- "CHIEF MINISTER NAGALAND KOHIMA July 11, 2017 D.O No. CMN/3/G/2017 Hon"ble Governor, 1. I am in receipt of your D.O letter No. G-03/1-03/13 FM (Pt.II) dated 11th July, 2017, directing me to obtain a vote of confidence on the floor of the Nagaland Legislative Assembly on or before the 15th July, 2017. 2. The Council of Ministers, in its meeting held at my official residence under my chairmanship on 11th July, 2017 had duly considered and discussed your directive. The Council of Ministers felt that the claim of the support of 37 MPF MLAs and 7 Independent MLAs made by Shri T.R. Zeliang, MLA is an internal party matter to be discussed and resolved in the official meeting of the NPF Legislature Party, and not on the floor of the State Legislative Assembly. 3. The Council of Ministers also noted that with the official notification having been issued for holding of by-election to the 10th Northern Angami-1 Assembly Constituency and the model code of conduct in force, and the Chief Minister, Dr. Shurhozelie Liezietsu having filed his nomination to contest the by-election, it would not be proper for the Council of Ministers to recommend the summoning of a special session of the State Assembly during the election period. 4. Therefore, the Council of Ministers does not find any justification for the summoning of a special or emergent Assembly at this time. A copy of the minute of the Cabinet meeting held on 11th July, 2017 is enclosed for your reference. With warm regards, Yours sincerely, (Dr. Shurhozelie Liezietsu) Shri P.B. Acharya, Hon"ble Governor of Nagaland, Raj Bhawan, Kohima" "CHIEF MINISTER NAGALAND

KOHIMA July 11, 2017 D.O No. CMN/60/ASSY/2017 Dear Speaker, I received letter No. G-03/1-03/13/FM (Pt.II) dated 11th July, 2017 from the Hon"ble Governor of Nagaland. I believe that a copy of the same letter has also been endorsed to you. The Hon"ble Governor desires that the State Legislative Assembly be convened on or before 15th July, 2017 for a floor test, based upon the request summated to him by a group of Legislators led by Shri T.R. Zeliang. I have considered the letter of the Hon"ble Governor. The Council of Ministers headed by me as Chief Minister has not advised the Hon"ble Governor to summon the State Legislative Assembly. You will appreciate that with the decision in the Arunachal case viz. (2016) 8 SCC 1 Nabam Rebia and Bamang Felix v. Deputy Speaker, Arunachal Pradesh Legislative Assembly and Ors, the Hon"ble Supreme Court has clearly laid down that the Governor has no authority on his own to summon, prorogue or dissolve the Legislative Assembly. He can only do so on the aid and advice of the Council of Ministers headed by the Chief Minister. This being the inescapable position of law, since the Council of Ministers has not advised the Hon"ble Governor to summon the State Legislative Assembly, the question of summoning the State Legislative Assembly on or before 15/07/2017 does not arise. Regards Yours sincerely, (Dr. Shurhozelie Liezietsu) Dr. Imtiwapang, Hon"ble Speaker, Nagaland Legislative Assembly, Kohima" 22. The letter dated 13-07-2017 written by the Governor to the petitioner is also reproduced herein below:-

"P.B. ACHARYA RAJ BHAVAN

Governor of Nagaland Kohima-797001

No. G-03/1-03/13/FM (Pt.II) Dated 13.07.2017 Dear Chief Minister, I am in receipt of your letter D.O No. CMN/3/G/2017 dated July 11, 2017 in response to my letter No. G-03/1-03/13/FM (Pt.II) dated July, 11 2017, asking you to obtain vote of confidence on or before July 15, 2017 on the floor of the Nagaland Legislative Assembly. I am also in receipt of a copy of the letter written to you by the Speaker of the Nagaland Legislative Assembly, proposing to convene the 17th (Emergent) Session of the Twelfth Nagaland Legislative Assembly at 0930 Hrs on 14th July, 2017. As already stated by me in my letter dated 11, 2017, Shri T.R. Zeliang former Chief Minister of Nagaland and Leader of the NPF LEG Party & Chairman, DAN has claimed the support of total 44 9 37 MLA's and 7 Independent MLA's) in the Nagaland Legislative Assembly with current total strength of 59 MLA's. In the reply given by you, refusing to summon an Emergent Session of the State Assembly for proving your majority does not seem to be justified in your letter, you have not refuted the claim of Shri T.R. Zeliang that enjoys the support of in all 44 MLA's in a house of 59. The question is not of this issue being an internal party matter of NPF, but the question is whether you as the Chief Minister of the State enjoy the support of the majority of the members of the House or not. From the material available with me, I am prima facie of the opinion that you have lost the support of the majority of the members of the House and therefore, you are once again requested to call

Emergent Session of the Nagaland Legislative Assembly for proving your majority on the floor of the House as early as possible. So far as the question of By-election is concerned, it is a By-Election of only one legislative constituency, and therefore, by no stretch of imagination it can be presumed that because of this " it would not be proper for the Council of Ministers to recommend the summoning of a special session of the State Assembly during the election period" I would therefore once again request you to positively prove your majority by obtaining a vote of confidence on the floor of Nagaland State Assembly on or before, July 15, 2017. Yours sincerely, (P.B. ACHARYA) Dr. Shurhozelie Liezietsu, Hon"ble Chief Minister, Nagaland, Kohima Copy to : 1. Dr. Imtiwapang Aier, Hon"ble Speaker, Nagaland Legislative Assembly for necessary action regarding convening of Legislative Assembly session on or before 15th July, 2017 (P.B. Acharya)" 23. The Hon"ble Supreme Court in the case of Nabam Rebia (supra), has dealt with the provision of Article 163, 174, 179 and the 10th Schedule of the Constitution. While dealing with Article 174 of the Constitution, the Hon"ble Supreme Court had also taken into consideration the observations recorded in the Justice Sarkaria Commission Report on "Centre-State Relations" and the Justice M.M. Punchhi Commission Report on "Constitutional Governance and the Management of Centre-State Relations". Thereafter, it has been held that as long as the Council of Ministers enjoys the confidence of the House, the aid and advice of the Council of Ministers is binding on the Governor on the subject of summoning, proroguing or dissolving the House or Houses of the State Legislature. At the same time, it has been held that after the Government in power has lost the confidence of the House, the said position would stand altered and as and when the Chief Minister does not enjoy the support from the majority of the House, it is open to the Governor to act at his own will without any aid and advice. Further, the Hon"ble Supreme Court had also referred to the treatise by M.N. Kaul and S.L. Shakdher, Practice and Procedure of Parliament (5th And.) published by the Lok Sabha Secretariat. The Hon"ble Supreme Court was of the considered view that the Chief Minister and his Council of Ministers lose their right to aid and advise the Governor to summon or prorogue and dissolve the House, when the issue of the Government's support by a majority of the members of the House has been rendered debatable. It was therefore, held that in ordinary circumstances during the period when the Chief Minister and his Council of Ministers enjoys the confidence of the majority of the House, the powers vested with the Government under Article 174 to summon, prorogue and dissolve the House (s) must be exercised in consonance with the aid and advice of the Chief Minister and his Council of Ministers. However, in a situation where the Governor has reasons to believe that the Chief Minister and his Council of Ministers have lost the confidence of the House, it is open to the Governor to require the Chief Minister and his Council of Ministers to prove their majority in the House, by a floor test. 24. Coming to the case in hand, it is important to note and which is also not disputed by any of the parties that the present Nagaland Legislative Assembly is without an opposition inasmuch as, all the elected members from different parties are constituents of the DAN which is the ruling party. 25. This

Court has considered the resolution passed by the NPF Legislature Party held at Dimapur on 04-07-2017. Therein, it was resolved that the word in the NPF Legislature Party's Resolution dated 20-02-2017 "unanimously elect Dr. Shurhozelie Liezietsu as the new Leader of NPF Legislature Party with immediate effect" was to be substituted by the word "unanimously recommend to the Governor the appointment of Dr. Shurhozelie Leizeitsu, a non-MLA, as the Chief Minister of Nagaland vice Shri T.R. Zeliang, who resigned from the office of the Chief Minister of Nagaland, for the time being" The said substitution was deemed to have taken effect from the date of the passing of the original resolution i.e from 20-02-2017. Another resolution was also passed resolving that the respondent No. 2 who was elected as leader of the NPF Legislature Party on 17-05-2014 had neither tendered his resignation from his office nor any other NPF MLA had been elected so far at a NPF Legislature Party meet to replace him. The 3rd resolution was also passed to request the petitioner to resign and pave way for the respondent No. 2, the leader of the NPF Legislature Party to form a new DAN Government in Nagaland in accordance with the established parliamentary convention for a peaceful transaction. Further, a 4th resolution was also passed to empower the respondent No. 2 to form a new DAN Government and for the purpose empowered him to stake claim before the Governor in his behalf. 26. The respondent No. 2 on the basis of the resolution passed on 04-07-2017 had written a letter dated 08-07-2017 to the Governor claiming the support of 34 NPF MLAs and 7 Independent MLAs. Thereafter, the letter dated 11-07-2017 was written by the Governor asking the petitioner to obtain a vote of confidence on or before 15-07-2017. The said letter was followed up by another letter dated 13-04-2017 by the Governor. 27. This Court has also considered the reply dated 11-07-2017 made by the petitioner to the Governor wherein, it has been stated that the claim of the respondent No. 2 having the support of 37 NPF MLAs and 7 Independent MLAs is only an intra-party matter and that the by-election to the 10th Northern Angami-1 Assembly Constituency has been notified. No explanation has been given or any claim has been made that the petitioner still has the majority of the House in the said letter. From the materials available on record, it appears that the Governor had reasons to believe that the petitioner and his Council of Ministers have lost the confidence of the House. Further, from the minutes of the emergency Cabinet meeting that was held on 11-07-2017, it can be seen that the stand of the Cabinet is that there is no split within the NPF Party and the NPF Party fully support the present Council of Ministers headed by the petitioner. It can also be seen that the stand of the Cabinet is that a group of dissident Legislators from the NPF Party under the leadership of the respondent No. 2 still belongs to the NPF Party. This would indicate that there is leadership crisis amongst the NPF Legislators which comprises of the majority members of the MLAs in the DAN Government and also in the House. At the cost of repetition, there is no opposition in the present Nagaland Legislative Assembly and all the elected members from the different political parties are constituents of the DAN. From the letter dated 08-07-2017 written by the respondent No. 2 to the Governor, it appears that the petitioner

does not enjoy the support from the majority of the House and therefore, it is open to the Governor to act at his own, without any aid and advice. Further, the explanation of the Governor in the letter dated 13-07-2017 is self explanatory and exhaustive. This Court is of the considered opinion that the Governor had taken the right decision to ask the petitioner to have a vote of confidence in the floor of the House to see which out of the two contesting claimants of Chief Ministership has a majority in the House. In that view of the matter, this Court does not see any reasons to interfere with the letter dated 13-07-2017. 28. The contention of the learned senior counsel for the petitioner that there has been violation of Rule 3 of the Conduct of Business has also been considered and this Court is of the considered opinion that such contention at this stage is premature and therefore, not tenable. Further, the contention of the learned senior counsel for the petitioner that sufficient time should be given to the petitioner to obtain the vote of confidence on the floor of the House after the bye-election to be held on 29-07-2017 is rejected. However, the matter is left to the wisdom of the Governor to take a decision on the same after proper application of mind. 29. In the facts and circumstances of what has been discussed hereinabove, there is no merit in the writ petition and the same is accordingly dismissed. No costs. 30. The interim order passed on 14-07-2017 stands vacated.