

**BEFORE THE KERALA STATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM**

**PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER  
Wednesday, the 3<sup>rd</sup> day of January 2018  
O.P.Nos.10/2016&11/2016**

**O.P.No.10/2016**

Petitioner : Beena.V.,  
W/o Sajeev,  
KuzhivilaVeedu,  
Kunnathur East P.O.,  
Kollam District-691 540.

**(By Adv.A.K.Manoj)**

Respondent : RajasekharanPillai.P.S.,  
PurangattukizhakkathilIvarkala,  
Puthanambalam P.O.,  
Kollam District – 691553.  
KunnathurGrama Panchayat

**(By Adv. Sajitha.S)**

**O.P.No.11/2016**

Petitioner : Beena.V.,  
W/o Sajeev,  
KuzhivilaVeedu,  
Kunnathur East P.O.,  
Kollam District-691 540.

**(By Adv.A.K.Manoj)**

Respondent : SathiUdayakumar,  
MangattuKizhakkathil  
Ivarkalapadi North,  
Puthanambalam P.O.,  
Kollam District – 691553,  
KunnathurGrama Panchayat

**(By Adv. Sajitha.S)**

These petitions having come up for hearing on the 15<sup>th</sup> day of December 2017, in the presence of **Adv.A.K.Manoj** for the petitioner and Adv. **Sajitha.S** for the respondents and having stood over for consideration to this day, the Commission passed the following.

### **COMMON ORDER**

Both the petitions are filed under Sections 3 and 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have committed defection and hence became disqualified to continue as members of KunnathurGrama Panchayat and also for declaring them as disqualified to contest as candidates in any election of the local body for a period of six years.

2. As the questions of law and facts involved in both the petitions are common, they were tried together treating O.P.No.10/2016 as the main case. Petitioner in both the petitions is one and the same person.

3. Common case of the petitioner in both the petitions in brief is as below:- The Petitioner and respondents are elected members of KunnathurGrama Panchayat in Kollam District in the election held in November 2015. Petitioner was elected as the candidate of Communist Party of India (Marxist)(CPI(M) and the respondent in O.P.No. 11/2016 was elected as the candidate of Communist Party of India (CPI). Respondent in

O.P.10/2016 contested the election as an independent candidate with the support of Communist Party of India (CPI) which is a constituent of the CPM led LDF. As the previous President of the Panchayat resigned from the post, the post fell vacant. Fresh election to elect the new President was scheduled to be held on 10.08.2016. Shri.A.Dileep was decided to be the candidate of the LDF for the post of the President and whips were issued to the members of the LDF by the respective parties in the LDF. The District Secretary of CPI, Kollam District issued whips to the respondents on 08.08.2016 directing them to vote in favour of the LDF candidate Shri.Dileep. When the election to the post of the President was held on 10.08.2016 the respondents abstained from the election meeting defying the direction of the party. They disobeyed the whip and purposely abstained from the meeting with a view to defeat the LDF candidate and to ensure the victory of the candidate of the rival party. By doing so the respondents committed defection incurring disqualification under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act and the petitioner filed these petitions for a declaration to that effect.

4. The respondents filed statement of objections raising common contentions which in brief are as below,- These petitions are not maintainable. The petitioner filed the above petitions out of political vengeance towards the respondents. It is true that the respondent in O.P.11/2016 was elected as the candidate of CPI and the respondent in O.P.10/2016 was elected as an independent with the support of CPI. The petitioner is only a name lender and

the petitions are filed at the instance of Shri.Dileep who joined in LDF after got elected as an independent. When fresh election to the post of new President was scheduled to be held on 10.08.2016 the CPI(M) proposed the name of Shri.Dileep. But the CPI opposed his name as he was elected as Panchayat member defeating the candidate of CPI. But when the District leadership of CPI(M) insisted to support Shri.Dileep the District Secretary of CPI issued whips to the respondents to vote in favour of the said Shri.Dileep. But due to illness and consequent hospitalization, the respondents could not attend the election meeting on 10.08.2016 and vote in favour of Shri.Dileep. The respondent in O.P.10/2016 was admitted in Travancore Medical College Hospital on 09.08.2016 due to fever, breathlessness and chest pain and he was discharged only on 12.08.2016. The respondent in O.P.11/2016 was admitted in CSI Hospital, Kazhakkuttam on 09.08.2016 due to chest pain and she was discharged only on 11.08.2016. Do to the above reasons the respondents could not attend the President election meeting on 10.08.2016. Their absence was not willful and there is no violation of whip. The petitioner filed the petitions with ill motives. There is no merit in the petition and they are only to be dismissed with costs.

5. The evidence in these cases consists of the oral testimonies of PW1,PW2, RWs1 to 5 and Exts.A1,A2,B1,B2 and X1to X6.

6. Both sides were heard.

7.The following points arise for consideration;

- (1) Whether the petitions are maintainable?
- (2) Whether the respondents have committed defection as contemplated under Section 3(1)(a) and 3(1) (b) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (3) Whether the abstention of the respondent in the election meeting held on 10.08.2016 is justifiable?
- (4) Whether the petitioner is entitled to the declaration prayed for?
- (5) Reliefs and costs?

8. **POINT No.(1)**: Both the petitions are filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks a declaration that the respondents have committed defection and hence they became disqualified to be the members of Kunnathur Grama Panchayat and also from contesting as candidates in any election to local body for a period of six years. The respondents denied the allegations and among other things it is also their contention that the above petitions are not maintainable. Though such a contention is raised in their objection statement there is absolutely nothing from their side to show that the petitions are not maintainable.

9. It may be noted that these petitions are filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. As per Section 4(1) of the Act, if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it

in this behalf may file a petition before the State Election Commission for decision.

10. From the contentions of the respondents in their objection statement it can be seen that a question arises as to whether the respondents have become subject to disqualification as provided by Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act. Admittedly the petitioner is a member of the local authority in which the respondents are also members. The petitioner being a member of the local authority he is entitled to file these petitions as per law. The consent or authorization of his political party or the other parties in the LDF is not necessary for a member for filing a petition under Section 4 of the Act. As these petitions are filed by a competent person within the time limit and a question arises as to whether the respondents have become subject to disqualification as provided by Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, these petitions are held to be maintainable. Point is answered accordingly.

**11. POINT Nos.2 to 5:** As stated above, the petitioner and respondents are elected members of Kunnathur Grama Panchayat in the election held in November 2015. Petitioner was elected as the candidate of CPM and the respondent in O.P.11/2016 as the candidate of Communist Party to India (CPI). The respondent in O.P.10/2016 was elected as an independent candidate with the support of CPI. So he is a deemed member of CPI as per the explanation to

Section 3 of the Act. The CPI(M) and CPI contested the election as part of a political coalition by name Left Democratic Front (LDF).

12. It is stated that after the election the LDF formed the Panchayat board with the support of two independents and the nominee of CPI(M) Shri.Raveendran was elected as the President of the Panchayat. Later he resigned from the post and fresh election was scheduled to be held on 10.08.2016. Ext.A1 is the copy of the election notice issued by the Returning Officer.

13. According to PW1 the LDF decided to nominate Shri.Dileep as the candidate for the post of the President and the respective parties in the LDF issued whips to the members. The District Secretary of CPI issued whips to the respondents directing them to vote in favour of Shri.Dileep aforesaid and Ext.A2 is the copy of the whip containing the acknowledgments of the respondents and another member of CPI. Case of the petitioner is that respondents disobeyed the direction of their party with a view to defeat the LDF candidate and to ensure of the victory of the UDF candidate and thereby they committed defection. PW2 is the Secretary, KunnathurGramma Panchayat. He is examined to prove the party affiliation of the respondents. Exts.X1 and X2 are the copies of the register showing the party affiliation of the respondents. Exts.X3 and X4 are the copies of the declarations submitted by the respondents to the Secretary after the election declaring their party affiliation. As there is no dispute over the party affiliation of the respondents

Exts.X1 to X4 and the evidence of PW2 require no discussion. Admittedly they belong to CPI/LDF.

14. Case of the respondents is that they did not do any act of defection. Their absence in the election meeting on 10.08.2016 was not deliberate. It was on account of their illness and consequent hospitalization they could not attend the meeting on 10.08.2016. RW1 is the respondent in O.P.10/2016 and RW2 is the respondent in O.P.11/2016. According to them they could not participate in the election meeting held on 10.08.2016, due to their illness and consequent hospitalization. Their absence was not without and hence, to them, there is no violation of whip incurring disqualification under section 3 of the Kerala Local Authorities (Prohibition of Defection) Act. To support the case of illness the respondents produced Exts.B1, B2, X5 and X6. Exts.B1 and X5 are said to be the treatment records in respect of RW1 and Exts.B2 and X6 relate to RW2.

15. According to RW1 he was suffering from fever and chest pain and on account of that he was admitted in Travancore Medical College Hospital at Mylapore, Kollam District on 09.08.2016 and was discharged on 12.08.2016. It is also stated by him that he was under the treatment of RW3 Dr.Anandkrishnan and Ext.B1 is the treatment certificate issued by him. Ext.X5 is the copy of the discharge summary. According to RW3 doctor there was no cardiac problem for RW1 and on the first day itself ECG was normal. It was only a muscle pain (MYALGIA). It is also stated by RW3 that pain can

be pretended. Evidence of RW3 doctor would show that RW1 was not suffering from any serious illness at that time.

16. Similar is the case of RW2 also. Evidence of RW2 is that on 09.08.2016 she was proceeding from Kollam to Thiruvananthapuram to visit a relative admitted in Mental Health Centre, Thiruvananthapuram and when she reached at Kazhakkuttam she felt chest pain and she was admitted in CSI Hospital, Kazhakkuttam on that day and she was discharged on 11.08.2016. It was on account of that she could not attend the election meeting, RW2 states. Ext.B2 is said to be the Medical Certificate issued to her and Ext.X6 is the Medical records produced from the hospital. To support her case she has examined RW4 doctor. But it is to be stated that RW4 is not the doctor who allegedly treated RW2. According to RW4, RW2 was treated by Dr. Anoop who is still working in the same hospital. But the said doctor is not examined in this case. Why RW2 did not take any steps to examine the said doctor is not known. Further Ext.B2 is seen issued by Dr. Vishnu. He is also not examined in this case. There is no explanation for that also. As per the evidence of RW4, RW2 was not having any cardiac problem. Her evidence would show that there was no serious illness for RW2 at that time disabling her from attending the election meeting on 10.08.2016.

17. RW5 is said to be the Puthenambalam Branch Secretary of CPI. According to him the respondents' absence in the election meeting on 10.08.2016 was due to their illness and hospitalization and they informed him

about their hospitalisation. But nowhere in the objection statement the respondents have stated the name of RW5. Further as per his evidence RW2 sustained injury on her leg on her way to Thiruvananthapuram. Even RW2 has no case that she sustained any injury on her leg. His evidence would only show that he has come before the Commission only to help the respondents and not to tell truth. Anyway his evidence can have no impact in this case in view of the evidence of RWs3 and 4 doctors.

18. Argument of the learned counsel for the petitioner is that the respondents were not suffering from any illness disabling them to attend the election meeting on 10.08.2016 and Exts.B1,B2 and Exts.X5 and X6 were got prepared to put forward a defence in this case with a view to escape from the liability under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act. To him there was no inability for them to participate in the election meeting on 10.08.2016. The evidence and circumstances in this case tempt me also to think on that lines. From the available evidence it is not possible to say that the absence of RWs1 and 2 in the election meeting on 10.08.2016 is not deliberate. Further, it is in evidence that RWs1 and 2 were against the decision of their party to support Shri.Dileep aforesaid and electing him as the Panchayat President. It is stated by them that Shri.Dileep contested in the Panchayat election against the candidate of CPI and it was by defeating the candidate of CPI he became a Panchayat member. Hence they were against the candidature of Shri.Dileep for the post of the Panchayat President. The

absence of the respondents in the election meeting on 10.08.2016 is to be viewed in that background also. It has become a practice now to produce some medical records in cases like this to justify the willful abstention. Such acts cannot be encouraged and countenanced. There is no satisfactory evidence in this case to support the case put forward by the respondents. Their absence is not so innocent as projected by them. Culpability is there on their part and certainly they are to bear the consequences.

19. It is a fact that the respondents did not attend the election meeting on 10.08.2016. Admittedly whips were issued to them by the District Secretary of CPI who is competent to issue the whips to them, directing them to vote in favour of the LDF candidate Shri.Dileep. There is no dispute over that. The respondents did not act as directed by their party. Instead of attending the meeting and voting in favour of Shri.Dileep they abstained from the meeting. Reason for their abstention according to them is their illness. Regarding their illness and hospitalization it is already discussed above and found that there was no serious illness for them disabling them to attend the election meeting on 10.08.2016. If really they intended to attend and vote in favour of their LDF candidate Shri.Dileep they could have done it and there was no such disability deterring them from attending the meeting. Their abstention is not all justifiable. Situation being so they cannot escape from the liability under Section 3 of the Act.

20. Section 3(1)(a) of the Act has two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership of such political party and second limb comes in to play when such member violates or disobeys the direction issued by the political party or a person authorized by it in this behalf. As per clause (iva) of Section 2, a direction in writing means a direction in writing signed with date, issued to a member belonging to or having the support of a political party, by the person authorized by the political party from time to time to recommend the symbol of the said party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting. A member can be disqualified if he has voluntarily given up the membership of the party to which he belongs or acts in defiance of a whip or direction issued by that political party. The grounds for disqualification under the first and second limbs of Section 3(1)(a) are distinct and are not interlinked as held in the decision reported in **2009(2) KHC 839 (Biju R.S. and others V Kerala State Election Commission and others)**.

21. The respondent in O.P.11/2016 contested the election as a candidate of CPI and she was elected as a member of CPI. A whip was admittedly issued to her by the District Secretary of CPI directing her to vote in favour of Shri.Dileep and even according to her she is bound by the whip of her party. But she did not act as per the whip and she violated the whip. So there is violation of whip on her part and hence the second limb of Section 3(1)(a) of

the Act is attracted in her case. Though a case under the first limb can also be put forward against RW2 no such case is pleaded by the petitioner in the petition. PW1 has no such case. No argument was addressed also from the petitioner's side on that aspect. As there is no pleading in that regard the said aspect is not considered in this case.

22. Regarding the case against the respondent in O.P.10/2016 it may be noted that he is an independent member elected with the support of CPI and LDF. So the section to be applied in his case is Section 3(1)(b) of the Act and not 3(1)(a) of the Act. As per Section 3(1)(b) of the Act if an independent member belonging to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorized by the coalition in its behalf in the manner prescribed votes or abstains from voting, (i) in a meeting of a municipality, in an election of its President, Vice President, a member of Standing Committee or the Chairman of the Standing Committee or(ii) in a meeting of a Panchayat in an election of its President/Vice President, a member of his standing committee or the Chairman of the Standing Committee or in a voting on a no confidence motion against any one of them except a member of a Standing Committee, he shall be disqualified for being a member of that local authority.

23. As per explanation to Section 3 of the Act, an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was set up or given support as a candidate for the election. Admittedly the respondent in O.P.10/2016 was a candidate set up and supported by CPI and hence he is a deemed member of CPI. As he is a deemed member of CPI he is bound by the decision of that party. RW1 has no different case also. A whip was admittedly issued to him and was accepted by him. He did not act as per the decision of the party and he violated the whip and thereby committed defection incurring disqualification under Section 3(1)(b) of the Act.

24. The conduct of the respondents in these cases would clearly demonstrate that they became disloyal to their respective political parties which elected them as members of the Panchayat. They violated the direction of their political party. The above acts would amount to defection inviting disqualification and the case put forward by the petitioner against the respondents is clearly established. According to the Father of Nation Mahatma Gandhi politics without principle is one of the grave vices in that group. The menace of defection, certainly, is to be curbed. The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it.

25. From the available evidence and the circumstances emanating there from it can be seen that the respondent in O.P.10/2016 has committed defection incurring disqualification as provided under Section 3(1)(b) and the respondent in O.P.11/2016 under Section 3(1)(a) of the Act and therefore they became subject to disqualification for being members of KunnathurGrama Panchayat. Points are answered accordingly.

In the result, both the petitions are allowed and the respondent in O.P.10/2016 is declared as disqualified for being member of KunnathurGrama Panchayat as provided by Section 3(1)(b) of the Kerala Local Authorities (Prohibition of defection) Act and the respondent in O.P.11/2016 as provided under Section 3(1)(a) of the Act. The respondents are further declared as disqualified for contesting as candidates in an election to any local authorities for a period of 6 years from this date, as provided by Section 4(3) of the Act.

Considering the circumstances of the case the parties are directed to bear their respective costs.

Pronounced before the Commission on this the 3<sup>rd</sup> day of January 2018

Sd/-

**V.BHASKARAN,**  
**STATE ELECTION COMMISSIONER**

**APPENDIX**

**Witnesses examined on the side of the petitioner**

PW1 : Smt.Beena.V  
PW2 : Shri.Nazrudeen,

Secretary, KunnathurGrama Panchayat

**Witnesses examined on the side of the respondent**

RW1 : Shri. RajasekharanPillai.P.S  
 RW2 : Smt. SathiUdayakumar  
 RW3 : Dr.Ananthakrishnan  
 RW4 : Dr.Sarojini  
 RW5 : Shri.Mohanan

**Documents produced on the side of the petitioner**

A1 : Notice No.4-973/14 dated 29.07.2016 issued by the  
 Returning Officer, KunnathurGrama Panchayat  
 A2 : Whip issued by the Secretary, CPI, Kollam District  
 dated 08.08.2016

**Document Produced on the side of the respondents**

B1 : Treatment certificate of Rajasekharan Pillai issued  
 from Travancore Medical College Hospital  
 B2 : Medical Certificate issued from Rural Health  
 Training Centre, Kazhakuttom dated 11.08.2016

**Documents produced on the side of the Court Witnesses**

X1 : True copy of the Register showing the party  
 affiliation of the member of Shri.Rajasekharan Pillai,  
 KunnathurGrama Panchayat  
 X2 : True copy of the Register showing the party  
 affiliation of the member of Smt.SathiUdaya Kumar,  
 KunnathurGrama Panchayat  
 X3 : Copy of the declaration in Form No.2 filed by  
 Shri.P.S.Rajasekharan Pillai, Member, Kunnathur  
 Grama Panchayat dated  
 X4 : Copy of the declaration in Form No.2 filed by  
 Smt.SathiUdayakumar, KunnathurGrama Panchayat  
 dated

- X5 : Copy of the Discharge summary of Shri.Rajasekharan Pillai from Travancore Medical College Hospital
- X6 : Treatment history of Smt.SathiUdaya Kumar

Sd/-

**V.BHASKARAN**

**STATE ELECTION COMMISSIONER**

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