

PUNJAB VIDHAN SABHA SECRETARIAT
(LEGISLATION BRANCH)

No. 27-LA-2019/19921

From

Surinder Pal,
Secretary.

To

The Assistant Controller,
Printing Press, Punjab,
Sahibzada Ajit Singh Nagar.

Dated Chandigarh, the 29th October, 2021

Subject: Notification regarding disqualification of Sardar Baldev Singh
Kalyan, MLA.

Sir,

I am directed to send herewith the matter mentioned above as
subject for publication in the Extraordinary Issue of the Punjab Government
Gazette bearing today's date.

Yours faithfully,



**SUPERINTENDENT,
for SECRETARY.**

PUNJAB VIDHAN SABHA SECRETARIAT

NOTIFICATION

THE 29TH OCTOBER, 2021

No.27-LA-2019/ 58 :- The following decision dated the 26th October, 2021 of the Speaker, Punjab Vidhan Sabha (Punjab Legislative Assembly) given under paragraph 6(1) of the Tenth Schedule to the Constitution of India is hereby notified and published:-

Before the Hon'ble Speaker, Punjab Legislative Assembly

CHANDIGARH

Date of Decision 26th OCTOBER, 2021

Disqualification petition dated 29.04.2019

S. Simranjit Singh, # 93/2, Adarsh Nagar, Jalandhar;

Petitioner

Vs

S. Baldev Singh Kalyan, M.L.A., # 277, Near Bali Da Aara, Guru Teg Bahadur Nagar, Faridkot.

.....Respondent

&

Disqualification petition dated 15.07.2019

S. Dharamjit Singh Ramayana, District President Aam Aadmi Party, VPO Ramayana, Tehsil Jaito, District Faridkot;

.....Petitioner

Vs

S. Baldev Singh Kalyan, M.L.A., # 277, Near Bali Da Aara, Guru Teg Bahadur Nagar, Faridkot.

.....Respondent

&

Disqualification petition dated 15.07.2019

Shri Tarsem Chand and 17 others from Jaito Assembly Constituency.

.....Petitioners

Vs

S. Baldev Singh Kalyan, M.L.A., # 277, Near Bali Da Aara, Guru Teg Bahadur Nagar, Faridkot.

.....Respondent

(Disqualification petitions under Tenth Schedule to the Constitution of India)

Petitioners S. Dharamjit Singh Ramayana, Shri Tarsem Chand and others (ex-parte).

These petitions having come up for hearing before me and after hearing the arguments of petitioner S. Simranjit Singh and S. Tejvir Singh, Advocate representing the respondent, I pass the following order:

ORDER

1. S. Simranjit Singh (hereinafter referred to as the 'Petitioner No. 1' for brevity) filed the present petition before me on 29.04.2019 through his Counsel Parminder Singh Vig, Advocate under Tenth Schedule read with Article 191 of Constitution of India, Anti Defection Law and The People's Representation Act, praying that S. Baldev Singh Kalyan (hereinafter referred to as the 'respondent' for brevity) be disqualified under the Tenth Schedule to the Constitution of India.
2. Petitioners S. Dharamjit Singh Ramayana, Shri Tarsem Chand and others, by moving separate applications, alleged that S. Baldev Singh contested the Lok Sabha Election from the Faridkot Parliamentary Constituency as a candidate of Punjab Ekta Party, after submitting his resignation from the primary membership of Aam Aadmi Party, therefore, respondent be declared as disqualified as a member of Punjab Legislative Assembly under Anti-Defection Law.
3. In his petition, the Petitioner No. 1 averred that Respondent, who had contested elections from Jaito Constituency as a candidate of Aam Aadmi Party, got elected on the party ticket and symbol of Aam Aadmi Party but thereafter, he contested the 17th Lok Sabha Elections from Faridkot as a candidate of another political party (Punjab Ekta Party), for which he filed his nomination papers to the Electoral Officer without resigning from the primary membership of Aam Aadmi Party as well as from the membership of Punjab Vidhan Sabha. Therefore, from the above act and conduct of respondent, it depicts that he deliberately breached the provisions of Anti Defection Law and thus, prayed that

respondent be disqualified under the Provisions of Tenth Schedule to the Constitution of India.

4. In order to prove and support the versions mentioned in the other two petitions, neither the petitioners annexed any documentary evidence nor they appeared before me to contest the present petition and resultantly, they were proceeded Ex-parte vide order dated 24.08.2021.

5. I have perused the averments mentioned in all the three petitions and documents annexed with the petition filed by Petitioner no. 1, i.e nomination paper filed by respondent at the time of contesting elections from Faridkot Lok Sabha Constituency as a candidate of Punjab Ekta Party; having satisfied myself that the petition complies with the requirements of Tenth Schedule read with Article 191 of Constitution of India, on 07.05.2019, caused a copy of the petition along with annexures thereto be forwarded to the respondent, in relation to whom the petition has been made, with the request to furnish his reply thereon, within three weeks of the receipt of the same. In response thereto, on 27.05.2019, the respondent by moving a separate application sought adjournment for filing detailed reply on the ground that he is contesting election from Faridkot Lok Sabha Constituency as a candidate of newly formed Punjab Democratic Alliance. Thereafter also, instead of filing reply he again sought adjournments time and again but did not file any reply. Copies of each of the petitions were again supplied to the Respondent on 21.09.2021 in response to his request dated 14.09.2021 Finally, on 05.10.2021, respondent along with Advocate Shri Tejvir Singh appeared and filed reply to the petition filed by the petitioner no. 1 and opposed the present petition on the grounds inter-alia that he won the election from Jaito Constituency as a candidate of Aam Aadmi Party; that after a year or so, 8-9 MLAs of the party were having change in opinion, the respondent along with other party members was deciding to constitute

a new party in the year 2018; that he filed the nomination papers for Member of Parliament from Faridkot Constituency on 25.04.2019 but he was defeated in the said election; that, therefore, he neither acted against the rules and regulations of Aam Adami Party nor voted against the Party agenda at any level; that he is never elected to any House of Legislature other than MLA Jaito Constituency; that presently he is working under the leadership of Aam Aadmi Party and prayed for dismissal of the present petition.

6. On 24.08.2021, Petitioner No. 1 appeared and made oral submission that he had already submitted the relevant/supportive documents and prayed that the present petition may be decided on the basis of averments and the documents annexed with the petition. To test the veracity of the documents filed by the Petitioner No. 1, I deemed it fit to summon concerned Returning Officer/representative appointed by the Election Commission of India along with relevant record.

7. Sh. Paramdeep Singh, Additional Deputy Commissioner (Urban Development), Faridkot appeared and stated that in the year 2019, he was posted as Sub Divisional Magistrate-cum-Additional Returning Officer, 09-Faridkot Lok Sabha Constituency. In year 2019, in total 20 candidates contested the Lok Sabha Elections from the Lok Sabha Constituency Faridkot and they submitted the nomination papers before me. At that time, S. Baldev Singh (respondent) submitted the nomination papers to contest the election as a candidate of Punjab Ekta Party. He proved on record attested copy of nomination papers filed by him as Ex. P1, affidavit as Ex. P2, checklist of nomination papers duly signed by respondent as Ex P3, Form A and Form B of Punjab Ekta Party as Ex. P4, Scheduled Caste certificate as Ex. P5, No due certificate from Punjab Vidhan Sabha to contest the elections as Ex. P6 and Oath tendered by respondent, during nominations as Ex. P7. He also stated that Badal Singh S/o Thana Singh, Sawran Singh

S/o Sulakhan Singh and Sukhdev Singh S/o Karnail Singh raised objections that respondent is not eligible to contest the elections on behalf of Punjab Ekta Party as he is already candidate of Aam Aadmi Party. He further proved on record objections tendered by above said persons against nomination papers of respondent as Ex. P8 & Ex. P9, Reply filed by respondent as Ex. P10 & Ex. P11, Speaking orders of Returning Officer as Ex. P12 and final result for 09-Faridkot Parliamentary Constituency for all candidates as Ex. P13.

8. On 05.10.2021, the respondent through his advocate S. Tejvir Singh filed an application praying that his disqualification petitions be also clubbed and decided alongwith the disqualification petitions pending against S. Sukhpal Singh Khaira, claiming that disqualification petitions pending against both of them are based on same facts and nature and involved same legal issues. After giving a careful thought to the said prayer I do not find any merit in the said request, since *firstly* the disqualification petitions filed against the respondent and S. Sukhpal Singh Khaira, are filed by different petitioners, *secondly* the factual position is also different as in the case of respondent the petitioners have categorically stated that respondent has not resigned from the primary membership of AAP whereas in the complaint against S. Sukhpal Singh Khaira, all the petitioners have stated that he held a press conference and announced his resignation from the primary membership of AAP. Hence, the facts in disqualification petitions against respondent and S. Sukhpal Singh Khaira are different and in the interest of justice and fair trial, the same needs to be heard and decided separately.

9. I have gone through the petition and the evidence on record as well as reply filed by respondent Sardar Baldev Singh Kalyan, MLA. From the record available on the file, I find that the disqualification petitions against the respondent succeed. The respondent has himself admitted to have contested Lok Sabha election from Faridkot

Constituency in the year 2019, in his reply as well as his request letter dated 27.05.2019 for seeking adjournment in the present case. Other than this in the nomination papers and affidavit furnished by the respondent before the returning officer for the Lok Sabha Constituency Faridkot in the year 2019, which are placed on record as annexure P1 and P2, respondent has himself admitted to be a candidate set up by Punjab Ekta Party, whereas he was elected as MLA from Aam Aadmi Party from 89-Jaito (SC) Assembly Constituency. This clearly shows that respondent by his act and conduct of contesting the Lok Sabha elections in the year 2019 as a candidate of Punjab Ekta Party has voluntarily given up his membership of Aam Aadmi Party on whose sponsorship the respondent became a member of Punjab Legislative Assembly. This opinion is further strengthened by the observations made by the hon'ble Supreme Court in Para 11 of Ravi S. Naik vs UOI, 1994 Supp.(2) SCC 641 the same is reproduced hereinbelow:

"11. This appeal has been filed by Bandekar and Chopdekar who were elected to the Goa Legislative Assembly under the ticket of MGP. They have been disqualified from membership of the Assembly under order of the Speaker dated December 13, 1992 on the ground of defection under paragraph 2(1)(a) and 2(1)(b) of the Tenth Schedule. From the judgment of the High Court it appears that disqualification on the ground of paragraph 2(1)(b) was not pressed on behalf of the contesting respondent and disqualification was sought on the ground of paragraph 2(1)(a) only. The said paragraph provides for disqualification of a member of a House belonging to a political party "if he has voluntarily given up his membership of such political party". The words voluntarily given up his membership" are not synonymous with "resignation and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."

10. I, therefore, hold that respondent Sardar Baldev Singh Kalyan, an elected member from 89-Jaito (SC) Assembly Constituency has incurred disqualification for being a member of the House in terms of paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India. Thus, he has ceased to be a member of the Punjab Legislative Assembly with immediate effect. I decide and declare accordingly.

DATED CHANDIGARH
THE 26TH OCTOBER, 2021

RANA K.P. SINGH
SPEAKER
PUNJAB VIDHAN SABHA.

DATED CHANDIGARH
THE 29TH OCTOBER, 2021

SURINDER PAL
SECRETARY
PUNJAB VIDHAN SABHA.



Superintendent
Punjab Vidhan Sabha
Chandigarh