



# OFFICE OF THE CHIEF ELECTORAL OFFICER

Union Territory of Jammu & Kashmir

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"Greater participation for a Stronger Democracy"

Subject:- **Application/ Reference Titled Basharat –Bin -Qadir V/s Shafat Gaffar Mir & others under section 34-C of Jammu & Kashmir Municipal Corporation Act, 2000 for setting aside election of respondents on the ground of defection.**

Order No. CEO/ME/2020/ 202

Dated: 10/02/2022

The Application/ reference Titled Basharat –Bin- Qadir V/s Shafat Gaffar Mir & others has been filed by Shri Basharat –Bin- Qadir Councillor ward No 24 chattabal (herein after referred as applicant) under section 34-C of Jammu & Kashmir Municipal Corporation Act, 2000 for setting aside election of Three Councilors / Corporaters of Srinagar Municipal Corporation namely 1. Shafat Gaffar Mir Ward No 21 Zirayat Batamaloo, 2. Mst Shameema Khan Ward No 26 Bemina, 3.Gh. Rasool Hajam Ward No 30 Zainakot, (herein after referred as respondents), on the ground of defection. Notice was issued to the respondents who submitted objections /reply to the application/ reference. The applicant has pleaded that he is the member of Indian National Congress and is the Chief Whip of the party in Srinagar Municipal Corporation. The respondents have contested Srinagar Municipal Elections 2018, on the party ticket of Indian National Congress and are members of Indian National Congress.

On 30.12.2019, Secretary, Srinagar Municipal Corporation issued notification for election of Deputy Mayor whereby election was scheduled on 13-01-2020. The applicant on 8.01.2020 in the capacity of Chief Whip of Indian National Congress for Srinagar Municipal Corporation, issued a three line Whip whereby all the councilors of the Congress party were directed to vote in favour of Mr. Nakul Mattoo for the election of Deputy Mayor in Srinagar Municipal Corporation which was to be held on 13th of January, 2020. The election for the post of Deputy Mayor, Srinager Municipal Corporation was held and the result was also declared on the same day. The total votes cast were 68 (sixty Eight), invalid votes 4 (four), Valid votes 64 (sixty four). 33(thirty three) votes were cast in favour of Mr. Pervaiz Ahmed Qadir and votes cast in favour of Syed Mohammad Hussain were 0(zero), while votes cast in favour of Mr. Arif Majeed Pampori were 24(twenty four) and votes cast in favour of Mr. Nakul Mattoo were 7(Seven). The applicant has pleaded that Indian National Congress has 17 members in

the Srinagar Municipal Corporation, out of which only seven Councilors have voted in favour of party's nominated candidate and 10 councilors/members of Indian National Congress have voted against the nominated candidate of the party despite a direction/whip issued by the party on 8th of January, 2020. The non-applicants have been continuously creating indiscipline in the party and defying the whip for which non-applicants were warned and show-cause notices were issued to them from time to time to explain their position to which they have not bothered to respond. The applicant has prayed to disqualify the non-applicants as member of Srinagar Municipal Corporation under Section 34-C of Jammu and Kashmir Municipal Corporation Act, 2000 on the ground of defection under Section 34-A of Jammu and Kashmir Municipal Corporation Act, 2000 and other grounds mentioned in this application in the interest of justice.

In opposition to the application, the non-applicants have submitted their objections wherein it has been pleaded that the application is misconceived, both on facts and on law. The applicant is not the validly appointed Chief Whip of the Indian National Congress Party, in fact, the non-applicant/respondent no 1, namely Shafat Gafar Mir is the duly appointed Chief Whip of the Indian National Congress party in the Srinagar Municipal Corporation. The respondent no. 1 has been issuing the whip on behalf of the Indian National Congress as and when the occasion arises. The latest whip issued by the abovementioned Respondent was on 15<sup>th</sup> of June, 2020, which was mailed to the concerned authorities from the official email address of the Secretary J&K Pradesh Congress Committee. The application is vague, the Jammu and Kashmir Municipal Corporation (Procedure and Conduct of Business) Regulations, 2005 provide for voting through "secret ballot" both for the posts of Mayor as well the Deputy Mayor and there is no mechanism in place to identify and filter the votes cast by the Corporators. The applicant himself has mentioned in the application that 10 Corporators belonging to the Indian National Congress have voted against the alleged whip, however, action has been sought only against three Respondents/Corporators, making it apparent that this is nothing more than a personal vendetta against the Respondents. Section 34-C of the Act confers powers on this Hon'ble forum when any question as to whether a member of the Corporation has become subject to disqualification is referred for the decision of the Chief Electoral Officer. No reference in accordance to the law or the rules has been made to this Hon'ble Forum by any competent authority. Moreover, the Applicant has no authority to file the present petition on behalf of the Indian National Congress party. The applicant has presented a concocted story and he is not the Chief Whip of the INC nor the respondents have created indiscipline. Regulation 6(7) provides that When two or more validly nominated candidates offer themselves for election at the meeting, the election shall be held by secret ballot in the manner hereinafter provided. Regulation 6(10) provides that " No Councilor shall vote for more than

one candidate. At the time of voting, each Councilor shall place a cross (X) on the right hand side of the ballot paper opposite the name of the candidate for whom he wishes to vote, and will then fold the ballot paper without showing the front of the paper to any person, insert the same in the ballot box in the presence of the presiding authority. The said regulations has been made applicable for the election to the post of Deputy Mayor by Regulation 8. In light of the abovementioned Regulations, it becomes clear that the applicant has no means to determine for whom the vote was cast by any of the councilors, including the non-applicants. Thus, this Petition is prima facie without any merit and fails even the test of common sense. The respondents have prayed that application be dismissed.

Learned counsel for the applicant has argued that the respondents are members of Indian National Congress and are always creating indiscipline, defying the whip of the party for which they were number of times requested to maintain the discipline and even show cause notices were issued to them to explain their position to which they have not responded, they have defied the whip issued by the chief whip whereby they were directed to cast their votes in favour of party candidate Mr. Nakul Matoo , as such are liable to be disqualified.

Learned counsel for the respondents argued that the respondents are members of Indian National Congress and have not cast their vote against the party candidate and applicant has managed a concocted story against the respondents as the method of voting was by secret ballot and there is no instrument to measure which councilor has cast vote in favour of which candidate, the present application has been filed with mala-fide intentions and deserves to be dismissed.

Heard the arguments of the parties and perused the record. A member of corporation can be disqualified on the ground of defection under section 34-A of Jammu & Kashmir Municipal Corporation Act, 2000 which reads as under:-

**“Section 34A: Disqualification on ground of defection.**

- (1) A member of a Corporation belonging to any political party shall be disqualified for being a member of the Corporation -
- (a) If he has voluntarily given up his membership of such political party ; or
  - (b) If he votes or abstains from voting in such Corporation contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned in writing by such political party, person

or authority within fifteen days from the date of such voting or abstention.


- (2) Notwithstanding anything contained in sub-section (1), a person who on the commencement of the Jammu and Kashmir Municipal Laws (Amendment) Act, 2005 is a member of a Corporation (whether elected or nominated as such) shall, where he was a member of a political party, immediately before such commencement be deemed, for the purpose of sub-section (1), to have been elected as a member of such Corporation as a candidate set up by such political party.

Explanation:- for the purpose of this section,-

- (a) An elected member of a Corporation shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member or which he joins after such election; and
- (b) A nominated member of a Corporation shall, -
  - (i) Where he is a member of any political party on the date of his nomination as such member be deemed to belong to such political party;
  - (ii) In any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes a member.

It is an admitted fact that the applicant and the respondents have contested the Municipal Elections 2018 on the party ticket of Indian National Congress and the total elected councillors of Indian National Congress in Srinagar Municipal Corporation is 17. A member of the corporation can be disqualified for being a member of the Corporation if he has voluntarily given up his membership of such political party or if he votes or abstains from voting in such Corporation contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned in writing by such political party, person or authority within fifteen days from the date of such voting or abstention. The applicant has not placed on record any document/evidence which can show that the respondents have not cast their vote in favour of party candidate and defied the whip, moreover, the method of voting for the election of Deputy Mayor Srinagar Municipal Corporation was by secret ballot, as such it can not be established that in favour of which candidate a member of Srinagar Municipal Corporation has cast his vote.

Now, therefore , in exercise of the powers conferred under section 34-C of the Act, and on the aforesaid stated rule position, the instant reference/ application is dismissed, as there is found no merit in the reference/application.

  
Chief Electoral Officer,  
Union Territory of  
Jammu & Kashmir and  
Ladakh.

No:- 2152/CEo/ME/2020/66-74

Dated :- 10-02-2022

Copy to:

1. Principal Secretary, Housing and Urban Development Department, Civil Secretariat, Jammu for information.
2. Deputy Commissioner, Srinagar for information.
3. Commissioner, Srinagar Municipal Corporation for information.
4. Sh. Basharat Bin Qadir, Councilor Ward No. 24 Chattabal,
5. Sh. Shafat Gaffar Mir, Councilor Ward No. 21 Batamaloo,
6. Mst. Shameema Khan councillor ward No 26-Bemina East
7. Gh. Rasool Hajam Ward No 30 Zainakot, ,
8. Incharge Website
9. Office file