

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 11th day of October 2019

O.P.No.115/2018

Petitioner : T.T.Babu,
S/o Thevan,
Thurutheparambu House,
Mampillyparambu,
Kennedimukku, Edappally P.O.,
Ernakulam District-682 024.

Councillor, Ward No.41,
Thrikkakara Municipality

(By Advs. A.Santhosh Kumar &K.Vinod)

Respondent : Sheela Charu,
W/o Charu,
Thanapadath House, TV Centre,
CSEZ, Ernakulam District-682037.
Councillor, Ward No.20,
Thrikkakara Municipality

(ByAdvs.Ajithkumar.S and Eldhose M. Varghese)

This petition having come up for hearing on the 25th day of **September 2019**, in the presence of Advs. **A.Santhosh Kumar &K.Vinod** for the petitioner and **Advs. AjithKumar.S&EldhoseM.Varghese** 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 Thrikkakara Municipality 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 are elected Councillors of Thrikkakara Municipality in the election held in November 2015 and both of them contested and were elected as the candidates of Indian National Congress (INC). The INC contested the election as part of United Democratic Front (UDF), a political coalition. Indian Union Muslim League (IUML) is the other constituent in UDF in Thrikkakara Municipality. There are 43 wards (seats) in Thrikkakara Municipality and out of which the UDF got 21 seats- INC-17 and IUML-4. The Left Democratic Front (LDF) secured 20 seats. Communist Party of India (Marxist) [CPI(M)]-16, Communist Party of India (CPI)-3 and Congress (S)-1. The remaining 2 seats were won by independents. With the support of two independent members the LDF formed the Council. Smt. K.K.Neenu from CPI(M) was elected as the Chairperson of the Municipality and the independent member Shri.Sabu Francis became the Deputy Chairman. On 11.04.2018 the UDF members

moved a no confidence motion against the Chairperson and it was carried. Thereafter fresh election to elect the Chairperson was held and Smt.M.T.Omana from UDF was elected as the Chairperson.

3. Subsequently the LDF members moved a no confidence motion against the Chairperson Smt.M.T.Omana and it was tabled for discussion on 27.11.2018. The DCC President, Ernakulam District issued whips dated 21.11.2018 to all the elected members of Indian National Congress including the respondent directing them to abstain from attending the meeting on 27.11.2018 and from voting. The whip was served on the respondent through her husband. The whip was sent to the respondent by registered post also. The respondent did not receive the postal article knowing the contents therein, despite intimation to her. In addition to that the whip was served on the respondent by affixture also. The whip was affixed at the residence of the respondent in the presence of the witnesses. Copy of the whip was communicated to the Secretary of Thrikkakara Municipality and also to the authorised officer. The respondent was very well aware of the whip issued by the DCC President. But she did not care to obey the whip. She actively participated in the meeting held on 27.11.2018 and voted in favour of the no confidence motion and as a result the motion was carried. The respondent defied the whip of the party and acted against the interest of Indian National Congress. It is disloyalty to the party. She has voluntarily given up her

membership from Indian National Congress and joined in LDF. She is now in LDF camp. By violating the whip issued by her party and acting against the interest of her party the respondent committed defection and thereby incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks a declaration to that effect.

4. The respondent filed counter statement contending as below. The petition is not maintainable. It is true that the respondent contested and was elected as the candidate of Indian National Congress in the election held in November 2015 as stated in the petition. After the election Smt.K.K.Neenu was elected as the Chairperson. Later she lost the post when a no confidence motion was moved against her and was carried. Thereafter Smt.M.T.Omana from INC was elected as the Chairperson. There was maladministration during her period as Chairperson and that led to corruption and misutilization of funds. She did not care to give any priority for the development programmes of the Municipality. Many other Councillors also were not satisfied with the performance of Smt.M.T.Omana as Chairperson. The respondent raised these issues before INC and UDF leaders several times. But the District Committee INC and UDF neglected the complaints against the respondent. While so, the LDF members moved a no confidence motion against the Chairperson Smt.M.T.Omana and it was tabled for

discussion on 27.11.2018. No whip/direction was issued to the respondent by the DCC President as alleged directing her to abstain from the meeting. There was no such whip issued as stated in the petition. No whip was served on the respondent under any mode. The respondent was not aware of any such whip. There was no affixture of the whip. The averments that copies of the whip were communicated to the Secretary of the Municipality and authorised officer are false. There was no decision of the party to abstain from the meeting held on 27.11.2018. The respondent participated in the discussion of no confidence motion and voted infavour of the motion as there was no written direction issued by the party or the authorized person. It was due to the maladministration, mismanagement and corruption on the part of Smt.M.T.Omana as Chairperson the respondent supported the no confidence motion against her. The respondent did not disobey the direction of the party. It is not correct to say that she abandoned her membership in INC. Casting of vote against the Chairperson is not a support to LDF. The respondent did not do any act of defection. There is no merit in the petition and hence it is only to be dismissed.

5. The evidence in this case consists of the oral testimonies of PWs1 to 4, RWs1 to 6 and Exts.A1to A14 and X1 to X2(c).

6. Both sides were heard.

7.The following points arise for consideration;

- (1) Whether the original petition is maintainable?
- (2) Whether the respondent has disobeyed the direction of her political party as alleged ?
- (3) Whether the respondent has voluntarily given up her membership from Indian National Congress as alleged?
- (4) Whether the respondent has committed defection as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (5) Whether the petitioner is entitled to the declaration prayed for?
- (6) Reliefs and costs?

8. **POINT No.(1)**: Though in the counter statement the respondent raised a contention that the original petition is not maintainable, there is absolutely nothing from her side to show that the original petition is not maintainable.

9. The petitioner and respondent are elected Councillors of Thrikkakara Municipality and admittedly both of them were elected as the candidates of Indian National Congress. The alleged cause of action in this case was on 27.11.2018 when a no confidence motion moved against the then Chairperson Smt.M.T.Omanawas tabled for discussion. Smt.M.T.Omana became the Chairperson of the Municipality as a nominee of INC to which party the respondent also belongs. It is stated that the President of Ernakulam District Congress Committee issued whips to all the

elected Councillors of INC in Thrikkakara Municipality including the respondent directing them to abstain from participating in the discussions on 27.11.2018 and voting in favour of the no confidence motion and the whip was served on the respondent. But the respondent, it is stated, defying the whip participated in the discussion of the motion and voted in favour of the motion moved by the rival party against her own party nominee. According to the petitioner the respondent by violating the direction of her party and acting against the interest of her party, committed defection and thereby incurred disqualification as provided under Section 3(1)(a) of the Act. Contention of the respondent on the other hand is that there was no whip from her party and she did not violate any direction of her party. According to her she did not commit any act of defection incurring disqualification.

10. It may be noted that the original petition is 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.

11. Ongoing through the contentions of the parties it can be seen that a question arises as to whether the respondent has become subject to disqualification as provided by Section 3(1)(a) of the Kerala Local Authorities

(Prohibition of Defection) Act. Admittedly the petitioner is a Councillor of the local authority in which the respondent is also a Councillor. The petitioner being a Councillor of the local authority, is entitled to file this petition as per law. As this petition is filed by a competent person within the time limit and a question arises as to whether the respondent has become subject to disqualification as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, this petition is held to be maintainable. Point is answered accordingly.

12. POINT Nos.2 to 6: Case of the petitioner as stated above, is that the respondent committed defection defying the direction of her party and also by voluntarily giving up her membership from INC and thereby she incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. Indisputably, the respondent was elected as the candidate of INC. Ext.A1 copy of the register showing the party affiliation of the respondent and other Councillors also would show the said fact.

13. There are 43 wards (seats) in Thrikkakara Municipality and out of which the Indian National Congress got 17 seats and IUML, the other constituent in the UDF got 4 seats. On the side of LDF the CPI(M) secured 16 seats, CPI got 3 seats and Congress (S) has one seat. The remaining two seats were won by independents. After the election two independent members supported the LDF faction and Smt.K.K.Neenu of CPI(M) was

elected as the Chairperson of the Municipality and the independent member Shri.Sabu Francis as the Deputy Chairperson. While so, the UDF members moved a no confidence motion against the Chairperson and it was carried. Thereafter Smt.M.T.Omana from INC was elected as the Chairperson. After six months thereafter, the members of LDF moved a no confidence motion against the Chairperson Smt.M.T.Omana and it was tabled for discussion on 27.11.2018.

14. According to PW1 the DCC President, Ernakulam District Committee issued whips to all the elected Councillors of INC directing them to abstain from the meeting on 27.11.2018 and voting. Ext.A2 is the copy of the whip issued to the respondent and the same was served on her. It is stated that the whip issued to the respondent was received by her husband and he acknowledged the receipt in Ext.A4 local delivery book of the DCC. Besides serving the whip directly, the whip was sent by registered post also. Ext.A3 is the postal receipts for sending the whip by registered post and it was sent on 22.11.2018. In addition to that, PW1 states, the whip was served by affixture also. It is also stated by PW1 that the copies of whips were given to the Secretary of the Thrikkakara Municipality and also to the authorized officer. Ext.X1 is the said copy received by the Secretary. Ext.A8 is the copy of Ext.X1. The whip was affixed on the wall of the respondent's house in the presence of witnesses. It was PW3 Shri.NoushadPallachi who had taken the whip to the house of the respondent

for service. PW1 and PW4 K.M.Mathew were also present with him at the time of affixing the whip. Ext.A6 is the report prepared by PW3 NoushadPallachi regarding the affixture of the whip. The respondent disobeyed the direction of the party and voted infavour of the no confidence motion and actedagainst the interest of her party. The conduct of the respondent would amount to voluntarily giving up her membership from Indian National Congress, it is further stated.

15. PWs2 to 4 are the other witnesses examined on the side of the petitioner. PW2 is the DCC President of Ernakulam District Congress Committee. It is stated by him that he has issued whips in this case to all the elected Councillors of INC directing them to abstain from attending the meeting on 27.11.2018 and from voting. It is also stated by him that Ext.A2 is the copy of the whip issued by him to the respondent. The whip issued to the respondent and others were entrusted to the Block Congress Committee President Shri.NoushadPallachi to be served on them. Though the whip was served on the respondent she did not care to obey the direction of the party, PW2 further states. PW3 Shri.NoushadPallachi gave evidence regarding the service of whip to the respondent. According to him he went to the house of the respondent along with the petitioner and witness Shri.K.M.Mathew who was examined as PW4 and when they reached the house of the respondent she was not there. His further evidence is that he gave the whip to the respondent's husband and after receiving the same the respondent's husband

put his signature in Ext.A4 local delivery book of the DCC acknowledging the receipt of whip. Ext.A4(a) is the signature of respondent's husband. According to PW3 the whip was served by affixture also by affixing the same on the wall of the respondent's house and Ext.A6 is the report prepared by him from there regarding that. PW1 and PW4 were also present there with him. PW1 and PW4 admitted the said fact and both of them admitted their signatures in Ext.A6 report.

16. RW1 is the respondent. Her evidence is that she did not commit anyact of defection inviting disqualification. To her there was no whip or direction from her party to vote against the no confidence motion and no whip was served on her. As there was no direction from the party she chose to participate in the discussion and voted infavour of the no confidence motion as there were allegations of corruption and mismanagement against the Chairperson Smt.M.T.Omana. According to RW1, she did not abandon her membership from INC.

17. The other witnesses examined on the side of the respondent are RWs2 to 6. RW2 and RW6 are two other Councillors of Thrikkakara Municipality. RW2 belongs to IUML party and RW6 is an independent member. Evidence of RW2 is that there was a meeting of UDF parliamentary party prior to 27.11.2018 and in that meeting it was decided to defeat the no confidence motion against the ChairpersonSmt.M.T.Omana. It may be noted that her evidence is against the respondent and what for the

respondent examined RW2 is not known. RW6 is an independent member and he did not say anything material in this case and as an independent member he cannot say the issuance of whip and the internal matters of INC.

18. RW3 is the Secretary of Thrikkakara Municipality. According to him he has received a copy of the whip issued in this case and Ext.X1 is the said whip. It is further stated by him that Ext.A8 is the photo copy of Ext.X1. RW4 is the postman attached to Cochin Economic Zone Post office. His evidence would show that the respondent did not claim the whip sent to her by registered post despite intimation to her. Ext.X2 delivery details of the postal articles in that area during the relevant period would show the said fact. Ext.X2(a) and X2(b) would show that intimations were given in the house of the respondent on two occasions. One on 24.11.2018 and the other on 26.11.2018. But the respondent did not claim the postal articles. It is interesting to note that the respondent examined RW3 Secretary and RW4 Postman to make evidence for the petitioner and to prove his case. Why the respondent has taken that much pain to adduce evidence for petitioner is yet to be known. RW5 is none other than the husband of the respondent. He is the Vice President of Edappally Block Congress Committee. It is admitted by him that PW3 Shri.Noushad Pallachi is the President of the Block Congress Committee. He was examined on the side of the respondent only to deny Ext.A4(a) signature in Ext.A4 local delivery book. His evidence

would show that he came before the Commission only to support his wife and not to tell truth.

19. Submission of the learned counsel for the petitioner is that the respondent colluded with the rival front LDF and disobeyed the direction of PW2 DCC President. The respondent's conduct of supporting the no confidence motion and voting infavour of the motion moved by the rival parties against her own party nominee is sufficient to hold that she became disloyal to the party and she has voluntarily given up her membership from the party. Her subsequent conducts would further reinforce the case of defection put forward by the petitioner. After ousting her own party nominee Smt.M.T.Omana from the Chairpersonship the respondent became the Chairperson with the support of the rival from LDF in the election held on 18.12.2018. In that election she herself stood as a candidate and contested against her own party nominee. In the Deputy Chairman election also she supported the LDF nominee and Exts.A13 and A14 minutes regarding the above elections would show the above facts. The respondent committed defection attracting both the limbs of Section 3(1)(a) of the Act, the counsel further submits. Contention of the learned counsel for the respondent is that there was no whip or direction from the party with regard to the stand to be taken in the no confidence motion and hence she voted infavour of the motion as per her conscience. Hence according to the

counsel the respondent's act of supporting the no confidence motion will not attract the provisions of Section 3(1)(a) of the Act.

20. Whether the respondent has committed any act of defection envisaged under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act is the question to be considered in this case. The Kerala Local Authorities (Prohibition of Defection) Act was enacted to prohibit defection among members of local authorities in the state and to provide for disqualification of the defecting members of the local authorities. Section 3 of the Act deals with disqualification on the ground of defection. Section 3(1)(a) is the provision relevant in this case and it reads as below:- 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 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.

21. Section 3(1)(a) of the Act has two parts. The first part is attracted when a member belonging to any political party voluntarily gives up his membership of such political party and second part 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.

22. As stated above the respondent was elected as the candidate of INC and she is bound by the decision of her party and the respondent has no dispute over those aspects. PW2 DCC President is the competent person to issue whip to the elected members of INC. RW1 has no case that PW2 is not the competent person to issue whip to her. Her only case is that no whip was issued in this case and served on her. But the evidence of PWs 1 to 4 and Ext.A2 would show otherwise. PW2 is the DCC President who issued Ext.A2 whip in this case directing the respondent to abstain from the meeting and voting on the no confidence motion referred to above. I do not find anything in this case to disbelieve the evidence of PW2 District President regarding the issuance of whip in this case. So the contention of the respondent that no whip was issued in this case cannot be accepted.

23. Whether the whip was communicated to the respondent is the matter to be looked into next. As per Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules the whip can be served by three modes – 1. directly 2. sending by registered post and 3.byaffixture. All the three modes were adopted in this case and it can be seen from the evidence that the whip was served on the respondent by adopting all the three modes. It is stated by PW2 DCC President that he entrusted the whips to PW3 Block Congress Committee President for serving the same to the respondent and other Councillors. PW3 has clearly stated about the service of whip to the respondent through her husband. It is true that the respondent and her husband RW5 denied the said fact. At the same timeRW1 stated about Noushad's visit to her house and her husband's putting his signature in a book brought by PW3 Noushad. She got the said information from her husband only. But sensing danger she gave a twist to the time. Her version is that her husband told about the above incident only after the discussion and voting on no confidence motion were over on 27/11/2018. It is difficult to believe that her husband would keep the said fact as secret till voting on no confidence is over. The contention of RW1 that her husband told about his putting signature in a book brought by PW3 only after the voting on the no confidence motion can only be the result of an afterthought as contended by the learned counsel for the petitioner. According to Petitioner Ext.A5 photo was taken when PW3went to the house

of the respondent to serve the whip. Admittedly the photo of the respondent's husband is therein Ext.A5 photo. A book like Ext.A4 can also be found in front of RW5 in Ext.A5 photo . The photo of PW3NoushadPallachi is also therein Ext.A5. When we consider the evidence of PW1, PW3 and RW1 along with Ext A4, A4(a) and Ext A5 it can be safely concluded that the whip in this case was served on the respondent through her husband.

24. It is further to be stated that the whip in this case was served by sending by registered post and also by affixture. Ext.A3 postal receipt would show the sending of the whip to the respondent by speed post. It is in evidence that the respondent did not claim the postal cover despite intimation given to her on 24.11.2018 and 26.11.2018. The evidence of RW4 Postman and Exts.X2, X2(a) and X2(b) would show the said fact. Ext X2(a) and X2(b) are the relevant delivery slips. As stated above the respondent herself examined RW4 Postman on her side and elicited the above facts. It is also in evidence that the whip in this case was served on the respondent by affixture also. Evidence of PWs1, 3, 4 and Ext.A6 would show that the whip was affixed on the wall of the respondent's house. It is stated by PWs 1,3 and 4 that they went to the respondent's house and affixed the whip on the wall of the respondent's house. PWs 1 and 4 admitted their signatures in Ext.A6 report as witnesses. There is nothing in this case to discredit the evidence of PWs 1, 3 and 4 regarding the affixture of the whip.

From the evidence of PWs1, 3, 4 and Ext.A6 it can be seen that the whip was affixed on the wall of the respondent's house and that the whip was served by affixture. Affixture is a deemed service and hence it is to be taken that the whip was served on the respondent by adopting the third method also. The respondent therefore cannot contend that there was no service of whip on her and that she was not aware of the whip.

25. It may be noted that the respondent is a responsible elected Councillor of INC and she cannot act according to her whims and fancies and that too against the direction of her own party. The respondent is bound by the direction and decision of her party. Disobedience and acting against the interest of the party is nothing but disloyalty. It is found above that DCC President issued whip to the respondent directing her to abstain from participating in the meeting held on 27.11.2018 and voting in the no confidence motion and that the whip was served on her. But the respondent did not follow the whip. She defied the direction and voted in favour of the no confidence motion moved against her own party nominee by the rival party. Her said act would only show that she acted against the interest of her own party and she has voluntarily given up her membership from INC.

26. Further, as per Section 3(1)(a) of the Act a member can be disqualified if he has voluntarily given up the membership of the party to which he belongs. It is the settled law that the disqualification for voluntarily giving up the membership of the political party to which he

belongs is not dependent on any violation of the whip. It is not necessary to hold that the member has violated the whip in order to conclude that he has voluntarily given up the membership of the political party to which he belongs. The grounds for disqualification under the first and second limbs of Section 3(1)(a) of the Act are distinct and are not interlinked as held in the decisions reported in **2009(2) KHC 839 (Biju R.S. and others V. Kerala State Election Commission and others)**, **2015 KHC 454 (Suryaprakash and others V. State Election Commission, Thiruvananthapuram and others)** **2015 KHC 7086 (Chenthamara K. and others V. Kerala State Election Commission, Thiruvananthapuram and others)** and **2018 (5) KHC 964 (Eruthavoor Chandranand another V. Kerala State Election Commission and others)**. From the conduct of a member an inference can be drawn that he has voluntarily given up his membership from his party.

27. It is admitted by RW1 that she supported the no confidence motion and voted in favour of the motion moved by the rival party against the Chairperson Smt.M.T.Omana, the nominee of her own party. Her version is that the party did not issue any direction regarding the stand to be taken on the no confidence motion in this case and hence she supported the motion. But it has come in evidence that PW2 the DCC President who is competent to issue the whip has issued it to the respondent in this case and she disobeyed the direction. There are 17 INC members in Thrikakkara Municipality and except the respondent all other INC members followed the

direction of PW2 and abstained from voting. Abstention of all other members of INC was admitted by RW1. She did not enquire about the reason for their abstention. The contention of the respondent that there was no direction from the party cannot be accepted at all in the light of what has been stated above.

28. The respondent's act of supporting the no confidence motion in this case disregarding the direction of her party certainly is an act of disloyalty on her part towards her party. Her above conducts would amount to voluntarily giving up of her membership from INC. Further her subsequent conducts also would show her abandonment of her membership from INC. After ousting Smt.M.T.Omana from the Chairpersonship through the no confidence motion fresh election to the post of Chairperson was held on 18.12.2018. Ext.A13 minutes would show the said fact. Smt.AjithaThankappan was the nominee of INC/UDF for the post of Chairman and RW1 admitted the said fact. But against Smt.AjithaThankappan the respondent herself stood as a candidate and with the support of the rival front LDF the respondent became the Chairperson. It is admitted by RW1 that none of the INC members cast their votes in her favour. Similar is the stand taken by her in the election of Deputy Chairperson held in the A.N of 18.12.2018. It is admitted by RW1 that Shri.K.T.Eldhowas the candidate nominated by LDF and she cast her vote infavour of the LDF candidate. From the above acts of the respondent also it

can be seen that she had already abandoned her memberships voluntarily, from INC. As an elected Councillor of INC the respondent cannot take a different stand from that of the party. Her act of voting infavour of the motion and her subsequent act of contesting against her own party nominee for the post of Chairperson and supporting the candidate of the rival front LDF in the Deputy Chairperson election would show her disloyalty towards her party and her acts against the interest of her own party.

29. 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. 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 the 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 10th schedule, the *Apex Court in KihotoHollohanVs.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 disqualification. A political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its 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.”

30. A member belonging to a political party has to be loyal to his party and the moment he becomes disloyal he/she would become subject to disqualification on the ground of voluntarily giving up his/her membership from the party. The conduct of the respondent in violating the direction of her party and voting infavour of the no confidence motion moved by the rival party against her own party nominee defying the direction of her party would clearly demonstrate that she became disloyal to the party which elected her as a Councillor of Thirkkakara Municipality. The above acts of the respondent would amount to defection inviting disqualification under both the limbs of Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the case put forward by the petitioner against the respondent is clearly established. According to 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.

31. From the above facts and circumstances it can be seen that the respondent has committed defection and she has voluntarily given up her membership from the party which elected her as Councillor, as provided by Section 3(1)(a) of the Act and therefore she became subject to disqualification for being a Councillor of Thrikkakara Municipality. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being Councillor of Thrikkakara Municipality as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent is further declared as disqualified for contesting as a 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 11th day of October 2019

Sd/-
V.BHASKARAN
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Shri.T.T.Babu
 PW2 : Shri.T.J.Vinod
 PW3 : Shri.NoushadPallachi
 PW4 : Shri.K.M.Mathew

Witnesses examined on the side of the respondent

RW1 : Smt.SheelaCharu
 RW2 : Smt.ShabnaMeher Ali
 RW3 : Shri.Shibu P.S
 RW4 : Shri.Amal Raj M.K
 RW5 : Shri.T.K.Charu
 RW6 : Shri.M.M.Nazar

Documents produced on the side of the petitioner

A1 : Copy of the register showing the party affiliation of the Councillors of Thrikkakara Municipality
 A2 : Copy of the whip issued by Shri.T.J.Vinod, DCC President, Ernakulamto Smt.SheelaCharu dated 21.11.2018
 A3 : Postal receipt dated 21.11.2018
 A4 : Local Delivery Book of Ernakulam DCC
 A4(a) : Local Delivery Book (Relevant page No.6)
 A5 : Photo
 A6 : Copy of the report prepared by Shri.Noushad Pallachi regarding the affixure of the whip
 A7 : Photos (Computer Printout)
 A8 : Copy of the whip issued by Shri.T.J.Vinod, DCC President, Ernakulam to the Secretary, Thrikkakara Municipality
 A9 : Copy of the whip issued by Shri.T.J.Vinod, DCC President, Ernakulam to the Authorised officer

- A10 : Copy of the minutes of the meeting of Thrikkakara Municipality held on 27.11.2018
- A11 : MalayalaManoram daily dated 28.11.2018
- A11(a) : News report in MalayalaManorama daily dated 28.11.2018(relevant page No.3)
- A12 : Mathrubhoomi daily dated 28.11.2018
- A12(a) : News report in Mathrubhoomi daily dated 28.11.2018(relevant page No.3)
- A13 : Copy of the minutes of the meeting to elect the Chairperson of Thrikkakara Municipality held on 18.12.2018
- A14 : Copy of the minutes of the meeting to elect the Deputy Chairperson of Thrikkakara Municipality held on 18.12.2018

Documents produced by the witness

- X1 : Copy of the whip issued by Shri.T.J.Vinod, DCC President, Ernakulam to the Secretary, Thrikkakara Municipality
- X2 : File containing the Delivery slips kept in Post office
- X2(a) : Copy of the delivery slip dated 24.11.2018
- X2(b) : Copy of the delivery slip dated 26.11.2018
- X2(c) : Copy of the speed post bag Manifest dated 04.12.2018 issued by Sub postmaster, Cochin Special Economic Zone.

Sd/-

V.BHASKARAN
STATE ELECTION COMMISSIONER

//True Copy//