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NOTIFICATION

No. LA. 27/LEGN/2018/414, , the 27th November, 2020. In pursuance of Rule 8 (3) of the Members of Mizoram Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987, the following decision dated 27.11.2020 of the Speaker, Mizoram Legislative Assembly in terms of para 2(2) of the Tenth Schedule of the Constitution of India is hereby notified and published.

Decision of the Speaker in terms of para 2(2) of Tenth Schedule to the Constitution of India

In the matter of

Petitions for Disqualification of the Respondent under Rule 6 of the Members of Mizoram Legislative Assembly (Disqualification on Ground of Defection) Rules 1987 r/w Article 191(2) and Para 2(2) of the Tenth Schedule to the Constitution of India.

1. Er. H. Lalzirliana, MLA
2. Pu Lalrinsanga Ralte, MLA
3. Pu C. Lalmuanpuia, MLA
4. Pu Zothantluanga, MLA
5. Dr. F. Lalnunmawia, MLA
6. Pu L. Thangmawia, MLA
7. Dr. ZR. Thiamsanga, MLA
8. Pu Ramthanmawia, MLA
9. Dr. Vanlaltanpuia, MLA
10. Pu H. Biakzaua, MLA
11. Pu Lawmawma Tochhawng, MLA
12. Dr. K. Pachhunga, MLA

-
Vrs

Pu Lalduhoma, MLA -

Petitioners

Respondent

1. The above-named 12 Petitioners are the sitting MLAs of the ruling MNF Party in the 8th Mizoram State Legislative Assembly from different Assembly Constituencies. Petitioner No. 1 is an MLA from Mamit Assembly Constituency, Petitioner No. 2 is an MLA from Serlui Assembly Constituency, Petitioner No. 3 is an MLA from Aizawl North III Assembly Constituency, Petitioner No. 4 is an MLA from Aizawl West I Assembly Constituency,

Petitioner No. 5 is an MLA from Aizawl South III Assembly Constituency, Petitioner No. 6 is an MLA from Lengteng Assembly Constituency, Petitioner No. 7 is an MLA from Champhai North Assembly Constituency, Petitioner No. 8 is an MLA from East Tuipui Assembly Constituency, Petitioner No. 9 is an MLA from Lunglei North Assembly Constituency, Petitioner No. 10 is an MLA from Lawngtlai East Assembly Constituency, Petitioner No. 11 is an MLA from Lunglei East Assembly Constituency and Petitioner No. 12 is an MLA from Lunglei South Assembly Constituency while the Respondent is an MLA from Serchhip Assembly Constituency. The Petitioners had submitted Petitions under Rule 6 of the Members of Mizoram Legislative Assembly (Disqualification on Ground of Defection) Rules 1987 (hereinafter referred to as the Rules of 1987 for short) for disqualifying the Respondent for being a Member of the Mizoram State Legislative Assembly on ground of Defection as provided under Para 2(2) of the Tenth Schedule to the Constitution of India. The first 10 Petitioners had submitted their Petitions on 22/9/2020 while the last two Petitioners had submitted their Petitions on 24/9/2020. The Petitions though submitted separately in the names of those 12 Petitioners, the contents of those Petitions are similar except the names of the Petitioners. As a result, instead of registering all those Petitions separately, they are all registered under a single registration.

2. On receipt of the said Petitions, I had gone through the same and considered whether the Petitions had complied with the requirements of Rule 6 of the 1987 Rules, and being satisfied that the Petitions were made in compliance of Rule 6 thereof, I had forwarded copies of the Petition alongwith the Annexures thereto to the Respondent on 24/9/2020 allowing him to submit his Comments if any within 14 days. The Respondent had submitted his Comments in response to the Petitions submitted by the Petitioners on 8/10/2020. All the Petitioners were furnished a copy of the Comments submitted by the Respondent allowing them to submit their Comments/Replication in reply to the Comments submitted by the Respondent vide Order Memo No. LA.161/LEGN/2020/435 dt. 20/10/2020. On receipt of the said Order alongwith the Comments submitted by the Respondent, all the 12 Petitioners had submitted their Replication dt. 24/10/2020 and the same had been furnished to the Respondent vide Order Memo No. LA.161/LEGN/2020/758 dt. 26/10/2020 by which the Petitioners as well as the Respondent were informed that they would be allowed to be heard in person on dt. 3/11/2020 at 11:00 AM at the Committee Room, main Building of Assembly Secretariat.

3. On the fixed date i.e., dt. 3/11/2020, all the Petitioners, except Petitioners No. 8 & 9, were present and the Respondent was also present as per schedule. The said two Petitioners were unable to participate in the proceeding on 3/11/2020 as they were undergoing home quarantine in connection with the Covid-19 Pandemic.

INSPECTION AND VERIFICATION OF DOCUMENTS & CONDUCT OF PERSONAL HEARING

4. The Petitioners and the Respondent had enclosed several documents in support of their respective claims. The details of the documents submitted by the Petitioners and the Respondent are shown herein below:

(a) **Documents submitted by Petitioners-**

- i. Affidavit dt. 7/11/2018 of Pu Lalduhoma S/o Vaisanga (L) R/o H/No. 157, Chawlhmun - II, Aizawl, Mizoram, submitted along with his nomination as an **Independent Candidate** from 26 - Serchhip (ST) Constituency, downloaded from ECI website (eci.gov.in).
- ii. Letter F No. 56/39/2019/PPS-I/606 dt. 8/7/2019 from the Secretary, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi addressed to the President, Mizoram People's Movement, Treasury Square, Aizawl informing

- him that Zoram People's Movement has been registered as a Political Party under section 29A of the Representation of the People Act, 1951 with effect from dt. 3/7/2019, obtained from the Office of the Chief Electoral Officer, Mizoram.
- iii. Extract copy of Vanglaini Mizo Daily dt. 20/8/2019 in which it was reported that Pu Lalduhoma MLA, the then ZNP President had declared that the ZNP was already wound up and was no longer in existence and that the same has been entirely converted to ZPM, through public circulation.
 - iv. Video clips of the Local News Channel of both LPS and ZONET broadcast on 9/9/2020, obtained from youtube.com Press Release of ZPM Party Thalai Hqrs. 9/9/2020 signed and issued by Dr. C. Lalrammawia, Gen Secy. Publicity Deptt. ZPM Party Thalai Gen. Hqrs. stating that Pu Lalduhoma had made an official speech welcoming those newly enrolled members on behalf of the ZPM Party, obtained from the Social Media.
 - v. Extract copy of Vanglaini Mizo Daily dt. 10/9/2020 reporting the event regarding induction and welcome speech given by Pu Lalduhoma on the previous day at the ZPM Party Office, through public circulation.
 - vi. Extract copy of Vanglaini Mizo Daily dt. 11/9/2020 in which it was reported that Pu Lalduhoma MLA, had participated in the official function of ZPM at Darlawn in which he had given an official speech welcoming the newly enrolled members on behalf of ZPM Party, through public circulation.
 - vii. Extract copy of the Judgment of the Supreme Court at pages 1,2 & 19 - print out from Docid#IndiaLawLib/260866 also reported in (2007) AIR(SCW)158 : (2007) AIR(SC) 590 : (2007) 1 Law Herald 295 : (2006) 13 SCALE 335 : (2006) 11 SCC 1 : (2006) Supp10 SCR 521.
 - viii. A copy of "Press Release dt. 2/10/2020 vide MEMO NO. PC-7/2020-2020/PR-71" issued by the Office of the Mizoram Peoples' Conference Party, General Headquarters, Aizawl : Mizoram personally obtained through the Signatory.
 - ix. A copy of "Press Release No. 4 of 25/9/2020" issued by the Zoram Nationalist Party, General Headquarters, Aizawl : Mizoram personally obtained through the Signatory.
 - x. A copy of an "Application for Party Registration of Zoram People's Movement (ZPM)" duly obtained by Pu Lalpianfela Chawngthu, Tuikhuahtlang, Aizawl under the RTI, Act, 2005 through the State Public Information Officer, Mizoram Legislative Assembly Secretariat on 23/10/2020.

(b) Documents submitted by Respondent-

- i. The Charter of Zoram People's Movement (Allied Front).
- ii. Formation of ZPM published by Indian Express.
- iii. Formation of ZPM published by Janambhumi.
- iv. Chief Ministerial Candidate Proclamation Programme of ZPM (Allied Front).
- v. Press Release No.2 dt.3/10/2017 of the ZPM.
- vi. News Report by the Telegraph.
- vii. Pictures of General Assembly of ZPM and Declaration of ZPM CM Candidate dt. 8/5/2018.
- viii. ZPM MLA Candidate Rinawmna Thutiam (Oath Allegiance by the Respondent before Chairman, VUC).
- ix. Group Photo of ZPM Candidates dt. 24/10/2018.
- x. Pictures of five ZPM Candidates dt. 24/10/2018.
- xi. News Report by the Mizoram Post.

- xii. Pictures of Campaign programme of ZPM before General Election 2018 showing common flag, banner and symbol.
- xiii. Election Result as reported by 'The Hindu'.
- xiv. Picture of Function for Facilitation of Seven ZPM MLAs dt. 12/12/2018.
- xv. Names of ZPM Legislature Party submitted under Form No. 1.
- xvi. Copy of Eight Mizoram Legislative Assemblt Bulletin Part -II showing Recognition of Party in the House/Party Affiliation dt. 16/1/2019.
- xvii. Letter dt. 11/3/2019 from ECI addressed to Dr. Kenneth Chawngliana c/o Zoram People's Movement in which he was advised to furnish documents in connection with Application for Registration of ZPM as a Political Party u/s 29A of the RP Act, 1951.
- xviii. Letter dt. 8/7/2019 from ECI, New Delhi addressed to the President Zoram People's Movement informing him that Zoram people's Movement was registered as a Political Party u/s 29A of the RP Act, 1951 w.e.f. dt. 3/7/2019.

5. On the date and time fixed for Personal Hearing of the parties, all the documents submitted by the Petitioners and the Respondent were inspected and verified by the Parties. Since no objections were raised by the Parties regarding the genuineness or authenticity of those documents, the same were admitted for evidence. And the documents submitted by the Petitioners were marked as Exhibit P - 1 to Exhibit P - 12, while the documents submitted by the Respondent were also marked as Exhibit R - 1 to Exhibit R - 22 respectively.

6. After completion of the process of verification and admission of documents as shown herein above, the Petitioners were called upon to present their case by way of oral submission, and accordingly, Pu L. Thangmawia, Petitioner No. 6 had made oral submission for and on behalf of all the 12 Petitioners. Thereafter, the Respondent was called upon to present his submission in response to the submissions made by the Petitioners. After the Respondent had completed his submission, the Petitioners were given opportunity to clarify or rebut the statements made by the Respondent. All the submissions made during the course of personal hearing of the parties were recorded verbatim with the help of an Electronic Voice Recorder. The recorded submissions of the parties, having been printed out had formed part of the record.

CONTENTIONS OF THE PETITIONERS

7. The Petitioners as stated earlier had filed separate Petitions praying for disqualification of the Respondent for being a Member of the House on ground of defection as provided under Para 2(2) of the Tenth Schedule to the Constitution of India which runs as follows:

"An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election."

In this connection, the Petitioners have stated that the Respondent had filed his nomination as an Independent Candidate for contesting in the Mizoram State Legislative Assembly Election, 2018 from Serchhip Assembly Constituency as per Exhibit P-1, and being the returned candidate in the said election, he was functioning and discharging his duties and responsibilities as an Independent MLA in the Assembly Sessions and even outside. However, even after the Zoram People's Movement (ZPM) which was an Allied Front, not a Political Party, was registered as Political Party under section 29A of the Representation of the People Act, 1951 with effect from 3/7/2019 by the Election Commission of India

vide its Letter F.No. 56/39/2019/PPS-I/606 dt. 8/7/2019 (Exhibit P - 2), the Respondent continued to intermingle with the said newly formed Political Party by playing active roles in the official functions of the said ZPM Party. It was stated by the Petitioners in their Petitions that on dt. 19/8/2019, the Respondent had participated in the official function of ZPM Party in its Party Gen. Hqrs. Office in which the Respondent had clearly stated that all members of the erstwhile ZNP in which he was the founder President, had merged with the ZPM Party as shown in Exhibit P - 3. Further, it was stated by the Petitioners that on 9/9/2020, while participating in the ZPM Party function at ZPM Party Office at Aizawl, he had welcomed those newly enrolled members on behalf of the ZPM Party thereby showing himself to be part and parcel of the said ZPM Party. The proceeding of the said Meeting was covered with video and the same were widely publicised/broadcast as News Item in the Local Channels of LPS and ZONET (Exhibit P - 4 & P - 5) on the following night. The speech of the Respondent was also clearly highlighted in the ensuing Press Release (Exhibit P - 6) made by ZPM Thalai Headquarters in which it was highlighted, among other things, that he had welcomed those new members to work hard with joy and in unison with the other members of the Party for successful implementation of the policy of New System (Kalphung Thar Policy).

The said event was also reported in the Vanglaini Mizo Daily on 10/9/2020 (Exhibit P - 7). It was further stated by the Petitioners that the Respondent had zealously participated in the ZPM Party function held at Darlawn on the night of 9/9/2020 where he had again given an Official Speech in the ZPM Party Programme at 7:30 PM by welcoming those newly enrolled members on behalf of the ZPM Party. The said event was also reported in the Vanglaini Mizo Daily dt. 11/9/2020 (Exhibit P - 8).

8. The Petitioners had thus shown that the Respondent, though an Independent MLA from Serchhip Assembly Constituency, had abandoned his independent character by joining the newly formed ZPM Political Party and his conduct and activities stated earlier are sufficient proof of his joining the said Political Party as laid down in the case of *Jagjit Singh Vs State of Haryana & Ors.* reported in (2006) *11 SCC 1* by which the Supreme Court (Full Bench) had disposed of a batch of Writ Petitions such as Writ Petition (Civil) Nos. 287, 290, 291, 292, 293 & 294 of 2004 by a common judgment. The relevant paragraph of the Judgment has been enclosed in the Petition (Exhibit P - 9). The Petitioners had thus contended that though the Respondent might not have joined the ZPM Party by paying or subscribing enrollment fee as such, however his conduct and activities as stated earlier were sufficient proofs of his affiliation/joining of the said ZPM Party for which he had incurred disqualification for being a member of the House as contemplated under Para 2(2) of the Tenth Schedule to the Constitution of India.

CONTENTIONS OF THE RESPONDENT

9. The Respondent in his Comment on the Petitions of the 12 Petitioners had contended as follows:
- (a) That the Petitions are liable to be dismissed under Rule 7 (2) of the Rule of 1987 for not complying with the requirements of Rule 6 (4) and Rule 6 (7) thereof. He had specifically contended that the Petitioners have not stated anywhere in their Petitions that they were satisfied that there were reasonable ground for believing that a question had arisen as to whether he had become subject to disqualification under Tenth Schedule to the Constitution of India and that the Petitions are liable to be dismissed on the ground that none of the Annexures to these Petitions were verified as mandated in terms of Rule 6 (7) of the Rules of 1987.
 - (b) That the Respondent being one of the 38 candidates set up by the Zoram People's Movement and being the Chief Ministerial Candidate of the said ZPM he was fighting

the said MLA General Election 2018 under the banner of ZPM with a common symbol, flag, banner, manifesto and common office and all the candidates had taken/subscribed their oath of allegiance being administered by Chairman of the Council of Elders (Val Upa Council), he cannot therefore, be equated with those elected members of the House who have been elected as such otherwise than as a candidate set up by any political Party. Thus, according to him, he did not incur any disqualification for being a member of the House in spite of his activities and intermingling in the party functions of the ZPM Political Party.

- (c) That he had to contest the said Election as an Independent Candidate by filing his nomination as an Independent Candidate only because of the process of Registration of ZPM as a Political Party under the provisions of Section 29A of the Representation of the People Act, 1951 was not yet finalised at that time and thus he should not be weighted in the same scale with the real Independent Candidates who were not set up by any Political Party. Though he had admitted that he had participated in the functions of ZPM Party and had welcomed new members who joined ZPM Party, he however stated that he had not enrolled himself as a member of any Political Party. While stating that "ZPM is a Party that sponsored me as a candidate, and in fact, it is only due to their support that I could become a Member of Legislative Assembly, and therefore I have moral obligations to the rank and file of ZPM Party", he however denied that he had enrolled himself as a member of any Political Party including the ZPM Party. He had also contended that ZPM is not the first and the only Party that had field nomination as Independent Candidates in Mizoram. Accordingly, the Respondent has contended that there is no special reason for disqualifying him on ground of defection in view of non-disqualification of those 24 successful Independent Candidates belonging to the MNF Party in connection with the MLA General Election of 1987 and other precedents pointed out by him.
- (d) That the objects and reasons of the Constitution (52nd Amendment) Act, 1985 on the basis of which the Tenth Schedule to the Constitution was enacted as a preventive measure to stop defectors who disregarded the very people who elected them and joined other parties with vested personal benefits. The spirit and intent of the Act being to outlaw and punish such defectors who betrayed their own voters, he cannot with all his conscience labeled himself as a defector since he had not forsaken the will of the people who had voted him. Para 2(2) of the Tenth Schedule is solely meant for Independent Members who have, whatsoever, no connection with Political Parties and hence implicitly not meant for a member like him who was sponsored and supported by a Political Organization.
- (e) The case of Jagjit Singh Vs State of Haryana cited by the Petitioners was not relevant in as much as Jagjit Singh was not an Independent Member of Haryana State Assembly.

The Respondent had also relied upon the documents submitted by him marked as Exhibit R - 1 to R - 22. In view of the stands/grounds taken above, the Respondent had prayed for dismissing the Petitions submitted by the Petitioners.

CLARIFICATION OF THE PETITIONERS IN THEIR REPLICATIONS

10. The Petitioners having been furnished with the Comment of the Respondent and being allowed to submit their Comments/Clarification by way of Replication had stated as follows:

- (a) That the Petition submitted by them were in perfect compliance of the provisions of the Rules of 1987 and after proper scrutiny or examination, the said Petitions were found to be in order and were forwarded to the Respondent as provided under Rule 7 (3) of the said Rule.
- (b) That the stand taken by the Respondent that he had contested the said election in 2018 with other 37 ZPM candidates on a common platform with a common symbol, flag, banner, manifesto and a common office formed by the said two recognised Political Parties and three other unrecognised Parties would not make any difference since he and his other colleague had filed their nominations as Independent Candidates. In fact, the Press Release made by the Office of the Mizoram People's Conference Party, General Hqrs., Aizawl (Exhibit P - 10) had clearly shown that the Respondent had confused his status as an Independent Candidate supported by two recognised Political Parties and three unrecognised Parties with that of the ZPM Political Party. It was stated in the said Press release that the common symbol, common manifesto and the common office used by those Independent Candidates under the banner of ZPM did not give the Respondent any other status except that of an Independent MLA. The ZPM (Allied Front) formed on 15 August, 2017 is completely different from the ZPM Party formed on dt. 3/7/2019 registered by the Election Commission of India as a Political Party.
- (c) That in response to the contention of the Respondent that the ZNP had ceased to exist and was already wond up and merged with the ZPM Party, the Petitioners had produced and relied upon the Press Release No. 4 of dt. 25/9/2020 (Exhibit P - 11) made by the Zoram Nationalist Party, General Hqrs. in which it was stated that as per Chapter 7 Para 34 of the Constitution of ZNP, the highest authority of the Party is the General Assembly and that in urgent matters the National Council may take the place of the General Assembly. It is evident from the said Press Release that neither the General Assembly nor the National Council of ZNP had made any such resolution for winding up of the ZNP or merging of the ZNP with that of the ZPM Party, thereby belying the claim of the Respondent.
- (d) That the contention of the Respondent that he had to file the Nomination as an Independent Candidate was only because of the process of Registration of ZPM as a Political Party under the provisions of Section 29A of the Representation of the People Act, 1951 was not yet finalised at that time, was rebutted by the Petitioners by producing a copy of the Application for Party Registration submitted by Zoram People's Movement (ZPM) duly signed by its President Dr. Kenneth Chawngliana on dt. 10/1/2019 submitted to the ECI on dt. 21/1/2019 (Exhibit P - 12). Based upon this, the Petitioners contended that the process of application for Party Registration was started only on dt. 10/1/2019 and as a result the stand taken by the Respondent that he had to file his nomination as an Independent Candidate in the year 2018 **"only because of the technicality of non completion of the Registration Procedure under section 29A of the Representation of the People Act, 1951"** was completely wrong and baseless.

ISSUES TO BE DECIDED

11. On the basis of the Pleadings, the documentary evidence and the submissions made by both Parties at the time of Personal Hearing which are all on record, the following are the issues to be considered and decided in connection with this case.

- (1) Whether the Petitions submitted by the Petitioners are in conformity with the relevant provisions of the Rules of 1987.
- (2) Whether the Respondent who is an elected member of the Mizoram Legislative Assembly has been elected as such otherwise than as a candidate set up by any Political Party.
- (3) Whether the Respondent has joined any Political Party after his said election. If so, whether he is liable to be disqualified for being a member of the House.

FINDINGS AND DECISIONS

12. Before dealing with the issues, it is important to highlight the relevant provisions of Article 191 of the Constitution of India and the Constitution (52nd Amendment) Act, 1985. Article 191 is regarding disqualification for membership of Legislative Assembly or Legislative Council of a State on different grounds. Article 191(2) which has been inserted by the Constitution (52nd Amendment) Act, 1985 runs as follows-

“191(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule”.

By the same Amendment Act of 1985 the Tenth Schedule to the Constitution of India was enacted in paragraph 2 of which was given the provision regarding Disqualification on ground of defection. For the case at hand, the relevant provision of the Tenth Schedule is Para 2(2) which has stated that *“An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election”*. Para 6 of the same Schedule provides that if any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final, and that the said proceedings shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 212. Further, Para 8 thereof has given the rule making power to the Chairman or Speaker of a House for giving effect to the provisions of this Schedule. In exercise of the powers conferred by Para 8 of the tenth Schedule to the Constitution of India, the Speaker of Mizoram Legislative Assembly was pleased to make the Members of Mizoram Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987 which has been referred to as the Rules of 1987. The instant Petitions have been made by invoking the provision of Rule 6 thereof.

13. Now coming to Issue No. 1 i.e., *“Whether the Petitions submitted by the Petitioners are in conformity with the relevant provisions of the Rules of 1987”*, it may be noted that Rule 6 provides for making of a reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule only by way of a Petition in relation to such Member in writing to the Speaker by any other Member. The Petitioners being Members of the Mizoram State Legislative Assembly, they are the ‘Members’ contemplated under Rule 6 (2). What has been stated in the Comment by the Respondent under Para 4 is that the Petitions have nowhere stated that the Petitioners are satisfied that there are reasonable ground for believing that a question has arisen as to whether the Respondent has become subject to disqualification under the Tenth Schedule to the Constitution of India. In this regard, the statements made in each paragraph of the Petition along with the documents annexed to the Petitions are indicative of the satisfaction of the Petitioners that there are reasonable ground for believing that a question has arisen as to whether the Respondent has become subject to disqualification under the Tenth Schedule to the Constitution of India. Further, in spite of the contention of the Respondent in his Comment under Para 5 and 6 that none of the Annexures to the said Petitions were verified as mandated in terms

of Rule 6 (7), a perusal of the Petitions submitted by the Petitioners had proved the Respondent wrong. The fact that the Petitions had duly complied with the requirements of Rule 6 of the Rules of 1987 was confirmed by me on 9/10/2020 in the presence of two of the colleagues of the Respondent namely Pu Vanlalhlana and Dr. Vanlalhlana, both Independent MLAs. Being satisfied that the Petitions were in compliance of the requirement of Rule 6, I had proceeded on to the next step as provided under Rule 7 (3). Accordingly, I have no hesitation in deciding Issue No. 1 in favour of the Petitioners and it is held that the Petitions submitted by the Petitioners are in conformity with the relevant provisions of the Rules of 1987.

14. Now coming to Issue No. 2 i.e., "*Whether the Respondent who is an elected member of the Mizoram Legislative Assembly has been elected as such otherwise than as a candidate set up by any Political Party*". The Respondent did not deny, in fact, he could not have denied, that he had filed his nomination as an Independent Candidate for contesting as a Candidate in the election to Mizoram Legislative Assembly from 26 - Serchhip (ST) Constituency alongwith the accompanying Affidavit in Form No. 26 on dt. 7/11/2018 (Exhibit P - 1) which the Respondent himself had duly affirmed in his Comment at Para 8. However, the Respondent had taken the stand that he is not 'A Member who has been elected as such otherwise than as a candidate set up by any Political Party' referred to by Para 2(2) of the Tenth Schedule. What he has stated under Para 16 of his Comment may be quoted:

"16 It is very clear that I am an Official candidate set up by the Nomination Committee of **ZPM Party** alongwith 37 Candidates. It may be technically true that I contested the Election as an Independent Candidate because I had to file the nomination as as an Independent Candidate only because of the process of Registration of ZPM as a Political Party under the provisions of Section 29A of the Representation of the People Act, 1951 was not yet finalised at that time. However, I should not be weighted in the same scale with the real Independent Candidates who were not set up by any political party".

As per the version of the Respondent as can be seen from his above quoted statement, the Respondent did not deny that he contested the election as an Independent Candidate but not a real Independent Candidate, and refused to accept that he is "a Member who has been elected as such otherwise than as a candidate set up by any Political Party referred to by Para 2(2) of the Tenth Schedule". However, the law does not provide for such kind of an Independent Candidate as the Respondent had claimed himself to be. If he is a candidate sponsored by any registered Political Party, he should have declared it so in his Affidavit and in his nomination paper. The fact that he had shown and declared himself to be an Independent Candidate in his Affidavit is a clear and indisputable evidence that he was an Independent Candidate and on his election as a Member of the Mizoram Legislative Assembly he continued to be an Independent MLA. It is immaterial whether he was having a common manifesto, election symbol, flag etc with any other Independent Candidate. In otherwords, two or more Independent Candidates sharing a common platform, election office, election symbol etc would not change those Independent Candidates as Party Candidates or Party MLAs. Though he had claimed that he had to file the nomination as an Independent Candidate only because of the process of registration of ZPM as a Political Party under the provisions of Section 29A of the Representation of the People Act, 1951 was not yet finalised at that time, however as contended by the Petitioners in their Replication and on perusal of the Application for Party Registration (Exhibit P - 12) submitted by the ZPM signed by Dr. Kenneth Chawngliana, President of the ZPM, it is clearly evident that the Application was signed only on 10/1/2019 by the said President and was received by the office of the Election Commission of India on 21/1/2019. This clearly confirmed that no process of registration of ZPM as a Political Party under the provisions of section 29A of the Representation of the People Act, 1951 was taken up or initiated prior to 10/1/2019. The Respondent as an elected Member of the Mizoram Legislative Assembly and being a

prominent citizen and an honourable representative of the people of his constituency is expected not to make misleading or baseless statement in his pleadings. Further, it may be stated that though the Respondent had claimed that he was an Official Candidate set up by the Nomination Committee of **ZPM Party** along with 37 candidates, it cannot but be concluded that the Respondent was confused about the status of ZPM at its initial formation not as a political party but as a movement, and ZPM Party after having been registered as a political party under the Representation of the People Act, 1951. In other words, it may be noted that the Respondent was not set up by the Nomination Committee of ZPM Party or sponsored as a candidate by any Political Party. Accordingly, he cannot claim to be an Independent Candidate/Member not covered and governed by the provision of Para 2(2) of the Tenth Schedule.

15. Now coming to Issue No. 3 i.e., “*Whether the Respondent has joined any Political Party after his said election. If so, whether he is liable to be disqualified for being a Member of the House*”, the Petitioners have alleged that the Respondent who has been elected as an Independent MLA had joined the ZPM Party after his election. In this connection, it is an admitted fact that Zoram People’s Movement was registered as a Political Party by the Election Commission of India under Section 29A of the Representation of People Act, 1951 w.e.f. 3/7/2019. The Respondent had also admitted the contents of Exhibit P – 3 in which the speech of the Respondent that members of the ZNP, of which he was the founder President, had joined and merged with the newly formed ZPM Party after winding up the ZNP was published by Vanglaini Mizo Daily on dt. 20/8/2019. The Respondent had also admitted the contents of Exhibit P – 4 & 5 which is the video coverage of the official programme of ZPM Party on dt. 9/9/2020 held at ZPM General Hqrs. Office, Aizawl and the same was broadcast as news item in the Channels of LPS and Zonet. The Respondent also admitted the contents of Exhibit P – 6 & 7. Exhibit P – 6 is the Press Release of ZPM Thalai Headquarters dt. 9/9/2020 which had publicised the fact that the Respondent in his Official Speech welcoming the newly enrolled members of ZPM Party had stated, among other things, that he had welcomed those new members to work hard with joy and in unison with the other members of the Party for successful implementation of the policy of New System (Kalphung Thar policy). The speech of the Respondent as published in the Press Release is reproduced herein below –

“Kalphung thar Policy tihlawhtling tur hian theihtawp chhuaha, lungrual leh hlim taka thawk turin ka lawm lut che u a. System thar hmang turin mi thar, a bik takin thalai kan mamawh a ni. ZPM chuan Sorkar thar thalaiten ‘kan ta’ an tih theih tura siam kan tum a. Chumi atan vawiinah thalai, qualification leh talent tha tak tak nei mi 56 zet mai ZPM min rawn zawm hi a lawmawm ka ti a, kan thla in timuang em em a ni. ZPM Policy hian thalai thiamna tha tak tak neite dawmkan nan Skill Development leh entrepreneurship a ngai pawimawh hle a. Thalaite hna nei lo tan eizawwna a an bul tanna tur Hand Holding (Bana Kaih) Policy leh kut hnathawktu te tan DAH Policy kan nei bawk a ni.”

Exhibit P – 7 contains the detailed report of the same function/programme of the ZPM Party held on 9/9/2020 at the ZPM Party Hqrs. Office in which the Respondent had played the main role of welcoming and felicitating the new members of ZPM Party published in the Vanglaini Mizo Daily. Exhibit P – 8 in which the said Vanglaini Mizo Daily dt. 11/9/2020 had reported the participation of the Respondent in the welcoming and felicitation programme of the ZPM Party held on the night of 10/9/2020 at Darlawn Town is also not denied by the Respondent. This admitted documents are reports of some, and not all of the activities of the Respondent and his participation in the official functions of the ZPM Party. The Petitioners have strongly alleged that all these activities of the Respondent and his participation in and intermingling with the activities of ZPM Party are sufficient evidence to prove his joining of the ZPM Party. Accordingly, the Petitioners have approached the Office of the Speaker by submitting their said Petitions demanding disqualification of the Respondent for his membership of the House.

16. On perusal of the Petitions, the enclosed Annexures marked as Exhibits P – 1 to 8, their Replications and the enclosed Annexures marked as Exhibits P – 10 to 12, and the recorded statement of Pu L. Thangmawia, MLA who had made oral submissions in support of the Petitions on behalf of all other Petitioners as well as the Comments including the Exhibits R – 1 to 22 and oral submissions of the Respondent, it is apparent on the face of the record that the Respondent, by participating and intermingling in the activities and programmes of the ZPM Party has shown himself to have joined and be a member of the ZPM Party and that he had already abandoned his status as an Independent MLA. In this connection, I have also perused the judgment of the Hon'ble Supreme Court (Full Bench) in the case of **Jagjit Singh Vs State of Haryana & Ors.** reported in different Law Journals including (2006) 11 SCC 1 printed out from IndiaLawLib/260866. A perusal of the said judgment would indicate that the Supreme Court had clubbed together the six Writ Petitions out of which four Petitioners were Independent members of the House. While dealing with the case of those Independent Members who had subsequently joined the Indian National Congress Party after their election, the question that was considered by the Apex Court was whether an Independent Member formally joining a political party is the requirement so as to earn disqualification, or the factum of joining can be inferred from facts and conduct of a Member without a Member formally joining the said Political Party. The Apex Court held that to determine whether an Independent Member had joined a Political Party, the test is not whether he has fulfilled the formalities for joining a Political Party but whether he has given up his independent character on which he was elected by the electorate. The relevant paragraph quoted by the Petitioners in their Petition is repeated herein below –

“33. We are of the view that to determine whether an independent member has joined a Political Party the test is not whether he has fulfilled the formalities for joining a Political Party. The test is whether he has given up his independent character on which he was elected by the electorate. A mere expression of outside support would not lead to an implication of a member joining a Political Party. At the same time, non-fulfillment of formalities with a view to defeat the intent of paragraph 2(2) is also of no consequence. The question of fact that a member has given up his independent character and joined, for all intent and purposes, a Political Party though not formally so as to incur disqualification provided in paragraph 2(2) is to be determined on appreciation of material on record. Applying this test here, it cannot be held that the Speaker committed any illegality in coming to the conclusion that the Petitioners had joined the Indian National Congress. The conclusions reached by the Speaker cannot be held to be unreasonable, assuming that two views were possible....”

Considering the facts and circumstances and the law laid down by the Apex Court as discussed above, I am fully convinced that the law laid down by the Apex Court is squarely applicable in the instant case. Accordingly I hold that the Respondent on the basis of his conduct and activities as stated earlier, had joined the ZPM Party which was registered as a Political party w.e.f. 3/7/2019. Consequently, I hold that the Respondent has joined a Political Party i.e., ZPM Party after his election as a Member of the House.

17. Now having held that the Respondent had joined the ZPM Party, the next question that needs to be answered is whether the Respondent is liable to be disqualified for being a Member of the House. The law in this connection as contained in Para 2(2) of the Tenth Schedule is without any ambiguity. On the event of an Independent Member of the House subsequently joining any Political Party he shall have to be disqualified for being a Member of the House. It is not in the discretion of the Speaker to pardon the defaulting Member or to refuse to take action by not disqualifying him. In fact, it is the mandate and compulsion of the law which has provided that once it is established that an elected Member of the House who has been elected as such otherwise than as a candidate set up by any political party, shall be

disqualified for being a Member of the House if he joins any Political Party after such election. The Respondent having been held to be covered and governed by the provision of Para 2(2) of the Tenth Schedule to the Constitution of India, I, in my capacity as the Speaker of the House, have no other alternative, but to act in accordance with the law as provided under the said Para 2(2) of the Tenth Schedule. In other words, the Respondent having incurred the disqualification for being a Member of the House on his joining of the Zoram People's Movement Party (ZPM), he shall have to be disqualified for being a Member of the House.

ORDER

Now, therefore, on the basis of the above findings, I have no other option but to carry out the solemn duty reposed upon me by the Constitution and hold that the Respondent who was elected independently and was not a candidate set up by any Political Party, had, as admitted and declared by himself, by joining the Zoram People's Movement Party on 19/8/2019 and for his subsequent conduct and activities aforesaid, attracted the disqualification in terms of Para 2(2) of the Tenth Schedule to the Constitution of India. The Petitions filed by the Petitioners are thus allowed, meaning thereby that the Respondent is disqualified for being a Member of the Mizoram Legislative Assembly.

Now, in exercise of the powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India and the Members of Mizoram Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987 framed thereunder, I, Lalrinliana Sailo, Speaker, Mizoram Legislative Assembly, hereby declare that Pu Lalduhoma, the Respondent has incurred disqualification for being a Member of the Mizoram Legislative Assembly in terms of paragraph 2(2) of the Tenth Schedule, on the basis of the above decision.

Accordingly, Pu Lalduhoma, the Respondent ceases to be a Member of the Mizoram Legislative Assembly with immediate effect and his seat, therefore, falls vacant in terms of article 190(3) of the Constitution of India.

Action contemplated under Rule 8 of the Members of Mizoram Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987 be taken accordingly.

Aizawl
Dated : 27.11.2020

LALRINLIANA SAILO
Speaker
Mizoram Legislative Assembly

H. LALRINAWMA
Commissioner & Secretary