

BEFORE THE ELECTION COMMISSION OF INDIA

Coram:

(H.S. Brahma) (Dr. S. Y. Quraishi) (V.S. Sampath)
Election Commissioner Chief Election Commissioner Election Commissioner

***In re:* Dispute regarding merger of Save Goa Front, a recognised State Party in the State of Goa with the Indian National Congress.**

Present :

For Shri Kennedy Afonso group:

1. Shri A. N. Haksar, Sr. Advocate
2. Shri Udayan Jain , Advocate
3. Ms. Pooja Jain, Advocate
4. Shri Kennedy Afonso

For Antonio Gauncar group :

1. Dr. Sumant Bharadawaj, Advocate
2. Shri. K. K. Shukla, Advocate
3. Shri Antonio D. Gauncar

For Suresh P. Pilarnekar group :

1. Shri Suresh P. Pilarnekar,
2. Shri Raul Pereira.

Upon hearing the submissions made by the learned counsels and the representatives of the contending groups on 03.02.2012, and upon considering the written submissions of the parties, and after having perused the records of the case, and having carefully examined and considered all relevant facts and circumstances of the case and propositions of law placed before it, the Commission passes, the following

ORDER

This is a case of dispute between three groups of Save Goa Front, a recognised State Party ('SGF' for short) in the State of Goa with 'Aeroplane' as its reserved symbol in that State, under the Election Symbols (Reservation and Allotment) Order, 1968, ('Symbols Order' for short). One group is led by Shri Antonio Gauncar, the second group is led by Shri Kennedy Afonso and the third group is led by Shri Suresh P. Pilarnekar.

2. The SGF was registered as a political party under Section 29A of the Representation of the People Act, 1951 w.e.f. 11.04.2007. At the time of registration of the party, Shri Sidhanath Buyao, Dr. Wilfred M. Mesquita, Shri Antonio Gauncar and Shri Kenendy Afonso were respectively the President, General Secretary, Vice-President and Executive member of the Party. Later, the party was accorded recognition under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 as a State Party on the basis of its poll performance in the general election to the Legislative Assembly of Goa, held in 2007, in which two candidates of SGF were returned elected and the party polled 7.80% of votes. The two MLAs of the party were Shri Churchill Alemao and Shri Reginal Alex. As per the party's constitution, the term of office-bearers is three years and as per the Commission's record, no information about the organisational election of SGF was received by the Commission till the dispute arose in 2008.

3. On 24.01.2008, Sh. Alemao Churchill, one of the party MLAs, claiming to be the president of the party, informed the Commission that in a meeting held on 18.01.2008, the party had unanimously resolved to merge with the Indian National Congress (INC) on 23.01.2008. It needs to be noted that the Commission had not received any document regarding election of Shri Churchill as Party President. Another office bearer (executive member in the original executive committee) Sh. Kennedy Afonso, claiming to be the general secretary of the party also stated that the party had merged with INC by complying with all the provisions provided in the party constitution.

4. On the other hand, Sh. Antonio Gauncar, Vice-President of the party, informed, vide his letter dated 24-01-2008, that the claim of merger of the party with the INC was false and also violative of the party constitution. He further informed that the party was contemplating to initiate action to disqualify both the MLAs on the ground of their defection to the INC, and there was a special general body meeting called on 06.02.2008 for this purpose. He requested the Commission not to take cognizance of any correspondence from Shri Alemao and Shri Afonso. The communications received from Sh. Antonio Gauncar and Sh. Kennedy Afonso were sent to the president of the party, as per the Commission's record, for comments. Subsequently, Sh. Antonio Gauncar sent a copy of minutes of proceedings of a general body meeting stated to have been held on 06.02.2008, along with a copy of extract of resolution passed. The resolution was regarding election of Sh. Gauncar as party president in place of Sh. Churchill.

5. The party president (as per the Commission's records) did not send any comments on this. However, Sh. Antonio Gauncar informed vide letter dated 05.05.2008, that he had taken over the president-ship of the Party in the absence of the president by virtue of article 7(E) of the party constitution and that he had called the meeting of general body under the provisions of the said constitution. He also objected to the reported merger of the Party with INC.

6. In the meanwhile, one Sh. Suresh P. Pilarnekar, who also claimed to be the president of the Party, informed vide his letter dated 6.11.2008, that Sh. Gauncar had tendered his resignation on 09.05.2007 and, therefore, the general body meeting called on 06.02.2008 by him was not valid. Sh. Pilarnekar also submitted a copy of resignation letter dated 9.5.2007, of Sh. Gauncar, addressed to the then party president.

7. In view of the above claims and objections from three different groups, the Commission adopted the following course of action :-

- a) The Commission sent a letter to Sh. Kennedy Afonso stating that as per the guidelines given by the Supreme Court in its judgment in APHLC vs. Capt. William Sangma, (AIR 1977 SC 2155) there has to be consultation at every level of the party in the case of merger of the party. He was advised to submit

documents, if any, to show that the principles in the said judgment were followed.

- b) Sh. Gauncar was sent copies of letters of Sh. Pilarnekar and Sh. Afonso for comments.
- c) Sh. Pilarnekar was advised to submit documents in support of his claim about his election as party president/ general secretary by 02.02.2009.

8. In reply, Sh. Afonso submitted copies of documents referring to merger of two MLAs of the party with the INC and minutes of the general body meeting and the meeting of the Central Executive Committee. Sh. Gauncar in his reply stated that the then party president rejected his resignation and he had since withdrawn his resignation. He stated that Sh. Pilarnekar and Sh. Raul Pareira had no *locus-standi* as they were expelled from the Party. Sh. Pilarnekar, in his reply, stated that in the general body meeting convened on 22.11.2008, Sh. Raul Pareira and Sh. Pilarnekar were elected as president and general secretary, respectively. He also stated that as Sh. Gauncar had already resigned from the party, he had no authority to convene general body meeting on 06.02.2008.

9. Thereupon, the replies received from various groups of the Save Goa Front were duly considered in the light of the relevant provisions of the constitution of the party. As regards the merger of the party with some other party, it is clear from the party constitution (page 5 of the constitution) that **no decision affecting the party and its basic structure of its very survival (merger or dissolution) shall be effected unless ratified by 2/3rd of the total membership of the general body.** At the time of registration of the party, the total membership was given as 150, while in the copies of documents submitted by Sh. Kennedy Afonso, the no. of members who attended the meeting of general body on 18.01.2008 and approved the resolution of merger with INC was 77. This came to only just above 50% of total membership, even assuming that the membership had not increased from the original 150. Therefore, the merger claimed by Sh. Kennedy Afonso and other members was not considered to be in accordance with the provisions of the party constitution.

10. As regards the resignation letter of Sh. Gauncar from the party, he admitted to have

submitted a letter of resignation on 09.05.2007 to Shri Sidhanath Buyao, who was President of the Party, as per the list of office-bearers at the time of registration of the party. However, an endorsement on the letter showed that the said resignation was rejected by Shri Buyao. Sh. Gauncar also submitted a copy of the letter sent by him withdrawing his resignation in view of the discussion with the general secretary. The party constitution provides that any member who has resigned may withdraw his resignation by submitting a letter of withdrawal within seven days. Therefore, the contention of Sh. Pilarnekar that Sh. Gauncar had ceased to be a member of the party was not accepted. Further, as per the party constitution, in the absence of the president for any reason, the vice president will act as the president. Sh. Gauncar was the vice president from the time of registration; therefore, it was decided at that time that the convening of general body by him after the former president left the party could not be treated as illegal.

11. In view of the above facts, the Commission issued a letter dated 26.03.2009, to the effect that there was no valid merger of the party with INC and recognized Shri Antonio Gauncar as the President of the Party. Aggrieved by this letter, Shri Kennedy Afonso filed a writ petition in the Hon'ble Delhi High Court, {WP (C)9014/2009} seeking a direction to set aside and quash the Commission's letter dated 26.03.2009 and to declare that the Save Goa Front validly merged with the Indian National Congress. The Hon'ble Court vide its Order dated 18.05.2009, stayed the above said letter till the next date of hearing. The Order was communicated to all the disputing groups and to the Chief Electoral Officer, Goa, informing them that in view of the Hon'ble High Court's Order, no one would be recognized as authorised office-bearers of the party, until further orders.

12. Subsequently, the Hon'ble High Court of Delhi vide its Order dated 22.11.2011, has set aside the Commission's letter dated 26.03.2009 and remanded the matter back to the Commission to re-determine the case after grant of hearing to the parties concerned and to dispose it of at the earliest and if possible before the next elections in Goa which were then due in February, 2012. In view of the above, all the three groups were asked to submit their written submissions by 30.12.2011 to the Commission (after due service thereof on other two groups.). All the groups furnished their written submissions and confirmed the service thereof on other groups.

13. Shri Kennedy Afonso, in his written submission, reiterated his earlier stand that the party had validly merged with the Indian National Congress and the decision of the Commission recognising Shri Antonio Gauncar as the President of the Party was wrong. Shri Afonso made the following submissions :-

- (i) Explaining the sequence of events relating to resignation of the then President Shri Sidhanath Buyao, and election of Shri Churchill Alemao as the President of SGF and resignation of Shri Antonio Gauncar and relying on the relevant records of the erstwhile SGF it was contended that Mr. Churchill Alemao was duly elected President of SGF on 9.5.2007 and remained the President till the time of the extinction/merger of SGF with INC.
- (ii) The resolution for the merger of SGF with INC was approved by the requisite number of members of the General Body and the guidelines laid down by the Apex Court in the case of *All Party Hill Leaders Conference vs. Captain William Sangma, [(1977) 4SCC 161]* were followed. All the 77 members who attended the General Body Meeting on 18.1.2008, unanimously supported the resolution to merge SGF with INC.
- (iii) Once the merger of SGF with INC became final, Mr. Antonio Gauncar sprang up all of a sudden to allegedly fight for the cause of SGF. Mr. Antonio Gauncar having resigned 9 months ago was absent from all meetings and affairs of SGF ever since and was not bothered about the status and interest of the party or its members. But, he convened so called Extraordinary General Body Meeting of SGF on 6.2.2008, which was attended by 68 people. However, out of these 68 people, only 12 were members of the erstwhile SGF. Further, out of the 12 members, 5 had already attended the general body meeting on 18.01.2008 and supported the SGF merger with INC.
- (iv) As regards the Commission's decision recognising Shri Antonio Gauncar as the President of the party by virtue of article 7(E) of the

constitution of SGF, he submitted that the decision of the Commission was wrong because Shri Gauncar had resigned from the post of Vice-President of SGF and from its primary membership on 9.5.2007, which resignation was valid and binding in terms of the constitution of SGF, and after his resignation on 9.5.2007, Mr. Gauncar never attended any meeting of the CEC of SGF or any other Party Meeting till the merger of SGF on 23.1.2008. He further submitted that in accordance with article V of the constitution of SGF a resignation when tendered became effective with immediate effect unless withdrawn within 7 days giving reasons for withdrawal. In addition to this, the constitution of SGF does not envisage a provision for rejection of a letter of resignation. He also stated that from the letter dated 1.1.2009 of Mr. Buyao addressed to the Hon'ble Commission it is clear that that Mr. Antonio Gauncar had never withdrawn his 'letter of resignation'. Mr. Antonio Gauncar was always absent from every meeting and all affairs of SGF ever since his resignation on 9.5.2007 till the date he himself convened an alleged meeting on 6.2.2008.

- (v) As per the constitution of SGF, a letter withdrawing a letter of resignation must necessarily state the reasons for such withdrawal, and unlike a letter of resignation, the letter of withdrawal of resignation requires the consideration and acceptance by the CEC. Further, the alleged endorsement by Mr. Sidhanath Buyaon on the photocopy of the letter of resignation submitted by Mr. Gauncar have no implications inasmuch as (a) it was made after Mr. Sidhanath Buyao's resignation as President of SGF, (b) it was made suo motu without the sanction of the CEC, (c) it was made not in accordance with the constitution on SGF as there was no provision in the constitution of SGF permitting the same, (d) it was not made on the original letter of resignation, and (e) the only reason why Mr. Buyao got a copy of the said letter of resignation

was because it was addressed to the President of SGF and was sent to the residential address of Mr. Buyao.

14. In the written submissions, he has also alleged that the Commission overlooked his letter dated 4.10.2007 addressed to it informing the that all the four posts of Vice-President had been duly filled up and that Mr. Gauncar was not one of those 4 Vice-Presidents and the Commission's records still reflect Mr. Sidhanath Buyao as President of SGF and Mr. Antonio Gauncar as Vice-President, despite the fact that it was informed to the Commission vide letter dated 10.5.2007, that Mr. Sidhanath Buyao had resigned as President and that Mr. Churchill Alemao was appointed President of SGF in his place. (In para 3 above, it has been made clear that the Commission had not received any such communication).

15. Shri Antonio Gauncar in his written submission reiterated his stand that the SGF had not merged with the Indian National Congress but is separately existing as a registered political party of which he is the present president. In his written submission he has mainly submitted that :-

- (i) The said merger of the party with the INC claimed by Shri Afonso group cannot be held as a valid merger as the said resolution was not approved by the requisite number of members of general body. It is also evident that the guidelines given by the Supreme Court in AHLC Vs. Capt. William Sangma were not followed.
- (ii) On the plea of Shri Afonso before the Hon'ble Court, that he was not given the opportunity to explain his stand in the case before the Commission, the Hon'ble Court has remanded back the matter. However, Shri Afonso has not submitted any further documents/written submission at all and non-petitioner before the Hon'ble High Court, Shri Suresh P. Pilarnekar, verbatim repeated what he had stated earlier before the Commission and the same was rejected after due consideration and he never objected to the same.

- (iii) Mr. Antonio Gauncar gave his resignation letter on 9.5.2007 and his resignation was rejected on the very same day on 9.5.2007 by the then President of Save Goa Front and the then General Secretary on the very same day informed him that his resignation had been rejected by the President of Save Goa Front and requested him to meet him to discuss and sort out any misunderstanding.
- (iv) The other party has falsely stated that he was not given the opportunity to present his case/ papers before the Commission whereas various correspondences made between Mr. Afonso and the Commission, prove that he was given ample opportunity by the Commission.

16. In view of the above, he submitted that the SGF has not merged with India National Congress but separately exists as a registered political party of which he is the present president.

17. Shri Suresh S. Pilarnekar also reiterated his stand that the party has not merged with the Indian National Congress and Shri Raul Pareria is the authorised President of the Party. Shri Pilarnekar's submissions are as follows:-

- (i) Since Shri Antonio Gauncar had resigned from the post of Vice President as well as primary membership of the party vide his letter dtd. 9.5.2007 and had not withdrawn the said resignation within 7 days from the date of said letter, Shri Antonio Gauncar is not member of the Save Goa Front Party. Therefore, all the acts, deeds and things he has done under the name of Save Goa Front after 9.5.2007 are null and void.
- (ii) Shri Antonio Gauncar needs to be put to strict proof as to the fact that he had submitted letter of withdrawal of the resignation letter to the prescribed authority of the party within 7 days. Otherwise it would amount to miscarriage of justice and cause great harm and injury to the genuine members of the original party.
- (iii) It is not Shri Antonio Gauncar, but Mr Raul Pereira, Mr Ludovico Govera and Sh. Pilarnekar who were instrumental in reviving the party after alleged merger of the party by its elected legislators.

- (iv) After learning about the fact that Shri. Antonio Gauncar had resigned from the primary membership of the party and his lack of locus to convene lawful General Body meeting of the party, they (Shri Pilarnekar and his supporters) convened the General body meeting on 4.11.2008, for which the letter dated 6.11.2008 alongwith documents appended thereto submitted to the Commission is conclusive proof.

18. In view of above submissions, he requested the Commission to declare that the executive committee elected under the chairmanship of Raul Pereira is official and lawful Executive.

19. On 23.1.2012, Shri Suresh S. Pilarnekar also filed a rejoinder to the written submissions filed by Shri Kennedy Afonso and Shri Antonio Gauncar. In his rejoinder he submitted that :-

- (i) As regards submission of Mr. Kennedy Afonso relying upon the judgement of the Hon'ble Supreme Court in *Sadiq Ali v/s Election Commission of India, (1972) 4 SCC 664*, it is submitted that the majority of the original members of the party are with the Save Goa Front headed by Mr. Raul Pereira. In support of his claim, he has submitted a copy of proceedings of General Body Meeting of the Party held on 22/11/2008, which was also submitted earlier to the Commission vide their letter dtd. 01/12/2008.
- (ii) As to the contention of Shri Gauncar at para (xvii) of his written submission relating to his resignation, it is submitted that as per Article V of the Constitution of the Party, the President has no powers to reject resignation submitted by any member to resign from primary membership or the Executive Body of the Party. Resignation becomes effective after expiry of 7 days if not withdrawn within 7 days from the date of resignation. Further, the remark on the said letter which read as "To, the General Secretary, please inform Mr. Gauncar that his resignation is rejected." is signed by Mr. Siddhanath Buyao on 09/05/2007. Mr. Churchill Alemao had

joined the Party on 08/05/2007 and had taken over as President of the Party from 09/05/2007. This fact was communicated to the Hon'ble Election Commission vide letter dtd. 10/05/2007. As such Mr. Sidhanath Buyao has no authority to sign any party correspondence as President since 09/05/2007.

20. The Commission fixed a hearing in the matter on 27.01.2012, which was adjourned to 03.02.2012, on the submission of the learned Sr. Counsel appearing for Sh. Kennedy Afonso that the copy of the letter of withdrawal of resignation placed on record by Shri Gauncar was received by him only at the time of hearing.

21. The Commission heard the matter on 03.02.2012. On behalf of Shri Kennedy Afonso, Shri A. N. Haksar, Senior Advocate alongwith Shri Udayan Jain and Ms. Pooja Jain, Advocates, and on behalf of Shri Antonio Gauncar, Dr.Sumant Bharadawaj and Shri K. K. Shukla, Advocates appeared. Suresh P. Pilarnekar appeared in person.

22. At the hearing, Shri A. N. Haksar, learned sr. counsel of Shri Kennedy Afonso mainly submitted that :-

- (i) The decision of the merger took place with the requisite support of the members of the General Body of the SGF as required under its constitution inasmuch as on 18.1.2008, the total membership of the General Body (constituting all ordinary members) of SGF was 99 (51 members having resigned on various dates between April 2007 to January 2008) out of which 77 members were present at the said meeting and approved the merger decision.
- (ii) Shri Antonio Gauncar never participated in any meeting called by the party, after his resignation on 09.05.2007, and therefore, it is up to Shri Gauncar to show that the party was functioning under his leadership. However, nothing has been produced by him to this effect.

- (iii) The resignation of Shri Gauncar, from both the post of Vice President and from the primary membership of SGF, became final in terms of Article 5.1. and 5.2 of the Constitution of SGF which are the only articles applicable to the resignation of a member of SGF. No letter of withdrawal was ever tendered by Mr. Gauncar. Further, unlike a letter of resignation under Article 5.1 which does not require a communication of acceptance, there is no such exemption under Article 5.2. with respect to a letter withdrawing a letter of resignation. On the contrary, there is a requirement for reasons to be given and such reasons must be acceptable to the party.
- (iv) Post 9.5.2007, there is nothing on record placed by Sh. Gauncar to show that he had participated in any activity of the SGF or that he had conducted or attended any meeting until February 2008, when he claims he was elected Party President. Communications were sent to the Hon'ble Commission about various activities of the party after 09.05.2007. Mr. Gauncar never contested any of the activities, at that point of time, which clearly proves that the alleged letter of withdrawal dated 13.5.2007 submitted by Mr. Gauncar is a complete after thought and has been forged and fabricated with malafide intentions and ulterior motives.

23. At the hearing, Shri Haksar also submitted a copy of the Order dated 3.2.2012, of the Speaker of the Legislative Assembly of Goa passed in the matter of disqualification petition filed before him in respect of Shri Churchill Alemao and Shri Aleixo Reginaldo Lourenco, MLAs of Goa Legislative Assembly under the Tenth Schedule of the Constitution of India, wherein the Speaker rejected the disqualification petition filed against Shri Churchill Alemao and Shri Aleixo Reginaldo Lourenco, MLAs, and held that they had already become members of the INC.

24. Dr. Sumant Bharadawaj, learned Counsel appearing on behalf of Shri Antonio Gauncar, submitted that he had nothing new to say in the matter and reiterated his stand that the party had not merged with the Indian National Congress and still exists as a political party and he is the authorised President of the Party. He submitted that the decision communicated by the Commission vide its letter dated 26.03.2009, was correct and the same decision may be confirmed and continued.

25. Shri Suresh P. Pilarnekar while mentioning the sequence of events of resignation of Shri Gauncar submitted that the veracity of letter of withdrawal of resignation of Mr. Gauncar was questionable as prior to the Commission's letter dated 29.01.2009, it was not in the knowledge of any member of SGF and perhaps, the same was managed by Mr. Gauncar in collusion with Dr. Wilfred Mesquita, the erstwhile General Secretary of the party who had himself resigned on 4.10.2007 on the merger issue and joined the BJP. Therefore, it has no evidential value unless proved otherwise. Further, the claim of Mr. Gauncar that he has no locus standi in the Party's affairs since he had been expelled from the Party on 18/11/2008 vide letter dated 19/11/2008 is untenable. The claims of Shri Gauncar to be the President of the Party is unacceptable, he having resigned from the primary membership of the Party from 09/05/2007. He is before the Commission solely based on his subsequently created documents (withdrawal letter), in connivance with erstwhile General Secretary of the Party.

26. Shri Suresh S. Pilarnekar also submitted that Mr. Antonio Gauncar has neither contested Assembly Elections of 2007 on the Party ticket, not attended any meeting/function of the Party since the time he resigned from the Party i.e. from 09/05/2007 nor had done any work for furtherance of the Party. In view of the above, he has submitted (i) that the Save Goa Front Party survives and continues to function in view of decision of the Hon'ble Supreme Court in APHLC v/s Captain William Sangama., (ii) that Mr. Antonio Gauncar cannot become lawful President of the Party on two counts: (a) that his resignation from the post of Vice-President as well as from the primary membership of the Party was absolute and he ceased to be the member of the Party having not withdrawn the said resignation letter within 7 days from the date of his resignation. (Copy of the letter of withdrawal produced by him vide his alleged letter of withdrawal dt.

29/01/2009 was a subsequently created document, as such cannot be relied upon unless proved otherwise), (b) the attendance in General Body Meeting held on 22/11/2008, which was attended by as many as 122 members, itself speaks about the majority and numerical strength of the faction of the Party headed by Mr. Raul Pereira, as against the attendance in General Body Meeting dated 06/02/2008 convened by Mr. Gauncar wherein hardly 68 members were present including him and Mr. Raul Pereira and many others who also attended the GBM convened by him (Sh. Pilarnekar) on 22/11/2008.

27. On conclusion of the hearing, the parties were informed that they could file written arguments, if they so desired, by 06-02-12. Sh. Kennedy Afonso stated that he would file it alongwith copies of resignation letters of 51 members of the party submitted on various dates before the general body meeting of 18-01-2008. Sh. Antonio Gauncar stated that he had nothing further to submit. Sh. Pilarnekar handed over a copy of his written arguments. Sh. Afonso submitted his written arguments on 06-02-2012.

28. We have carefully analyzed the submissions of all the three groups and we have also examined the documents and evidence furnished by them in support of their respective cases and claims. The primary issue for decision is whether the SGF has validly merged with the INC. The question regarding the claim of Sh. Gauncar or Sh. Pilarnekar heading the SGF arises only if the claim of merger fails.

29. The constitution of SGF itself makes provisions for its dissolution/merger, which should bind its members. Relevant provisions in the Party Constitution under Article VI(c) thereof relating to decision of merger are reproduced below:-

“ VI- FUNCTIONS AND PRIVILEGES OF THE CENTRAL BODY SHALL BE AS FOLLOWS:

XXXXXXXXXXXXX

5. No decision affecting the Party and its basic structure or its very survival (merger or dissolution) shall be effective unless ratified by 2/3rd of the total membership of the General Body.”

30. Under article VI of the constitution, the general body of the party comprises all the registered members. As per article III of the party constitution, the SGF has only one category of members which is the ordinary members.

31. It is a matter of record that at the time of registration of the SGF under Section 29A of the Representation of the People Act, 1951 in April, 2007, the party had a general membership of 150 . The merger of the party with the INC is claimed to have taken place in the general body meeting held on 18.01.2008. There is no dispute that, the said meeting was attended by 77 of the 150 original members of the party. Neither Sh. Gauncar nor Sh. Pilarnekar has raised any dispute in this regard. Now the question is whether the decision of merger as approved by 77 members would fulfil the requirements of the above cited provisions in the Party Constitution for the decision of the merger to be a valid one. In the written submissions of Sh. Kennedy Afonso as well as in the oral submissions of Sh. Haksar, learned senior counsel appearing on his behalf, they have categorically stated that as on 18-01-2008, the general membership of SGF was only 99, following the resignation of 51 of the original members during the intervening period. They have placed on record copies of the letters of resignation of the 51 members. After the hearing, copies of the letters of resignation of the 51 members were sent to both Sh. Gauncar and Sh. Pilarnekar through the Chief Electoral Officer, Goa, on 04.02.2012, asking them to make their submissions, if any, with regard to these letters latest by 07-02-2012. The Chief Electoral Officer has confirmed that the documents were served at the addresses of Sh. Gauncar and Sh. Pilarnekar on 06-02-2012. Neither Shri Gauncar nor Shri Pilarnekar has submitted any communication in this behalf to the Commission till today. Therefore, the implied presumption is that they do not have any submission to make with regard to these letters of resignation. This would mean that the submissions of Sh. Afonso that 51 members had resigned from the membership of the SGF prior to 18-01-2008, and consequently the SGF had a general membership strength of only 99 on 18.01.2008, stands unrebutted and admitted. The provision in the Party Constitution regarding termination of membership (article-V of the party constitution) is quoted below:-

“ARTICLE V : TERMINATION OF MEMBERSHIP

1. Any member may resign from the primary membership or the executive body of the Party by submitting a letter of resignation duly signed, in the prescribed manner. Such resignation shall become effective from the time the letter of resignation is submitted to the prescribed authority of the Party and shall not require any communication of acceptance by the Prescribed Authority. The letter of Resignation shall be written on plain paper/letter head.”
32. In view of the above position, there is no reason not to accept the submission of Shri Afonso that on the date of merger, i.e. on 18.01.2008, the SGF had only a membership of 99. In fact, both Shri Gauncar and Shri Pilarnekar admitted that the meetings called by them were attended only by a handful of the original members of the SGF. Neither of them has produced any document to show that the other members who are stated to have attended their meetings were bona fide members of the SGF.
33. With the admitted membership of 99, a decision with the approval of 2/3rd members, i.e. 66 members, in a general body meeting would fulfill the requirement of the provisions in the party constitution regarding decision on merger, i.e. approval/ratification by two-third of the membership of the general body. Thus, the decision of merger which had the approval of 77 members of the party out of a total membership of 99 as on the date of the decision of merger fully conformed to the requirements of Party Constitution for valid merger. Further, since the decision of merger was taken by the general body of the party, the principles laid down by the Supreme Court in *APHLC vs. Capt. William Sangma* (AIR 1977 SC 2155) are also complied with.
34. In view of the above, the Commission is satisfied that the SGF has merged with the Indian National Congress. The fact that the two MLAs elected on the ticket of SGF have been admitted by the INC in its fold and they have been functioning as MLAs belonging to INC, as mentioned in the order passed on 03.02.2012 by the Speaker of Goa Legislative Assembly, a copy of which was submitted by Sh. Haksar at the hearing on 3rd February, 12, shows that the INC has also accepted the merger of SGF with them.
35. Since the SGF is seen to have validly merged with the INC, the claim of Sh. Gauncar and Sh. Pilarnekar of heading the party becomes infructuous.

36. In view of the foregoing, the Commission, in terms of paragraph 16 of the Election Symbols (Reservation and Allotment) Order, 1968, hereby decides and directs as follows:

- (i) The Save Goa Front has merged with the Indian National Congress;
- (ii) The name Save Goa Front shall be deleted from the list of political parties;
- (iii) The symbol 'Aeroplane' which was the reserved symbol of Save Goa Front shall remain frozen and shall not be allotted to any candidate until further orders of the Commission.

-sd-

(H.S. BRAHMA)
ELECTION COMMISSIONER

-sd-

(S.Y.QURAISHI)
CHIEF ELECTION COMMISSIONER

-sd-

(V.S.SAMPATH)
ELECTION COMMISSIONER

New Delhi.

Dated: 9th February, 2012