

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

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

Wednesday, the 17th day of February 2016

O.P.Nos.113/2014&114/2014

O.P.No.113/2014

Petitioner : Mathews George,
S/o George, Kavalam House,
Kurisumoodu P.O., Changanassery,
Kottayam District.

Joy Fletcher) (By Advs. M.Hashim Babu&Caroline

Respondent : Rani Vinod,
Thoppil House, Near Ayurveda Hospital,
Perunnai.P.O., Changanassery.

(By Adv. Kallambalam S.Sreekumar)

O.P.No.114/2014

Petitioner : Mathews George,
S/o George, Kavalam House,
Kurisumoodu P.O., Changanassery,
Kottayam District.

(By Advs. M.Hashim Babu&Caroline
Joy Fletcher)

Respondent : Satheesh Aikkara,
Aikkara House, Perunnai P.O.,
Changanassery.

(By Adv. Kallambalam S.Sreekumar)

These petitions having come up for hearing on the 4th day of February 2016, in the presence of Advs. **M.Hashim Babu & Caroline Joy Fletcher** for the petitioner and Adv. **Kallambalam S.Sreekumar** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These are petitions filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondents have become subject to disqualification for being Councillors of Changanassery Municipality due to defection. Since both these cases are filed by a common petitioner and common questions of law and facts arise for consideration in these cases, they have been taken up jointly as per order on I.A.No.193/2014 and O.P.No.113/2014 is treated as the main case.

2. Common allegations are raised by the petitioner in both these cases which are in short as follows:- The petitioner contested the election as a candidate of Kerala Congress(M) from Ward No.4 of Changanassery Municipality in the General Election held in 2010. The respondents contested

the election in different wards of Changanassery Municipality as independent candidates supported by United Democratic Front and were elected as Councillors. Out of the 37 wards 20 candidates set up by United Democratic Front were declared as elected and out of them Congress party secured 8 seats, Kerala Congress 6 seats and the remaining including the respondents were independents supported by UDF. The LDF secured 12 seats out of which the CPM alone won in 11 wards and CPI in one ward and 5 independents supported by LDF also found victory. Thus the UDF secured majority and in decided the election to the post of Chairperson and Vice Chairman held on 08.11.2010, Smt. Omana George belonging to Indian National Congress was elected as Chairperson and this petitioner was elected as Vice Chairman and the respondents supported them in both elections. Subsequently the LDF along with these respondents preferred no confidence motion against the Chairperson and Vice Chairman. The said motions were tabled for discussion on 16.09.2014 and 17.09.2014. The UDF decided to defeat the said motions and directions were issued by competent persons to all the members including these respondents and a copy of the whip was communicated to the Secretary also. The Chairperson resigned on 16.09.2014 and in the voting on the no confidence motion moved against the Vice Chairman, these respondents disobeyed the whip given by the petitioner who was elected by the UDF Parliamentary party as the person to give whip and by disobeying such direction they voted in favour of the no confidence motion and thus it was passed. The election to fill

up the vacancy of Chairperson and Vice Chairman was fixed on 08.10.2014 and the UDF parliamentary party decided Smt.K.M.Najiya as Chairperson and Shri Santhosh Antony as Vice Chairman candidates. The petitioner has issued whip to both these respondents and by violating the said directions they voted in favour of the candidates set up by the LDF and thus they were elected. From the conduct of the respondents it has become clear that they had withdrawn their affiliation from UDF and joined the LDF and thereby committed defection. Therefore they are disqualified for being Councillors of Changanassery Municipality and hence these petitions.

3.The respondents filed separate objections raising common contentions which are briefly the following,- The petitions are not maintainable either in law or on facts. In the election held in 2010 the respondents contested as purely independent candidates and they were elected without support of any political party or front. So the respondents are not bound to support any political party or front in the voting on the no confidence motion or in the election to the post of Chairperson and Vice Chairman. It is true that the respondents had attended the meetings with the UDF Councillors and independent Councillors of Changanassery Municipality for the formation of new board. But they attended the meeting as total independent members. It is also true that the respondents had signed in the no confidence motion moved against the Chairperson and Vice Chairman and it was with a view to protect the interest of the public. The respondents were not served with any whip and

moreover the UDF parliamentary party has no authority to issue whip to the respondents. The respondents have never joined or supported any political party or front at any point of time and they had taken independent stand always. Since the respondents were elected as to complete independent members, they are not bound by any direction and decision of any political party or coalition. The respondents have not committed any defection as alleged and the petitions are only to be dismissed.

4. The evidence consists of the oral depositions of PWs1 and 2, RWs1 to 3 and Exts.P1 to P13, R1 and R2 and X1 and X2.

5. Both sides were heard

6. The following points arise for consideration;

- (i) Whether the petitions are maintainable?
- (ii) Whether the respondents had contested the election as candidates supported by UDF as alleged?
- (iii) Whether the respondents have become subject to disqualification for being Councillors of Changanassery Municipality?

7. **ISSUE No.(i)**: These are petitions filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. According to the common petitioner the respondents had contested the election in different wards of Changanassery Municipality as candidates with the support of UDF and that they had withdrawn from the UDF and joined the LDF and voted in favour of the no confidence motion moved against the Vice Chairman and also supported the LDF candidates in the election to the post of Chairperson and Vice

Chairman by disobeying the direction of the UDF parliamentary party and thereby committed defection. The respondents would contend that they had contested the election without support from any political party or coalition and that they are not bound by the decision or direction of the UDF. In the light of the rival contentions a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act'. Section 4 of the Act states that 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 can file a petition before the State Election Commission for decision. These petitions are filed by a Councillor of the same Municipality of which the respondents also are Councillors. It is also seen that these petitions are filed within the time limit prescribed under Rule 4 A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. From the above facts and materials on record it is found that these petitions are maintainable and the contention of the respondents challenging the maintainability is totally unsustainable. The point is answered in favour of the petitioner.

8. **POINT No.(ii):** The short question to be considered in these cases is whether the respondents have contested the election with the support of UDF or whether they were complete independents, in the election held in October

2010. The petitioner has been examined as PW1. He has deposed that the respondent in O.P.No.113/2014 had filed nomination as an independent candidate and subsequently the UDF had given support to her and with the votes of UDF she was elected as Councillor. It is also deposed by PW1 that even though there was a candidate belonging to Congress party, her candidature was freezed with a view to support the respondent in O.P No.113/2014 and thus the said respondent had won the election with the support of UDF. PW1 has further deposed that the respondent in O.P.No.114/2014 had submitted nomination as a candidate having the support of UDF and he won the election as such and agreements were executed by both these respondents along with other UDF Councillors and the said agreements are marked as Exts.P1 and P2. The nomination submitted by the respondents in O.P.No.114/2014 is marked as Ext.P3. The copy of the register maintained by the Municipality showing the political affiliation of the Councillors is marked as Ext.P12. PW1 has also deposed that the respondents had participated in the UDF parliamentary party meeting and the minute of such meeting is marked as Ext.P13.

9. PW2 is stated to be the Changanassery Niyojakamandalam convener and he has deposed that both these respondents had contested the election with the support of UDF and that even though the respondent in O.P.113/2014 had submitted nomination as an independent she was later given support by the UDF and the candidature of the Congress candidate was withdrawn and the

decision in this respect dated 16.10.2010 is marked as Ext.X1. It is also deposed by PW2 that agreements were executed by respondents admitting that they had contested the election as candidates with the support of UDF.

10. The respondent in O.P.No.113/2014 has been examined as RW1. She has stated that she had contested the election as a complete independent candidate and the candidate belonging to UDF and LDF also had contested in that election and that she had submitted declaration after her election as councilor stating these facts and the copy of that record is marked as Ext.R1. RW1 has further stated that she had never obtained the support of UDF in her election held in October 2010 to Changnassery Municipality. The respondent in O.P.No.114/2014 has been examined as RW2. He has deposed that he was not having support of the UDF or LDF and that he was supported by NSS from the very beginning and the copy of the declaration submitted by him after his election as Councillor is marked as Ext.R2. He has also deposed that in the agreements executed with the UDF Councillors, he is shown as a complete independent. He has also deposed that he had not participated in the UDF parliamentary party meetings. RW3 is the Joint Secretary of NSS No.226 and he has deposed that the respondent in O.P.No.114/2014 was having the support of NSS and that RW3 was the Booth Agent and Counting Agent, of this respondent and Ext.X2 is stated to be the pass issued to him in this respect.

11. The learned counsel for the petitioner would fairly argue that as regards the respondent in O.P.No.113/2014, there is not much evidence

showing that she had contested the election as a candidate having the support of UDF. Admittedly this respondent had submitted nomination as a complete independent and the candidate belonging to Congress party also had contested in the same ward. In the declaration submitted by her before the Secretary as provided by Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, it is clearly stated that she had contested the election as a complete independent and that she was not having support from any political party or coalition and this record is marked as Ext.R1. Ext.P12 is the copy of the register maintained by the Changanassery Municipality as provided by Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and in this record also this respondent is shown as a complete independent. The other two records relied on by the petitioner are Exts. P1 and P2 which are agreements executed by members belonging to political parties and UDF and also these members. A careful reading of these agreements would reveal that both these respondents were treated as independent Councillors. So Exts.P1 and P2 also are not of any help to prove that these respondents were elected as Councillors with the support of UDF. Exts.P6, P12, and X1 are found to be post-election records and as these respondents had supported the UDF originally in the election to the post of Chairperson and Deputy Chairman in 2010 they may have participated in the meetings of the parliamentary party of UDF. Any how these records are found to be not reliable documents to prove that these respondents had contested the

election with the support of UDF. Even in Ext.P6(a) it is not stated that the respondent in O.P.No.113/2014 is an independent member having the support of UDF. Moreover Ext.P6(a) cannot be considered as a reliable document as the signatures of the participants start from a different page from the page in which the minutes are recorded. So on a careful consideration of all facts, there cannot be any doubt that the respondent in O.P.No.113/2014 had contested the election as a complete independent candidate and that she was not having the support of any political party or coalition in the election held in October 2010 to Changanassery Municipality.

12. The learned Counsel for the petitioner would argue that the respondent in O.P.No.114/2014 had submitted nomination as a candidate having the support of UDF and that he had participated in the parliamentary party meeting of UDF as an independent member having the support of UDF and also that in the agreements executed by these respondents, it is stated that he is an independent member having the support of UDF and so according to him these respondents have withdrawn from the UDF coalition and joined to the LDF and thus committed defection. It is true that in the nomination paper submitted by this respondent, it is stated that he is an independent member having the support of UDF. However this record cannot be considered as sufficient to come to a conclusion that he had the support of UDF in the election. The definite case of this respondent is that he contested with the support of NSS. RW3 also is examined to prove the same. The fact that this

respondent was having the support of NSS is admitted by PW1 also. It is significant to notice that in the records prepared immediately after the election it is stated that this respondent is a complete independent councilor. Ext.P1 is an agreement stated to have been executed by the Councillors of Congress party, Kerala Congress (M) and independent Councillors regarding sharing of posts. In this record it is clearly stated in clause (iv) that the Chairmanship of the Welfare Standing Committee shall be held by the independent member Shri.Satheesh Ayikkara for three years. In the further agreement executed on the next day and marked as Ext.P2 also it is stated that these respondents are complete independent members. Ext.R1 is found to be the copy of the declaration submitted by this respondent as provided by Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and in this record. It is clearly stated that this respondent had contested the election as an independent candidate without support from any political party or coalition. In Ext.P12 also which is the copy of the register maintained by the Municipality as provided by Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, it is clearly stated that this respondent is an independent member without having any support from any political party or coalition. Since these are statutory records, their contents cannot be disbelieved without sufficient contra evidence. Rule 3(2) (c) of the Rules states that an independent who contested the election otherwise than as a candidate of a political party or a coalition or as a candidate with the support

of the same shall file a declaration to that effect before the officer authorized under sub rule (1) and accordingly that member shall be treated as an independent member and as per sub rule (1) shall be maintained therein the respective facts. Rule 3 of the Rule states that the declaration of the member under sub rule (2) shall be filed on the same day he assumes office as member after swearing. From the above facts and materials on record it is clearly found that the respondent in O.P.No.114/2014 also had contested the election as a complete independent candidate.

13. Therefore I find that the respondents in both these cases have been elected as independent members without support from any political party or coalition. The point is answered accordingly.

14. **POINT Nos.(iii):** Since the respondents are found to be independent members having elected without any support from political parties or coalition they are entitled to take independent stand based on their conscience in relation to voting on a no confidence motion or in the election to the post of President and Vice President. The petitioner in his capacity as the elected Councillor of the UDF parliamentary party is found to be not competent to issue direction to the respondents in relation to voting on no confidence motion or in the election to the various office bearers of the Municipality. The petitioner has completely failed in proving that these respondents have committed defection as alleged and so the petitions are only to be dismissed. The points are answered accordingly.

In the result, the petitions are dismissed.

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 : Sri.Mathew George, Kavalam House, Changanasseri
- PW2 : Sri.Mathukutty Plathanam, Plathanam, Thuruthi P.O.
Changanassery, Kottayam – 686 535

Witnesses examined on the side of the respondent

- RW1 : Smt.Rani Vinod, Thoppil Veedu, Perunna P.O.,
Changanasseri
- RW2 : Sri.Satheesh Kumar, Ayikkara Veedu,
Changanassery, Kottayam
- RW3 : Sri.Ratheesh Kumar, Chithira, Panachakavu P.O.,
Perunna West, Changnassery

Documents produced on the side of the petitioner

- P1 : Executed agreement dated 07.11.2010
- P2 : Executed agreement dated 11.11.2011
- P3 : Nomination paper submitted by Shri.Satheeshkumar
Dated 29.05.2010

- P4 : Copy of the registered notice No.2786/2014 dated 03.09.2014 of the Regional Joint Director, Kollam addressed to Smt.K.M.Najiya, Councillor
- P4(a) : Copy of the no confidence motion against Shri.Mathews George, Municipal Deputy Chairperson
- P5 : Copy of the whip dated 11.09.2014 issued by Shri.Mathews George, UDF Parliamentary Pary, Changanassery Municipality, addressed to M.H.Haneefa, Councillor,
- P6 : Meeting of the minutes book, Changnassery Municipality
- P6(a) : Minutes of the dated 08.11.2010 of Changanassery Municipality
- P7 : Copy of the notice No.T5-2655/2010/D.O.K dated 26.09.2014 of the Returning Officer, Changanassery Municipality address to Shri. Mathews George
- P8 : Copy of the whip dated 08.10.2014 issued by Shri.Mathews George, UDF Parliamentary party addressed to the Secretary, Municipal Council, Changanassery
- P9 : Add refused sender
- P10 : Add refused sender
- P11 : Copy of the letter No.A2-3877/2014/D.O.K dated 08.12.2014 of the State Public Information Officer
- P12 : Letter No.7842/A/2014/SEC dated 04.11.2014 reply of Shri.K.Santhosh Kumar, Public Relations Officer & State Public Information Officer
- P13 : Minutes book of the meeting dated 19.03.2014

Document produced on the side of the respondent

- R1 : Copy of the declaration submitted by Smt.Rani Vinod dated 01.11.2010

R2 : Copy of the declaration submitted Shri.Satheesh
Aykkara dated 01.11.2010

Document produced on the side of the witnesses

X1 : Minutes Book of Changanassery Municipality

X2 : Counting Agent pass of Sri.Ratheesh Kumar

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.

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