

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

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

**Friday, the 16<sup>th</sup> day of November 2018**

**O.P.No.27/2017**

Petitioner : Lousamma James,  
W/o James, Kochumalayil,  
Vadakkenireppu.P.O.,  
Njezhoor, Kottayam District.  
PIN: 686 612.  
Member, Division No.06,  
Kaduthuruthi Block Panchayat

**(By Adv. Sajitha.S)**

Respondent : Annamma Raju,  
W/o Raju,  
Kochuparambil, Kallara South P.O.,  
Kottayam District.  
Member, Division No.10,  
Kaduthuruthi Block Panchayat

**(Adv. KallambalamS.Sreekumar)**

This petition having come up for hearing on the 7<sup>th</sup> day of **November 2018**, in the presence of Adv. **Sajitha.S** for the petitioner and **Adv.KallambalamS.Sreekumar** 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 Kaduthuruthi Block Panchayat 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 members of Kaduthuruthi Block Panchayat, Kottayam District, in the election held in November 2015. Both of them contested and were elected as the candidates of Kerala Congress (M),(KC(M). There are 13 Divisions(wards) in Kaduthuruthi Block Panchayat and out of which the Indian National Congress (INC) led United Democratic Front (UDF) got 6 seats – Indian National Congress - 2 and Kerala Congress (M)- 4. Similarly the CPI(M) led Left Democratic Front (LDF) also got 6 seats – CPI(M)- 5 and CPI -1. The remaining one seat was won by an independent. The UDF formed the Panchayat board with the support of the independent member. The petitioner was elected as the President of the Block Panchayat and the independent member Shri.K.A.Thomas as Vice President. Ever since the petitioner became the

President the respondent started to move with the LDF and in all matters she was causing disturbance to the functioning of the Block Panchayat.

3. With the intention to unseat the petitioner from the post of the President and also the Vice President, preparation was made to move a no confidence motion against the President and Vice President with the connivance of the Left Democratic Front. The LDF moved a no confidence motion against the President and Vice President. The motion was tabled for discussion on 12.04.2017. A meeting of the parliamentary party of Kerala Congress (M) was convened and it was decided to defeat the motion. The District President of Kerala Congress (M) Shri.E.J.Augusty issued direction to all the Kerala Congress (M) members directing them not to participate in the voting and to protect the President and Vice President. The respondent refused to receive the whip when tendered and hence it was affixed on the front sidewall of herhouse. Though the respondent was aware of the issuance of the whip and the stand of her party the respondent violated the direction and participated in the meeting and voted infavour of the no confidence motion against the nominees of her own party. The motion was carried with the support of the respondent.

4. Thereafter fresh election was scheduled to be held on 09.05.2017 to elect the new President and Vice President. Parliamentary party meeting of Kerala Congress (M) was again held and the party decided the petitioner

to be the President and Shri.K.A.Thomas as Vice President. Whip was issued to all the members of Kerala Congress(M) including the respondent directing them to vote in favour of the petitioner and Shri.K.A.Thomas. The whip issued by District President of Kerala Congress (M) was served on the respondent directly. The whip was sent by registered post also. But the respondent refused to accept the whip sent by post and got the same returned. The respondent had sufficient knowledge about the contents of whip. But she chose to violate the direction of her party and she herself contested for the post of the President with the support of the rival political party and front. In the Vice President election also the respondent violated the direction of her party and voted infavour of the LDF nominee Shri.Sudharman. The respondent colluded with the rival front and acted against the interest of Kerala Congress (M) and caused defeat of her own party nominee. By doing so the respondent voluntarily abandoned her membership from Kerala Congress(M). She is now in the LDF camp. Byviolating 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.

5. The respondent filed counter statement contending as below. The petition is not maintainable. It is true that the petitioner and respondent contested the election and were elected as the candidates of Kerala Congress (M). The Kerala Congress (M) Parliamentary party had never decided to elect the petitioner as the President of the Block Panchayat. On 14.11.2015 the petitioner approached the respondent to vote in her favour as the independent member was ready to support her. As a friend she conceded her request and voted in favour of the petitioner. The independent member Shri.K.A.Thomas is always against the Kerala Congress (M). The respondent did not move anyno confidence motion against the petitioner. Some members moved the motion as they were against the corrupt and illegal acts of the petitioner and it was moved not on political basis. The respondent supported the motion with the consent of the party. There was no whip as alleged and no whip was served also on her both in respect of no confidence motion and election of President and Vice President held on 09.05.2017. It is not correct to say that the respondent has voluntarily given up her membership in Kerala Congress (M). She continues to be a member of Kerala Congress (M) even now. The respondent did not act against the interest of the party and she did not disobey the direction of the party. No whip was read out in the meeting and no copy of the whip was given to the Secretary. The respondent did not do

any act of defection. There is no merit in the petition and hence it is only to be dismissed.

6. The evidence in this case consists of the oral testimonies of PWs1 to 4, RWs1 to 5 and Exts.A1to A23, X1 and X1(a).

7. Both sides were heard.

8.The following points arise for consideration;

(1)Whether the petition is maintainable?

(2) Whether the respondent has disobeyed the direction of her political party as alleged?

(3) Whether the respondent has committed defection as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?

(4) Whether the respondent has voluntarily given up her membership in Kerala Congress (M) as alleged?

(5) Whether the petitioner is entitled to the declaration prayed for?

(6) Reliefs and costs?

9. **POINT No.(1)**: The petitioner and respondent are elected members of Kaduthuruthi Block Panchayat in the election held in 2015. Both of them were elected as the candidates of Kerala Congress (M) party. Out of the 13 seats in Kaduthuruthi Block Panchayat both UDF and LDF

got 6 seats each and one seat went to the independent. With the support of the independent member the UDF formed the Panchayat committee and the petitioner was elected as the President of the Block Panchayat. The independent member Shri.K.A.Thomas was elected as the Vice President. Later, it is stated, the LDF members moved a no confidence motion against the President and Vice President and when it was tabled on 12.04.2017 for discussion the respondent Kerala Congress (M), supported the motion and voted in favour of the of the motion moved against her own party nominees. She violated the direction issued by her party and consequently the motion was carried with her support. Thereafter, fresh election was scheduled to be held on 09.05.2017. According to the petitioner the Kerala Congress party decided the petitioner to be the candidate for the post of President and Shri.K.A.Thomas for Vice Presidentship and the District President of Kerala Congress(M) issued directions to all the elected members of Kerala Congress (M) to elect them. But the respondent did not care to obey the direction of her party. Defying the direction issued by the District President of her party she herself stood as a candidate for the post of the President against the petitioner, her own party nominee with the support of the rival front LDF and became the President defeating the petitioner. By doing so, the petitioner states, the respondent committed defection and incurred disqualification as provided under Section 3 (1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The

respondent denied the allegations. According to her there was no whip from her party and there was no violation of the whip also. To her she did not commit any act of defection incurring disqualification. It is also her contention that the petition is not maintainable. Though such a contention is raised in the counter statement, it is to be stated that there is nothing on her side to show that the petition is not maintainable.

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 party 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 member of the local authority in which the respondent is also a member. The petitioner being a member 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 is that the respondent committed defection by acting against the interest of her political party and also by defying the direction of her party and thereby she incurred disqualification under Section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. As stated above, the petitioner and respondent are elected members of Kaduthuruthi Block Panchayat. Admittedly both the petitioner and respondent were elected as the candidates of Kerala Congress (M). Ext.A1 copy of the register showing the party affiliation of the petitioner and respondent also would show the said fact.

13. There are 13 divisions (seats) in Kaduthuruthi Block Panchayat and both the UDF and LDF got 6 seats each. The remaining one seat was won by an independent. Out of the 6 seats obtained by UDF its constituents KC(M) has 4 seats and the INC has 2 seats. The CPI(M) and CPI in the LDF got five seats and one seat respectively. With the support of the independent member Shri.K.A.Thomas the UDF decided to form the Panchayat board and the petitioner from Kerala Congress(M) was elected as the President and the independent member Shri.K.A.Thomas as the Vice

President. While so the members of LDF, it is stated, with the support of the respondent moved a no confidence motion against the President and Vice President and it was tabled for discussion on 12.04.2017. Notice was issued to the members regarding the meeting for discussing the no confidence motion. Exts.A2 and A3 are the notices issued to the member Shri.JosePuthenkala. Ext.A2 is with regard to the motion against the President and Ext.A3 is with regard to the motion against the Vice President. According to the petitioner the District President Shri.E.J.Augusty issued whip to all the elected members of the Kerala Congress (M) directing them to abstain from the meeting for discussing the no confidence motion against the President and Vice President. The whip was sent to the respondent by registered post. Ext.A5 is the copy of the whip with postal receipt. Further, the whip was served by affixture also and Ext.A4 is said to be the photo of the whip affixed on the front side of the house of the respondent. Though the respondent was aware of the stand of her party to be taken in the no confidence motion, the respondent chose to disobey the same and supported the motion moved against her party nominees by the rival front. With the support of the respondent the motion was carried and the petitioner and ShriK.A.Thomas were unseated from the posts. Exts.A6 and A7 are the copies of the minutes.

14. It is to be stated here that this case is not in respect of the no confidence motion and the stand taken by the respondent in the no confidence motion. The cause of action for this petition as per the petition was on 09.05.2017, the date on which the election for the post of the President and Vice President was held. This case is for the alleged act of defection on the part of the respondent at the time of election of the President and Vice President held on 09.05.2017. PW2 the District President stated that no case was filed against the respondent with regard to the stand taken by her in the no confidence motion as it was thought of giving an opportunity to her to correct her mistake in the President and Vice President election to be held on 09.05.2017. But she continued to defy the party and to disobey the direction of the party. Consequent to the passing of no confidence motion seat of the President and Vice President fell vacant. Election to elect the new President and Vice President was scheduled to be held on 09.05.2017. Exts.A8 and A9 are the election notices issued by the Returning Officer for that. It is stated by PWs 1 to 3 that the KC(M) party decided to nominate the petitioner as the candidate for the post of President and Shri.K.A.Thomas as the candidate for post of Vice President, PW2 is the Kottayam District President of the KC(M) and PW3 is the President of the Kaduthuruthi Mandalam Committee of KC(M). PW4 is another elected member of Kaduthuruthi Block Panchayat belonging to KC(M) party. He also stated about the decision of the Kerala Congress (M)

to field the petitioner as a candidate for the post of President and issuance of whip.

15. It is stated by PW2, the District President of Kerala Congress (M) that he has issued whips to all the elected members of Kerala Congress (M) directing them to vote in favour of the petitioner for the post of President and Shri.K.A.Thomas for the post of Vice President. Ext.A10 is the copy of the whip issued to the respondent to vote in favour of the petitioner and Ext.A11 is the copy of the whip issued to the respondent to vote in favour of the Shri.K.A.Thomas. The whip was sent to the respondent by registered post both in her residential address and on her official address. Exts.A12 to A15 are the postal receipts for that. The respondent was aware of the whip and she, PW2 states, deliberately refused to accept the whip sent to her by post and got returned. Exts.A16 to A19 are the returned postal articles. Copy of the whip was given to the Secretary of Block Panchayat also and Ext.A20 is the receipt for that. Instead of obeying the direction of her party the respondent chose to defy it and she herself stood as candidate of rival LDF front for the post of the President against the petitioner, the candidate of her own party. She defeated the petitioner with the support of LDF members and became the President. In the Vice President election also she cast her vote in favour of the candidate put up by the rival front LDF violating the direction and decision of her party to vote

Shri.K.A.Thomas. To PW2 the respondent disobeyed the whips and acted against the interest of the party and thereby committed defection.

16. Case of RW1, the respondent is that she did not do any act of defection inviting disqualification. There was no whip from her party and no whip was served on her. As there was no whip from her party and the violation of the same does not arise. There was no decision by the party to put up the petitioner as a candidate for the post of President. As no decision from the party the respondent stood as a candidate for the Presidentship and she did not abandon her membership in the Kerala Congress (M), it is further stated.

17. RWs2 to 5 are the other witnesses examined on the side of the respondent. RW2 is a member of CPM Kaduthuruthi Area Committee. RW3 is a member of Kaduthuruthi Block Panchayat and he is a CPI(M) member. According to RWs2 and 3 the respondent contested for the post of President as a nominee of LDF and she contested against the Kerala Congress (M) nominee. In the Vice President election also the respondent voted in favour of the LDF nominee. It is further stated by them that they were not aware of the stand taken by the Kerala Congress (M) party regarding the election for the posts of President and Vice President held on 09.05.2017. Anyway they cannot say anything regarding the decision of the Kerala Congress(M) party. Further, their evidence would show that the respondent is now in the LDF camp as alleged by the petitioner. To them

the Kerala Congress (M) party decided to work with the CPI(M) and it was on that basis the LDF supported the respondent. There is absolutely nothing to show that the Kerala Congress (M) party has taken such a decision. Further, the evidence of her own witnesses RW4 and RW5 would show otherwise. RW4 is the present President of Kottayam District Committee of Kerala Congress (M). He has clearly stated that it was the petitioner who was the candidate of the party for the post of the President in Kaduthuruthi Block Panchayat in the election held on 09.05.2017 and that Shri.K.A.Thomas was the nominee of the party for the post of Vice President. The then District President Shri.E.J.Augusty issued whip to the respondent directing her to vote in favour of the petitioner and Shri.K.A.Thomas and the respondent did not act as per the direction. Similar is the evidence of RW5. RW5 is the former President of the Kottayam District Panchayat. He also stated about the issuance of whip to the respondent directing her to vote in favour of the petitioner and Shri.K.A.Thomas and the respondent did not act as per the direction of the party.

18. Submission of the learned counsel for the petitioner is that the respondent stood as a candidate against her own party nominee with the support of the members of the rival front LDF disobeying the direction of PW2, the District President of her party and thereby committed defection. By doing so the respondent acted against the interest of her political party

and acting against the interest of her political party alone is sufficient to hold that the respondent has voluntarily given up her membership of the party and she is disqualified, the counsel submits. Contention of the learned counsel for the respondent on the other hand is that there was no decision to nominate the petitioner as the candidate for the presidency and no whip was issued and served on her directing to vote in favour of the petitioner and Shri.K.A.Thomas. The respondent did not do any act attracting the provisions of defection, the counsel further contends.

19. 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 relevant provision 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 an voting on a no-confidence motion against any one of them except a member of a Standing Committee.

20. 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.

21. To attract the second part there must be a proper whip and the whip should be communicated and there must be violation of the whip. Admittedly the District President of Kerala Congress (M) is the competent person to issue the whips to the elected members of the Kerala Congress (M) in the local authority of Kottayam District. It is in evidence that PW2 Shri.E.J.Augusty was the President of the Kottayam District Committee of Kerala Congress (M) during the relevant time. The respondent's own witnesses RW4 and RW5 also admitted the said fact. PW2 has clearly stated about the issuance of the whip directing the respondent and other members KC(M) to vote in favour of the petitioner in the President election



and to vote infavour of Shri.K.A.Thomas for the post of the Vice President, in the election held on 09.05.2017. Ext.A10 is the copy of the whip issued to the respondent directing her to vote in favour of the petitioner and Ext.A11 is the copy of the whip to the respondent directing her to vote infavour of Shri.K.A.Thomas for the post of the Vice President. It has also come in evidence that the whips were sent to the respondent by registered post both in her residential and official address. Exts.A12 to A15 are the postal receipts for that. Exts.A12 to A15 would show that the whips were sent to the respondent in her home address on 05.05.2017 and in the official address on 06.05.2017. According to PW1 the respondent deliberately got the same returned by no claiming the same, despite the intimation given to her. Exts.A16 to A19 are the returned postal covers. The postal endorsements on Exts.A16 to A19 would show that the same were sent to the respondent in her correct address and she did not claim the article despite intimation to her. It is admitted by RW1 that the address shown on Exts.A16 and A17 is her residential address and the address on Exts.A18 and A19 is her official address and the letters sent by post on those addresses would be delivered to her. Exts.A12 to A19 would show that the whips were sent to the respondent by registered post with acknowledgment due, in her correct address sufficiently early and she refused to accept the same.

22. According to the learned counsel for the petitioner, the respondent was aware of the contents the letters and decision of her party well in advance and hence she refused to receive the whips sent by post to make out a defence in a case she expected against her. The evidence and circumstances would only lend support to the said contention. The respondent has no case that Exts.A16 to A19 were sent not in her correct address. It is well settled that once a notice has been sent by registered post with acknowledgment due in correct address it must be presumed that the service has been made effective. There is nothing to rebut the said presumption in this case. As the whip was sent by registered post in correct address and the respondent did not claim despite intimation to her it is to be taken that the whips were served on her. Copy of the whip was given to the Secretary of Panchayat also as stipulated in Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules.

23. It may be noted that the respondent is a responsible elected member of Kerala Congress (M) in Kaduthuruthi Block Panchayat and she cannot act according to her whims and fancies and that too against the direction of her own party in the President and Vice President election. She is bound by the direction of her party and disobedience and acting against the interest of the party is nothing but disloyalty. The decision of the party to vote and elect the petitioner as the President and Shri.K.A.Thomas as the Vice President was intimated to the respondent and she was directed to act

as per the direction of the party by issuing whips to her by PW2. But she defied the direction and stood as a candidate against the petitioner, a nominee of her own party with the support the rival front LDF and defeated her own party nominee. Similar is the case in the election of the Vice President. She supported Shri.Sudharman the candidate of the rival LDF and cast her vote in his favour and defeated the candidate fielded by her party and the front. The above acts of the respondent would only show that she has acted against the interest of her party.

24. It may also be noted 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 or acts in defiance of a whip 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 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)** and **2015 KHC 454 (Suryaprakash and others V. State Election Commission, Thiruvananthapuram and others)**. From the conduct of a member an

inference can be drawn that he has voluntarily given up his membership from his political party.

25. 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 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."*

26. 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.”*

27. As stated above the respondent was elected as a member of Kerala Congress (M) party and she is bound by the decision of her party. She cannot act against the interest of her party. It is a matter of admission that the respondent contested as a candidate of the rival front LDF against the petitioner, the nominee of her own party and became the President of

the Block Panchayat defeating the nominee of her own party. According to the learned counsel for the respondent there was no decision of the Kerala Congress (M) to field the petitioner as a candidate and hence the contest of the respondent against the petitioner with the support of the LDF members cannot be termed as against the interest of her party. But it is in evidence that the petitioner contested for the post of the President as per the decision of her political party and District President of the party issued direction to all the elected members of Kerala Congress(M) to vote in favour of the petitioner and elect her as the President and Shri.K.A.Thomas as Vice President. Ext.X1(a) minutes and the evidence of PWs 1 to 4 and also the evidence of the respondent's witnesses RW4 and RW5 would clearly show the said fact.

28. Ext.X1 is the minute book of the Parliamentary party meetings of KC(M), Kaduthuruthy Block Panchayat and Ext.X1(a) is the minutes of the meeting held on 01.05.2017 under the Presidentship of the local MLA Shri.Mons Joseph in the presence of the District President of Kerala Congress (M) Shri.E.J.Augusty and elected members of Kerala Congress (M) in Kaduthuruthi Block Panchayat. Ext.X1(a) would show the decision of the party to nominate the petitioner for the post of the President and Shri.K.A.Thomas for the post of Vice President. It is true that the respondent did not attend the said meeting. But that is not a ground to say that there was no decision of the party to field the petitioner and

Shri.K.A.Thomas as the candidates for the posts. The Kerala Congress (M) has four members in Kaduthurthi Block Panchayat and except the respondent all others voted in favour of the petitioner and Shri.K.A.Thomas. That also would show that it was as per the decision of Kerala Congress (M) the petitioner and Shri.K.A.Thomas contested for the posts.

29. It is in evidence that on earlier occasion also there was instance of taking a different stand by the respondent from that of her political party. There was a no confidence motion moved by the members of LDF and in that, despite the direction of her party she supported the motion moved against the President and Vice President, the nominees of her own party. The counsel for the respondent has a contention that at that time no action was taken against the respondent alleging defection and hence the present case against the respondent is not sustainable. Omission to file a case against the respondent for the alleged act of defection on earlier occasion is not a bar for the petitioner to file this case. Further, it is stated by PW2 the District President that an opportunity was given to the respondent to correct her mistake and they were waiting the stand to be taken by the respondent in the President and Vice President election held on 09.05.2017. The non-filing of the case for the previous act of the respondent will not make the present act legal unobjectionable.



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 to contest against the nominees of her own party with the support of the members of rival political party defying the direction of her party would clearly demonstrate that she became disloyal to the party which elected her as a member of Kaduthuruthi Block Panchayat. The above acts would amount to defection inviting disqualification as alleged and the case put forward by the petitioner against the respondent is clearly established. I do not find anything in this case to take a different view. According to Father of Nation Mahatma Gandhi politics without principle is one of the grave vices in that group. The menace of defection is, certainly, 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 of the party which elected her as member, as provided by Section 3(1)(a) of the Act and therefore she became subject to disqualification for being a member of Kaduthuruthi Block Panchayat. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being member of Kaduthuruthi Block Panchayat 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 16<sup>th</sup> day of November 2018  
Sd/-

**V.BHASKARAN,  
STATE ELECTION COMMISSIONER**

**APPENDIX**

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

PW1 : Smt.Lousamma James  
PW2 : Shri.Augusty E.J  
PW3 : Shri.Mathew P.M  
PW4 : Shri.JosePuthenkala  
:

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

RW1 : Smt.Annamma Raju  
RW2 : Shri.Jayakrishnan.K  
RW3 : Shri.Pramod C.B  
RW4 : Shri.Sunny Sebastian  
RW5 : Shri.SacariyasKuthiraveli

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

- A1 : Copy of the Register showing the party affiliation of the members of Kaduthuruthy Block Panchayat
- A2 : Copy of the notice of no confidence motion against the President of Kaduthuruthy Block Panchayat
- A3 : Copy of the notice of no confidence motion against the Vice President of Kaduthuruthy Block Panchayat
- A4 : Photos
- A5 : Copy of the whip issued by the District President of Kerala Congress (M) Kottayam District Committee to Smt. Annamma Raju dated 09.04.2017 in respect of the no confidence motion against the President and Vice President
- A6 : Copy of the minutes of the meeting of no confidence motion against the President, dated 12.04.2017, Kaduthuruthi Block Panchayat
- A7 : Copy of the minutes of the meeting of no confidence motion against the Vice President, dated 12.04.2017, Kaduthuruthi Block Panchayat
- A8 : Election notice No.G3-28300/2015 dated 26.04.2017 issued by Returning Officer of Kaduthuruthy Block Panchayat to Shri. Jose Puthenkala for the President election
- A9 : Election notice No.G3-28300/2015 dated 26.04.2017 issued by the Returning Officer of Kaduthuruthy Block Panchayat to Shri.C.B.Pramod for the Vice President

election

- A10 : Copy of the whip dated 02.05.2017 issued by Shri.E.J.Augusty, President of KC(M)Kottayam District Committee to Smt.Annamma Raju for the President election
- A11 : Copy of the whip dated 02.05.2017 issued by Shri.E.J.Augusty, President of KC(M)Kottayam District Committee to Smt.Annamma Raju for the Voce President election
- A12 : Postal receipt dated 05.05.2017
- A13 : Postal receipt dated 05.05.2017
- A14 : Postal receipt dated 06.05.2017
- A15 : Postal receipt dated 06.05.2017
- A16 : Unclaimed postal article addressed to Smt.Annamma Raju
- A17 : Unclaimed postal article addressed to Smt.Annamma Raju
- A18 : Unclaimed postal article addressed to Smt.Annamma Raju
- A19 : Unclaimed postal article addressed to Smt.Annamma Raju
- A20 : Receipt dated 08.05.2017 issued by the Secretary, Kaduthuruthi Block Panchayat
- A21 : Postal receipt dated 06.05.2017
- A22 : Copy of the Minutes of the election meeting to elect the President, Kaduthuruthy Block Panchayat dated 09.05.2017

A23 : Copy of the Minutes of the election meeting to elect the Vice President, Kaduthuruthy Block Panchayat dated 09.05.2017

**Documents produced on the side of the witness**

X1 : Kerala Congress (M) Parliamentary Party meeting minutes book in Kaduthuruthy Block Panchayat

X1(a) : Minutes of the meeting of Kaduthuruthi Block Panchayat Kerala Congress (M) Parliamentary Party held on 01.05.2017

Sd/-  
V.BHASKARAN  
**STATE ELECTION COMMISSIONER**

//True Copy//