

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

PRESENT: SHRI.K.SASIDHARAN NAIR, STATE ELECTION COMMISSIONER

Tuesday, the 17th day of February 2016

O.P.No.111/2014

Petitioner : S.D.Suresh Babu,
S/o Damodharan,
Member, Ward No.9,
Chembu Grama Panchayat,
Brahmamangalam P.O.,
Kottayam District.

(By Adv. G.K.Sudheer)

Respondent : T.V.Surendran,
Member, Ward No.15,
Chembu Grama Panchayat,
Brahmamangalam P.O.,
Kottayam District.

(By Adv. P.Nandakumar)

This petition having come up for hearing on the 9th day of December 2015, in the presence of Adv. **G.K.Sudheer** for the petitioner and Adv. **P.Nandakumar** 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 has become

subject to disqualification for being a member of Chembu Grama Panchayat on the ground of defection.

2. The short facts are as follows,- The petitioner and respondent are members of Chembu Grama Panchayat. They contested the election held in October 2010 as official candidates of Indian National Congress. Out of the total 15 members Indian National Congress secured 7 seats and 7 seats were won by LDF consisting of CPI and CPI(M). One independent candidate has also found victory in the election. The petitioner and Smt.Omana Parakkulam were elected as President and Vice President respectively. As per the decision of the Congress parliamentary party a no confidence motion was moved by the LDF and it was tabled for discussion on 12.08.2014. The Kottayam District Congress Committee President issued direction to all members of the Congress party to ensure that the no confidence motion moved against the President was defeated and such a decision was taken by the party unanimously. The respondent also had attended the meeting in which such a decision was taken. Accordingly all the 7 members belonging to Congress party voted against the no confidence motion. But the independent member supported along with the LDF members and thus the motion was carried. The election to the post of President was scheduled on 04.09.2014. The district leadership of the party convened a meeting on 03.09.2014 to discuss regarding the election and it was decided in that meeting to field the petitioner himself as the official nominee of the party. Written directions were issued to all the members of Congress party to vote in

favour of the petitioner in the election held on 04.09.2014 and all the members except the respondent accepted that direction. But the respondent by citing certain personal urgency went home after the meeting held on 03.09.2014 and so his written direction was instructed to be served at his residence. But the respondent was not at home to receive the direction and so it was delivered to his father and a copy of the direction was affixed on the outer side of his house in the presence of witnesses. The respondent who was fully aware of the decision of the Congress party abstained from attending the election held on 04.09.2014. Except the respondent all other Panchayat members belonging to Congress party were present and they voted in favour of the petitioner in accordance with the party decision. In the election the candidate set up by LDF coalition secured 7 votes whereas the petitioner got only 6 votes and so Shri.T.M.Vijayan, the candidate of LDF was declared elected as President. The abstention of the respondent from the meeting convened for electing the President was willful and deliberate and his above act amounts to voluntarily abandoning his membership of the political party which field him as a candidate and made him a Panchayat member. At present the respondent is fully associating with CPI(M). Therefore the respondent is liable to be disqualified on the ground of defection. Hence this petition.

3. The respondent has filed objection contending in short as follows,-
The petition is not maintainable and it is also barred by limitation. The respondent had voted against the no confidence motion moved against the

petitioner and as an independent member supported that motion along with LDF members, it was carried. Though the meeting of the members belonging to Congress party was convened in the DCC office on 03.09.2014, the name of the presidential candidate could not be finalized as the majority members were against and the petitioner as President. There was no decision taken to field the petitioner to the post of President and the meeting did not reach any finality and it was informed that the decision regarding the official candidate will be informed after discussion with party higher-ups. In the evening on that date the respondent had a family function at Kumbalam and after the function the respondent experienced severe vomiting and diarrhea and he was admitted in a nearby hospital. The allegation that written direction was served to the petitioner regarding participation and voting in the election meeting is totally false. The respondent was not available in his residence. He could not attend the meeting on 04.09.2014 as he was hospitalized. The allegation that whip was served to his father also is false. No decision was taken by the DCC to field the petitioner as candidate to the post of President. The allegation that Shri.T.M.Vijayan was elected as President due to the absence of this respondent is totally false. The respondent has not committed any defection and the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1 to 9, RW1 and Exts.P1 to P7, R1 and R2and X1 and X2.

5. Both sides were heard

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent was prevented by sufficient cause from attending the election meeting held on 04.09.2014 as contended by the respondent?
- (iii) Whether the respondent has committed defection as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act?
- (iv) Whether the respondent has become subject to disqualification for being a member of Chembu Grama Panchayat?
- (v) Reliefs and costs?

7. **POINT No.(i)** : This is a petition filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act'. The petitioner who was the President was ousted by a no confidence motion moved against him and so a meeting to elect the President was convened by the Returning Officer on 04.09.2014. It is alleged by the petitioner that he was decided as the candidate by the Congress party and that this decision was communicated to all the Congress members including the respondent and the respondent had deliberately abstained from attending the meeting convened on 04.09.2014 to elect the President. According to the petitioner the act of the respondent in abstaining from the said meeting was in collusion with LDF members with a view to defeat the petitioner in his election to the post of President and thus the respondent has become subject to disqualification due to defection. The respondent would contend that he could not attend the meeting

on 04.09.2014 on the account of the reason that he was hospitalized due to vomiting and diarrhea and that no decision was taken to nominate the petitioner as President by the Congress party and also that no whip was served to the respondent as per law and so according to the respondent the petition deserved only dismissal. Section 4(1) of the Act states that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act, a member of that local authority or the political party concerned or a person authorized by it in this behalf can file a petition before the State Election Commission for decision. In the light of the rival contentions a question arises as to whether the respondent has become subject to disqualification under the provisions of the Act and the petition has been filed by a member of the same Panchayat of which the respondent also is a member. It is also found that the petition has been filed within the time prescribed under Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. No serious contentions are raised challenging the maintainability of the petition. Therefore I find that this petition is maintainable and the point is answered accordingly.

8. **POINT Nos.(ii) to (v)**: Certain facts are not in dispute. Out of the 15 wards in Chembu Grama Panchayat, 7 seats were secured both by the Congress party and LDF and the remaining one seat was secured by an independent. A no confidence motion was moved against the President by the LDF members and it was carried with the support of the independent member. It is in the

above context that a meeting was convened by the Returning Officer on 04.09.2014 to fill up the vacancy of the President. The petitioner as well as the respondent were elected as members belonging to Congress party. The petitioner has been examined as PW1. He has deposed that after the no confidence motion was carried, the election to the post of President was proposed to be conducted on 04.09.2014 and the members belonging to Congress party were called for a meeting at the DCC office on 03.09.2014 and the petitioner was decided as the candidate in that meeting and in the same meeting whip was given to all the Congress members except the respondent and the whip given to the petitioner is marked as Ext.P4. PW1 has further deposed that the direction to the respondent was served at his residence and also affixed in front of his house in the presence of witnesses and the respondent abstained from attending the meeting held on 04.09.2014 purposely to help the member belonging to the LDF to become the President. PW1 would further depose that since the respondent abstained from the meeting the candidate set up by LDF was declared elected as he secured 7 votes. In cross-examination it was suggested to PW1 that no whip was served to the respondent which he denied. There is no serious cross-examination regarding the evidence tendered by PW1. The minutes regarding the discussion and voting on the no confidence motion and the election to the post of President were marked through the Secretary of the Grama Panchayat during his examination as PW2. PW3 is the Secretary of Congress party and also an executive member of KPCC. He has deposed that in

the meeting convened for deciding the candidate for the election to the post of President all the Congress members attended and the respondent also attended that meeting and he returned while the meeting was progressing. PW3 would further depose that the petitioner was decided as the candidate for the post of President and direction was given to all Congress members except the respondent at the meeting and the direction to the respondent was affixed in front of his residence. PW4 is the Chembu Mandalam President of Indian National Congress. He has categorically stated that in the meeting convened by him at the DCC office on 03.09.2014, the petitioner was decided as the President candidate and the respondent also admitted that in that meeting and in the subsequent parliamentary party meeting, the respondent left early by saying that his grandson was ill and that whip was given to others at the meeting and Shri.T.J.Thomas, PW1 and Shri.T.K.Vasudevan were authorized to serve the whip of the petitioner and though they went to the house of the respondent he was not available there and his whip was served to his father and another copy was affixed in front of his house in the presence of witnesses and a copy of that whip is marked as Ext.P4 and the receipt of the same given to the father of the respondent in this respect is marked as Ext.P6(a) and the receipt in respect of affixture is marked as Ext.P6(b). PW4 has also deposed that the respondent disobeyed the direction and abstained from attending the meeting held on 04.09.2014 and no information was given to the party leaders for his absence. There is no serious cross-examination for the evidence tendered by PW4. PW5

is another member of this Panchayat and he has also given a similar version as that of PW4. PW6 is a neighbor of the respondent and he has deposed that PWs 3 to 5 came to the house of the respondent when he was available there and he saw them giving whip to the father of the respondent and another copy of the whip was seen affixed in front of the house of the respondent and he had put his signature in Ext.P6(b). There is no serious cross-examination for the evidence of PW6 also. PW7 is another witness and he has deposed on similar terms as given by PW6. PW8 is none other than the Kottayam DCC President and according to him a meeting of the Congress party leaders and Congress members was convened by him on 03.09.2014 and the minutes of that meeting is marked as Ext.P7. He has further deposed that the first decision in the minutes is relating to the selection of the candidate for the post of President and that minutes is marked as Ext.P7(a) and the petitioner was unanimously decided as the candidate for the post of President and direction was given to the members to vote in his favour in the election meeting proposed to be held on 04.09.2014. He has identified Ext.P4 as the copy of the whip signed by him. He would further depose that all members of Congress except the respondent had received the whip at the meeting venue itself and as the respondent had by them returned, direction was given to serve him the whip at his residence. PW8 has further deposed that the respondent by disobeying the direction issued by him had abstained from attending the election meeting held on 04.09.2014 and thereby he has committed defection and that he has been suspended from party.

In cross-examination he has deposed that he had convened the meeting at DCC office on 03.09.2014 and all the parliamentary party members had attended that meeting and the petitioner was decided as the President candidate unanimously in that meeting. He has also deposed that the respondent had suggested in the meeting that he may be elected as President and that has been recorded in Ext.P7. PW9 has deposed that he is the Secretary of KPCC and that he had recorded Ext.P7(a) minutes.

9. The main contention of the respondent is that he could not attend the meeting convened on 04.09.2014 for the reason that he was hospitalized due to vomiting and diarrhea. The respondent has been examined as RW1. He has deposed that on 03.09.2014 after attending the meeting convened at the DCC office, he along with his family members went to the house of the wife of his son at Kumbalam and while returning from there at 5 O'Clock, he felt considerable stomach ache and he went to the Lakshmi Hospital, Aroor and was admitted there. He would further depose that as he was hospitalized on 14.09.2014, he could not attend the election meeting held on that day. The certificate stated to have been obtained from the hospital is marked as Ext.R1. In cross-examination RW1 would depose that he could not produce the Admit Card or the O.P Ticket issued from the hospital. He would further depose that the Doctor who issued Ext.R1 is unable to travel and so it is not possible for him to examine the Doctor. He would further state that Ext.R1 was in this custody while filing the objection to the main petition and there was no reason

for not producing that document along with his objection. It is also deposed by RW1 that he has not mentioned the name of the hospital where he was treated in his objection. To the suggestive question as to whether he had informed about his hospitalization to any of the Congress party leaders his answer is that he did not inform anybody about his illness. RW1 has also deposed that he did not know who was elected as President and nobody had informed him regarding the election.

10. On a careful analysis of the evidence tendered by RW1 it is clearly found that he had deliberately abstained from attending the election meeting held on 04.09.2014. The burden is heavy upon the respondent to prove that he could not attend the meeting due to his illness. Even the Doctor who is stated to have given Ext.R1 has not been examined in this case. Other attending circumstances also would reveal that he was purposely abstaining from attending the meeting held on 04.09.2014. The DCC President has deposed that the respondent requested to elect him as President and as all others had supported the petitioner he was unanimously decided as the candidate for the post of President. The fact that the respondent had requested the DCC President to decide him as the candidate for the post of President is recorded in Ext.P7 also. According to PW8, as the common opinion was to elect the petitioner himself, the request of the respondent was not considered. It is also found that whip was given to all the other members at the venue of the meeting itself whereas the respondent left the place without accepting the whip and it had to

be taken to the house for service. By then he left the house and remained absent on the next day when the meeting was convened for electing the President. It is also significant to notice that the independent member who had supported the no confidence motion along with the LDF did not attend the election meeting held on 04.09.2014. The sequence of events would reveal that the respondent wanted to become the President and for that purpose he got the no confidence motion moved against the petitioner passed with the help of the independent also and subsequently as part of a plot to defeat the petitioner from getting elected as President, he along with the independent abstained from attending the meeting and thus the nominee of the LDF was elected as President. The contention of the respondent that he was hospitalised due to stomach ache and diarrhea is projected as a lame excuse for his abstention from the election meeting and the same is found to be totally false. If he had attended the meeting, as the independent did not favour anybody, there would have been a tie and the result would have been decided by draw of lots. The absence of the independent member who supported the no confidence motion in the election meeting on 04.09.2014 also is conspicuous. Ext.R1 cannot be relied on account of the reason that it has not been properly proved by examining the person who issued the same. As the burden is upon the respondent to prove the veracity of Ext.R1, the non-examination of the Doctor who is stated to have been issued certificate is fatal to his case. There is no difficulty in procuring certificate in the nature of Ext.R1. The respondent would state that the Doctor who issued

the certificate is very aged and unable travel. If that be so, he could have been examined through a Commission. In this case several witnesses have been examined on Commission from the side of the petitioner. So the justification for the non -examination of the Doctor is totally unsustainable. Admittedly the respondent was fully aware of the meeting held on 04.09.2014 and that was an important meeting to elect the President. On a careful appreciation of the entire evidence it is clearly found that the respondent has completely failed in proving that he was prevented by sufficient cause from attending the election meeting held on 04.09.2014. Even persons who are hospitalized and bed ridden use to attend such meetings on account of its importance in deciding the fate of the board. According to the respondent he was admitted in a Private Hospital and he was discharged on the day of the meeting itself. He has admitted that he was fully conscious. Even assuming that he was having such ailments, he could have attended the meeting held on 04.09.2014. The falsity of the contention is evident when he says that he did not inform about his illness to any of his party colleagues or leaders. It has come out in evidence that the direction to elect the petitioner as President was affixed in front of his house and copy was served to his father. The fact that the father is residing at a nearby house along with the brother of the respondent is not of much consequence. The version of the respondent that no decision was taken in the meeting convened by the DCC President on 03.09.2014 regarding the candidate for the post of President is found to be totally false. There is overwhelming evidence to prove that the

petitioner was decided as the candidate for the post of President and the attempt of the respondent to get him decided as a candidate became futile and that may be the reason for his abstention in the election meeting.

11. Whether the conduct of the respondent in abstaining himself in the election meeting held on 04.09.2014 would constitute defection deserves consideration. Section 3(1)(a) of the Act deals with disqualification in respect of a member belonging to a political party and it reads as follows,-

“3. Disqualification on ground of Defection,-

1)Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act.

(a) “if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorized by it in this behalf in the manner prescribed, votes or abstains from voting.

(i) in a meeting of Municipality, in an election of its Chairperson, Deputy Chairperson, a member of standing committee or the Chairman of a standing committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or in an 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.”

12. PW8 is admittedly the person authorized by the Congress party to recommend symbol of that party to candidates contesting in the election to local bodies. It is settled law that if a member of the political party violates direction issued by the party in respect of voting in an election to the post of President or Vice President, his conduct would constitute the ground of voluntarily giving up his membership from the party.

13. Section 3(1) (a) of the Act consists of two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership of such political party. The second limb is attracted when such member violates the direction issued by the political party or a person authorized by it in this behalf. As per clause **(iva) of Section 2 as inserted by Act 6 of 2013 which came into force on 17.01.12**, 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 political party for contesting in election, for exercising the vote favorably or unfavorably or to abstain from voting.

14. The object sought to be achieved by the “Act” is to prohibit defection among members of the Local Authorities and 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 foundation of our democracy. It is settled law that if a member or a group of elected members of a political party takes a different stand from that of a political party as such and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. The Kerala Local Authorities (Prohibition of Defection) Act derived its source from the 10th Schedule to the Constitution of India. While upholding the constitutional validity of the 10th Schedule, the Apex Court in **Kihoto Hollohan Vs. Zachillhu (1992 Supp. 2 SCC 651)** observed as follows:-

“A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set

up by a political party is so elected on the basis of the programme of that political party.....If a member while remaining a member of the political party which had set him up as a candidate at the election votes or abstains from voting contrary to any 'direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, he incurs the disqualification.....A political party functions on the strength of shared beliefs of its own members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political party's declared politics will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance nay indeed its survival....To vote against the party is disloyalty. To join with others in abstention or voting with other side smacks of conspiracy."

In Faisal Vs.Abdulla Kunhi, 2008(3)KHC 267 it has been held as follows:-

"Since the words voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by resignation, from the conduct of the petitioner if an inference can be drawn that he has voluntarily given up his

membership of his political party, he is liable to be disqualified. From the facts noticed by the second respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation.”

15. It is also settled law that a member belonging to a political party has to be loyal to his party and the moment he becomes disloyal, he would become subject to disqualification on the ground of voluntarily giving up his membership from the party. The conduct of this respondent in having abstained from attending the election meeting held on 04.09.2014 would clearly demonstrate that he had become disloyal to the party which elected him as a member. It is also found that the direction given by PW8 to attend the election meeting held on 04.09.2014 and vote in favour of the petitioner was duly communicated to the respondent as provided by Sub rule (2) of Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Rules. It is proved beyond doubt that the whip issued by PW8 was affixed in front of the house of the respondent in the presence of witnesses who have already been examined in this case. The oral version given by these witnesses are not seriously challenged in cross-examination. More over the copy of the whip was

served to the father of the respondent and even though he was residing in another house, the fact that such a communication was given cannot be discarded. All these materials would go to show that the respondent was fully aware of the direction issued by PW8. The contention of the respondent that he was hospitalised and so could not attend the meeting on 04.09.2014 is found to be totally untenable.

16 From the discussion held above I hold that the respondent has voluntarily given up his membership from the party in which he belonged as provided by Section 3(1)(a) of the Act and so he has become subject to disqualification for being a member of Chembu Grama Panchayat. The points are answered accordingly

In the result, the petition is allowed and the respondent is declared as disqualified for being a member of Chembu Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the respondent is also declared as disqualified from contesting as candidate in an election to any local authority for a period of 6 years from this date as provided by Section 4(3) of the Act.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 17th day of February 2016

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Shri.Suresh Babu, Sreebhavan, Brahmamangalam
P.O.,Thalayolaparambu, (Via) Kottayam
- PW2 : Shri.Moidunnikutty, Secretary,
Chembu Grama Panchayat
- PW3 : Shri.T.J.Thomas, Therathu House, Chemmanathera
P.O., Vaikkom, Kottayam
- PW4 : Shri.P.V.Surendran, Kizhakkeparambil,
Brahmamangalam P.O.
- PW5 : T.K.Vasudevan, Parappin House, Kattikunnu,
Chembu P.O.
- PW6 : Shri.Shaji, Naduthara, Chembu P.O. Vaikkom
- PW7 : Shri.Mukundan, Panakkanthara, Chembu P.O
Vaikkom
- PW8 : Adv.Tomy Kallani, Kallanikkavayalil, Silver
Jubilee Nagar, Vadavadoor P.O.
- PW9 : Shri.G.Rathikumar, Indira Bhavan,
Chengamanad P.O., Kottarakkara

Witnesses examined on the side of the respondent

- RW1 : Shri.T.V.Surendran, Thekkenjarakkattu,
Chembu P.O., Vaikkom

Documents produced on the side of the petitioner

- P1 : Copy of the register showing the political
affiliation of the members of Chembu Grama
Panchayat
- P2 : Minutes Book of Chembu Grama Panchayat
- P3 : Registered notice No.A.1204/2014 dated 31.07.2014
By the Secretary, Vaikkom Block Panchayat
- P4 : Copy of the notice issued by Adv.Tomy Kallany,
President, Kottayam DCC addressed to
Shri.S.D.Suresh Babu

- P5 : Copy of the notice issued by Adv.Tomy Kallany, President, Kottayam DCC held on 04.09.2014
- P6 : Copy of the petition
- P6(a) : Copy of the whip issued to Shri.T.V.Surendran Dated 04.09.2014
- P6(b) : Copy of the receipt of whip affixed in front of house of Shri.T.V.Surendran
- P6(c) : Copy of the whip received by Shri.T.K.Vasudevan
- P6(d) : Copy of the whip Siji Reji
- P7 : Copy of the minutes book of Chembu Grama Panchayat

Documents produced on the side of the respondent

- R1 : Copy of the Certificate issued by Dr.K.A.Ranganath, Lakshmi Hospital, Aroor.
- R2 : Registered Notice No.A.466/2015 dated 13.04.2015 issued by K.G.Salim Kumar, Secretary, Vaikom Block Panchayat

Documents produced on the side of the witnesses:

- X1 : Copy of the letter No.A-1204/2014 dated 13.04.2015 issued by Shri.K.G.Salimkumar, Secretary, Vaikom Block Panchayat addressed to the Secretary, Chembu Grama Panchayat
- X2 : Copy of the minutes of the meeting of Chembu Grama Panchayat

Sd/-

K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

//True Copy//