

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 3rd day of November 2017

O.P.No.06/2016

Petitioner : Shibu. G.R.,
S/o Rathnakaran,
Former Ward member,
KanjiramkulamGramapanchayat.

(By Adv.G.K.Sudheer)

Respondent : D.Prasannakumari,
W/o Raju, Kalathanni House,
Chani, Kanjiramkulam P.O.,
Member, Ward No.9,
KanjiramkulamGrama Panchayat

(By Adv.K.Vinod)

This petition having come up for hearing on the 27th day of **October 2017**, in the presence of **Adv.G.K.Sudheer** for the petitioner and **Adv.K.Vinod** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

This is a petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent committed defection and hence disqualified to continue as member of

Kanjiramkulam Grama Panchayat and also for declaring her as disqualified to contest as candidate in any election to the local body for a period of six years.

2. The petitioner's case in brief is as below:-The petitioner and respondent were elected members of Kanjiramkulam Grama Panchayat for the period 2010-2015. The petitioner was elected from ward No.1 as a candidate of CPI(M) in the election held in October 2010 and the respondent was elected from ward No.9 as an independent candidate without the support of any political party or coalition. The elected members took oath and assumed office on 01.11.2010 and the statutory term of their membership would expire on 31.10.2015. As the respondent was elected to the Panchayat as an independent member she is liable to keep her independent status for the whole term of her membership. While so election notification was issued on 07.10.2015 for the General Election to all the local bodies and the last date for filing nomination was on 14.10.2015. The respondent filed her nomination for contesting from the very same ward No.9 as the official candidate of Indian National Congress and her nomination was accepted after scrutiny. The last date for withdrawal of the nomination was on 17.10.2015 and the respondent did not withdraw her nomination. The respondent was allotted the official symbol of the Indian National Congress. It was while the respondent was

holding the office of the member of Kanjiramkulam Grama Panchayat as an independent member for the period 2010-2015 she joined in Indian National Congress (INC) party and contested as the official candidate of Indian National Congress. It was without resigning her Panchayat membership she joined in another party. As she was elected as an independent member she is bound to retain her independent status till the expiry of the term. But before that she joined in a political party Indian National Congress. The above conduct of the respondent would amount to defection and thereby she incurred disqualification under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent is hence liable to be disqualified to continue as a member of Kanjiramkulam Grama Panchayat and to contest the election for a period of six years. This petition is for a declaration to that effect.

3. The respondent filed counter statement contending as below. The original petition is not maintainable. The petitioner has no locus standi to file the original petition. The petitioner was a member of Kanjiramkulam Grama Panchayat for the term 2010-2015 which expired on 07.10.2015, the date of declaration of the General Election and thereafter he ceased to be a member of the Grama Panchayat. The petitioner filed this petition on 14.12.2016 and at that time he was not a member of the said Grama Panchayat. The petitioner is hence not entitled to file this original petition under Section 4(1) of the Act. Once in the General Election for

local bodies is declared by the Commission the status of the existing members ceases to exist. When the respondent filed nomination paper for the next election her status is that of a candidate and not as a member. The term of the Panchayat committee expired on the notification for fresh election, on 07.10.2015 for the next term. This petition is filed only to harass the respondent. The respondent did not do any act of defection. There is no merit in the petition and hence it is only to be dismissed.

4. The evidence in this case consists of the oral testimonies of PW1 and RW1 and Exts.A1 to A8.

5. Both sides were heard.

6.The following points arise for consideration;

(1)Whether the petition is maintainable?

(2) Whether the respondent has committed defection as contemplated under Section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?

(3) Whether the petitioner is entitled to the declaration prayed for?

(4) Reliefs and costs?

7. **POINT No.(1)**: This point was already considered as a preliminary point and this original petition was found maintainable. The respondent did not challenge the said finding and it has become final.

8. **POINT Nos.2 to 4:** Case of the petitioner is that respondent committed defection incurring disqualification under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act and hence she is disqualified to be a member of KanjiramkulamGramma Panchayat. Petitioner and respondent were elected members of KanjiramkulamGrammaPanchayat in the election held in October 2010. Petitioner was elected from ward No.1 as a candidate of CPI(M) and the respondent was elected from ward No.9 as an independent member having no affiliation to any political party or coalition. Exts.A1 series and A2 series, the nomination paper and annexures with it and Ext.A3 copy of the register showing the party affiliation of the elected members would show that the respondent contested the election as an independent candidate without the support of any political party or coalition. The respondent assumed the office on 01.11.2010 and the five years term of her office as member expired on 31.10.2015.

9. According to PW1, while the respondent was an independent member of the KanjiramkulamGramma Panchayat she joined in Indian National Congress (INC) and filed nomination paper on 14.10.2015 as a candidate of Indian National Congress for the next election for the period 2015-2020 and she was elected also. By doing so the respondent committed defection incurring disqualification as provided under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act.

Case of the respondent is that after the election notification on 07.10.2015 she is entitled to contest as a candidate of any party even if she was elected as an independent member or a member of any political party. She need not wait for the expiry of the term of her membership as an independent member. Her joining in Indian National Congress party after the election notification thus is permissible and it will not amount to defection, she further contends.

10. Indisputably, the respondent was elected as an independent member in the election held in October 2010. RW1 admitted the said fact. It is also a matter of admission now that the respondent filed her nomination as the official candidate of INC for the next election before the expiry of her term in the previous committee as an independent member. The election for the period 2015-2020 was held on 02.11.2015. RW1 admitted that she filed her nomination paper on 14.10.2015 as the official candidate of the Indian National Congress and she was elected as a member of Kanjiramkulam Grama Panchayat for the period 2015-2020 as Congress candidate. Ext.A6 is the nomination paper filed by her on 14.10.2015. It is admitted by RW1 that she herself prepared Ext.A6 nomination paper. Exts.A6(a) to A6(e) are the annexures filed along with Ext.A6 nomination paper. RW1 has no dispute over Ext.A6 series. Ext.A6 series would show that she has filed her nomination paper to contest from ward No.9 of Kanjiramkulam Grama Panchayat as a candidate of Indian

National Congress for the election period 2015-2020 and it was before the expiry of her term in the previous Panchayat Committee. Ext.A6(e) is the certified copy of the letter from the DCC President, Thiruvananthapuram to the Returning Officer of KanjiramkulamGrama Panchayat informing him that the respondent was the official candidate of Indian National Congress and requesting him to allot the official symbol of Indian National Congress to the respondent. Ext.A6(e) letter was filed by the respondent along with Ext.A6 nomination paper on 14.10.2015. As Exts.A1 series to A6 series are admitted by RW1 they require no discussion.

11. Submission of the learned counsel for the respondent is that the respondent has lost the status of the Panchayat member and ceased to be a member of the Panchayat when election notification was issued by the State Election Commission on 07.10.2015 with the election schedule. After the election notification the respondent is at liberty to join in any political party and Section 3 of the Act is not applicable to her as she ceased to be a Panchayat member after the election notification on 07.10.2015. It is a strange argument and it is not legally sustainable also. The term of the elected members of KanjiramkulamGrama Panchayatfor the period 2010-2015 was from 01.11.2010 to 31.10.2015. As per Section 149 of the Kerala Panchayat Raj Act the term of the elected members is 5 years from the date of first meeting of the elected members. The first meeting of the elected members of KanjiramkulamGrama Panchayat in this

case was on 01.11.2010 and the period of five years is to be calculated on 01.11.2010. The term of the respondent as a member then would expire only on 31.10.2015. So till 31.10.2015 the respondent was an independent member of Kanjiramkulam Grama Panchayat. No doubt, the respondent can join in any political party after 31.10.2015 if she wishes. At the same time if she wanted to join in Indian National Congress before 31.10.2015 she should resign her Panchayat membership to avoid disqualification under Section 3(1)(c) of the Act as submitted by the learned counsel for the petitioner. But in this case before the expiry of her term the respondent joined in Indian National Congress and became the official candidate of Indian National Congress without resigning her membership.

12. As stated above the respondent was elected as an independent member without the support of any political party or coalition. So her status as an independent member would and should continue till the expiry of the term on 31.10.2015. To avoid the disqualification under Section 3(1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act, as stated above, the respondent should have resigned her Panchayat membership before joining in Indian National Congress and filing nomination paper as a Congress candidate on 14.10.2015. But she did not do that the argument of the learned counsel for the petitioner is that the term of the committee in which the alleged act of defection was occasioned was over and hence it cannot be said that she is disqualified to sit in the

next committee to which fresh election was held. It is true that the act of defection and the resultant disqualification occurred during the period 2010-2015. But the disqualification becomes operative only from the date of decision of the Election Commission under Section 4(3) of the Act and it extends to six years from that date. The disqualification so incurred is not co-terminus with the term of the committee.

13. It is also the argument of the learned counsel for the respondent that this original petition should have been filed before the expiry of the term of the membership of the respondent in the previous committee. The term of membership of the petitioner and respondent was over on 31.10.2015 and thereafter the respondent cannot be proceeded against for the alleged act of defection which took place before 31.10.2015. To the counsel the disqualification alleged against a member should be agitated before the expiry of his/her term of office in which such disqualification occurred. If such an argument is accepted the members of the local bodies can indulge in all sorts of defection towards the expiry of the term of office of the committee members and escape from the liability under Section 3 of the Act as observed by the Hon'ble High Court in the decision reported in 2017(3)KHC 697 (Jesse Raju V. Communist Party of India, Ekm and another). The above argument if accepted would make the provisions of the Kerala Local Authorities (Prohibition of Defection) Act inapplicable to the acts of defection of the members in the last month of the term of their

office. That is not the law. If a member commits any act of defection even two days before the expiry of his term of membership he is liable to be proceeded against under Section 3 and 4 of the Act. To file petition against the member 30 days time is there as provided under Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and if there is delay proviso to Rule 4A(2) provides condonation of delay when sufficient cause is shown.

14. As stated above the respondent was elected as an independent member and she is bound to retain her independent status till the expiry of her term ie., 31.10.2015. It is in evidence that the respondent joined in Indian National Congress party before the expiry of her term of membership and became the official candidate of INC for the next election. That is the act of defection put forward by the petitioner in this case.

15. 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.Filing of such petitions is regulated byRule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules.

Rule 4A reads as below,-

“(1).If any subject arises as to whether a member of a local authority has become subject to disqualification by the act, a member of that local authority or a member authorized to give directions to that member as per sub-rule (1) of Rule 4 may file a petition before the State Election Commission to decide the matter.

(2) The petition as per sub-rule (1) shall be filed within 30 days from the date of deemed disqualifications of the member.

Provided that if the petitioner proves that there exist sufficient reason for not filing the petition within the time limit specified, the State Election Commission may accept the petition.”

As per the proviso if there is sufficient reason for not filing the original petition within the time limit the State Election Commission can accept the petition after condoning the delay. The petitioner in this case filed this original petition along with the petition to condone the delay as I.A.103/2015 and it was allowed. The order of the Commission in I.A.103/2015 was challenged before the Hon’ble High Court by filing WP(C)No.29009/2016 and the same was dismissed by the Hon’ble High Court confirming the order of the Commission. When a court condones

the delay caused in filing a proceeding it does not extend the period of limitation prescribed by law for filing it as held by the Hon'ble Supreme Court in the decision reported in AIR 1979 SC 566 (Rajendranath V. Gangadas and others). It treats the proceedings as if it is filed within limitation. In this case the cause of action arose on 14.10.2015. The petitioner has 30 days as per law to approach the Commission ie., up to 14.11.2015. It is true that he has filed the petition only on 14.12.2015 with a petition to condone the delay. Delay was already condoned and the order I.A.103/2015 has become final. When delay is condoned the petition is to be taken as filed within the period of limitation. The above argument of the counsel under the above circumstances is only to be rejected.

16. The object sought to be achieved by the Act is to prohibit defection among members of the Local Authorities and to provide disqualification for the defecting members. What is ultimately sought to be prevented is the evil of the political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy.

17. As per Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act, if an independent member joins in any political party or coalition he/she can be disqualified for being a member

of that local authority. It is a matter of admission that the respondent joined in Indian National Congress while she was continuing as an independent member of Kanjiramkulam Grama Panchayat. The contention of the respondent that she can join in any political party after the election notification on 07.10.2015 cannot be accepted. The above act of the respondent would amount to defection. When the question of disqualification is decided, the consequence is that the member would cease to be a member from the date of such decision and would be disqualified from contesting as a candidate in an election to any local authority for six years from that date. The Kerala Local Authorities (Prohibition of Defection) Act was enacted to prohibit defection among the members of local authority in the state and to provide for disqualification of the defecting members of the local authorities. The provisions under the 10th schedule of the constitution and under the Kerala Local Authorities (Prohibition of Defection) Act are intended to curb the evil of unprincipled and unethical political defection.

18. In the light of the above facts and circumstances I will have to necessarily hold and I hold that the respondent has committed defection as provided under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act and therefore she became subject to disqualification for being a member of Kanjiramkulam Grama Panchayat. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being a member of Kanjiramkulam Grama Panchayat as provided by Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent is further declared as disqualified for contesting as candidate 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 3rd day of November 2017

Sd/-
V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Shri.ShibuG.R

Witnesses examined on the side of the respondent

RW1 : Smt.D.PrasannaKumari

Documents produced on the side of the petitioner

A1 : Copy of the nomination in Form No.2
 filed by Smt.D.PrasannaKumari dated
 30.09.2010

A1(a) : Copy of the Form No.2-A details with

- nomination regarding criminal cases
filed by Smt.D.PrasannaKumari
- A1(b) : Copy of the Form No.2-B details with nomination regarding properties filed by Smt.D.PrasannaKumari
- A2 : Certified copy of the oath Declaration form submitted by Smt.D.PrasannaKumari
- A2(a) : Copy of the form of certificate showing oath Declaration by Smt.D.PrasannaKumari
- A3 : Copy of the Register showing the party affiliation of the members of Kanjiramkulam Grama Panchayat
- A4 : No.151/2015/SEC dated 07.10.2015 Copy of the General Election notification
- A5 : No.152/2015/SEC dated 07.10.2015 copy of the General Election Notification
- A6 : Copy of the nomination form filed by Smt.D.PrasannaKumari dated 14.10.2015 (Copy issued under RTI Act 2005)
- A6(a) : Certified copy of the Form No.2-A details with nomination regarding criminal cases and properties
- A6(b) : Oath Declaration Form submitted by Smt.D.PrasannaKumari (Copy issued under RI Act)
- A6(c) : Copy of the Receipt from Kanjiramkulam Grama Panchayat (Copy issued under RI Act)
- A6(d) : Copy of the Receipt of notice to allot symbol (Copy issued under RI Act)
- A6(e) : Letter issued by the President DCC(I),

Thiruvananthapuram addressed to the
Returning Officer of Kanjiramkulam Grama
Panchayat

- A7 : Election Campaign notice
- A8 : Election poster

Sd/-
V.BHASKARAN
STATE ELECTION COMMISSIONER
//True Copy//