

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 8th day of July 2016

O.P.Nos.12/2014 & 13/2014

O.P.No.12/2014

Petitioner : V.K.Gowreeshan,
Gowreeshabhavanam,
Chandiroor P.O., Cherthala,
Alappuzha.
Member, Ward No.15
AroorGrama Panchayat

(By Adv. SalinS.Rajan)

Respondent : NiceyLawarance,
Nedumpozhy, Aroor. P.O.,
Member, Ward No.19,
AroorGrama Panchayat,

(By Adv. Anand.B)

O.P.No.13/2014

Petitioner : V.K.Gowreeshan,
Gowreeshabhavanam,
Chandiroor P.O., Cherthala,
Alappuzha.
Member, Ward No.15
AroorGrama Panchayat

(By Adv. SalinS.Rajan)

Respondent : AjithaRamesan,
Thuruthipadam, Aroor.P.O.,
Member, Ward No.14,
AroorGrama Panchayat,

(By Adv.Anand.B)

These petitions having come up for hearing on the 17th day of June2016, in the presence of Adv. **SalinS.Rajan** for the petitioner and Adv. **Anand. B** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These two petitions are filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents are disqualified for being members of AroorGrama Panchayat and also declaring them as disqualified to contest as candidates in any election of the local authority for a period of six years from the date of the order.

2. As the questions of law and facts involved in these petitions are common, they were taken up together treating O.P.No.12/2014 as the main case. The petitioner in both the petitions is one and the same.

3. The petitioner's case in brief is as below:- The petitioner and respondents are elected members of AroorGrama Panchayat, Alappuzha

District in the election held on 25.10.2010. They belong to JanathipathyaSamrakshanaSamithi (JSS). The petitioner was elected from ward No.15 of AroorGrama Panchayat. The respondent in O.P.No.12/2014 was elected from ward No.19 and the respondent in O.P.No.13/2014 from ward No.14. The petitioner and respondents were attending the meetings of the AroorGrama Panchayat following the directions of the JSS party. While so the post of the Vice President fell vacant and the Vice President election was fixed to be held on 03.03.2014. On 25.02.2014 the District Secretary of the JSS issued whip to the respondents to cast vote in favour of the candidate Smt. Sheeja Sivadas for the post of Vice President election to be conducted on 03.03.2014. But the respondents abstained from attending the election meeting and their act was in contrary to the direction given by the political party to which they belong. Their act amount to defection as contemplated under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act and by doing so they subjected themselves to be disqualified as a member of AroorGrama Panchayat. The petitioner thus seeks declaration to that effect.

4. The respondents filed statement of objections raising common contentions which in brief are as below,- The petitions are not maintainable. The petitioner and respondents were elected as members of AroorGrama Panchayat representing ward Nos.15, 14 and 19 respectively as alleged. The three members contested the election from the above respective wards as

candidates of JSS, a partner of UDF coalition. JSS is a registered political party. JSS have only three members in AroorGrama Panchayat. There was a split in the JSS political party on 26.01.2014 over an issue as to whether the JSS should leave UDF and become part of or merge with CPI(M). The UDF coalition is led by the Indian National Congress and the LDF led is by CPI(M). The JSS now led by Shri.A.N.RajanBabu is the original party which consists of majority of State committee members, District committee members and members of the party. A splinter group led by the General Secretary Smt.K.R.GowriAmmma left UDF and merged with CPI(M). JSS political party led by Shri.A.N.RajanBabu with majority State Committee members come 80% of the District committee and majority of the party members decided to continue in UDF and still the party supports UDF. Out of the three members of AroorGrama Panchayat the respondents belong to JSS of which Shri.A.N.RajanBabu is its General Secretary. While so on 25.02.2014 one Shri.C.M. Anil Kumar who claims to be the District Secretary (JSS), Alappuzha gave a letter to the respondents directing them to vote for Smt.SheejaSivadas an LDF candidate belonging to CPI(M) in the Vice President election. Shri.C.M.Anil Kumar opted to leave UDF along with Smt.K.R.GowriAmmma to become part of CPI(M). He has no authority to give whip directing the respondents to vote for LDF candidate in the election of Vice President of the Panchayat. As the respondents do not belong to the JSS faction which left UDF and as in pursuance of the split the

respondents constituted two third of the members of the original political party no whip can be validly issued by Shri.C.M.Anill Kumar directing them to vote for LDF candidate. The alleged whip is invalid an illegal and the respondents cannot be disqualified under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act. The respondents abstained validly from voting to the post of Vice President on 03.03.2014. Their act will not amount to contrary to the alleged direction. The respondents do not belong to the party of Shri.C.M Anil Kumar who opted to leave UDF along with the General Secretary Smt.K.R.GowriAmmma. The act of the respondents does not amount to defection as contemplated under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act and they cannot be disqualified for being members of AroorGramma Panchayat.

5. The petitioner and Shri.C.M. Anil Kumar are members of splinter group supporting Smt.K.R.GowriAmmma and the proposal to joint CPI(M). The JSS headed by Adv.A.N.RajanBabu, and the General Secretary, is the original political party. The respondents do not subscribe to the view of Smt.K.R.GowriAmmma. The petitioner is not entitled to get any relief in the petition and they are only to be dismissed.

6. The evidence in these cases consists of the oral testimonies of PWs1 and 2, RWs1 and 2 and Exts.P1 to P7(a) and R1 to R7.

7. Both sides were heard.

8.The following points arise for consideration;

- (1) Whether the petitions are not maintainable?
- (2) Whether the respondents have disobeyed the decision and direction of the JSS party in the election to the post of Vice President of AroorGrama Panchayat as alleged?
- (3) Whether the respondents have committed defection as contemplated Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act?
- (4) Reliefs and costs?

9. **ISSUE No.(1)**: The petitioner filed these petitions alleging that the respondents became disqualified for being members of AroorGrama Panchayat and seeking declaration to that effect. The petitioner and respondents were elected as members of AroorGrama Panchayat in the General Election held in October 2010 and all of them contested the election as candidates of JSS. Out of 22 seats in the Panchayat the Congress led United Democratic Front (UDF) secured 15 seats and CPI(M), LDF secured 6 seats and one seat was won by a complete independent. As the UDF got majority they decided to form the Panchayat board. JSS is a part of the UDF. Later the post of Vice President ship of AroorGrama Panchayat fell vacant and fresh election of the Vice President was fixed to be held on 03.03.2014. On that day the respondents abstained from attending the meeting despite the whip issued by the party.

10. According to PW1, the petition, the respondents had abstained from voting on 03.03.2014 defying the direction of the JSS party and hence

they became disqualified. The respondents have denied allegations and among other things they contended that these petitions are not maintainable. Though such a contention is put forward in their statement of objections there is nothing from their side to show that these petitions are not maintainable. Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, states that if a member of a 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 or by a person or authority authorized by the party in this behalf votes or abstains from voting, in an election to the post of President, Vice President or on a no confidence motion moved against them, he shall become subject to disqualification for being a member of that local authority. As the respondents abstained from attending the election meeting on 03.03.2014 defying the direction issued to them by their party, it is stated, Section 3(1)(a) of the Act is applicable to them.

11. It may be noted that these petitions are filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. As per Section 4(1) of the Act, if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it in this behalf may file a petition before the State Election Commission for decision.

12. From the pleadings and evidence adduced in this case it can be seen that there arises a question as to whether the respondents became disqualified for being members of AroorGrama Panchayat as provided by Section 3(1)(a) of the Act. These petitions are filed by a member of the same Panchayat of which the respondents also are members and petitions are filed within the time prescribed under Rule 4(A)(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. It may be noted that except stating that these petitions are not maintainable there is no material from the side of respondents to show that these petitions are not maintainable. As these petitions are filed by a competent person within the time limit and a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Act these petitions are held to be maintainable. The point is answered accordingly.

13. **POINT Nos.(2) to (4):**The petitioner, as stated above, seeks a declaration that the respondents are disqualified for being members of AroorGrama Panchayat and also from contesting as candidates in the election to local authorities for a period of six years. The respondents' abstention from voting in the Vice President's election to the Panchayat held on 03.03.2014 defying the direction of their political party is stated to be the reason for filing these petitions. According to the petitioner, the respondents committed disloyalty to the political party JSS to which they belonged and they voluntarily gave up their membership from the JSS party. The

respondents took a different stand from that of their political party JSS in the Vice President's election and disobeyed the whip issued by the District Secretary of the JSS which they were bound to obey. Their above acts hence warrant disqualification, the petitioner further contends. There are 22 wards in Aroor Grama Panchayat and out of which the UDF got 15 seats. The JSS a constituent of UDF has 3 seats. The petitioner and respondents are the said three persons from JSS. While the Panchayat was being run by the UDF vacancy of the post of Vice President arose and the election for the post of new Vice President was fixed to be held on 03.03.2014 and the Returning Officer issued the required notices to that effect.

14. According to PW1 the respondents did not attend the meeting convened by the Returning Officer on 03.03.2014 for electing the Vice President and deliberately abstained from attending the meeting despite the whip issued to them to attend and vote. Exts.P1 and P2 are the copies of the whips issued by the District Secretary of JSS to the respondents and the receipt of the whips was acknowledged by the respondents. Their respective endorsements on Exts.P1 and P2 would show the said fact. As per Exts.P1 and P2 the Alappuzha District Secretary of JSS directed the respondents to attend the Vice President election meeting on 03.03.2014 and to vote for LDF candidate Smt. Sheeja Sivadas. The respondents defied the said direction and became subject to disqualification as per Section 3(1)(a) of the

Kerala Local Authorities (Prohibition of Defection) Act, the learned counsel for the petitioner contends.

15. PW2 is the District Secretary of JSS. He gave evidence supporting the case of the petitioner. According to him he is the District Secretary of JSS and he has issued Exts.P1 and P2 whips to the respondents to attend the election meeting on 03.03.2014 and to vote as directed therein. But the respondents, PW2 states, abstained from the election meeting defying the whip issued. According to him he was elected as the District Secretary of JSS Alappuzha in the District committee meeting held on 13.01.2014 and Ext.P6 is the minute's book relating to that and Ext.P4 is the copy of the same. The whips issued by him are proper and valid and the respondents are bound by that.

16. The respondents admit their abstention from the Vice President election meeting held on 03.03.2014. To them there was no proper and valid whip and PW2 has no authority to issue the whip to them. It is also their contention that their abstention will not amount to defection and in no way it can be termed as voluntarily giving up their membership in the party. The respondent in O.P.13/2014 was examined as RW1. RW2, the other witness examined on their side is a member of Pattanakkad Block Panchayat. He was also elected as the candidate of the JSS. According to RW1 there was a split in JSS over the issue as to whether the JSS should leave the UDF and become part of LDF or merge with CPI(M). The majority of the State

Committee, District Committee members and party members led by Shri.A.N.RajanBabu, were against leaving the UDF and becoming part of LDF. A splinter group led by the General Secretary Smt.K.R.GowriAmm left the UDF to join the LDF led by CPI(M). According to RWs1 and 2 the JSS led by Shri.A.N.RajanBabu is the real JSS and the other group led by Smt.K.R.GowriAmm is only a splinter group. Shri.Ponnappan is the District Secretary of the JSS led by Shri.RajanBabu and the respondents belong to the JSS led by Shri.A.N.RajanBabu. PW2, Shri.Anil Kumar is not the District Secretary of their party and he has no authority to issue whip to them, RW1 states. The evidence of RW2 is also to that effect.

17. It is a fact that the petitioner and respondents contested in the Panchayat election and got elected as the candidate of JSS. It was the then District Secretary of the JSS party who recommended the party symbol for them to contest the election as JSS candidates. Admittedly the District Secretary of the JSS is the competent person to allot the symbol and he is the competent person to issue whip also, to the members. Exts.P1 and P2 are the copies of the whips issued in this case by PW2 to the respondents and admittedly they received the whips and after receiving the same they abstained from attending the election meeting in question violating the whip issued by PW2. The contention of the Respondents is that there was a split in JSS over the issue of leaving UDF. The General Secretary, Smt.K.R.GowriAmm and her small group were in favour of the JSS

leaving the UDF and the majority of the members led by Shri.A.N.RajanBabu was against that. On account of that a split occurred. One faction led by Smt.K.R.GowriAmmma and other faction by Shri.A.N.RajanBabu. The respondents belong to the JSS led by Shri.A.N.RajanBabu and the petitioner belongs to the group led by Smt.K.R.GowriAmmma. According to the respondents the JSS led by Shri.A.N.RajanBabu is the real JSS and the whip issued by PW2 Shri.Anil Kumar is not binding on them. PW2 is the District Secretary of the small faction led by Smt.K.R.GowriAmmma. Hence their abstention, according to RW1, from voting on 03.03.2014 disobeying the whip issued by PW2 will not amount to defection inviting disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act.

18. It may be noted that there was only one JSS at the time of the Panchayat election held in 2010 and its General Secretary was Smt.K.R.GowriAmmma. The alleged existence of JSS with the name RajanBabu in bracket, is a new development. There is nothing in evidence to show that the JSS of which Smt.K.R.GowriAmmma is the General Secretary is not in existence and the faction led by Shri.A.N.RajanBabu is the real JSS. Admittedly no such recognition was given by the Election Commission of India to JSS of Shri.A.N.RajanBabu. As the respondents contested and elected as members of JSS they are bound by the direction of that party. They cannot contend that they are not bound by the whip issued

by PW2 stating that there is a split in the party and they belong to a different faction of the party. It is only at the risk of being disqualified they can take such a stand.

19. Evidence of RWs1 and 2 is that the District Secretary of their above of JSS is one Ponnappan and hence the whip issued by PW2 the Secretary of the other group is not binding on them. But there is nothing to show that their group is the original JSS and that Shri.Ponnappan is the District Secretary of the JSS as contended by them. He is not examined also as a witness in these cases. It is in evidence that PW2 Shri.C.M.Anil Kumar who issued the whip in this case is the District Secretary of JSS. He was elected as the Secretary of Alappuzha District committee of JSS in the District committee meeting held on 13.01.2014. Ext.P6 minutes would show that the said fact. I do not find anything in these cases to discard Ext.P6. It is futile to contend that abstention of the respondents will not amount to defection as there was a split in the party and their faction of JSS does not recognize PW2 as the District Secretary. Whether the respondents accept PW2 as their District Secretary or not is left to their domain and their acceptance of PW2 has no role to play in this case. PW2 is the duly elected Secretary of the District Committee Alappuzha. The respondents may have their own reservation about him and that has nothing to do with this case. As PW2 is the Alappuzha District Secretary of JSS the respondents are bound by the directions issued by him. Defying the direction is certainly at

their risk. Further, it is to be stated that no argument was addressed in these cases from the side of respondents.

20. Indisputably, the respondents received the whips in these cases and by their conduct of abstention from the election meeting they defied the direction of the party. Their abstention is without any excuse and certainly it will amount to defection. It is submitted by the learned counsel for the petitioner that the faction led by Shri.A.N.RajanBabu now formed yet another party and it a part of another Front. There is no material before me regarding that aspect. Anyway that is not a matter to be considered in these petitions.

21. Section 3(1)(a) of the Act has two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership of such political party and second limb comes 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. 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.ZachillhuAIR (1993) SCC 412*” 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 incurse 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."

23. In the decision reported in 2008 (3) KHC 267 in (Faisal P.A. Vs. K.A.AbdullaKunhi) it was 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.”

24. 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 the respondents in having abstained from the election meeting held on 03.03.2014 would clearly demonstrate that they became disloyal to the party which elected them as members. It is found above that the direction given by PW2 to attend the election meeting held on 03.03.2014 and to vote in favour of the Vice President candidate nominated by the party, was duly communicated to the respondents and the receipt of the same was admitted by the respondents. Admittedly they disobeyed the whip. According to them they belong to a different faction of JSS and that was why they violated the whip issued by the Secretary of

the other group. But they cannot escape from the clutches of Section 3(1)(a) of the Act under the pretext of the alleged split in the party.

25. It is found above that PW2 is the Alappuzha District Secretary of JSS and it was he who issued the whip and he is the competent person to issue the whip. The respondents did not obey the whip. The respondents' abstention from the election meeting on 03.03.2014 defying the direction of the party inviting disqualification is clearly established in these cases. According to the Father of Nation Mahatma Gandhi politics without principle is one of the seven capital sins to be deprecated. Political defection is one of the grave vices in that group. The menace of defection, certainly, is to be curbed.

26. Ongoing through the entire evidence and the circumstances in these cases I will have to necessarily hold and I hold that the respondents have committed defection and they have voluntarily given up their membership from the party in which they belong as provided by Section 3(1)(a) of the Act and therefore they became subject to disqualification for being members of AroorGrama Panchayat. Points are answered accordingly.

In the result, both these petitions are allowed and the respondents are declared as disqualified for being members of AroorGrama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the respondents are also declared as disqualified for

contesting as candidates in an election to any local authorities for a period of 6 years from this date, as provided by Section 4(3) of the Act.

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

Pronounced before the Commission on this the 8th day of July 2016

Sd/-

**V.BHASKARAN,
STATE ELECTION COMMISSIONER**

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri.V.K.Gowreesan,Gowreesabhavanam,
Chandiroor P.O., Cherthala, Alappuzha
- PW2 : Sri.AnilKumar,Alappuzha

Witnesses examined on the side of the respondent

- RW1 : Smt.AjithaRamesan
- RW2 : Shaji, Ezhupunna P.O

Documents produced on the side of the petitioner

- P1 : Copy of the whip issued to Smt.NiceyLawrance
byShri.C.M.Anil Kumar, District Secretary,
J.S.S.Alappuzha (Marked through PW1)
- P2 : Copy of the whip issued to Smt.AjithaRamesan
byShri.C.MAnilkumar, Secretary, JSS, Alappuzha
District Committee (Marked through PW1)

- P3 : Letter No.AB.2-47/07 dated 07.03.2014 of the Assistant Executive Engineer, PWD Building (Markedthrough PW1)
- P4 : Copy of the minutes of the 6th District Conference of JSS held on 7,8 January 2014. (Marked through PW2)
- P5 : Copy of the minutes of JSS, Aroor Panchayat Committee, held on 31.10.2010 (Marked through PW2)
- P6 : Minutes Book of JSS Aroor District Committee, Alappuzha (Marked through PW2)
- P6(a) : Minutes of the meeting (District Conference) held on 7,8 January 2014 (Marked Through PW2)
- P7 : Minutes Book of JSS Aroor Panchayat Committee (Marked through PW2)
- P7(a) : Minutes of the meeting held on 31.10.2010 (Markedthrough PW2)

Document produced on the side of the respondents

- R1 : Copy of the declaration in form No.2 filed by Shri.V.K.Gowreesan, Member (Marked through PW1)
- R1(a) : Copy of the declaration in form No.2 filed by Smt.NicyLawrance, member (Marked through PW1)
- R1(b) : Copy of the declaration in form No.2 filed by Smt.AjithaRamesan, member, (Marked through PW1)
- R2 : Copy of the register showing the party affiliation of the members of AroorGrama Panchayat (Marked through PW1)

- R3 : Copy of the declaration in form No.2 filed by Smt.AjithaRamesan, member (Marked through RW1)
- R4 : Copy of the register showing the party affiliation of the members (Marked through RW1)
- R5 : Notice of District Convention of JSS (RajanBabu) (Marked through RW1)
- R6 : Notice of Kollam District Convention of JSS (RajanBabu) (Marked through RW1)
- R7 : Copy of the report of JSS, District Committee, Kozhikode, (Marked through RW1)

Sd/-
V.BHASKARAN
STATE ELECTION COMMISSIONER

//True Copy//