

Lalpianfela Chawngthu,
Advocate,
Tuikhuahtlang, Aizawl,
C/o – BAKE HOUSE, H. NO.: T-116/A
Aizawl: Mizoram. PIN – 796 001.
Phone: (+91) 94369 61305
e-mail: lchawngthu7@gmail.com



OFFICE:
Tete-a & Mapiana
Law Firm & Consultancy,
M/ZP Building,
Treasury Square,
Aizawl: Mizoram.
PIN: 796 001

Dt : 19.12.2023

To,

The Chief Executive Member,
Lai Autonomous District Council,
Lawngtlai, Mizoram.

Subject : W.P.(C) No. 150 of 2023, Sh.K. Hre Kung v/s The State of Mizoram r/b The Chief Secretary to the Govt. of Mizoram & 4 Ors.

Sir,

I am sending herewith a copy of W.P.(C) No. 150 of 2023, Sh.K. Hre Kung v/s The State of Mizoram r/b The Chief Secretary to the Govt. of Mizoram & 4 Ors alongwith a copy of Order dt. 7.12.2023 passed by the Hon'ble Gauhati High Court for your kind perusal and for para-wise comment on the said Writ Petition. I'll be very grateful if the para-wise comment on the said Writ Petition be conveyed to me at the earliest.

Thanking you.

Lalpianfela
19/12/2023
(LALPIANFELA CHAWNGTHU)
Standing Counsel,
Lai Autonomous District Council.

GAHC030006592023



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

Case No. : WP(C)/150/2023

Sh. K. Hre Kung
S/o K. Kiauvunga (L)
R/o Vengthar, Sangau-II
Lawngtlai District

VERSUS

The State of Mizoram r/b The Chief Secretary to the Govt. of Mizoram and 4
Ors.
Aizawl: The Secretary to the Govt. of Mizoram
District Council and Minority Affairs

3: The Secretary to his Excellency
the Governor of Mizoram
Raj Bhawan
Aizawl

4: The Chief Executive Member
LADG
Lawngtlai through the EC
LADC

5: The Chairman
LADC
Lawngtlai District
Mizora

Advocate for the Petitioner : Mr Ashok Kumar Rokhum

Advocate for the Respondent : Addl. AG/GA, Mizoram

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO
HON'BLE MRS. JUSTICE MARLI VANKUNG
ORDER

07.12.2023

(Nelson Sailo, J)

Heard Mr. A.K. Rokhum, learned counsel for the petitioner who submits that the petitioner is aggrieved with the Show Cause Notice dated 10.11.2023 (Annexure-3) issued to him by the Chairman of the Lai Autonomous District Council (LADC), Lawngtlai asking him to show cause as to why he should not be disqualified for having left Mizoram National Front (MNF), a political party who had sponsored him and under which he was elected to the LADC to join the Zoram Peoples Movement (ZPM) party. The learned counsel submits that paragraph No. 3(1) of the Sixth Schedule to the Constitution of India provides for the powers of the District Councils and Regional Councils to make laws. Under the said paragraph, the LADC is not empowered to frame the anti defection law as contained in Rule 11(6)(a) of the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2010. He therefore submits that the said provision is ultravires the Constitution and should be declared as such.

The learned counsel further submits that a similar question cropped up before the Division Bench of this Court as it was then in the case of

Hispreacheringson Shylla -Vs- Khasi Hills Autonomous District Council & Others reported in 2008 (3) GLT 433 wherein, the Division Bench held that the Khasi Hills Autonomous District Council constituted under the Sixth Schedule does not have any power to frame anti-defection law. The said decision was also relied upon by a subsequent Division Bench of this Court in *WP(C) No. 65/2020 (Onish Moy Chakma & Ors. -Vs- State of Mizoram & Ors.)*. The Division Bench relying upon the earlier decision as referred to herein above, held similar provision on anti defection framed under the Chakma Autonomous District Council (Constitution, Conduct and Business, Etc.) Rules, 2002 as ultravires. The learned counsel therefore submits that the present case is squarely covered by the said two (2) decisions and the provision impugned should be interfered with by this Court.

In view of above, issue notice of motion returnable by four (4) weeks. Mr. P.C. Lalthangmawia, learned Govt. Advocate accepts notice on behalf of the respondent Nos. 1, 2 & 3 while Mr. Lalpianfela Chawngthu, learned counsel appears and accepts notice on behalf of the respondent Nos. 4 & 5. As such, notice is complete. Petitioner to serve requisite extra copies of the writ petition to the learned counsels appearing today within three (3) days, if not already done.

Having regard to the projection made by the petitioner, in the interim, it is hereby directed that the respondents shall maintain status quo as on today.

List the matter again after four (4) weeks.

JUDGE

JUDGE

Comparing Assistant

DISTRICT : LAWNGTLAI

IN THE GUWAHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)
AIZAWL BENCH : AIZAWL

(CIVIL EXTRAORDINARY JURISDICTION)
W.P.(C) No 150/2023

To,

Sh. Lanusungkum Jamir, the Hon'ble Chief Justice(acting) of
Gauhati High Court and his Lordship's other companion Justices of
the same High Court.

IN THE MATTER OF:

Sh. K. Hre Kung
s/o K. Kiauvunga (L)
R/o Vengthar, Sangau-II
Lawngtlai District
.....Petitioner

-Vrs-

The State of Mizoram, represented by
the Chief Secretary to the Govt. of
Mizoram, Aizawl & 4 Ors.

.....Respondents

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Filed by:

(SIMRAN THAPA)

SYNOPSIS

The petitioner is a member of Lai Autonomous District Council (LADC) elected from 3 Sangau-West Constituency which was held in the month of December 2020.

By this Writ Petition the petitioner is challenging The Constitutional Validity of Rules prescribed under clause (a) sub-rule(6) of Rule 11 of the Lai Autonomous District Council(CCB) Rule 2010. The Respondent No. 5 by invoking the aforesaid Rules of LADC (CCB) Rules,2010 have issued an impugned Show cause Notice to the Petitioner for disqualification from the sitting MDC in gross violation of sub para (6-A) of paragraph 2 of the Sixth Schedule to the Constitution of India. As per sub para (6-A) of paragraph 2 of the Sixth Schedule " The elected members of MDC shall hold office for a term of five years after general elections to the Council unless the District Council is sooner dissolved under paragraph 16 by the Governor. That as paragraph 3 of the Sixth Schedule to the Constitution of India the District Councils are empowered to make certain Laws for their own within their jurisdiction. The Anti Defection law for disqualification of setting MDC is not incorporate within the law making power vested to the LADC like the Parliament and State Legislature .The law making power of Autonomous District is certain limitation. The rules prescribed under clause(a) sub-rule(6) of Rule 11 of LADC (CCB)

Rule 2010, was made without any legal sanction and authority and legislature competency. As such the aforesaid rules of LADC is ultra-vires, nullity, void ab initio and repugnant to paragraph(6-A) of the Sixth Schedule to the Constitution of India.

The Show cause notice on dated 10.11.2023 issued to the petitioner by the Respondent No.5 is without any legal basis and it is a gross violation of the constitutional right of the petitioner and unless the Hon'ble High Court interferes with the matter a great injustice shall be cause to the petitioner.

Having no alternative remedies, hence the present Writ petition.

Filed by:

(SIMRAN THAPA)

LIST OF DATES

Date	Events
08.12.2020	Certificate of Election issued by the Returning Officer whereby the Petitioner was elected as a member Lai Autonomous District Council from 3-Sangau West Constituency.
23.10.2023	The petitioner abandoned MNF Party and joined ZPM Political Party as a primary member by payment of fee
10.11.2023	The Respondent No. 5 has issued a show cause notice to the Petitioner for disqualification from the sitting MDC for leaving MNF party which sponsored to him at the time of Election and joining other Political Party(ZPM).
14.11.2023	The Petitioner submitted reply to the show cause notice issued to him by the Respondent No.5

DISTRICT : LAWNGTLAI

IN THE GUWAHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM &
ARUNACHAL PRADESH)
AIZAWL BENCH : AIZAWL

(CIVIL EXTRAORDINARY JURISDICTION)

W.P.(C) No____/2023

To,

Sh. Lanusungkum Jamir, the Hon'ble Chief Justice(acting) of Gauhati High Court and his Lordship's other companion Justices of the same High Court

IN THE MATTER OF:

An application under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus, certiorari or any other appropriate writ(s) directions or order.

-AND-

IN THE MATTER OF:

The Petitioner is challenging the Constitutional validity and legality of the impugned clause (a) sub-rule (6) of the Rule 11 of the Lai Autonomous District Council (CCB) Rules, 2010 as regard with disqualification of elected sitting MDC from District Council on the ground of defection.

-AND-

IN THE MATTER OF:

The impugned clause (a) sub rule 6 of the Rule 11 of the Lai Autonomous District Council(CCB) Rules,2010 is repugnant to sub para (6-A) of paragraph 2 of Sixth Schedule to the constitution of India. The aforesaid clause(a) sub rule (6) of rule 11 of the Lai Autonomous District Council(CCB) Rules,2010 was made wrongly without legislative competency and is repugnant to the sub para (6-A) of para 2 of the sixth schedule to the Constitution of India. Para 3 of the sixth schedule to the constitution of India does not confer any power to the LADC to make Anti-defection law.

-AND-

IN THE MATTER OF:

Impugned show cause notice dated 10.11.2023 by the Chairman, LADC without any constitutional validity and in gross violation of Sub para (6-A) of Paragraph 2 of the Sixth Schedule to the Constitution Of India.

-AND-

IN THE MATTER OF :

Violation of the Petitioner Fundamental Rights envisages in Article 14, 19 & 21 of the Constitution of India and great injustice may cause to the Petitioner and may also suffer irreparable loss.

-AND-

IN THE MATTER OF :

Sh. K. Hre Kung

s/o K. Kiauvunga (L)

R/o Vengthar, Sangau-II

Lawngtlai District

.....Petitioner

-Vrs-

1. The State of Mizoram, represented by the Chief Secretary to the Govt. of Mizoram, Aizawl.
2. The Secretary to the Govt. of Mizoram, District Council and Minority Affairs Department, Aizawl.
3. The Secretary to His Excellency, the Governor of Mizoram Raj Bhawan Aizawl, Mizoram.
4. The Chief Executive Member Lai Autonomous District Council, Lawngtlai through the Executive Secretary, LADC Lawngtlai District Mizoram.
5. The Chairman, Lai Autonomous District Council, Lawngtlai District, Mizoram

..... Respondents.

The humble Petition of the above-named Petitioner

MOST RESPECTFULLY SHEWETH:

1. That your humble Petitioner is a bona fide citizens of India by birth and belonging to Mizo Community; a recognized Schedule Tribe by the Constitution of India. As such, the Petitioner has all the rights and privileges as guaranteed by the Constitution of India and all other laws for the time being in force.
2. That the Petitioner is the elected member of the Lai Autonomous District Council General Election through the process of Universal Adult Franchise which was held in the month of December 2020. And the Petitioner have contested MDC from 3-Sangau West Constituency and accordingly obtained majority and he was declared as a winner in the Election by the Returning Officer, Election Commission on dated 08.12.2020 sponsored by the Political Party Mizo National Front(MNF)

Copy of the said Certificate of Election issued by the Returning Officer on dated 08.12.2020 is hereby annexed and marked as Annexure No. 1.

3. That the Petitioner in spite of being sponsored by the MNF Party and elected as a Member of District Council from the 3 Sangau West Constituency, Lawngtlai District held in the Month of December,2020 he has voluntarily abandoned MNF Political Party and joined Zoram People's Movement(ZPM) by enrolling his name and submitted his joining letter on dated

23.10.2023 by subscribing a fee to the President, Zoram People's Movement Party ,Sangau Unit II.

Copy of the said joining letter to the ZPM Party by the Petitioner on dated 23.10.2023 is annexed herewith and marked as Annexure No.2.

4. That on dated 10.11.2023 the respondent no. 5 Chairman, Lai Autonomous District Council have issued a show cause notice to the Petitioner in writing for violation of Rules prescribed under clause(a) sub-rule (6) of Rule 11 of Lai Autonomous District Council(CCB) Rules,2010 calling upon as to why the Petitioner shall not be disqualified from the Member of Lai Autonomous District Council for the violation of abovementioned Rules and the Petitioner was given 4 days time i.e 14.11.2023 to reply the said impugned show cause notice to the Respondent No. 5.

Copy of the said impugned show cause notice on date 10.11.2023 issued by the Respondent No. 5 to the Petitioner is annexed herewith and marked as Annexure no. 3.

5. That in pursuance to the impugned show cause notice dated 10.11.2023 by the Respondent No.5 the Petitioner on dated 13.11.2023 have submitted his reply to the Chairman Lai Autonomous District Council, Lawngtlai, Mizoram mentioning that as per Sub- para (6-A) of Para 2 of the Sixth Schedule to the Constitution of India, the elected member of the District Council shall hold office for a term of five years

from the date of appointed for the first meeting of the Council after general election to the Council, unless the District Council is sooner dissolved by the Governor under Para 16.

Copy of the reply to the show cause notice on dated 13.11.2023 by the Petitioner to the respondent no. 5 is annexed herewith and marked as Annexure No.4.

6. That the Petitioner was elected as a member of Lai Autonomous District Council which was held in the month of December 2020. As per sub para(6-A) of Paragraph 2 of the Sixth Schedule to the Constitution of India the elected member of District Council shall hold office for a term of five years from the date of appointed for the first meeting of the Council after the General election to the Council, unless the District Council is sooner dissolved under Paragraph 16 and a nominated member shall hold office at the Pleasure of the Governor.

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor , render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate.

From the plaint reading of the abovementioned paragraph it is to be mentioned that the Petitioner was vested to hold his office for a period of five years unless the District

Council is sooner dissolved by the Governor. The Petitioner term of office cannot be cut short or decreased unless sub para (6-A) Paragraph 2 of the sixth schedule is amended by the Parliament. It is further to me mentioned that if the impugned notification is not stay or suspend the very purposes of the sub para (6-A) Paragraph 2 of the Sixth schedule to the Constitution of India shall be defeated and the Petitioner shall suffer great injustice and irreparable loss in terms of salary and allowances and his status and image in the eye of Public.

7. That as per chapter III Rule 11 of the Lai Autonomous District Council (Constitution and Conduct of Business) Rules, 2010 the elected member of the District Council may be disqualified on the following grounds :

DISQUALIFICATION FOR MEMBERSHIP TO THE DISTRICT COUNCIL

(1) A person shall be disqualified for being chosen as, and for being a member of the District Council –

(a) if he holds an office which is capable of yielding pecuniary gain under the Government of India or the Government of any State or Union Territory specified in the First Schedule of the Constitution of India or under a District Council of any Autonomous District duly constituted under the provisions of the Sixth Schedule to the Constitution;

Provided that a person, for the purposes of this clause, shall not be deemed to hold an office of profit by

reason merely of his being a member of the Executive Committee or a Chairman or a Deputy Chairman, or a Member of the District Council;

(b) if and for so long as there subsists a contract entered into by him in course of his trade or business with the District Council for the supply of goods to, or for the execution of any works undertaken by the District Council;

Explanation - For the purposes of this clause, where a contract has been fully performed by the person by whom it has been entered into with the District Council, the contract shall be deemed not to subsist by reason only of the fact that the District Council has not performed its part of the contract either wholly or in part;

(c) if he is of unsound mind and stands so declared by a competent court or authority prescribed under the Mental Health Act, 1987;

(d) if he is an undischarged insolvent;

(e) if he is not a citizen of India , or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(f) if he has been convicted of an offence referred to in sub-section (1) of section 8 of the Representation of the People

Act, 1951 (43 of 1951), and a period of six years has not elapsed since the date of such conviction and prior to the date of filling of nomination;

(g) if he has been convicted of the contravention of any such law as enumerated in section 8 (2) of the Representation of the People Act, 1951(43 of 1951) and sentenced to imprisonment for not less than six months, and a period of six years has not elapsed since the date of his release after expiry of the term of such sentence;

(h) if he has been found guilty of a corrupt or illegal practice as by an order under rule 205, 206 or 207 of these Rules;

Explanation - The term 'corrupt or illegal practice' in its reference under this clause shall be confined to those corrupt or illegal practices which have been declared by rule 205, 206 or 207 to be an offence or practice entailing disqualification under these Rules;

(i) if he has been convicted of any offence other than those referred to in clauses (f) and (g) above and sentenced to imprisonment for not less than two years, and a period of six years has not elapsed from the date of his release after expiry of the term of such sentence.

(2) Notwithstanding anything in clauses (f), (g) and (i) above, a disqualification under either clause shall not, in case of a person who, on the date of the conviction, is a member of the District Council, take effect until three months have elapsed from that date, or if within that period an appeal or application for revision is preferred from the conviction or the sentence, and an interim stay against such conviction or suspension of such sentence has been obtained by such person from a competent appellate or revisional court, as the case maybe.

(3) A person who having held an office under the Government of India or under the Government of any State or Union Territory, or under any District Council of an Autonomous District, has been dismissed for corruption or for disloyalty to the State or removed for disobedience or violation of any direction issued under rule 225 of these Rules shall be disqualified for a period of five years from the date of such dismissal or removal, as the case may be;

Provided that no such certificate to the effect that a person has been dismissed for corruption or for disloyalty to the State or so removed shall be issued, unless an opportunity of being heard has been given to that person.

Explanation - For the purpose of this sub-rule, a certificate issued by the Secretary to the Government to the effect that a person having held office

under the Government of India or under the Government of a State or Union Territory or under a District Council has or has not been dismissed for corruption or disloyalty to the State or has or has not been removed for disobedience or violation of any direction issued under rule 5 of these Rules shall be the conclusive proof of that fact;

4) A person shall be disqualified if, and for so long as he is a managing agent, manager or Secretary of any Company or Corporation (other than a Co-operative Society) in the Government of India or the Government of a State or Union Territory or a District Council has held not less than twenty five percent of the share.

(5) If the Governor is satisfied that a person having been nominated as a candidate for the District Council or having acted as Election Agent of any person so nominated-

(a) has failed to lodge an account of election expenses within the time and in the manner required by rule 186; or

(b) has no good reason or justification for such failure, then the Governor shall, by an order published in the official Gazette, declare him to be disqualified for

a period of three years from the date of the order.

(6) A sitting member of the District Council shall be disqualified if –

- (a) he has voluntarily given up the political party which sponsored him as a candidate on the date of his nomination and joined any other political party after his election or his nomination as a member; or**
- (b) having been elected to the District Council as an independent candidate has later joined any Political Party; or**
- (c) having been elected as an independent candidate or appointed as a nominated member has once given support to any political party but later withdraws it and supports another political party.**

(7) All decision regarding disqualification of members as mentioned in clauses (a), (b) and (c) of sub-rule (6) above shall be made by the Chairman and his decision shall be final and binding on the members and the Political Party concerned.

That your humble Petitioner specifically challenge the impugned rule provided in clause (a) sub Rule (6) of Rule 11 of the Lai Autonomous District Council, (Constitution and Conduct of Business) Rules 2010 as the aforesaid subject matter as regard with making of Anti-defection law is not incorporated in the Paragraph 3 of the Sixth Schedule to the Constitution of India.

8. That your humble Petitioner submit and state that as per clause (a) sub rule (6) of Rule 11 of the Lai Autonomous District Council(CCB) Rules,2010 provide as "*a sitting member of the District Council shall be disqualified if, he has voluntarily given up the political party which sponsored him as a candidate on the date of his nomination and join any other political party after his election for his nomination as a member*".

It is pertinent to be mention that the Lai Autonomous District Council is constituted and established within the framework of the Sixth Schedule to the Constitution of India. That as per para 3 of the Sixth Schedule to the Constitution of India, the District Council are conferred with specific power to make laws and rules for its own with certain limitation. The Acts and Rules made by the District Council cannot overrule the law made by the Parliament. The Lai Autonomous District Council is not empowered to make rules for disqualification of sitting members of LADC on the ground of defection. As such the impugned notification dated 10.11.2023 issued by the Respondent No. 5 by invoking aforesaid rules is ultra vires and the same is nullity, void ab initio and has no legal validity. And it is repugnant to sub-para (6-A) of Paragraph 2 of the Sixth Schedule to the Constitution of India. And show cause notice issued by the Respondent No. 5 to the Petitioner on dated 11.10.2023 is a gross violation of Constitutional rights of the

Petitioner which envisages in Article 14, 19 & 21 of the Constitution of India. As such the impugned Rules as prescribe under clause (a) sub rule (6) of rule 11 of Lai Autonomous District Council (CCB) Rule, 2010 which was made wrongly by the LADC is liable to be struck down and also the impugned notification issued by the Respondent no.5 on dated 10.11.2023 has no any legal validity. As the said rules 2010 was made by the Lai Autonomous District Council without any legislative competency and beyond its jurisdiction.

9. That your humble Petitioner submit and state that as per paragraph 3 of the Sixth Schedule of the Constitution of India the District Council are conferred with certain powers to make within the District Council with certain limitation and control beyond which the District Council cannot make any laws. As per paragraph 3 of the Sixth Schedule to the Constitution of India the following are the subject matter in which the District council are empower to make laws for their administration within their respective district council area

3. Powers of the District Councils and Regional Councils to make laws.—(1)

The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing

or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town: Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes 1 [by the Government of the State concerned] in accordance with the law for the time being in force authorizing such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of jhum or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property; 2

(i) marriage and divorce;]

(j) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.

It is to be mentioned that the rule prescribe under clause (a) sub rule (6) of rule 11 of Lai Autonomous District Council (CCB) Rules, 2010 has override sub para (6-A) of paragraph 2 of the Sixth Schedule to the Constitution of India. The District Council are conferred to make rules and regulation for better control and administration within the District Council. It is to be mentioned that there is a distinction between plenary legislative power and ordinary legislative power. And plenary power of legislation is given only to the Parliament and the State Legislature. The Parliament has overriding and exclusive power with regard to making Law as provided in the Union and concurrent list. However, the power of Legislation conferred upon the District Council cannot by any means be equated with the plenary power of the Legislation. The rule made by the Lai Autonomous District Council cannot override the rule laid down by the Constitution of India. Hence the aforesaid impugned rules clause (a) sub rule (6) of rule 11 of Lai Autonomous District Council (CCB) Rules, 2010 was made without legislative competency and has no constitutional validity and the same is liable to be set aside and quashed.

10. That your humble Petitioner state and submit that on careful reading of the above-mentioned para 3 of the Sixth Schedule to the Constitution of India there is no scope or the Lai Autonomous District Council is not empowered for making of anti defection law for disqualification of sitting member of District Council due to defection. The District Council are the creature of the Sixth Schedule to the constitution of India which was made by the Union Legislature and came into existence in 1972. As such the creation can not destroy the creator and curtail Constitutional rights of the Petitioner whatsoever rightly or wrongly. As such the clause (a) sub rule (6) of rule 11 of Lai Autonomous District Council (CCB) Rules, 2010 is ultra-vires, nullity and the same cannot stand in the scrutiny of law. It is to be mentioned that the power of District Council to make laws is specifically limited by the provisions of Sixth Schedule to the Constitution of India and it cannot do anything beyond the limits which circumscribe their power. As such, the Respondent No.5, the Chairman of Lai Autonomous District Council has no authority to issue a show cause notice to the Petitioner to disqualify his membership by invoking the abovementioned impugned Rules subscribe clause(a) sub-Rule (6) of Rule 11 and shortening the period of the office of the MDC as provide in para (6-A) of the Sixth Schedule to the Constitution of India.
11. That as per paragraph 3 of the sixth schedule of the Constitution of India, the Lai Autonomous District Council is not empowered to make law as regard with disqualification of sitting members of the district Council on the ground of defection for joining of one party to another party and as such, the impugned rules clause (a) sub rule (6) of rule 11 of Lai Autonomous District Council (CCB) Rules, 2010 is void ab initio and has no any legal validity as the same was made by the Lai Autonomous District Council without legal sanction and without legislative competency. As such, the aforesaid rule is ultravires over exercise of the power by the LADC beyond its

Jurisdiction and the same is liable to be set aside and quashed.

12. That in any view of the matter, the impugned Rule as provide in clause (a) sub rule (6) of rule 11 of Lai Autonomous District Council (CCB) Rules, 2010 approved by the Governor on dated 20.10.2010 is repugnant to sub para (6-A) of paragraph 2 of the Sixth Schedule to the Constitution of India. That as per sixth schedule to the Constitution of India there are three ways for enactment or any law or rules within the Autonomous District Council they are as follows :

- (i) *As per Sub-Para 6 of Paragraph 2 of the Sixth Schedule to the Constitution of India, the Governor shall makes rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal councils or other representative tribal organizations within the autonomous districts or regions concerned.*
- (ii) *As per sub-para 7 of Paragraph 2 of the Sixth Schedule to the Constitution of India, the District or the Regional Council may after its first constitution makes rule 2[with the approval of the Governor] with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules for its own and Para 3 are the detailed subject matter on which the District Council are conferred to make law.*
- (iii) *As per Para 12B of the Sixth Schedule to the Constitution of India, application of Acts of Parliament and of the Legislature of the State of Mizoram to autonomous regions in the State of Mizoram.*

And none of the above-mentioned provisions are inconsonant with the Rules 11 of LADC, as the same was made without legislative competency and is not incorporated with the provisions of the law making power of the district Council. As such the said impugned rules is liable to be set aside and quashed.

13. That for the reason and the facts and circumstances narrated above, unless this Hon'ble Court interferes with the matter, great injustice shall be caused to the Petitioner and suffer irreparable loss in terms of monthly salary and allowances and position. As such interference of your Hon'ble High Court is highly warranted in this case.
14. That in any view of the matter the prescribe clause (a) of sub rule (6) of Rule 11 of the Lai Autonomous District Council(CCB) Rules,2010 is bad in law and is not sustainable in the scrutiny of law and the same is liable to be struck down.
15. That your humble petitioner has no other adequate and alternative remedy and the remedies sought for is complete and adequate.
16. That the Petitioner has not filed any other application or suit having an identical cause of action before any other forum or court.
17. That this Petition is being filed bonafide and in the interest of Justice.

IN THE PREMISES AFORESAID, it is therefore prayed that your Lordships may graciously be pleased to admit this Writ Petition, call for the record and issue rule calling upon the

Respondents and to show cause as to why the impugned clause (a) sub rule (6) of rule 11 of Lai Autonomous District Council (CCB) Rules, 2010 and impugned show cause notice issued by the Respondent No. 5 on dated 10.11.2023 as regard with disqualification from MDC of the Petitioner on the ground of defection shall not be set aside and quash or deleted and to pass any such further order(s) as your Lordships may deem fit and proper.

And ad interim, it is prayed to this Hon'ble Court to issue an order or direction to the Respondent No. 5 not to proceed further with the said impugned show cause notice on dated 10.11.2023 issued to the Petitioner and to stay the impugned notification until final disposal of the writ Petition.

And for this act kindness the Petitioner as in duty bound shall ever pray.

AFFIDAVIT

I, Shri K. Hre Kung S/o K. Kiauvunga(L) R/o Vengthar, Sangau-II, Lawngtlai District, Mizoram aged about 56 years do hereby solemnly affirm and state as follows :

1. That I am the Petitioner in the instant Writ Petition and as such I am fully acquainted with the facts and circumstances of the case.
2. That the statement made in this affidavit and in paragraph nos. _____ of the petition are true to the best of my knowledge which I believe to be true and those made in paragraph nos. _____ being matters of records is true to my information derived from the records which I believe to be true and the rest is my humble submission before this Hon'ble Court.
3. That the annexures annexed to the connected Petition are true and correct copies of their respective originals.

OATH

"I swear that this declaration is true, that it conceals nothing, and that no part of it is false, so help me GOD"

And in proof I sign this affidavit on this the 30th day of ^{Nov'br} December, 2023 at Aizawl, Mizoram.

Identified by me:

DEPONENT

Signed before me:

Rule-178
[Sub-rule (4)]

Certificate of Election

I, Dr. Andrew H. Vanlaldika, Returning Officer for the 3-SANGAU WEST

MDC Constituency hereby certify that I have on the 8th day of December 2020, declared that

Pi/Pu K. HRE KUNG of MNF

to have been duly elected by the said constituency to be a Member of the

Lai Autonomous District Council and that in token thereof,

I have granted to him this Certificate of Election.

Returning Officer

3-Sangau West

Place : Lawngtlai

Date : 08.12.2020

To

The President,
Zoram People's Movement Party,
Sangau-II Unit.

Subject: ZPM Party zawmna.

Ram tana thawhpui duhtak,

A ihmasing chibai ka buk'a che. 'Kalphung Thar' Mipu
slam tum ZPM Party hi kan Ram tan inghahna tiaka ngain vawin
2023 hian Enrollment Fee pein lawm takin ka rawn zawm o.

Ram tana i thawhpui,

(K. HRE KUNG) 23/10
MDC

Sangau West Constiteuncy

-25-

ANNEXURE No 2'11'

Typed Copy- 1/ Pg No 24

To,

The President
Zoram People's Movement
Sangau-II Unit.

Subj : **ZPM Party zawmna.**

Ram tana thawhpui duhtak,

A hmasain Chibai ka buk a che. 'Kalphung Thar' 'Mipui Sawrkar' siam tum ZPM Party hi kan ram tan innghahna tlaka ngaiin vawiin 23rd Oct, 2023 hian Enrolment Fee pein lawm takin ka rawn zawm e.

Ram tana I thawhpui,

Sd /

(K. HRE KUNG)

MDC

Sangau West Constituency

-26-

ANNEXURE No. 2 'B'

English Translated Copy- of Pg No 24

To,

The President
Zoram People's Movement
Sangau-II Unit.

Subj: **Joining of ZPM Party.**

Dear Colleague,

First of all, I convey my greetings to you. Having my full confidence that ZPM Party would form 'People's Government' on which Public may depend on its 'New Policy', today on 23rd October 2023 I have enrolled myself in the party by subscribing a fee and join ZPM with thanks.

Your Sincere Colleague,

Sd /

(K. HRE KUNG)

MDC

Sangau West Constituency

NO.B.11012/1/2019-LADC/DCS
LAI AUTONOMOUS DISTRICT COUNCIL
DISTRICT COUNCIL SECRETARIAT
LAWNGTLAI : 796891 - MIZORAM

Dated Lawngtlai, the 10th Nov. 2023.

To,

✓ Pu K. Hre Kung, MDC
2-Sangau 'W'

Subj :- Show Cause Notice.

Whereas under provision by Rules, Clause (a) sub rule (6) of Rules 11 of the Lai Autonomous District Council (CCB) rules 2010. "A sitting member of the District Council shall be disqualified if he has voluntarily given up the Political party which sponsored him as a candidate on the date of his nomination and joined any other Political Party after his election or his nomination as a member"

And whereas, you have been sponsored and elected by Mizo National Front Party from 2-Sangau 'W' Constituency in 2020 MDC General Election. But in violation of the above mentioned rules you had given up the Political Party sponsored you by joining Zoram People's Movement Party on 23rd. Oct. 2023.

Now, therefore, you are hereby called upon to Show Cause Notice in writing as to why you have violated the Rules as prescribed under clause (a) sub rule (6) of Rules 11 of the Lai Autonomous District Council (CCB) Rules 2010.

Your reply to the Show Cause Notice should reached to the undersigned on or before 14th Nov. 2023.(Tuesday).

Enclosed : Photo copy of
Joining letter to ZPM Party


10/11/23
(V.L. HMUAKA)

Chairman
Lai Autonomous District Council
Lawngtlai

Memo No.B.11012/1/2019-LADC/DCS : Dated Lawngtlai, the 10th Nov. 2023.
Copy to :-

1. Secretary to District Council & Minority Affairs Department, Aizawl for information.
2. Deputy Commissioner, Lawngtlai District, Lawngtlai, for information.
3. PS to Chief Executive Member, Lai Autonomous District Council, Lawngtlai for information.


10/11/23
(LIANCHUNGNUNGA)

Secretary
Lai Autonomous District Council
Lawngtlai

Dated Lawngtlai, the 14th November, 2023

To,

The Chairman,
Lai Autonomous District Council
Lawngtlai, Mizoram.

**Ref.: Memo No. B.11012/1/2019-LADC/DCS: Dated Lawngtlai,
the 10th November, 2023**

Subject: Reply to the Show cause Notice.

Sir,

I have received your letter cited above, from your esteemed office on 10th November, 2023 and I propose to submit in response to the Show cause notice which you have sent to me herein under.

That Sir, at the very onset, I would like to mention that I was not elected from the 2- Sangau West Constituency, but from the 3-Sangau West Constituency.

(Photocopy of Certificate of Election is annexed hereto and marked as Annexure-1).

I admitted that I was sponsored by the Mizo National Front (MNF) Party and I was elected as MDC from 3-Sangau West Constituency. And I also admitted that I had joined 'Zoram People's Movement Party' on 23rd October, 2023.

I would humbly like to bring to your notice that the District Councils are governed by the Sixth Schedule to the Constitution of India. The District Councils are the creatures of the Sixth Schedule, and cannot destroy their creator. The Constitution of India under sub-para 6-A of para-2 provides the terms of the elected members of the District Councils which reads as follows;

"(6-A) The elected members of the District Council shall hold office for a term of five years from the date appointed for the first meeting of the Council after the general elections to the Council, unless the District

Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor:

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces."

From the plain reading of the above-mentioned sub-para 6-A of para-2 to the Sixth schedule, the term of the elected members cannot be shortened by any means or for any other reason, as such, the reasons for disqualifying elected members of the District Council as provided by Rules 11(6) (a) of the Lai Autonomous District Council (CCB) rules, 2010 which reads as "a sitting member of the District Council shall be disqualified if he has voluntarily given up the Political party which sponsored him as a candidate on the date of his nomination and joined any other Political Party after his election or his nomination as a member" is repugnant to and **ultra vires** to the provision of sixth Schedule to the Constitution of India, which gave birth to the Lai Autonomous District Council, Lawngtlai Mizoram.

Further, there is no doubt that the District Councils established under the Sixth Schedule to the Constitution of India are empowered with legislative powers with the approval of the Governor of the State, however, such rule making power is limited in respect of certain subjects only which is provided under its sub-para (7) read with sub para (6) of para-2. The relevant provisions of the sixth schedule to the Constitution of India are abstracted hereinafter for your kind perusal:

"Sub-para (7) of para-2 of the Sixth Schedule; "The District or the Regional Council may after its first constitution make rules 2 [with the approval of the Governor] with regard to the matters specified in subparagraph (6) of this paragraph and may also make rules [with like approval] regulating—

(a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and

Council is sooner dissolved under paragraph 16 and a nominated member shall hold office at the pleasure of the Governor:

Provided that the said period of five years may, while a Proclamation of Emergency is in operation or if circumstances exist which, in the opinion of the Governor, render the holding of elections impracticable, be extended by the Governor for a period not exceeding one year at a time and in any case where a Proclamation of Emergency is in operation not extending beyond a period of six months after the Proclamation has ceased to operate:

Provided further that a member elected to fill a casual vacancy shall hold office only for the remainder of the term of office of the member whom he replaces."

From the plain reading of the above-mentioned sub-para 6-A of para-2 to the Sixth schedule, the term of the elected members cannot be shorten by any means or for any other reason, as such, the reasons for disqualifying elected members of the District Council as provided by Rules 11(6) (a) of the Lai Autonomous District Council (CCB) rules, 2010 which reads as "a sitting member of the District Council shall be disqualified if he has voluntarily given up the Political party which sponsored him as a candidate on the date of his nomination and joined any other Political Party after his election or his nomination as a member" is repugnant to and **ultra vires** to the provision of sixth Schedule to the Constitution of India, which gave birth to the Lai Autonomous District Council, Lawngtlai Mizoram.

Further, there is no doubt that the District Councils established under the Sixth Schedule to the Constitution of India are empowered with legislative powers with the approval of the Governor of the State, however, such rule making power is limited in respect of certain subjects only which is provided under its sub-para (7) read with sub para (6) of para-2. The relevant provisions of the sixth schedule to the Constitution of India are abstracted hereinafter for your kind perusal:

"Sub-para (7) of para-2 of the Sixth Schedule; "The District or the Regional Council may after its first constitution make rules 2 [with the approval of the Governor] with regard to the matters specified in sub-paragraph (6) of this paragraph and may also make rules [with like approval] regulating—

(a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business; and

(b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be:

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council."

Besides, Sub-paragraph (6) of para 2 reads as follows; " The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organizations within the autonomous districts or regions concerned, and such rules shall provide for-

(a) the composition of the District Councils and Regional councils and the allocation of seats therein;

(b) the delimitation of territorial constituencies for the purpose of elections to those councils;

(c) the qualifications for voting at such elections and the preparation of electoral roll therefore;

(d) the qualifications for being elected at such elections as members of such councils;

(e) the term of office of members of Regional Councils;

(f) any other matter relating to or connected with elections or nominations to such councils;

(g) the procedure and the conduct of business including the power to act notwithstanding any vacancy in the District and Regional councils.

(h) the appointment of officers and staff of the District and Regional Councils."

Para 3 of the Sixth Schedule, provides Powers of the District Councils and Regional Councils to make laws which reads as follows —

(b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be:

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (6) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council."

Besides, Sub-paragraph (6) of para 2 reads as follows; " The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing tribal Councils or other representative tribal organizations within the autonomous districts or regions concerned, and such rules shall provide for-

(a) the composition of the District Councils and Regional councils and the allocation of seats therein;

(b) the delimitation of territorial constituencies for the purpose of elections to those councils;

(c) the qualifications for voting at such elections and the preparation of electoral roll therefore;

(d) the qualifications for being elected at such elections as members of such councils;

(e) the term of office of members of Regional Councils;

(f) any other matter relating to or connected with elections or nominations to such councils;

(g) the procedure and the conduct of business including the power to act notwithstanding any vacancy in the District and Regional councils.

(h) the appointment of officers and staff of the District and Regional Councils."

Para 3 of the Sixth Schedule, provides Powers of the District Councils and Regional Councils to make laws which reads as follows —

(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes 1 [by the Government of the State concerned] in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of jhum or other forms of shifting cultivation;

(e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property;

(i) marriage and divorce;]

(j) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question. 14

(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes 1 [by the Government of the State concerned] in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

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(j) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question. 14

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

The rule making powers vested to the District Councils under the Sixth Schedule to the Constitution of India as mentioned above does not extend to making of rules which provides for removal or disqualification of a member on the grounds given in Rules 11(6) (a) of the Lai Autonomous District Council (CCB) Rules, 2010. Hence, the said impugned Rules 11(6) (a) of Rules, 2010 is repugnant to, inconsistent and ultra vires to the Sixth Schedule of the Constitution of India. This was rightly expressed and held by the Gauhati High Court, in **W.P.(C) No.65 OF 2020** (*Sh. Onish Moy Chakma & Ors Vrs Chakma Autonomous District Council & Ors*) as well as in **W.P.(C) No.78 (SH) OF 2008** (*Hispreacheringson Shylla Vs. Khasi Hills Autonomous District Council*). It is pertinent to mention herein that, since the Lai autonomous District Council, like the Chakma Autonomous District Council and Khasi Hills District Council is established under the same provisions of Constitution, the decision held in the above cited judgments are equally binding to the Lai Autonomous District Council as well.

2008/4

(Photocopy of Judgement & Order passed by Gauhati High Court in W.P.(C) No.65 OF 2020 and W.P.(C) No.78 (SH) OF 2008 is annexed hereto and marked as Annexure-2 & 3).

Further, I would like to bring to your kind notice that the District Council cannot enact a law preventing or penalizing defection by members of the Council. In the case of District Council of United Khasi & Jaintia Hills & Ors, the Apex Court held that *"The power of legislation conferred on bodies like the District Councils, which concerns us, must be confined strictly within the limits prescribed by the plain language used and the doctrine of wide construction visions conferring plenary nature of legislative power on the Parliament or the State Legislatures in which case the appellant's argument may be more appropriately accepted..... The District Councils unlike the parliament and the State legislatures are not intended to be clothed with plenary power of legislation. Their powers to make laws is expressly limited by the provisions of the Sixth Schedule which has created them and they can do nothing beyond the limits which circumscribed their power....."* Hence, the provision of ground for disqualification provided in Rules 11 (6) (a) of the Lai Autonomous District Council, (CCB) Rules, 2010 is clearly beyond the scope of the law making power conferred on the District Council by the Sixth Schedule to the Constitution and to that extent. Therefore, the impugned Rules 11 (6) (a) of the Lai Autonomous District Council (CCB) Rules, 2010 is thereof **void ab initio** being enacted beyond the jurisdiction of the District Council.

(3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect."

The rule making powers vested to the District Councils under the Sixth Schedule to the Constitution of India as mentioned above does not extend to making of rules which provides for removal or disqualification of a member on the grounds given in Rules 11(6) (a) of the Lai Autonomous District Council (CCB) Rules, 2010. Hence, the said impugned Rules 11(6) (a) of Rules, 2010 is repugnant to, inconsistent and ultra vires to the Sixth Schedule of the Constitution of India. This was rightly expressed and held by the Gauhati High Court, in **W.P.(C) No.65 OF 2020** (*Sh. Onish Moy Chakma & Ors Vrs Chakma Autonomous District Council & Ors*) as well as in **W.P.(C) No.78 (SH) OF 2008** (*Hispreacheringson Shylla Vs. Khasi Hills Autonomous District Council*). It is pertinent to mention herein that, since the Lai autonomous District Council, like the Chakma Autonomous District Council and Khasi Hills District Council is established under the same provisions of Constitution, the decision held in the above cited judgments are equally binding to the Lai Autonomous District Council as well.

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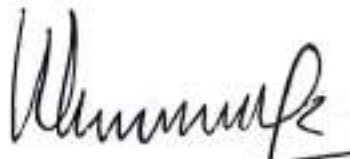
The law regarding defection is provided under the tenth Schedule to the Constitution, which is only applicable to the members of the Parliament and the State Assemblies. Hence, members of the District Council are excluded under this law. In order to incorporate subjects of Tenth Schedule to the law made by the District Council established under the Sixth Schedule, the provisions of the Constitution need to be amended. To this effect, "The 125th Constitution of India (Amendment) Bill, 2019 is only being introduced in the Parliament and is yet to be passed by the Parliament. Thus, in the absence of such Amendment, the anti-defection law is not applicable as of now among the members of the District Council nor is the Lai autonomous District Council have any legislative competency to make such law of disqualification or removal from members of the District Council in respect to defection from one political party to another.

That Sir, in light of the reply advances in the fore-going paragraphs; I have not violated any Rules in joining Zoram People's Movement Party. I am astonished and in utter-shock that I have been accused of violating the said Rules, which have neither legal standing nor existence just because I joined ZPM Party.

Last but not the least, I belief that you consider and regard what I have stated in this reply and act with a clear conscience by upholding and preserving the integrity and virtue of the Lai Autonomous District Council as being the head of the Legislature.

Thanking you in anticipation.

Sincerely Yours,


(K. HRE KUNG) 24/11/2023
Member of District Council
3-Sangau West Constituency
Lai Autonomous District Council
Lawngtlai,


The law regarding defection is provided under the tenth Schedule to the Constitution, which is only applicable to the members of the Parliament and the State Assemblies. Hence, members of the District Council are excluded under this law. In order to incorporate subjects of Tenth Schedule to the law made by the District Council established under the Sixth Schedule, the provisions of the Constitution need to be amended. To this effect, "The 125th Constitution of India (Amendment) Bill, 2019 is only being introduced in the Parliament and is yet to be passed by the Parliament. Thus, in the absence of such Amendment, the anti-defection law is not applicable as of now among the members of the District Council nor is the Lai autonomous District Council have any legislative competency to make such law of disqualification or removal from members of the District Council in respect to defection from one political party to another.

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Thanking you in anticipation.

Sincerely Yours,



(K. HRE KUNG)
Member of District Council
3-Sangau West Constituency
Lai Autonomous District Council
Lawngtlai,

24/11/2023