

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

**PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER**

**Wednesday, the 26<sup>th</sup> day of July 2017**

**O.P.Nos.23/2015, 24/2015, 25/2015, 26/2015,27/2015,28/2015 &  
29/2015**

**O.P.No.23/2015**

Petitioner : Josekutty Areeparambil,  
S/o Mathew,  
Areeparambil, Santhigram. P.O.,  
Erattayar, Kattappana.  
Idukki District-685 514.  
Member, Ward No.08,  
Erattayar Grama Panchayat

**(By Advs.M. Hashim Babu &Sajitha.S)**

Respondent : Betty Thomas,  
W/oThomas,  
Padalamkunnel, Chempakappara P.O.,  
Erattayar, Katappana,  
Idukki District 685 514.  
Member, Ward No.01,  
Erattayar Grama Panchayat

**(By Adv. Kallambalam S.Sreekumar)**

**O.P.No.24/2015**

Petitioner : Josekutty Areeparambil,  
S/o Mathew,  
Areeparambil, Santhigram. P.O.,  
Erattayar, Kattappana,  
Idukki District – 685 514.  
Member, Ward No.08,  
Erattayar Grama Panchayat

**(By Advs.M. Hashim Babu & Sajitha.S)**

Respondent : Shaji Souriyankuzhy,  
S/o Joseph,  
Souriyankuzhiyil, Uppukandom P.O.,  
Erattayar, Kattappana,  
Idukki District 685 514.

Member, Ward No.09,  
Erattayar Grama Panchayat

**(By Adv. Kallambalam S.Sreekumar)**  
**O.P.No.25/2015**

Petitioner : Josekutty Areeparambil,  
S/o Mathew,  
Areeparambil, Santhigram. P.O.,  
Erattayar, Kattappana,  
Idukki District – 685 514.

Member, Ward No.08,  
Erattayar Grama Panchayat

**(By Advs.M. Hashim Babu & Sajitha.S)**

Respondent : Appukuttan Kuttappan,  
S/o Kuttappan,  
Tharayil, Ezhukumvayal P.O.,  
Erattayar, Kattappana,  
Idukki District 685 514.

Member, Ward No.03,  
Erattayar Grama Panchayat

**(By Adv. Kallambalam S.Sreekumar)**  
**O.P.No.26/2015**

Petitioner : Josekutty Areeparambil,  
S/o Mathew,  
Areeparambil, Santhigram. P.O.,  
Erattayar, Kattappana,  
Idukki District – 685 514.

Member, Ward No.08,  
Erattayar Grama Panchayat

**(By Advs.M. Hashim Babu & Sajitha.S)**

Respondent : Dani Saji,  
W/o Saji,  
Varavukalayil House,  
Santhigram P.O.,  
Erattayar, Kattappana,  
Idukki District – 685 514.  
Member, Ward No.13,  
Erattayar Grama Panchayat

**(By Adv. Kallambalam S.Sreekumar)**  
**O.P.No.27/2015**

Petitioner : Josekutty Areeparambil,  
S/o Mathew,  
Areeparambil, Santhigram. P.O.,  
Erattayar, Kattappana,  
Idukki District – 685 514.  
Member, Ward No.08,  
Erattayar Grama Panchayat

**(By Advs.M. Hashim Babu & Sajitha.S)**

Respondent : Thressiyamma Francis,  
W/o Francis,  
Urambil, Eattithope. P.O.,  
Erattayar, Kattappana,  
Idukki District- 685 514.  
Member, Ward No.02,  
Erattayar Grama Panchayat

**(By Adv. Kallambalam S.Sreekumar)**  
**O.P.No.28/2015**

Petitioner : Josekutty Areeparambil,  
S/o Mathew,  
Areeparambil, Santhigram. P.O.,  
Erattayar, Kattappana,  
Idukki District – 685 514.  
Member, Ward No.08,  
Erattayar Grama Panchayat

**(By Advs.M. Hashim Babu & Sajitha.S)**

Respondent : Thomas Abraham,  
S/o Abraham,  
Maniplackal House, Vazhuvara. P.O.,  
Erattayar, Kattappana,  
Idukki District -685 514.  
Member, Ward No.11,  
Erattayar Grama Panchayat

**(By Adv. Kallambalam S.Sreekumar)**

**O.P.No.29/2015**

Petitioner : Josekutty Areeparambil,  
S/o Mathew,  
Areeparambil, Santhigram. P.O.,  
Erattayar, Kattappana  
Idukki District – 685 514.  
Member, Ward No.08,  
Erattayar Grama Panchayat

**(By Advs.M. Hashim Babu & Sajitha.S)**

Respondent : Baby Pathipallil,  
S/o Joseph, Pathipallil,  
Erattayar P.O.,Kattappana,  
Kttappana, Idukki District-685 514.  
Member, Ward No.07,  
Erattayar Grama Panchayat

**(By Adv. Kallambalam S.Sreekumar)**

These petitions having come up for hearing on the 14<sup>th</sup> day of July 2017, in the presence of Advs. **M.Hashim Babu &Sajitha.S** 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 petitions are filed under Sections 3 and 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have committed defection and hence became disqualified to continue as members of Erattayar Grama Panchayat and also for declaring them as disqualified to contest as candidates in any election of the local body for a period of six years.

2. As the questions of law and facts involved in all the petitions are common, they were taken up together treating O.P.No.23/2015 as the main case. Petitioner in all the petitions is one and the same person.

3. Common case of the petitioner in all the petitions in brief is as below:-  
The Petitioner and respondents were elected members of Erattayar Grama Panchayat in Idukki District in the election held in October 2010. Petitioner was elected from ward No.8 as the candidate of Indian National Congress. Respondents in O.P. 23/2015 and 24/2015 were also elected as the candidates of Indian National Congress and they were elected from ward Nos.1 and 9 respectively. Respondents in O.P.Nos.25/2015, 26/2015, 27/2015, 28/2015 and 29/2015 were elected as the candidates of Kerala Congress (M) and they were elected from ward Nos.3,13,2,11 and 7 respectively. The Indian National Congress (INC) and Kerala Congress (M) (KC(M)) contested the election on a

common political platform by name United Democratic Front (UDF) in Erattayar Grama Panchayat and also at the state level.

4. There are 14 wards in Erattayar Grama Panchayat and out of that the Congress led UDF got 13 seats –INC- 7 and KC(M) - 6. The remaining one seat was won by an independent supported by Left Democratic Front (LDF). As the UDF got majority they decided to form the Panchayat board. There was an understanding to share the posts of the President and Vice President of the Panchayat equally between Indian National Congress and Kerala Congress (M). Though the Indian National Congress is entitled to get the first term of presidentship as they have 7 members, Shri.Baby Pathippallil of Kerala Congress (M) insisted to allot the first term to Kerala Congress (M). As the DCC President told the Indian National Congress members to have adjustment Shri.Baby Pathippallil was elected to the post of President for a specific period of 2½ years. The nominee of Indian National Congress Smt.Rejani Saji was elected as the Vice President. Though Shri.Baby Pathippallil was directed to resign from the post of President after 2½ years by the District President of the Kerala Congress (M) and other UDF leaders he refused to resign. As Shri.Baby Pathippallil disobeyed the direction of the party the parliamentary party and the political leaders took a decision to move a no confidence motion against Shri.Baby Pathippallil and the motion was decided to be discussed on 16.01.2015. On 16.01.2015 morning Shri.Baby Pathippallil resigned from the

post and the motion was hence not taken up. The Vice President also resigned from the post on 20.01.2015.

5. Fresh election to the post of President was decided to be held on 07.02.2015. The parliamentary party meeting of the Indian National Congress was held on 05.02.2015 and Shri.Reji Ilipulikkattil was unanimously decided to be the President candidate. All the 7 members of Indian National Congress including the respondents in O.P.Nos.23/2015 and 24/2015 attended the meeting. The DCC President Shri.Roy K.Poulose issued whip to all INC members on 06.02.2015 directing them to vote in favour of Shri.Reji Ilipulikkattil. All the INC members except the respondents in O.P.23/2015 and 24/2015 accepted the whips and whips to respondents in O.P.23/2015 and 24/2015 were affixed on the walls of their respective houses and thus served by affixture. Copy of the whip was served to the Secretary of the Panchayat, also. The respondents in O.P.23/2015 and 24/2015 were fully aware of the whip and the decision of their party. Similarly the parliamentary party meeting of Kerala Congress (M) members was convened by the District President of Kerala Congress (M) and he also issued whips to all the elected members of Kerala Congress (M) to vote in favour of Indian National Congress nominee Smt.Reji Ilipulikkattil for the post of President. But the respondents in O.P. 25/2015 to 29/2015 did not attend that meeting. The whips were hence affixed on the walls of their respective houses. The respondents in O.P. 25/2015 to 29/2015 were

fully aware of the whip and the decision of the party to elect Shri.Reji Ilipulikattil as the President of Erattayar Grama Panchayat.

6. When the election meeting was held on 07.02.2015 the respondent in O.P.24/2015 Shri.Shaji Souriyankuzhi, INC member himself became a candidate for the post of President against the official candidate of INC/UDF Shri.Reji Ilipulikattil and other respondents supported and voted in favour of Shri.Shaji Souriyankuzhi. The official candidate of UDF Shri.Reji Ilipulikattil and Shri.Shaji Souriyankuzhi got 7 votes each and in the lot Shri.Shaji Souriyankuzhi found victory and he was declared elected as the President. The respondents were well aware of the decision and the interest of their parties. By defying the direction of their respective parties they voted against the official candidate Shri.Reji Ilipulikattil and by doing so they committed defection. Respondents have shown disloyalty towards their political parties and betrayed the electorate. By their conduct the respondents in O.P.23/2015 and 24/2015 voluntarily gave up their membership in Indian National Congress and the respondents in O.P.25/2015 to 29/2015 voluntarily abandoned their membership in Kerala Congress (M). The respondents thus incurred disqualification as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the petitioner filed these petitions for a declaration to that effect.



7. The respondents filed statement of objections raising common contentions which in brief are as below,- Baseless allegations are alleged against the respondents with malafide intention to oust the respondents. These petitions are not maintainable. It is true that the respondents in O.P.23/2015 and 24/2015 were elected to Erattayar Grama Panchayat as candidates of Indian National Congress and the respondents in O.P.25/2015 to 29/2015 as candidates of Kerala Congress (M). The Indian National Congress and Kerala Congress (M) got 7 seats and 6 seats respectively in the election out of the total 14 seats in Erattayar Grama Panchayat. The remaining one seat was won by an independent supported by Left Democratic Front. Shri.Baby Pathipallil was elected as the President of the Panchayat and he did not do anything against the interest of the Indian National Congress. The Indian National Congress nominee was elected as the Vice President. Later as per the direction of the party the President and the Vice President resigned from their posts. The parliamentary party or the political party did not decide to elect Shri.Reji Ilipulikattil as the President of the Panchayat at any point of time. No parliamentary party meeting was held on 05.02.2015. No whip was issued to the elected members as alleged to elect Shri.Reji Ilipulikattil as the President. The alleged affixture is false. Shri.Shaji Souriyankuzhi was the official candidate of UDF and the respondents acted in accordance with the direction of the party and parliamentary party. There was no act of defection on the part of the respondents as alleged. The respondents never acted against the interest and direction of their political party. The

petitions are without any bonafides. The petitioner is not entitled to get any reliefs in these petitions and the same are only to be dismissed.

8. The evidence in these cases consists of the oral testimonies of PWs1 to 4, RWs1 to 4 and Exts.P1 to P9 and B1 to B5.

9. Both sides were heard.

10. The following points arise for consideration;

- (1) Whether the petitions are maintainable?
- (2) Whether the respondents in O.P.23/2015 and 24/2015 have disobeyed the decision and direction of the Indian National Congress and the DCC President as alleged?
- (3) Whether the respondents in O.P.25/2015 to 29/2015 have disobeyed the decision and direction of the Kerala Congress(M) and the District President of Kerala Congress (M) as alleged?
- (4) Whether the respondents have committed defection as contemplated under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (5) Whether the respondents in O.P.23/2015 and 24/2015 have voluntarily given up their membership in Indian National Congress as alleged?
- (6) Whether the respondents in O.P.25/2015 to 29/2015 have voluntarily given up their membership from Kerala Congress (M) as alleged?
- (7) Whether the petitioner is entitled to the declaration prayed for?
- (8) Reliefs and costs?

11. **POINT No.(1)**: These seven petitions are filed under Sections 3 and 4 of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks a declaration that the respondents have committed defection and hence they became disqualified to be the members of Erattayar Grama Panchayat and also from contesting as candidates in any election to local body for a period of six years.

12. The petitioner and respondents were elected members of Erattayar Grama Panchayat in the election held in October 2010. The petitioner and respondents in O.P.23/2015 and 24/2015 were elected as the candidates of Indian National Congress (INC) and the respondents in O.P.Nos.25/2015, 26/2015, 27/2015, 28/2015 and 29/2015 were elected as the candidates of Kerala Congress (M). The INC and KC(M) contested the election forming political coalition by name United Democratic Front (UDF). The respondent in O.P.No.29/2015 Shri.Baby Pathippallil of the KC(M) was elected as the Panchayat President. It is stated that there was some dispute in UDF regarding the presindetship and later Shri.Baby Pathippallil resigned from the post. Fresh election was scheduled to be held on 07.02.2015.

13. According to the petitioner the UDF decided to nominate Shri.Reji Ilipulikkattil of Indian National Congress as the candidate for the post of the President. The Idukki District Congress Committee President and the Idukki District President of Kerala Congress (M) issued whips to the elected members of their respective parties to vote in favour of the UDF candidate Shri.Reji

Ilipulikkattil. When the election was held on 07.02.2015, it is stated, the respondent in O.P.No.24/2015 Shri.Shaji Souriyankuzhi of Indian National Congress himself became a candidate and contested against the official candidate of the Congress led UDF disobeying and defying the direction of his party and the whip issued by PW2. The respondents in O.P.23/2015 and O.P.Nos.25/2015 to 29/2015 supported Shri.Shaji Souriyankuzhi. Instead of casting their vote in favour of the official candidate Shri.Reji Ilipulikkattil, the respondent in O.P.No.24/2015 himself contested against him and got elected with the support of other respondents. According to the petitioner the respondents defied the direction of their political parties and committed defection and thereby they incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. As against that the contention of the respondents is that they have not committed any act of defection and they denied all allegations in the petitions. It is also their case that the above original petitions are not maintainable.

14. 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.

15. The petitioner being a member of the local authority is certainly entitled to file these petitions as per law. 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.

**16. POINT Nos.2 to 8:** Case of the petitioner as stated above is that the respondents committed defection by acting against the interest of their political parties and defying the direction of their parties and thereby they incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner and respondents were elected members of Erattayar Grama Panchayat in the election held in October 2010. The petitioner and respondents in O.P.Nos 23/2015 and 24/2015 were elected as candidates of Indian National Congress and the respondents in O.P.Nos 25/2015 to 29/2015 as candidates of Kerala Congress (M). Exts.P1 series declarations given by the petitioner and respondents to the Secretary of the Panchayat after the election and Ext.P2 register would show the party affiliation of the petitioner and respondents. There is no dispute over that aspect. The Indian National Congress and Kerala Congress (M) contested the election as part of a political coalition by name United Democratic Front.

17. There are 14 wards in Erattayar Grama Panchayat and out of which the Congress led UDF got 13 seats - INC got 7 and KC(M)-6. The remaining

one seat was won by an independent supported by CPI(M). As the United Democratic Front got majority it decided to form the Panchayat board. According to PW1, the petitioner there was an understanding with regard to the sharing of the post of the Panchayat President equally between the Indian National Congress and Kerala Congress (M) and as per that the first half was allotted to Kerala Congress (M) and the second half to the Indian National Congress. Consequently Shri.Baby Pathipallil of Kerala Congress (M), the respondent in O.P.29/2015 was elected as the Panchayat President for the first half and Smt.Rejani Saji of Indian National Congress as the Vice President. After the first half, it is stated, Shri.Baby Pathipallil refused to resign from the post despite the direction of the leaders of Kerala Congress (M) and the United Democratic Front. Later no confidence motion was moved against him and it came up for discussion on 16.01.2015. On 16.01.2015 morning Shri.Baby Pathipallil resigned from the post of the President and hence the motion was not taken up for discussion. Later Smt.Rejani Saji also resigned from the post of Vice President.

18. Fresh election to the post of the President was scheduled to be held on 07.02.2015. Ext.P3 is the copy of the election notice issued by the Returning Officer. According to PW1 Shri.Reji Ilipulikkattil of Indian National Congress was decided to be the candidate of UDF for the post of the Panchayat President, in the meeting of the parliamentary party held on 05.02.2015 and Ext.P9(a) minutes would show the said fact. PW2 the DCC President, Idukki and the

District President of Kerala Congress (M) issued whips to the elected members of INC and KC(M) respectively, directing them to vote in favour of Shri.Reji Ilipulikkattil. Ext.P4 is the copy of the whip issued by PW2 to the elected members of INC and Exts.P6 series are the copies of the whips issued by the then District President of KC(M) Shri.Johny Poomattam, to the members of Kerala Congress (M). As the respondents did not accept the whips the same were affixed on the walls of their respective houses, PW1 further states. Copies of the whips were served on the Secretary of Erattayar Grama Panchayat and Exts.P5 and P7 are the acknowledgments for that.

19. When election to the post of the President was held on 07.02.2015 the respondent in O.P.24/2015 Shri.Shaji Souriyankuzhi himself became a candidate and contested against the official candidate of Indian National Congress and other respondents supported him disobeying and defying the direction of their respective political parties. In the election both Shri.Reji Ilipulikkattill and Shri.Shaji Souriyamkuzhi got 7 votes each and in the lot Shri.Shaji Souriyamkuzhi became the President defeating the official candidate of UDF. By contesting against the official candidate of INC and UDF the respondent in O.P.24/2015 and by supporting him and voting against the official candidate, the other respondents, committed defection. By their above conducts they incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, it is further contended.

20. PW2 is the Idukki DCC President and PW3 is the present District President of Kerala Congress (M). Both PW2 and PW3 gave evidence supporting the case of PW1. It is stated by PW2 that he convened the parliamentary party meeting of the elected INC members of Erattayar Grama Panchayat on 05.02.2015 under his leadership and in the said meeting Shri.Reji Ilipulikkattil of Indian National Congress was decided to be the candidate for the post of Panchayat President. According to him Ext.P9(a) is the minutes of the said meeting and Ext.P9(a) would show that a meeting of the elected members of Indian National Congress was held on 05.02.2015 and Shri.Reji Ilipulikkattil was decided to be the candidate for the post of the Panchayat President. Incidentally it is to be stated that the President election as per Ext.P9(a) was on 17.02.2015 and not on 07.2.2015 and PWs 1 and 2 have no case that there is mistake in the election date shown in Ext.P9(a).

21. It is further stated by PW2 that he has issued whips to all the elected members of Indian National Congress directing them to vote in favour of Shri.Reji Ilipulikkattil and Ext.P4 is the copy of the whip. The respondents in O.P.Nos.23/2015 and 24/2015 disobeyed the direction of the party and acted against the interest of the Indian National Congress. PW3 is the District President of Kerala Congress (M), Idukki District. During the relevant time Shri.Johny Poomattam was the District President and it was he who issued Exts.P6 series whips to the KC(M) members, the respondents in O.P.25/2015. Later Shri.Johny Poomattam died and PW3 is the present District President of



Kerala Congress (M). PW3 is familiar with the signature of his predecessor in office and he identified the signatures of Shri.Johny Poomattom in Ext.P6 series. According to him Shri.Reji Ilipulikkattil was the official candidate of Congress and UDF for the post of the President and Exts.P6 series whips were issued to the respondents in O.P.25/2015 to 29/2015 directing them to vote in favour of Shri.Reji Ilipulikkattil. To him the respondents in O.P.25/2015 to 29/2015 disobeyed the whips and acted against the direction of the party.

22. PW4 is the Idukki District Secretary of Kerala Congress (M). Evidence of PW4 is also to the effect that the respondents in O.P.25/2015 to 29/2015 disobeyed the whips and direction of the KC(M) and they cast their vote in favour of Shri.Shaji Souriyankuzhi who contested against the official candidate. It is also stated by him that the respondents in O.P.25/2015 to 29/2015 refused accept the whip and hence the same were affixed on the walls of their respective houses.

23. Case of the respondents, as stated above, is that they did not do any act of defection inviting any disqualification. There was no whip from their political parties as alleged and therefore violation of the same does not arise. It is also their cases that they acted as per the decisions of their parties. Shri.Shaji Souriyankuzi, the respondent in O.P.24/2015 was nominated and supported only by the UDF members and they did not act against the interest of the UDF. RW1is the respondent in O.P.29/2015. According to him Shri.Shaji Souriyankuzhi was the nominee of the UDF for the post of the President and

Shri.Reji Ilipulikkattil was never decided to be the candidate for the post of the President. Accordingly the respondents supported Shri.Shaji Souriyankuzhi in the election on 07.02.2015 and their supporting Shri.Shaji Souriyankuzhi can never be termed as against the interest of their political party. RW2 is the respondent in O.P.28/2015 and RW3 is the respondent in O.P.24/2015. Their evidence, more or less, is on the same lines of RW1. According to RW2 he was elected as the whip of KC(M) parliamentary party in the meeting held on 31.12.2010 and Ext.Ext.B2 minutes book would show the said fact. With regard to the election of the panchayat President on 07.02.2015 a whip was issued by him to the KC(M) members to vote Shri.Shaji Souriyankuzhi and Ext.B5 is the copy of the whip. It may be noted here that no such thing we find in the counter statement of respondents in O.P.25/2015 to 29/2015 and hence no reliance can be placed in Ext.B5 especially in the light of Ext.P6 series issued by the District President of KC(M).

24. RW4 is the President of Erattayar Mandalam Congress Committee. According to him the Indian National Congress has not decided any person as the candidate for the post of the President till 06.02.2015 and as there was no direction from the party he directed Shri.Souriyankuzhi to contest for the post of President as INC nominee. Shri. Reji Ilipulikkattil was not decided to be the candidate of INC or UDF. It is further stated by him that no whip was given to Indian National Congress members regarding the President election till 07.02.2015.

25. There is no dispute over the party affiliation of the petitioner and respondents. It is a matter of admission that the petitioner and respondents in O.P.23/2015 and 24/2015 were elected as candidates of Indian National Congress and respondents in O.P.25/2015 to 29/2015 as candidates of Kerala Congress (M). Exts.P1 series and P2 also would show the said fact. It is also a fact that there were only two candidates in the election held on 07.02.2015 for the post of President and both the candidates were from Indian National Congress. The fact that Shri.Shaji Souriyankuzhi contested for the post of President and other respondents supported him and voted in his favour is not in dispute.

26. Submission of the learned counsel for the petitioner is that Shri.Reji Ilipulikkattil was the official candidate of INC/UDF and direction was issued to the elected members of INC and UDF including the respondents to vote in favour of Shri.Reji Ilipulikkattil. But the respondents disobeyed the direction. Respondent in O.P.24/2015 Shri.Shaji Souriyankuzhi himself became a candidate against the official candidate Shri.Reji Ilipulikkattil and other respondent supported him and thereby they committed defection. Acting in violation of the direction of the political parties alone is sufficient to hold that the respondents have voluntarily given up their membership of the party and hence they are to be disqualified, the counsel further submits. As against that the contention of the learned counsel for the respondents is that there was no decision to nominate Shri.Reji Ilipulikkattil as President and no whip was issued

in these cases to the respondents to vote in favour of Shri.Reji Ilipulikkattil. Shri.Shaji Souriyankuzhi and Shri.Reji Ilipulikkattil belong to one and the same party Indian national Congress and Shri.Shaji Souriyankuzhi did not seek any support from the opposition party or Left Democratic Front. Other respondents supported only a UDF member and they did not act against the interest of UDF. The act of the respondents in these cases would never amount to defection, the counsel further contends.

27. 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 ground of defection and it reads as below:-

***“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.*

*(b) If an independent member belong to any coalition with draws form such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorized by the coalition in its behalf in the manner prescribed votes or abstains from voting,-*

*(i) In a meeting of a municipality, in an election of its President, Vice President, a member of Standing Committee or the Chairman of the Standing Committee or*

*(ii) in a meeting of a Panchayat in an election of its President/Vice President, a member of his 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.*

*(c) if an independent member not belonging to any coalition, joins any political party or coalition, he shall be disqualified for being a member of that local authority.*

*he shall be disqualified for being a member of that local authority.”*

*(2) The direction in writing issued for the purpose of clauses (a) and (b) of sub-section (1) shall be given to the members concerned in the manner as may be prescribed and copy of such direction in writing shall be given to the Secretary of the Local Self Government Institution concerned.*

*(3) Where any dispute arises regarding the direction issued under this section between the political party or coalition concerned and the member authorized in this behalf as prescribed under sub-section (2), the direction in writing issued in this regard by the person authorized by the political party from time to time to recommend the*

*symbol of the political party concerned for contesting in election shall be deemed to be valid*

*Explanation,- For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was [set up or given support] as a candidate for the election*

28. Section 3(1)(a) is the provision relevant in these cases. 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 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.

29. To attract the second limb there must be a written whip, the whip must be communicated and there must be violation of the whip. It is true that a whip was issued in these cases by the District President of the Congress and District President of Kerala Congress(M). Exts.P4 and P6 series and the evidence of PWs 2 and 3 would show the said fact. Whether

the whips were served on the respondents is the question to be looked into them. It may be noted the whip was not personally served and not sent by registered post also. According to the petitioner the whips were affixed on the walls of the respective houses of respondents and hence whips were served by affixture. Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules deals with the service of whips/directions and as per that the whip can be served by three modes serving personally, by registered post with acknowledgment due and by affixture.

30. It may be noted that the whips in these cases were not served personally nor sent by registered post. According to the petitioner the whips in these cases were affixed on the walls of the houses of the respondents and hence served by affixture. But the persons who allegedly took the whips to the houses of the respondents for affixture and the alleged witnesses present therefor affixture are not examined in these cases. Issuance of whips by the DCC President and the District President of the KC(M) alone is not sufficient. The whips issued must be communicated to the respondents and served in the prescribed manner and then only they can be held liable for violation if any. There is nothing in evidence to show that the whips issued in these cases were served or communicated to the respondents in any of the modes above. In the absence such evidence it cannot be said that there is proper and valid whips in these cases. As there is no proper whip it cannot



be said that there is any violation of whips in these cases. So the second limb of Section 3(1)(a) is not attracted in these cases.

31. As per Section 3, as stated above, a member can be disqualified if he has voluntarily given up the membership of the party to which he belongs or acts in defiance of a whip or direction issued by that political party. 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 ground for disqualification under the first and second limbs of Section 3(1)(a) are distinct and are not interlinked as held in the decision reported in **(2015 KHC 454) (Suryaprakash and Others V Kerala State Election Commission, Thiruvananthapuram and others)**.

32. 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 *10<sup>th</sup> schedule to the Constitution of India*. While upholding the Constitutional validity of 10<sup>th</sup> 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 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.”*

33. Now let us consider the first limb of the section. There were two contestants for the post of the President in the election held on 07.02.2015 and they are Shri.Reji Ilipulikkattil and Shri.Shaji Souriyankuzhi. Both of them were from INC which isa constituent of UDF. Kerala Congress (M) is the other constituent. So the contest is between two members of one and the same party INC. Shri.Shaji Souriyankuzhi is the respondent in O.P.24/2015. All the seven respondents voted in favour of Shri.Shaji Souriyankuzhi. Both Shri.Reji Ilipulikkattil and Shri.Shaji Souriyankuzhi got 7 seats each and in the lot Shri.Shaji souriyankuzhi became the President. Ext.P8 minutes would reveal the said fact. Argument of the learned counsel for the petitioner is that Shri.Reji Ilipulikkattil was the official candidate of UDF and hence respondents’ act of not supporting Shri Reji Ilipulikkattil is an act of defection and by their conduct they voluntarily gave up their membership in their political parties.

34. It is found above that there is no proper and valid whip in these cases. In the absence of any whip the respondentsand other UDF members are at liberty to choose either Shri.Reji Ilipulikkattill or Shri.Shaji

Souriyankuzhi as they belong to one and the same party. The dispute then is only regarding the loyalty towards the leader and not the party. Admittedly the respondents did not take support from the opposition party. On the other hand it was Shri.Reji Ilipulikkattil who obtained the support of the lone rival LDF member Smt.Jisha Shaji. The said fact can be seen from Ext.P8. All the members who supported Shri.Shaji Souriyankuzhi were UDF members and no member from opposition party supported him. The act of the respondents is to be viewed in that background also. As there is no whip to the contrary the act of contesting and voting against a member of the same party without taking the aid or support of any opposition without shifting of political loyalty would not constitute defection in terms of Section 3 of the Act. For this I am drawing support from the decision of the Hon'ble High Court reported in **(2015(1) KHC 111) Joseph K.M V.Babychan Mulangasseri and others**). In that case members of the same party moved a no confidence motion against the Panchayat President who was their own party nominee and they voted in favour of the motion. They did not receive or gain any support from opposition party. It was held in that decision that expressing no confidence in the leader of the political party would not amount voluntarily given up of his membership of that political party.

35. What constitutes defection is deserting the political party and not deserting the leader of that political party. An act of a member expressing no faith in another member of the party will not amount to voluntarily giving

up of his membership of that party. The respondents did not support the rival political party nor did they receive the support of LDF. It was Shri.Reji Ilipulikkattil who received the support of LDF member to defeat Shri Shaji Souriyankuzhi.

36. The provisions under the 10<sup>th</sup> schedule and under the Kerala Local Authorities (Prohibition of Defection) Act are intended to curb unprincipled and unethical political defection. In order to draw an inference that the respondents have voluntarily given up their membership of their party there must be concrete proof and that they have acted in defiance of any valid directions of the party. The said voluntarily giving up of the membership should be established by positive reliable evidence.

37. From the available evidence and the circumstances in these cases it is not possible to hold that respondents have committed defection and they have voluntarily given up their membership from their political party as provided by Section 3(1)(a) of the Act as alleged. The petitioner failed to establish a case warranting the declaration prayed for. Points are answered accordingly.

In the result, all the above Original Petitions are dismissed. No costs.

Pronounced before the Commission on this the 26<sup>th</sup> day of July 2017

Sd/-

**V.BHASKARAN,**  
**STATE ELECTION COMMISSIONER**

**APPENDIX**

**Witnesses examined on the side of the petitioner**

PW1 : Shri.Josekutty Areeparambil  
 PW2 : Sri.Roy K.Poulose, DCC President,  
 Idukki District  
 PW3 : Shri. M.J.Jacob  
 PW4 : Shri.Rarichan

**Witnesses examined on the side of the respondent**

RW1 : Shri. Baby  
 RW2 : Shri. Thomas Abraham  
 RW3 : Shri.Shaji Sourajankuzhi  
 RW4 : Shri.Jose Antony

**Documents produced on the side of the petitioner**

P1 : Copy of the declaration in Form No. 2 filed by  
 Smt.Betty Thomas  
 P1(a) : Copy of the declaration in Form No. 2 filed by  
 Smt.Thressiamma Francis  
 P1(b) : Copy of the declaration in Form No. 2 filed by  
 Shri.Appukuttan Kuttappan  
 P1(c) : Copy of the declaration in Form No. 2 filed by  
 Smt.Geemol Saji  
 P1(d) : Copy of the declaration in Form No. 2 filed by  
 Smt.Lillikutty Antony  
 P1(e) : Copy of the declaration in Form No. 2 filed by  
 Smt.Reji Elipulikattu  
 P1(f) : Copy of the declaration in Form No. 2 filed by  
 Shri.Baby Pathipally  
 P1(g) : Copy of the declaration in Form No. 2 filed by  
 Shri.Josekutty Areeparambil  
 P1(h) : Copy of the declaration in Form No. 2 filed by  
 Shri.Shaji Joseph  
 P1(i) : Copy of the declaration in Form No. 2 filed by  
 Smt.Jisha Shaji

- P1(j) : Copy of the declaration in Form No. 2 filed by Shri.Thomas Abraham
- P1(k) : Copy of the declaration in Form No. 2 filed by Shri.Sibi Thomas
- P1(l) : Copy of the declaration in Form No. 2 filed by Shri.Dany Saji
- P1(m) : Copy of the declaration in Form No. 2 filed by Smt.Rajani Saji
- P2 : Copy of the register showing the party affiliation of the members of Erattayar Grama Panchayat
- P3 : Notice for the election of President issued by Returning Officer, Erattayar Grama Panchayat dated 28.01.2015
- P4 : Copy of the whip issued by Shri.Roy K Poulouse, President of DCC Idukki dated 06.02.2015
- P5 : True Copy of the Acknowledgment in Form No.1 issued by the Secretary, Erattayar Grama Panchayat through Right to Service Act-2012
- P5(a) : Copy of the letter dated 06.02.2015 issued by Shri.Roy K.Poulouse, President of Idukki DCC to the Secretary, Erattayar Grama Panchayat
- P6 : Copy of the whip issued by Shri.Johny Poomattom, President, Kerala Congress (M), District Committee, Idukki addressed to Shri.Appukuttan Kuttappan dated 06.02.2015
- P6(a) : Copy of the whip issued by Shri.Johny Poomattom, President, Kerala Congress (M), District Committee, Idukki addressed to Shri.Thomas Abraham dated 06.02.2015

- P6(b) : Copy of the whip issued by Shri.Johny Poomattom, President, Kerala Congress (M), District Committee, Idukki addressed to Shri.Dany Saji dated 06.02.2015
- P6(c) : Copy of the whip issued by Shri.Johny Poomattom, President, Kerala Congress (M), District Committee, Idukki addressed to Smt.Thressiamma Francis dated 06.02.2015
- P6(d) : Copy of the whip issued by Shri.Johny Poomattom, President, Kerala Congress (M), District Committee, Idukki addressed to Shri.Baby Joseph dated 06.02.2015
- P7 : Acknowledgment in Form No.1 issued by the Secretary, Erattayar Grama Panchayat to Shri.Jose Scariya, Kannamundayil, President, Kerala Congress (M)through Right to Service Act, 2012
- P8 : True copy of the minutes book of the meeting for the election of President dated 07.02.2015 at Panchayat Conference Hall
- P9 : Minutes Book of parliamentary party meeting of Congress(I) Mandalam Committee
- P9(a) : Minutes of the meeting of the elected members of INC dated 05.02.2015

**Documents Produced on the side of the respondents**

- B1 : Letter dated 01.03.2016 issued by Professor. M.J.Jacob, President, Kerala Congress (M) District Committee Idukki addressed to Shri.Baby Pathipallil
- B2 : Minutes Book of the Kerala Congress (M) Parliamentary Party, Erattayar Grama Panchayat
- B2(a) : Minutes of the meeting held on 03.12.2010 Erattayar Grama Panchayat
- B3 : True copy of the Order of the Hon'ble Ombudsman for



Local Self Government Institutions dated 25.07.2012

- B4 : Letter dated 01.03.2016 issued by the District General Secretary of Kerala Congress (M), Idukki addressed to Shri.Baby Pathipallil
- B5 : Copy of the whip issued by Shri.Thomas Abraham Kerala Congress (M) dated 07.02.2015

Sd/-

**V.BHASKARAN**  
**STATE ELECTION COMMISSIONER**

//True Copy//