GAHC040001462025 2026:GAU-AP:802-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/45/2025

Smti Ponung Radeng Saring and 2 Ors
Councilor, Ward No.5, Pasighat Municipal Council (PMC), Pasighat, East Siang District, Arunachal Pradesh.

2: Smti Yalop Nyigang Yomso
Age:
Occupation :
Councilor
Ward No.01
Pasighat Municipal Council (PMC)
Pasighat
East Siang District
Arunachal Pradesh.

3: Smti Rebeka Panyang
Age:
Occupation :
Deputy Chief Councilor cum Councilor
Councilor
Ward No.04
Pasighat Municipal Council (PMC)
Pasighat
East Siang District
Arunachal Pradesh

VERSUS

The State of AP and 2 Ors
represented by Chief Secretary, Govt of Arunachal Pradesh, Itanagar.

2:The Commissioner/ Secretary
Age: 0
Occupation :
Urban Local bodies

Govt of Arunachal Pradesh
Itanagar.

3:The State Election Commission
Age: 0
Occupation :
represented through its Secretary
Itanagar

Advocate for the Petitioner : T T Tara, Sr. Adv, Pondit Ronya,Kirmani Lollen,Terji Kamchi,Taba Tokur,Khoda Apa,Gamken Bam

Advocate for the Respondent : GA (AP), S/C State Election Commission,Ajin Apang, Sr. Advocate

BEFORE

HON'BLE MR. JUSTICE KARDAK ETE
HON'BLE MR. JUSTICE BUDI HABUNG

Date on which judgment is reserved : 21.07.2026

Date of pronouncement of judgment : 18.08.2026

Whether the pronouncement is of the Operative part of the judgment : No

Whether the full judgment has been Pronounced : Yes

JUDGMENT & ORDER (CAV)

(K. Ete, J)

Heard Mr. T. T. Tara, learned Senior Counsel assisted by Mr. G. Bam, learned counsel for the petitioners. Also heard Mr. I. Chowdhury, learned Advocate General assisted by Ms. P. Sangeeta, learned Government Advocate for the State respondents and Ms. N. Anju, learned counsel for the State Election Commission for the respondent No. 3.

2. The challenge made in this writ petition is to the constitutional validity of sub-sections (1) and (2) of Section 6 of the Arunachal Pradesh Urban Local Bodies (Disqualification on Grounds of Defection) Act, 2014 (hereinafter referred to as "the Act of 2014"), whereby an appeal against the decision of the State Election Commission in matters relating to disqualification on the ground of defection lies before the Chief Secretary of the State and, in the event the Chief Secretary also functions as the State Election Commissioner, before the Minister-in-Charge of Urban Local Bodies.

3. The petitioners are elected Councillors of the Pasighat Municipal Council, East Siang District, Arunachal Pradesh. It is the case of the petitioners that they have approached this Court in view of the notice dated 11.12.2024 issued by the Chief Secretary, Government of Arunachal Pradesh, requiring them to appear in Appeal No. 01/2024 preferred under Section 6(1) of the Act of 2014. The petitioners have specifically pleaded that they are not challenging the said notice or any proceedings initiated pursuant thereto, but have confined the present writ petition only to the constitutional validity of sub-sections (1) and (2) of Section 6 of the Act of 2014.

4. The State Election Commission, Arunachal Pradesh, functions within the constitutional provisions contained in Part IX and Part IX-A of the Constitution of India. While Article 243K provides for the constitution of the State Election Commission, Article 243ZA vests in the State Election Commission referred to in Article 243K(1) the superintendence, direction and control of elections to Municipalities. The petitioners contend that the State Election Commission, apart from conducting elections to Urban Local Bodies, has also been entrusted under the Act of 2014 with the adjudication of disputes relating to disqualification of members of such bodies.

5. The Act of 2014 provides for disqualification of members of Urban Local Bodies on the ground of defection. Section 6 thereof provides for an appeal against the decision of the State Election Commissioner before the Chief Secretary and, where the Chief Secretary also functions as the State Election Commissioner, before the Minister-in-Charge of Urban Local Bodies. The petitioners assail the said provision on the ground that it places a quasi-judicial determination rendered by the State Election Commissioner under the appellate scrutiny of authorities belonging to the executive branch, thereby affecting the independence and impartiality of the adjudicatory process and being contrary to the principles of separation of powers and the constitutional safeguards under Articles 14 and 21 of the Constitution of India.

6. Mr. T. T. Tara, learned Senior Counsel appearing for the petitioners, submits that the present writ petition involves a substantial constitutional question relating to the validity of the appellate mechanism created under Section 6(1) and (2) of the Act of 2014. Learned Senior Counsel submits that the impugned provisions create an arrangement whereby orders passed by the State Election Commissioner, while exercising quasi-judicial jurisdiction in matters relating to disqualification on the ground of defection, are subjected to appellate examination by an executive authority, namely, the Chief Secretary of the State and, in the circumstances contemplated under the proviso to Section 6(1), by the Minister-in-Charge of Urban Local Bodies. It is submitted that such an arrangement runs contrary to the constitutional requirement that adjudicatory functions must be discharged by authorities possessing the requisite independence and impartiality.

7. Learned Senior Counsel submits that the State Election Commission is not an ordinary statutory authority but a constitutional body constituted under

Article 243K read with Article 243ZA of the Constitution of India. It is submitted that the Constitution has entrusted the State Election Commission with the superintendence, direction and control of preparation of electoral rolls and conduct of elections to Municipalities and that the independence of such constitutional authority is an essential requirement for ensuring free and fair elections. Learned Senior Counsel submits that the constitutional status of the State Election Commission cannot be diluted by a statutory provision which has the effect of subjecting its decisions, rendered while exercising quasi-judicial functions, to the control or supervision of the executive branch of the State Government.

8. Learned Senior Counsel submits that the independence of electoral bodies from political and executive interference has been recognized by the Hon'ble Supreme Court as an essential component of the democratic structure of the Constitution. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **T. N. Seshan, Chief Election Commissioner of India v. Union of India & Others**, reported in **(1995) 4 SCC 611**, wherein the Apex Court observed that democracy being a basic feature of the constitutional scheme, free and fair elections are indispensable and that the responsibility of conducting elections has been entrusted to an independent body which must remain insulated from political and executive interference. Learned Senior Counsel submits that the principle laid down in the said judgment would equally apply to the State Election Commission, which performs constitutional functions in relation to elections to local bodies.

9. Learned Senior Counsel further places reliance upon the judgment of the Hon'ble Supreme Court in **Kishan Singh Tomar v. Municipal Corporation of the City of Ahmedabad**, reported in **(2006) 8 SCC 352**, wherein the Apex

Court emphasized the constitutional requirement of maintaining the independence of the State Election Commission and held that the State Election Commission must be allowed to function independently while discharging its constitutional responsibilities. Learned Senior Counsel submits that the power conferred upon the Chief Secretary or the Minister-in-Charge under Section 6 of the Act of 2014 has the effect of subjecting the decision-making process of the State Election Commission to executive scrutiny, thereby undermining the constitutional independence attached to the Commission.

10. Learned Senior Counsel submits that proceedings relating to disqualification on the ground of defection are adjudicatory in nature and involve determination of valuable rights attached to an elected office. It is submitted that the authority deciding such questions is required to act judicially, after providing an opportunity of hearing to the parties concerned, considering the material placed before it and arriving at a reasoned conclusion. Learned Senior Counsel submits that once the State Election Commissioner exercises such quasi-judicial jurisdiction, the decision rendered by such authority cannot be subjected to appellate review by an executive authority and can only be examined in exercise of judicial review by the constitutional courts.

11. In support of the aforesaid submission, learned Senior Counsel places reliance upon the Constitution Bench judgment of the Hon'ble Supreme Court in **Kihoto Hollohan v. Zachillhu**, reported in **1992 Supp (2) SCC 651**, wherein the Apex Court held that the authority deciding questions relating to disqualification on the ground of defection performs a judicial function and acts as a Tribunal. Learned Senior Counsel submits that the ratio laid down in the said judgment is that determination of disqualification questions involves adjudicatory functions and, therefore, the decision of such authority must

remain subject to scrutiny by superior constitutional courts and cannot be subjected to appellate control by an executive authority. It is submitted that Section 6 of the Act of 2014 creates an impermissible statutory hierarchy by placing an executive officer above an authority exercising quasi-judicial functions.

12. Learned Senior Counsel submits that the constitutional remedy available against an order passed by a quasi-judicial authority is judicial review by the High Court under Articles 226 and 227 of the Constitution of India. Reliance is placed upon the Constitution Bench judgment of the Hon'ble Supreme Court in **L. Chandra Kumar v. Union of India**, reported in **(1997) 3 SCC 261**, wherein it has been held that the power of judicial review vested in the High Courts under Articles 226 and 227 and in the Supreme Court under Article 32 forms part of the basic structure of the Constitution and cannot be excluded or substituted. Learned Senior Counsel submits that although the legislature may create statutory forums for adjudication, such forums cannot replace or dilute the constitutional jurisdiction of the High Court. It is submitted that the impugned provisions, by creating an executive appellate mechanism, seek to interpose an authority which is neither judicial nor independent between the State Election Commission and the constitutional courts.

13. Learned Senior Counsel submits that Section 6 of the Act of 2014 creates a reverse hierarchy by placing an executive authority in an appellate position over an authority exercising quasi-judicial functions. It is submitted that while the Executive is entrusted with the implementation of laws and policies framed by the Legislature, it cannot assume the role of an appellate authority over decisions rendered in the exercise of adjudicatory functions. Learned Senior Counsel submits that the distinction between administrative and adjudicatory

functions is a fundamental aspect of the constitutional scheme and that permitting an executive officer to examine, modify or set aside a quasi-judicial determination would amount to an impermissible encroachment upon the adjudicatory domain.

14. Learned Senior Counsel further submits that the impugned provisions violate the doctrine of separation of powers, which forms part of the basic structure of the Constitution of India. Reliance is placed upon the constitutional principles recognized by the Hon'ble Supreme Court, including in **Kesavananda Bharati v. State of Kerala**, reported in **(1973) 4 SCC 225**, wherein the principles forming part of the basic structure of the Constitution have been recognized. It is submitted that the adjudicatory functions entrusted to the State Election Commissioner under the Act of 2014 cannot be subjected to review by authorities who are themselves part of the executive branch of the State Government. Learned Senior Counsel submits that such an arrangement disturbs the constitutional balance between the Executive and the adjudicatory authorities.

15. Learned Senior Counsel submits that the proviso to Section 6(1) of the Act of 2014 creates an additional constitutional infirmity by providing that where the Chief Secretary also functions as the State Election Commissioner, the appeal shall lie before the Minister-in-Charge of Urban Local Bodies. It is submitted that a Minister, being a political functionary and a member of the elected executive, cannot be vested with appellate jurisdiction over disputes relating to electoral disqualification. Learned Senior Counsel submits that disputes relating to defection are inherently political in nature and, therefore, entrusting appellate jurisdiction in such matters to a political authority gives rise to a reasonable apprehension of bias and compromises the requirement of institutional

impartiality.

16. Learned Senior Counsel places reliance upon the judgment of the Hon'ble Supreme Court in **A. K. Kraipak v. Union of India**, reported in **(1969) 2 SCC 262**, wherein the Apex Court held that the test for determining bias is not actual bias but whether there exists a reasonable ground for believing that the authority is likely to be biased. Learned Senior Counsel submits that the principle of *nemo judex* in *causa sua* is attracted to the present case, as the appellate mechanism under Section 6 permits authorities closely connected with the executive government to adjudicate disputes involving elected representatives and political parties. It is submitted that the reasonable apprehension of bias is sufficient to render such an adjudicatory arrangement inconsistent with the requirement of institutional independence.

17. Learned Senior Counsel submits that the Chief Secretary, being the highest-ranking administrative officer of the State Government and functioning within the administrative control of the elected executive, cannot be considered an independent appellate authority in matters where the State Election Commissioner has exercised quasi-judicial powers. Similarly, it is submitted that the Minister-in-Charge, being a political executive, cannot be entrusted with the power to decide appeals concerning electoral disqualification. Learned Senior Counsel submits that the mere possibility of executive influence is sufficient to undermine public confidence in the fairness and impartiality of the adjudicatory process.

18. Learned Senior Counsel further submits that the impugned provisions violate Article 14 of the Constitution of India, as they permit an arbitrary and unreasonable procedure whereby decisions rendered by an independent authority exercising quasi-judicial functions are subjected to appellate review by

executive authorities without any rational basis. It is submitted that there is no discernible legislative purpose in creating an executive appellate mechanism when the orders of the State Election Commissioner are otherwise amenable to judicial review before the High Court under Article 226 of the Constitution.

19. Learned Senior Counsel submits that Section 6(2) of the Act of 2014, which provides for a "summary procedure" for disposal of appeals, suffers from further constitutional infirmity as it does not prescribe a structured appellate procedure or adequate safeguards for ensuring a fair adjudication. It is submitted that the provision does not lay down any detailed mechanism relating to appreciation of evidence, recording of reasons, or procedural safeguards required in proceedings affecting the right of an elected representative to continue in office. Learned Senior Counsel submits that the deprivation of such valuable rights through a summary procedure before an executive authority fails to satisfy the constitutional requirement of fairness, reasonableness and procedural safeguards guaranteed under Article 21 of the Constitution of India.

20. Learned Senior Counsel submits that the requirement of an independent and impartial adjudicatory mechanism has been repeatedly emphasized by the Hon'ble Supreme Court while examining the functioning of tribunals and bodies exercising judicial functions. Reliance is placed upon the judgment in **State of Maharashtra v. Labour Law Practitioners' Association**, reported in **(1998) 2 SCC 688**, wherein the Apex Court recognized that bodies exercising judicial functions must possess the necessary independence from executive control. Learned Senior Counsel submits that the principle laid down therein is equally applicable in the present case, where an executive authority has been designated as an appellate authority over a quasi-judicial determination.

21. Learned Senior Counsel further places reliance upon the judgment of the

Hon'ble Supreme Court in **Amrik Singh Lyallpuri v. Union of India**, reported in **(2011) 6 SCC 535**, and submits that the said decision recognizes the impermissibility of permitting an executive authority to sit in appeal over decisions rendered by quasi-judicial bodies. Learned Senior Counsel submits that ratio laid down in the said judgment applies to the present case, as Section 6 of the Act of 2014 similarly authorizes executive authorities to examine and decide appeals against determinations made by the State Election Commissioner while exercising quasi-judicial jurisdiction.

22. Learned Senior Counsel also places reliance upon the judgments of the Hon'ble Supreme Court in **Union of India v. R. Gandhi, President, Madras Bar Association**, reported in **(2010) 11 SCC 1** and **Madras Bar Association v. Union of India**, reported in **(2014) 10 SCC 1**, to submit that institutional independence and impartiality are indispensable requirements wherever adjudicatory functions are entrusted to an authority. Learned Senior Counsel submits that the transfer or vesting of judicial functions in any authority cannot be accompanied by a mechanism which subjects such functions to executive control, as such an arrangement would defeat the very purpose of creating an independent adjudicatory forum.

23. Learned Senior Counsel submits that the constitutional infirmity in Section 6 of the Act of 2014 is also evident from the legislative framework prevailing in other States. It is submitted that in States such as Kerala, Karnataka and West Bengal, decisions of the State Election Commission in matters relating to disqualification of elected representatives are not subjected to appellate review before executive authorities and remain open only to judicial review before the constitutional courts. Learned Senior Counsel submits that the statutory arrangement prevailing in Arunachal Pradesh is inconsistent with the

constitutional scheme, as it creates an executive appellate mechanism over the State Election Commission.

24. Learned Senior Counsel submits that the absence of such executive appellate provisions in other States indicates that there is no administrative necessity or compelling State interest in creating such a mechanism. It is submitted that the only effect of Section 6(1) and (2) of the Act of 2014 is to subordinate the decision-making process of the State Election Commission to executive authorities, thereby compromising the independence of the constitutional body and weakening public confidence in the electoral process.

25. Learned Senior Counsel, therefore, submits that sub-sections (1) and (2) of Section 6 of the Act of 2014 are constitutionally invalid, being contrary to the principles of separation of powers, judicial independence, natural justice and the guarantees contained under Articles 14 and 21 of the Constitution of India. Learned Senior Counsel submits that the impugned provisions are liable to be struck down as unconstitutional and that the orders passed by the State Election Commissioner in exercise of powers under the Act of 2014 ought to remain subject only to the constitutional jurisdiction of this Court under Article 226 of the Constitution of India.

26. Mr. I. Chowdhury, Learned Advocate General appearing for the State respondents, at the very outset, submits that, the present writ petition has been filed challenging the constitutional validity of sub-sections (1) and (2) of Section 6 of the Act of 2014. Learned Advocate General submits that the petitioners have themselves categorically stated that they are not challenging the notice dated 11.12.2024 issued by the Chief Secretary, Government of Arunachal Pradesh, in Appeal No. 01/2024 or any proceedings initiated pursuant thereto and have confined their challenge only to the constitutional validity of the

aforesaid statutory provisions.

27. Learned Advocate General submits that in the aforesaid circumstances, no constitutional or legal right of the petitioners has been affected and no prejudice whatsoever has been caused to them. It is submitted that the present proceedings, being a writ petition and not a Public Interest Litigation, cannot be entertained merely on the basis of an apprehension of possible consequences. He submits that undertaking adjudication on the constitutional validity of the impugned provisions in the absence of any actual infringement of rights would amount to an academic exercise, particularly when the proceedings initiated under the Act of 2014 have not been assailed.

28. Learned Advocate General submits that the challenge made by the petitioners to Section 6(1) and (2) of the Act of 2014 is without any legal foundation, inasmuch as the said enactment has been made by the competent Legislature in exercise of its legislative competence under Entry 5 of List II of the Seventh Schedule to the Constitution of India. Learned Advocate General submits that Entry 5 empowers the State Legislature to enact laws relating to local government including municipalities and matters connected with their functioning.

29. Learned Advocate General further submits that Part IX-A of the Constitution of India provides the constitutional provisions governing Municipalities and enables the State Legislature to make laws relating to the composition, functioning and disqualification of members of Urban Local Bodies. It is submitted that the provisions contained in Section 6(1) and (2) of the Act of 2014 form part of a duly enacted statutory scheme and carry with them a presumption of constitutional validity. Learned Advocate General submits that the allegations that the impugned provisions are unconstitutional, arbitrary or

violative of the doctrine of separation of powers are therefore liable to be rejected.

30. Learned Advocate General submits that the primary contention advanced on behalf of the petitioners emanates from the doctrine of separation of powers and the alleged impermissible vesting of appellate powers in an executive authority. It is submitted that the Constitution of India does not contemplate a rigid separation of powers but adopts a flexible constitutional scheme wherein certain functions may overlap amongst different organs of the State.

31. Learned Advocate General submits that the Executive, when empowered by statute, can exercise judicial or quasi-judicial functions and the mere conferment of such statutory power upon an authority belonging to the Executive would not render the provision unconstitutional. Learned Advocate General places reliance upon the judgment of the Hon'ble Supreme Court in **Rai Sahib Ram Jawaya Kapur & Ors. v. State of Punjab**, reported in **AIR 1955 SC 549**, wherein the constitutional position relating to the doctrine of separation of powers has been considered. The relevant paragraph of the said judgment is quoted hereinbelow:

> "*...12. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away.*
>
> *The Indian Constitution has not indeed recognised the doctrine of separation if powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature.*
>
> *It can also, when so empowered, exercise judicial functions in a limited way. The executive Government, however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the*

Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws."

32. Learned Advocate General submits that the contention of the petitioners proceeds on an incorrect assumption that merely because the Legislature has designated the Chief Secretary as the appellate authority under Section 6 of the Act of 2014, such authority would be exercising jurisdiction in his administrative capacity as the Chief Secretary. Learned Advocate General submits that while exercising powers under Section 6 of the Act of 2014, the Chief Secretary does not act in his administrative capacity but acts as an appellate authority created by the Legislature and exercises jurisdiction strictly in accordance with the statutory provisions.

33. Learned Advocate General submits that the appellate authority performs a quasi-judicial function and is required to consider the relevant materials, provide an opportunity of hearing to the concerned parties and pass orders in accordance with law and principles of natural justice. It is therefore submitted that the statutory arrangement cannot be said to amount to executive interference with the functioning of the State Election Commission.

34. Learned Advocate General submits that the contention raised by the petitioners that the impugned provisions result in ouster of judicial review is wholly misconceived. It is submitted that the appellate mechanism provided under Section 6 of the Act of 2014 does not exclude or restrict the constitutional jurisdiction of this Hon'ble Court under Articles 226 and 227 of the Constitution of India.

35. Learned Advocate General submits that the reliance placed upon the judgment of the Hon'ble Supreme Court in **L. Chandra Kumar** (supra), is

misplaced. It is submitted that the said judgment arose in the context of Articles 323-A and 323-B of the Constitution and dealt with the establishment of administrative tribunals and the continued availability of judicial review by the High Courts. Learned Advocate General submits that the said judgment only recognizes that the jurisdiction of the High Court under Articles 226 and 227 cannot be excluded and does not lay down that every statutory appellate authority exercising quasi-judicial functions must necessarily be a judicial authority.

36. Learned Advocate General further submits that the reliance placed by the petitioners upon the judgment in **Kihoto Hollohan** (supra), does not advance the case of the petitioners. It is submitted that the said judgment, in fact, supports the submission of the State respondents that a statutory authority empowered by law may perform adjudicatory functions. It is submitted that in the present case, the Chief Secretary while exercising powers under Section 6 of the Act of 2014 does not act as the Chief Secretary in an administrative capacity but acts as an appellate authority empowered by the State Legislature. Under the proviso to Section 6(1), where the Chief Secretary also functions as the State Election Commissioner, the Legislature has provided that the appeal shall lie before the Minister-in-Charge of Urban Local Bodies. It is submitted that the Minister, being a constitutional authority, while exercising jurisdiction under the Act, acts in a quasi-judicial capacity and is required to decide the matter in accordance with the statutory provisions and principles of natural justice.

37. Learned Advocate General submits that the challenge based on apprehension of bias and violation of principles of natural justice is also without merit. It is submitted that there can be no dispute with the legal proposition laid down by the Hon'ble Supreme Court in **A.K. Kraipak** (supra). However, learned

Advocate General submits that the said principle has no application in the present case, as the petitioners are challenging the constitutional validity of a statutory provision itself. Learned Advocate General submits that the possibility of abuse or improper exercise of a statutory power cannot be a ground for declaring a statutory provision unconstitutional. It is submitted that a statutory provision cannot be struck down merely on the basis of an apprehension that the power conferred under the statute may be misused.

38. In support of the aforesaid submission, learned Advocate General places reliance upon the judgment of the Hon'ble Supreme Court in **Pannalal Binjraj and Anr. Vs. Union of India and Ors.** reported in **AIR 1957 SC 397**, wherein the Hon'ble Supreme Court held that the possibility of improper or discriminatory exercise of a statutory power cannot, by itself, invalidate the legislation and that where there is an abuse of such power, it is the exercise of the power which may be subjected to judicial scrutiny. Learned Advocate General further relies upon the judgment in **D. K. Trivedi & Sons vs. State of Gujarat**, reported in **1986 (Supp) SCC 20**, wherein the Hon'ble Supreme Court held that the validity or constitutionality of a statutory provision conferring discretionary power upon the Executive or an administrative authority cannot be judged on the assumption that such power would be exercised arbitrarily and that the mere possibility of abuse or arbitrary exercise of power cannot invalidate the statute conferring such power. Reliance is also placed upon the judgment in **Natural Resource Allocation, In re, Special Reference No. 1 of 2012**, reported in **(2012) 10 SCC 1**, wherein the Hon'ble Supreme Court reiterated that a statutory provision cannot be declared unconstitutional merely on the ground of the possibility of its abuse or improper exercise and that the Court is required to examine the constitutional validity of the provision on the

basis of its legal character and operation rather than on the basis of hypothetical possibilities of misuse.

39. Learned Advocate General submits that the provisions of Section 6(1) and (2) of the Act of 2014 do not violate Article 14 of the Constitution of India. It is submitted that the statutory mechanism applies uniformly to all members of Urban Local Bodies and forms part of a structured legislative framework governing disqualification matters arising from defection. Learned Advocate General submits that the provisions have been enacted for maintaining discipline and stability in the functioning of Urban Local Bodies and there is no arbitrariness or unreasonableness in the statutory arrangement.

40. Learned Advocate General submits that the reliance placed by the petitioners upon the statutory schemes prevailing in other States is wholly misplaced. It is submitted that Article 14 does not authorize striking down a law enacted by one State merely because another State has adopted a different legislative arrangement on the same subject. Learned Advocate General places reliance upon the judgment **Sant Lal Bharti vs. State of Punjab**, reported in **(1988) 1 SCC 366**, in support of the proposition that difference in statutory provisions enacted by different States cannot by itself constitute discrimination under Article 14 of the Constitution. The relevant paragraph is reproduced hereinbelow:

> "*...5. Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory or different. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two enactments. The source of authority for the two statutes being different, Art. 14 can have no application.*"

41. Learned Advocate General submits that the reliance placed by the

petitioners upon the judgments in **Labour Law Practitioners' Association (supra), Amrik Singh Lyallpuri (supra)** and **Madras Bar Association (supra),** is wholly misconceived and misplaced. It is submitted that the said judgments were rendered in the context of the specific issues involved therein and cannot be applied mechanically to the facts of the present case. Learned Advocate General submits that the judgment in **Madras Bar Association** (supra), was rendered in the context of creation of the National Tax Tribunal and transfer of jurisdiction relating to questions of law which were earlier exercised by the High Courts. It is submitted that the facts and circumstances of the present case have no connection or correlation with the issues considered by the Hon'ble Supreme Court in the said judgment.

42. Learned Advocate General submits that a judgment is an authority for what it actually decides and that the observations made therein cannot be read independently of the factual context in which such observations were made. Learned Advocate General submits that the principles laid down in a judgment have to be understood in the backdrop of the facts and issues which arose for consideration before the Court and cannot be mechanically applied to cases involving a different factual and legal matrix.

43. In support of the aforesaid submission, learned Advocate General places reliance upon the judgments of the Hon'ble Supreme Court in **Divisional Controller, KSRTC v. Mahadeva Shetty and Anr.**, reported in **(2003) 7 SCC 197**, wherein the Hon'ble Supreme Court emphasized that the scope and authority of a precedent should not be expanded beyond the principle upon which the case was decided. Learned Advocate General further relies upon the judgment in **Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Ors.**, reported in **(2003) 2 SCC 111**, wherein it was held that a decision is an

authority for what it decides and not for what may be logically deduced therefrom and that even a slight difference in facts or additional facts may have a significant bearing on the precedential value of a decision. Reliance is also placed upon the judgment in **Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr.**, reported in **(2002) 3 SCC 496**, wherein the Hon'ble Supreme Court held that judicial observations must be understood in the context in which they are made and that judgments cannot be read as statutes by separating the observations from the factual background in which they are rendered.

44. Learned Advocate General submits that Section 6(1) and (2) of the Act of 2014 constitute a valid statutory mechanism enacted by the competent Legislature within its legislative competence. It is submitted that the appellate authority exercises jurisdiction in accordance with the statutory scheme and principles of natural justice, and any order passed thereunder remains subject to judicial scrutiny under Articles 226 and 227 of the Constitution of India. Learned Advocate General further submits that the impugned provisions do not interfere with the constitutional functions or independence of the State Election Commission, as the appellate mechanism operates in a distinct field relating to adjudication of disqualification disputes arising under the Act of 2014. Accordingly, it is submitted that the challenge raised by the petitioners is without merit and the writ petition is liable to be dismissed.

45. I have considered the submissions of the learned counsel for the parties and also carefully perused the authorities cited at the Bar as well as browsed through the Act of 2014.

46. The petitioners challenge the constitutional validity of Section 6 of the Act of 2014 on the ground that a decision rendered by the State Election

Commissioner, a constitutional authority entrusted with the conduct and supervision of elections to local bodies, cannot be made subject to an appeal before an authority forming part of the Executive. It is, therefore, necessary to examine the nature of the jurisdiction exercised by the State Election Commissioner under the Act of 2014 and the character of the appellate jurisdiction conferred by Section 6, particularly in the light of the constitutional scheme governing the State Election Commission and the principles laid down by the Hon'ble Supreme Court in the decisions relied upon by the learned Senior Counsel for the petitioners.

47. There can be no dispute that Articles 243K and 243ZA of the Constitution confer upon the State Election Commission the superintendence, direction and control of the preparation of electoral rolls and the conduct of elections to Panchayats and Municipalities, respectively. The constitutional object behind incorporation of the said provisions is to ensure that elections to local bodies are conducted by an independent constitutional authority and that such authority remains insulated from executive or political interference while discharging the constitutional functions entrusted to it.

48. At the same time, the constitutional status of an authority and the source of power under which such authority exercises a particular jurisdiction are distinct considerations. The mere fact that a constitutional authority has been entrusted by the Legislature with a statutory function would not, by itself, result in such statutory function acquiring the character of a constitutional function. The nature and source of the power exercised by the authority have to be examined for determining the character of the jurisdiction and the constitutional limitations applicable thereto.

49. In the present case, the power exercised by the State Election

Commissioner while deciding questions relating to disqualification of members of Urban Local Bodies on the ground of defection is not a power traceable to Articles 243K or 243ZA of the Constitution of India but from the Entry 5, List II of Seventh Schedule. The said jurisdiction has been created by the State Legislature under the Act of 2014. Articles 243K and 243ZA specifically relate to the superintendence, direction and control of the preparation of electoral rolls and the conduct of elections to Panchayats and Municipalities. Adjudication of questions relating to disqualification on the ground of defection is not a function specifically conferred by the said constitutional provisions but is a statutory jurisdiction created by the Legislature.

50. Once the Legislature has created such a statutory jurisdiction and entrusted the same to the State Election Commissioner, the question necessarily arises whether the Legislature is constitutionally precluded from prescribing the manner in which such jurisdiction is to be exercised or from providing a remedy against a decision rendered in exercise thereof. In the considered opinion of this Court, no such absolute prohibition can be read into Articles 243K or 243ZA. The question, therefore, is not whether the State Election Commissioner, being a constitutional authority, can exercise statutory jurisdiction, but whether the appellate mechanism provided by Section 6 of the Act of 2014 is inconsistent with any constitutional limitation.

51. Thus, the reliance placed by the learned Senior Counsel appearing for the petitioners upon the judgment of the Hon'ble Supreme Court in **T.N. Seshan, Chief Election Commissioner of India** (supra), does not advance the case of the petitioners. There can be no dispute with the proposition that the Election Commission, being a constitutional authority, is required to remain independent and free from executive or political interference while discharging the

constitutional functions entrusted to it. The Hon'ble Supreme Court, while considering the scheme of Article 324, also recognised that the Election Commission may discharge administrative, adjudicatory and legislative functions. The said principle, however, has to be understood in the context of the constitutional scheme governing the Election Commission and cannot be read to mean that every statutory function entrusted by the Legislature to a constitutional authority necessarily acquires the character of a constitutional function and becomes insulated from legislative regulation. The question in the present case is not one of interference with the constitutional functions of the State Election Commission but the validity of an appellate mechanism created in respect of a statutory jurisdiction under the Act of 2014.

52. The reliance placed upon the judgment of the Hon'ble Supreme Court in **Kishan Singh Tomar** (supra), also does not advance the case of the petitioners. The said judgment emphasised the constitutional responsibility of the State Election Commission to ensure timely elections to local bodies and recognised the importance of its independence in discharging the functions entrusted to it under the constitutional scheme. The said decision, however, was concerned with the constitutional powers and responsibilities of the State Election Commission in relation to the conduct of elections and does not deal with the question whether a statutory appellate remedy can be provided against an adjudicatory decision rendered by the State Election Commissioner under a State enactment relating to disqualification on the ground of defection.

53. The submission of the learned Senior Counsel for the petitioners that the decision of the State Election Commissioner can only be subjected to judicial review and cannot be made subject to a statutory appeal cannot be accepted in such absolute terms. Judicial review under Articles 226 and 227 of the

Constitution and a statutory appeal operate in different fields. Judicial review is concerned with the legality of the decision-making process, jurisdictional errors, violation of principles of natural justice and other recognised grounds of judicial review, whereas an appeal is a statutory remedy for examining the correctness of the decision within the limits prescribed by the Legislature. The existence of a statutory appeal does not, by itself, exclude or dilute the constitutional jurisdiction of this Court, and any order passed by the appellate authority would continue to remain subject to the jurisdiction of this Court under Articles 226 and 227 of the Constitution.

54. The reliance placed by the learned Senior Counsel upon the Constitution Bench judgment of the Hon'ble Supreme Court in **Kihoto Hollohan** (supra), also does not advance the case of the petitioners. In the said judgment, the Hon'ble Supreme Court held that, while deciding questions of disqualification under the Tenth Schedule, the Speaker or Chairman acts as a Tribunal and performs an adjudicatory function, and that the decision rendered by such authority is subject to judicial review. The principle emerging therefrom is that the decision on a question of disqualification is adjudicatory in nature and must conform to the requirements of fairness and remain subject to judicial scrutiny. However, the judgment does not lay down that every adjudicatory decision rendered by a statutory authority is, merely by reason of its adjudicatory character, constitutionally incapable of being subjected to a further statutory appellate remedy. The availability of judicial review by the constitutional courts cannot, therefore, be equated with a prohibition against a statutory appellate remedy.

55. The reliance placed upon the celebrated judgement in **Kesavananda Bharati** (supra) is also misplaced. The said judgment is principally concerned with the limits of the constituent power under Article 368 and holds that the

power of constitutional amendment cannot be exercised so as to alter or destroy the basic structure of the Constitution. It does not lay down any general proposition that an authority discharging a judicial or quasi-judicial function is constitutionally immune from a statutory appellate mechanism. Likewise, the principle affirmed in **L. Chandra Kumar** (supra) is that the jurisdiction of the High Courts under Articles 226 and 227, being part of the basic structure, cannot be excluded or ousted; it does not render every adjudicatory decision statutorily final or prohibit the Legislature from prescribing a hierarchy of adjudication and appeal. In the present case, Section 6 of the Act of 2014 neither amends the Constitution nor excludes or curtails the jurisdiction of this Court under Articles 226 and 227; it merely provides a statutory mechanism for further consideration of an adjudicatory decision. The mere existence of such a statutory appellate remedy, therefore, cannot, without more, be characterised as an alteration of the basic structure or as constitutionally impermissible.

56. The judgment of the Hon'ble Supreme Court in **Amrik Singh Lyallpuri** (supra), relied upon by the learned Senior Counsel for the petitioners, has also been considered. In the said case, the Hon'ble Supreme Court was concerned with a provision under which an appeal from an order of an Appellate Tribunal, which was manned by a judicial officer and possessed the trappings of a Civil Court, lay before the Administrator, namely, the Lieutenant Governor, who was an executive authority. The Court, in that institutional setting, held that an executive authority could not sit in appeal over a decision of a judicial or quasi-judicial authority having the trappings of a court. The ratio of the said judgment cannot be viewed independently from the nature of the authority whose decision was subjected to executive appellate review and the statutory framework under consideration therein. In the present case, the State Election

Commissioner exercises a statutory jurisdiction created under the Act of 2014 and Section 6 provides an appellate remedy within the same statutory scheme. The present case, therefore, cannot be decided merely by describing the Chief Secretary as an executive authority; the character of the underlying jurisdiction and the nature of the appellate power created by the Legislature have also to be examined. Unlike the provision considered in **Amrik Singh Lyallpuri** (supra), Section 6 does not confer a general administrative power upon the Executive to supervise, modify or set aside the functioning of the State Election Commission, nor does it exclude the constitutional jurisdiction of the High Court.

57. The other judgments relied upon by the learned Senior Counsel, including **Labour Law Practitioners' Association** (Supra), **R. Gandhi, President, Madras Bar Association** (Supra) and **Madras Bar Association** (Supra), undoubtedly emphasise the importance of independence and impartiality where judicial functions traditionally exercised by courts are entrusted to tribunals or other adjudicatory bodies, particularly where such tribunals are constituted as substitutes for, or in substantial replacement of, the jurisdiction exercised by courts. Those decisions, however, arose in the context of tribunalisation and the constitutional safeguards required when adjudicatory jurisdiction ordinarily exercised by courts is transferred to tribunals. The present case does not involve the creation of a tribunal in substitution of the constitutional courts, nor does Section 6 exclude, curtail or otherwise affect the jurisdiction of this Court under Articles 226 and 227 of the Constitution. The appellate authority exercises only the limited statutory jurisdiction expressly conferred upon it by the Act of 2014 and does not replace the jurisdiction of the constitutional courts. The principles laid down in the aforesaid decisions must, therefore, be applied having regard to the nature, source and extent of the jurisdiction conferred upon the appellate

authority in the present case.

58. The contention that the Chief Secretary, being an officer of the Executive, cannot exercise appellate jurisdiction over a decision rendered by the State Election Commissioner also cannot be accepted merely on the basis of the doctrine of separation of powers. The Constitution of India does not recognise a rigid and absolute separation of powers between the Legislature, Executive and Judiciary. The constitutional scheme is based upon functional separation and permits, in appropriate circumstances, overlapping of functions, subject to constitutional limitations. The Hon'ble Supreme Court in **Rai Sahib Ram Jawaya Kapur** (supra), has recognised that the doctrine of separation of powers does not operate in India with absolute rigidity and that the Executive may, in appropriate circumstances, exercise functions which are not exclusively reserved to the Judiciary. Consequently, the mere fact that the appellate authority is an officer of the Executive would not, by itself, render the conferment of appellate jurisdiction upon such authority constitutionally impermissible.

59. Therefore, the mere fact that the Chief Secretary belongs to the Executive establishment cannot, by itself, be a ground to declare Section 6 unconstitutional. While exercising jurisdiction under Section 6 of the Act of 2014, the Chief Secretary does not act merely in his administrative capacity or exercise administrative control over the State Election Commissioner. He acts pursuant to the appellate jurisdiction specifically conferred upon him by the Legislature and is required to exercise that jurisdiction within the limits prescribed by the Act. Section 6(2) further requires the appellate authority to follow the prescribed procedure and the principles of natural justice. The statutory designation of the Chief Secretary as appellate authority, therefore,

cannot by itself be equated with executive interference with the functioning of the State Election Commission.

60. This Court is conscious of the fact that proceedings relating to disqualification on the ground of defection involve serious consequences, as they affect the right of an elected representative to continue in office. The authority exercising such jurisdiction is, therefore, required to act fairly, objectively and in accordance with the principles of natural justice. The seriousness of the consequence, however, cannot by itself determine the constitutional character of the jurisdiction or render every statutory appellate remedy impermissible. What is required is that the appellate authority remains confined to the jurisdiction conferred by the statute and act in accordance with law.

61. The position, however, requires separate consideration insofar as the proviso to Section 6(1) is concerned. The said proviso provides that where the Chief Secretary also functions as the State Election Commissioner, the appeal shall lie before the Minister-in-Charge of Urban Local Bodies in the State. The legislative object behind the proviso appears to be to provide an alternative appellate authority in a situation where the ordinary appellate authority, namely, the Chief Secretary, is unavailable by reason of holding the office of the State Election Commissioner. The question, however, is whether the alternative forum so created satisfies the constitutional requirement of fairness and institutional impartiality.

62. In this regard, the distinction between the Chief Secretary and the Minister-in-Charge assumes significance. The Chief Secretary, while exercising jurisdiction under Section 6, acts pursuant to a statutory mandate and is required to adjudicate the appeal in accordance with the provisions of the

enactment and the principles of natural justice. The Minister-in-Charge, on the other hand, is a member of the elected political executive and is responsible for the administration of the concerned department. The appellate jurisdiction conferred by the proviso concerns proceedings relating to disqualification of elected representatives on the ground of defection. Conferment of such jurisdiction upon a member of the political executive, in the circumstances contemplated by the proviso, creates a reasonable apprehension regarding the institutional impartiality of the appellate forum.

63. The defect in the proviso is not based upon any assumption that a particular Minister would necessarily act unfairly or that the power conferred upon him would necessarily be abused. The issue is one of institutional design. An adjudicatory mechanism must not only be fair in fact but must also be structured in a manner which inspires confidence in its independence and impartiality. Where the subject matter of the adjudication concerns the electoral status of elected representatives and the appellate jurisdiction is vested in the political executive responsible for the concerned department, the apprehension of institutional bias cannot be regarded as unrealistic or remote.

64. The principle of institutional impartiality assumes greater significance where the dispute concerns disqualification on the ground of defection. Such proceedings directly affect the continuance of elected representatives in office and may have consequences upon the composition and functioning of elected local bodies. The appellate forum must, therefore, be so constituted that the parties are assured that the dispute will be determined on the basis of the statutory provisions and the material placed before the authority and not by considerations arising from the political or administrative relationship of the appellate authority with the subject matter.

65. This Court is also conscious of the settled principle that while exercising jurisdiction under Article 226 of the Constitution, the Court must exercise restraint while examining the constitutional validity of a statutory provision as there is always presumption of constitutionality in favour of the Enactment. The Legislature enjoys considerable discretion in framing laws and creating statutory mechanisms for achieving the object sought to be accomplished by the enactment. A statutory provision cannot be declared unconstitutional merely because another legislative arrangement may appear to be more appropriate or because the Court may consider a different mechanism to be preferable. However, where the mechanism created by the Legislature itself transgresses the constitutional requirement of fairness and impartiality, the constitutional court cannot decline to examine such infirmity.

66. The question of severability also arises for consideration. If a particular part of a statutory provision is found to suffer from constitutional infirmity, the Court would ordinarily preserve the remaining portion if the valid and invalid parts are capable of being separated and the remaining statutory scheme is capable of meaningful operation. The present case is one where the ordinary appellate mechanism under Section 6(1) and the procedural safeguards contained in Section 6(2) can operate independently of the proviso which confers appellate jurisdiction upon the Minister-in-Charge.

67. In the present case, this Court is, therefore, of the considered opinion that the infirmity, if any, is confined only to the proviso to Section 6(1). The remaining portion of Section 6(1), providing for an appeal before the Chief Secretary, and Section 6(2), prescribing the procedure to be followed by the appellate authority, are capable of independent operation and do not suffer from any constitutional infirmity. The doctrine of severability consequently requires

that only the offending portion of the provision be struck down while preserving the remaining statutory scheme.

68. For the foregoing reasons, this Court is unable to accept the challenge raised by the petitioners to the entirety of sub-sections (1) and (2) of Section 6 of the Arunachal Pradesh Urban Local Bodies (Disqualification on Grounds of Defection) Act, 2014. This Court is unable to hold that the Legislature was constitutionally precluded from providing an appellate remedy against a decision rendered by the State Election Commissioner in exercise of the statutory jurisdiction conferred by the Act of 2014. The said jurisdiction does not, merely by reason of being entrusted to the State Election Commissioner, become identical with the constitutional functions assigned to the State Election Commission under Articles 243K and 243ZA of the Constitution of India.

69. However, insofar as the proviso to Section 6(1) is concerned, the position has to be examined separately. The provision, to the extent it provides for an appeal before the Minister-in-Charge of Urban Local Bodies where the Chief Secretary also functions as the State Election Commissioner, creates an appellate mechanism before a member of the political executive in matters concerning electoral disqualification. Such an arrangement does not sufficiently safeguard the requirement of an independent and impartial adjudicatory forum and, to that limited extent, cannot be sustained.

70. Accordingly, the proviso to Section 6(1) of the Arunachal Pradesh Urban Local Bodies (Disqualification on Grounds of Defection) Act, 2014, to the extent it provides that the appeal shall lie before the Minister-in-Charge of Urban Local Bodies in the State, is hereby declared unconstitutional and is struck down.

71. The remaining portion of Section 6(1) and Section 6(2) of the Arunachal

Pradesh Urban Local Bodies (Disqualification on Grounds of Defection) Act, 2014 are upheld. The appellate mechanism provided therein shall continue to operate in accordance with law, subject to the observations made hereinabove.

72. It is made clear that this Court has not examined the legality, correctness or merits of the proceedings arising out of Appeal No. 01/2024 or the notice dated 11.12.2024 issued by the Chief Secretary, Government of Arunachal Pradesh, as the petitioners have consciously chosen not to challenge the said proceedings and have confined their challenge only to the constitutional validity of sub-sections (1) and (2) of Section 6 of the Act of 2014.

73. Consequently, the writ petition stands partly allowed to the extent indicated hereinabove. The challenge to Section 6(1) and Section 6(2) of the Act of 2014 is rejected except to the limited extent of the proviso to Section 6(1), which provides for "*an appeal before the Minister-in-Charge of Urban Local Bodies*". The parties shall bear their own costs.

JUDGE **JUDGE**

Comparing Assistant