

In Article V of the constitution. Amongst others, Article V(10) in my opinion is relevant for the present purpose. It reads:-

"All business of the party shall be performed in the name of the President and shall have the extra-ordinary powers to promulgate Ordinance to all Party functionaries including the Legislative Wing at times of exigencies."

Keeping in view of the aforesaid provision and as the President of the NPF, Dr. Shürhozelie Liezietsu is the only person competent to issue directions. Whips in terms of paragraph 2(b) of the Tenth Schedule.

In the present controversy the undisputed facts is that Dr. Shürhozelie Liezietsu, President, Naga people's Front, in exercise of his power under Article V(10) of the party constitution, appointed Mr. Kiyaniile Peseyie, Minister, Social Welfare (as he then was) by an order dated 14th Nov.2014. The contents of the appointment are relevant and it is quoted:-

"NAGA PEOPLE'S FRONT
CENTRAL OFFICE
NAGALAND : KOHIMA

Ref. No.....

Kohima, the 14th Nov.2014

Subject : Appointment of Chief Whip for Parliamentary Party of Naga People's Front in Nagaland Legislative Assembly.

Sir,

In exercise of the powers conferred on me vide Article V, Clause 10 of the Constitution of Naga People's Front, I, Dr. Shürhozelie Liezietsu, President of NPF hereby appoint Mr. Kiyaniile Peseyie, Minister, Social Welfare, to be the person authorized to issue directions to the Members of the Legislature Party of Naga People's Front in the Twelfth Nagaland Legislative Assembly. Violation of the directions issued by him shall entail consequences under the Tenth Schedule of the Constitution of India particularly paragraph 2 (1)(b) of the 10th Schedule of the Constitution of India.

This supersedes all earlier communications on the subject. The appointment shall be in force until further orders.

(Shürhozelie Liezietsu)
President, Naga People's Front.

Copy to : (1) The Chief Minister of Nagaland, Leader of the House, NLA
(2) Mr. Kiyaniile Peseyie, Minister, Social Welfare

(Shürhozelie Liezietsu)
President, Naga People's Front."

Another notification dated 19th July, 2017 has also been brought to my notice stating that NPF Legislature Party has informed the Honourable Speaker the appointment of T.R. Zeliang as whip of the NPF Legislature Party. This letter has important bearing and it is quoted-

"NAGALAND LEGISLATIVE
ASSEMBLY SECRETARIATE
KOHIMA

NOTIFICATION

No: AS/LEG-91/2003/26

Dated Kohima, the 19th July, 2017

The NPF legislature Party has informed the Hon'ble Speaker the appointment of Shri. T.R. Leader, NPF Legislature Party, as Whip of the NPF Legislature Party w.e.f. 04.07.2017

(N. BENJAMIN NEWMAI)
Commissioner & Secretary
Dated Kohima. The 19th July, 2017"

It is notice that the notification dated 19th July, 2017 appointing T.R. Zeliang as the Whip was issued by the Legislature Party.

It is not disputed that when the notification of 19th July, 2017 was issued appointing T.R. Zeliang as Whip of the NPF Legislature Party, the appointment of Kiyaniile Peseyie by the President of NPF in exercise of his power under Article V (10) was still holding the field.

The Power to issue Whip/directions under paragraph 2(b) of the Tenth Schedule belongs to the Political Party and not the Legislature Party. In my considerate opinion, therefore, the notification of 19th July, 2017 issued by the Legislature Party is without jurisdiction and invalid.

The notification dated 14th Nov.2014 appointing Kiyaniile Peseyie as Whip is validly made and enforceable.

By now it is a well settled principle of law that any order passed by an authority in exercise of its jurisdiction is a nullity. Therefore, the notification of 19th July, 2017 issued by the Legislature Party is void ab initio and non est.

In view of my afore stated opinion, I, respectfully, agree with the opinion rendered by Soli Sorabjeeto the extend consonant to my opinion and respectfully disagree with the opinion rendered by Fali Nariman and V. Giri.

In my opinion, therefore, any member of Legislature who voted against the Whip issued by Kiyaniile Peseyie incurred disqualification under paragraph 2 (1)(b) of the Tenth Schedule read with Article 191(2) of the constitution of India.

Justice H. K. Sema
(Former Judge, Supreme Court of India)