

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

In the matter of:

Shri Dilip Kumar Pandey (Petitioner)

Vs.

Raaj Kumar Anand (Respondent)

Petition for disqualification of Shri Raaj Kumar Anand, 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 Government of National Capital Territory of Delhi Act, 1991 and the Members of Delhi Legislative Assembly (Disqualification on grounds of Defection) Rules, 1996.

1. Petitioner Shri Dilip Kumar Pandey 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 Government of National Capital Territory of Delhi Act, 1991 and the provisions of The Members of Delhi Legislative Assembly (Disqualification on grounds of Defection) Rules, 1996 (hereinafter referred to as the Rules).

The Petitioner seeks disqualification of Shri Raaj Kumar Anand, the Respondent under para 2 (1)(a) of the Tenth Schedule on the ground that the latter has voluntarily given up the membership of his party, the Aam Aadmi Party (hereinafter referred to as AAP). The Petitioner has stated that Shri Raaj Kumar Anand has voluntarily given up the membership of his original political party i.e. AAP by way of joining the Bahujan Samaj Party. Both the Petitioner and the Respondent are sitting members of the Assembly and belong to AAP.

The petition was filed on 21.05.2024. 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 31.05.2024 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 11.06.2024 and 14.06.2024 in the matter.



4. The leader of the Legislature Party has, by his letter dated 31.05.2024 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.

5. The Issue

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 by way of joining Bahujan Samaj 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 Patel Nagar Assembly Constituency (AC No. 24) on 12 February 2020. He 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 by way of joining Bahujan Samaj Party and, therefore, he should be disqualified. The Petitioner 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 has willingly joined the Bahujan Samaj Party while being an elected Member of the Legislative Assembly of NCT of Delhi. In doing so, Shri Raaj Kumar Anand has voluntarily given up the Membership of his original political party i.e. AAP in terms of Para 2(1)(a) of the Tenth Schedule thereby incurring disqualification for being a Member of the Legislative assembly of NCT of Delhi. Petitioner has annexed (Annexure-III of the Petition) the screen-shots of the messages allegedly



posted by the Respondent on his verified Twitter account. The text of the tweets reads as follows:

"I offer my tributes to BR Ambedkar. Today, I feel like I have joined my own party" says former AAP leader Raaj Kumar Anand after joining the BSP.

"नई दिल्ली लोकसभा सीट से BSP के प्रत्याशी बने राज कुमार आनंद, आज ही BSP में हुए हैं शामिल".

Petitioner has also annexed the resignation letter resigning from the post of Minister of Social Welfare (Annexure-III) addressed to Shri Arvind Kejriwal, Chief Minister, Delhi, posted by the Respondent on Twitter.

Petitioner has also annexed the News Clippings (Annexure-III) from Hindustan Times of 06.05.2024 which says :

"Joining the BSP in a ceremony at the party's office on Hardhyan Singh Road in Karol Bagh, Anand said, 'We went with supporters to the Aam Aadmi Party. It was like a bad dream to join them' and 'BSP Delhi President Laxman Singh said, "we are happy that Raaj Kumar Anand has come back to the BSP'."

The second ground cited by the Petitioner in support of his petition for disqualification of the Respondent is that the Respondent has yet to resign from the Assembly, and hence ought to be declared to have been disqualified from being a member.

7. On the basis of pieces of evidence the Petitioner contends that by his conduct the Respondent has voluntarily given up his membership to his party, namely, the Aam Aadmi Party. The Petitioner also contends that the Respondent has not resigned his seat in the Assembly. The Petitioner, therefore, prays that the Respondent be disqualified from being a Member of the 7th Legislative Assembly of NCT of Delhi w.e.f. 06 May, 2024, the date of voluntarily giving up the membership of his original party i.e. AAP by the Respondent by way of joining the Bahujan Samaj Party (BSP) and that the seat held by the Respondent in the Legislative Assembly of NCT of Delhi be declared vacant w.e.f. 06.05.2024, upon his disqualification.
8. The evidence annexed with the Petition to prove that the Respondent has voluntarily given up the membership of his party, consists of the screen shots of tweets and News Clippings of some News Papers. 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. I have, therefore, admitted and taken on record the electronic evidence presented by the Petitioner.
9. As per the rules of evidence in the Indian Evidence Act 1872, I have examined and verified the electronic evidences i.e. the screen-shots of Twitter Account of the Respondent presented by the Petitioner.



10. I also took the cognizance of the fact that the respondent had filed his Nomination Papers to contest from New Delhi Parliamentary Constituency in Lok Sabha Elections 2024 on the ticket of BSP on 06.05.2024 which is clearly indicated from screen-shots of Twitter account of the Respondent.

11. Contentions of the Respondent.

The Respondent did not appear before me in person on 11.06.2024 and 14.06.2024. He did not furnish his written comments on the petition upto 14.06.2024.

12. The Findings

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

13. In the present case, the petitioner has produced evidence to show that the conduct of the respondent such as going to the party's office of BSP to join BSP in a ceremony, announcing that he was resigning from the post of Minister and joining BSP and also announcing that it was like a bad dream to join AAP, clearly indicate that the Respondent has voluntarily given up the membership of the AAP to which he belongs. The Petitioner has also produced the screenshot of a tweet from the Respondent giving his resignation from the post of Minister and blaming Delhi Government, Chief Minister of Delhi and AAP for allegedly changing their policies.
14. 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).
15. I consider that joining BSP and filing Nomination Papers to contest from New Delhi Parliamentary Constituency in Lok Sabha Elections 2024 on the ticket of BSP on 06.05.2024 by the Respondent is conclusive of the issue of disqualification of the respondent for the purpose of Para 2(1)(a) of the Tenth Schedule. So it can be concluded that the Respondent has voluntarily given up the membership of AAP and thus has become liable to be disqualified under Para 2(1)(a) of the Tenth Schedule.



I NOW DECLARE AS UNDER

That Shri Raaj Kumar Anand, the Respondent in this case, an elected Member of the Legislative Assembly of the National Capital Territory of Delhi, elected from Patel Nagar (Assembly Constituency No. 24) has become subject to disqualification under Paragraph 2 (1) (a) of the Tenth Schedule of the Constitution. That the disqualification of said Shri Raaj Kumar Anand takes effect from 06.05.2024.

Delhi

Date: 18.06.2024



**(Ram Niwas Goel)
Speaker**

Legislative Assembly

National Capital Territory of Delhi

