

**(2001) 03 GAU CK 0016**  
**In the Gauhati High Court**  
**Case No : Writ Petition (Civil) No. 224 of 2001**

|                                                                   |            |
|-------------------------------------------------------------------|------------|
| Wahangbam Nipamacha Singh and Others                              | APPELLANT  |
| Vs                                                                |            |
| Hon"ble Speaker, Manipur Legislative Assembly, Imphal and Another | RESPONDENT |

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**Date of Decision :** 27-03-2001

**Acts Referred:**

Constitution of India, 1950 — Article 191(2)

**Citation :** AIR 2002 Guw 7 : (2001) 2 GLT 130

**Hon'ble Judges :** J.N. Sharma, J

**Bench :** Single Bench

**Advocate :** NPC Singh, N. Romeo, Th. Modhu and A. Jiten, for the Appellant;  
H.N.K. Singh, for the Respondent

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## Judgement

1. The following is the order challenged in the Writ Application, that is, Annexure-A/1 which is quoted below :--

Annexure-A/

"MANIPUR LEGISLATIVE ASSEMBLY

SECRETARIAT ORDERS Imphal, the 13th February, 2001

No. 1/5(26)/2000-LA (P) : The following members of the Manipur Legislative Assembly have ceased to be members of the Manipur State Congress Party due to expulsion from the primary membership of the Manipur State Congress Party for a period of 6 (six) years with effect from 11-2-2001.

1. Shri W. Nipamacha Singh.
2. Dr. L. Chandramanl Singh.
3. Shri P. Achou Singh.
4. Shri Samuel Jendai.

5. Shri Ksh. Biren Singh.

6. Shri S. Rajen Singh.

7. Shri M. Kunjo Singh.

8. Shri H. Lokhon Singh.

1. Dr. S. Dhananjoy, Speaker of the Sev-enth Manipur Legislative Assembly, accordingly declare them unattached members of the Manipur Legislative Assembly with immediate effect.

Sd/- illegible,

(Dr. S. Dhananjoy)

Speaker,

Manipur Legislative Assembly."

2. Whether there was valid expulsion or not of these members by duly constituted body, that is the subject matter of Civil Suit being Title Suit No. 5/2001, now pending before the Civil Judge (Senior Division) No. 1, Manipur, East at Imphal. So I am not going to decide that aspect of the matter. But the basic question is that whether the Speaker had the right to treat these persons as unattached member of the Manipur Legislative Assembly with immediate effect, or not. This aspect of the matter came for consideration in G. Viswanathan Vs. The Hon''ble Speaker, Tamil Nadu Legislative Assembly, Madras and another, G. VIswanathan v. Hon''ble Speaker Tamilnadu Legislative Assembly, Madras wherein also the same question arose. There were two petitioners who were the members of Tamil Nadu Legislative Assembly. Both of them were expelled from AIADMK party on 8-1-1994. On 16-3-1994 the Speaker of Tamil Nadu Legislative Assembly declared the two appellants as "unattached" members of the Assembly and they challenged this order before the High Court by filing a writ application and that was dismissed and the matter came before the Apex Court and the Apex Court considering para 2 (1) of the Tenth Schedule of the Constitution laid down the law as follows at page 1064 of AIR :--

11. It appears that since the explanation to para 2 (1) of the Tenth Schedule povides that an 2 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 and elected as a member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as "unattached". The further question is when does a person Voluntarily give up" his membership of such political party as provided in para 2 (1)(a). The act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party

which set him up as a candidate and got elected. Joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member.

12. We are of the view that labelling of a member as "unattached" finds no place nor has any recognition in the Tenth Schedule. It appears to us that the classification of the members in the Tenth Schedule proceeds only on the manner of their entry into the House. (1) one who has been elected on his being set up by a political party as a candidate for election as such member. (2) one who has been elected as a member otherwise than as a candidate set up by any political party ..... usually referred to as an "independent" candidate in an election; and (3) one who has been nominated. The categories mentioned are exhaustive. In our view, it is impermissible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule of the Constitution. If a person belonging to a political party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion from the party or otherwise, he voluntarily gives up his membership of the political party and incurs the disqualification. Being treated as "unattached" is a matter of one convenience outside the Tenth Schedule and does not alter the fact to be assumed under the expulsion to para 2 (1). Such an arrangement and labelling has no legal bearing so far as the Tenth Schedule is concerned. If the contention urged on behalf of the appellant is accepted, it will defeat the very purpose for which the Tenth Schedule came to be introduced and would fail to suppress the mischief, namely, breach\* of faith of the electorate. We are, therefore, of the opinion that the deeming fiction must be given full effect for otherwise the expelled member would escape the rigour of the law which was intended to curb the evil of elections which has polluted our democratic polity.

3. The same is the situation in the case in hand. The learned advocate for the writ petitioner pressed other grounds, that is violation of principle of natural justice and other things regarding jurisdiction of the Speaker to act on such inadequate materials. But I am not deciding all these questions in view of the law laid down by the Apex Court. Accordingly the order quoted above shall stand quashed and these petitioners shall not be treated as "unattached" members and they shall be deemed to be members of the original party by the deeming fiction as pointed out by the Supreme Court.

4. I have heard Shri NPC Singh, learned counsel for the petitioners and Shri HNK Singh, learned advocate for the respondents. This order will not effect in the merit of the Civil Suit.