

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

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

Thursday, the 19th day of March 2015

O.P.Nos.28/2014, 29/2014 AND 30/2014

O.P.No.28/2014

Petitioner : K.Radhakrishnan,
S/o Kumaran,
Manalilthara Puhen Veedu,
Manthrothuruthu P.O.,
Kollam District. PIN 691 502.
Member, Ward No.08,
Manthrothuru Grama Panchayat

(By Adv. S.P.Sohanlal)

Respondent : Usha Shylok,
Member, Ward No.13,
Manthrothuruthu Grama Panchayat,
Kollam District, PIN-691 502.

(By Adv. Panambil S.Jayakumar)

O.P.No.29/2014

Petitioner : K.Radhakrishnan,
S/o Kumaran,
Manalilthara Puhen Veedu,
Manthrothuruthu P.O.,
Kollam District. PIN 691 502.
Member, Ward No.08,
Manthrothuru Grama Panchayat

(By Adv. S.P.Sohanlal)

Respondent : Rajendran,
Member, Ward No.03,
Manthrothuruthu Grama Panchayat,
Kollam District, PIN-691 502.

(By Adv. Panambil S.Jayakumar)

O.P.No.30/2014

Petitioner : K.Radhakrishnan,
S/o Kumaran,
Manalilthara Puhon Veedu,
Manthrothuruthu P.O.,
Kollam District. PIN 691 502.
Member, Ward No.08,
Manthrothuru Grama Panchayat

(By Adv. S.P.Sohanlal)

Respondent : O.Valsala,
Member, Ward No.04,
Manthrothuruthu Grama Panchayat,
Kollam District, PIN-691 502.

(By Adv. Panambil S.Jayakumar)

These petitions having come up for hearing on the 3rd day of February 2015, in the presence of Adv. **S.P.Sohanlal** for the petitioner and Adv. **Panambil S.Jayakumar** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These are petitions filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have become subject to disqualification for being members of Mantrothuruthu Grama Panchayat on the ground of defection. Since these petitions have been filed by a common petitioner and common questions of law and facts arise for consideration in all these cases, they have been taken up jointly and O.P.No.28/2014 is treated as the main case.

2. Common allegations are raised by the petitioner in all these cases which are in short as follows,- The petitioner and respondents contested as candidates of Indian National Congress in the General Election held in October 2010 in various wards of Mantrothuruthu Grama Panchayat and they were elected as members. Out of the 13 wards, Indian National Congress secured 8 seats and CPI(M) secured 5 seats and one CPI(M) member Smt.Sarithamani resigned as member and in the by-election to that ward, a member belonging to Congress party was elected. After the said by-election, the party wise position in the Panchayat has been changed as, Indian National Congress-9 and CPI(M) 4. After General Election, Smt.S.Sobha and Sri.Subramanian belonging to Indian National Congress were elected as President and Vice President respectively. While so these respondents along with the CPI(M) members moved the no

confidence motion against the President and it was scheduled for discussion on 24.04.2014. The Indian National Congress as well as UDF decided to defeat the said no confidence motion and accordingly the DCC President Sri.Prathap Varma Thampan issued whip to all the Congress members including these respondents to vote against the said no Confidence motion. The whip was issued by registered post and the respondents purposefully refused to receive the same. The respondents were having sufficient knowledge regarding the contents of the postal articles. In addition to that, the DCC President sent mobile messages to all the Congress members on 16.04.2014 to vote against the no confidence motion and he also contacted all the members over mobile phone on 22.04.2014 and gave similar instructions. But the respondents by defying the direction issued by the DCC President and also by disobeying the decision of the Congress party voted in favour of the no confidence motion and thus the President belonging to Congress party was out seat. The above act of the respondents is nothing but disloyalty to the party and by such conduct, the respondents have voluntarily given up their membership from the political party in which they are members and they have also violated the whip issued by the party. Therefore the respondents have become disqualified to continue as members of the Panchayat and hence these petitions.

3. The respondents have filed objections raising common contentions which are briefly, as follows,- The petitions are not maintainable either in law or on facts. The petitioner had violated the direction of the political party and committed defection for which proceedings have already been initiated against him and so he has no right to file these petitions. The decision to move the no confidence motion against the President was taken by the Congress party on account of serious complaints raised against the said President. There was serious of discussion and ultimately the President was directed to resign and when she refused, the Congress party decided to move the no confidence motion against her. The allegation that the Congress party and the UDF had decided to defeat the no confidence motion is not correct. No parliamentary party meetings were convened after moving the no confidence motion and the allegation that the DCC President had issued whip by registered post to vote against the no confidence motion is totally false. The respondents had no knowledge about any such letters or its contents. No mobile messages or telephone calls were received by the respondents either from the DCC President or any others with respect to voting on the no confidence motion. The DCC President is neither empowered nor competent to issue whip to the members of the Panchayat. The respondents had supported the motion in tune with the decision of the Congress party and it was when the President refused to step down in violation of the decision of the

party. The respondents were invited in the subsequent Congress Parliamentary party meeting held at the DCC Office in the presence of the KPCC Vice President and other leaders and they had participated in that meeting. They had also complied the direction of the party in the subsequent election to the post of President. They are continuing as members of the party. They had never voluntarily abandoned their membership from the party. The respondents have not committed any defection and the petitions are only to be dismissed.

4. The evidence consists of the oral depositions of PWs1 and 2, RWs1 to 4 and Exts.P1 to P6, R1 to R7 and X1 to X3.

5. Both sides were heard

6. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondents have moved the no confidence motion against the President as decided by the Indian National Congress?
- (iii) Whether the decision of the Congress party was to vote against the no confidence motion as alleged?
- (iv) Whether the DCC President had issued whip to the respondents directing them to vote against the no confidence motion which was scheduled for discussion on 24.04.2014?
- (v) Whether the respondents have become subject to disqualification, on the ground of defection, for being members of Mantrothuruthu Grama Panchayat?

(vi) Reliefs and costs?

7. **POINT No.(i)** : These are petitions filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, (hereinafter referred to as the 'Act'). According to the common petitioner the respondents who were elected as members belonging to Congress party had moved the no confidence motion along with the CPI(M) members against the President belonging to Congress party and by disobeying the decision and direction of the Congress party they along with the CPI(M) members ousted the President by voting in favour of the no confidence motion and thereby they have committed defection. The respondents would contend that the petition is not maintainable. It is also contended that the petitioner is not entitled to file these petitions for the reason that proceedings have been initiated against they have already become disqualified due to violation of the direction issued by the Congress party in respect of the Vice President election. Section 4(1) of the Act states that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act, a member of that local authority or the political party concerned or a person authorized by it in this behalf can file a petition before the State Election Commission for decision. The common petitioner is a member of the same Panchayat in which the respondents also are members. Section 3(1) (a) of the 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 he contrary to any direction of the political party or of 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 etc., or on a no confidence motion he shall be disqualified for being a member of that local authority. In the light of the rival claims, definitely a question arises as to whether the respondents have become subject to disqualification for being members of the Mantrothuruthu Grama Panchayat. The common petitioner being a member of this Panchayat is competent to file these petitions. These petitions are found to have been filed within the period prescribed under Rule 4A(2) of the Kerala Local authorities (Disqualification of Defected Members) Rules which provides 15 days reckoned from the date on which the cause of action arises for filing the petition. No other grounds are taken by the respondents so as to challenge the maintainability of these petitions. Therefore I find that the petitions are maintainable. The point is answered accordingly.

8. **POINT No.(ii):** Certain facts are not in dispute. The common petitioner and the respondents had contested the General Election held in October 2010 to the Mantrothuruthu Grama Panchayat as candidates of Indian National Congress and were elected as members. Exts.P1 to P3 are the copies of declarations filed by the respondents before the Panchayat immediately after their

election as members declaring that they are belonging to Indian National Congress. Ext.P4 is the register maintained by the Secretary of the Panchayat stating the political affiliations of the members which also proves that the respondents are members belonging to Congress party. These documents are not in dispute. Exts.P1 to P3 are declarations filed by the respondents as provided by Rule 3(2)(a) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and Ext.P4 is maintained as provided by Rule 3(1) of the said Rules. Since the petitioner and respondents admit that they were elected as members belonging to Congress party, no further proof is necessary to find that the respondents are members belonging to Congress party. So they are bound to obey the decisions and directions of that party. Out of the total 13 members in the Panchayat, the Congress party secured 9 members and the CPI(M) 4 members. These respondents along with all the members belonging to CPI(M) moved a no confidence motion against the President and the copy of the motion along with the notice expressing their intention to move the motion is marked as Ext.P5.

9. The definite case of the petitioner is that the Congress party had never decided to move a no confidence motion against the President. But the respondents would contend that the said no confidence motion was moved as per the decision of the Congress party and also as per the direction given by the DCC

President. In the light of the above contention, the burden is on the respondents to prove that the no confidence motion was moved as per the decision and direction of the Congress party. The respondents have been examined as RWs 1 to 3. RW1, the respondent in O.P.No.29/2014 has stated at Para 3 in her chief affidavit that several complaints were raised against the President which were discussed in the Block and Mandalam Congress Committee meetings and it was decided to remove her from the post of President. The same statements are contained in the chief-affidavit of RWs2 and 3 who are the respondents in O.P.Nos.30/2014 and 28/2014 respectively. In cross-examination RW1 has deposed that he along with other respondents and LDF members had moved the no confidence motion against the President and before moving the said motion, permission from the DCC President was not obtained. RW1 has further deposed that the DCC President had orally instructed them to move the no confidence motion. To the suggestive question put to RW1 in cross-examination that the DCC President has not given any permission or direction, he has stated that such a permission was orally given. In cross-examination RW2 has deposed that the no confidence motion was moved with the permission of the higher committees. He has further deposed that the DCC President has orally given permission to move the said motion. But RW3 the respondent in O.P.No.28/2014 in cross-

examination has admitted that they did not seek the permission of the DCC President for moving the no confidence motion against the President.

10. In this context the evidence of PW2, who was then the DCC President is of considerable importance. PW2 has deposed that after getting information regarding the no confidence motion moved against the President, he had issued direction to all the Congress members to vote against the said motion and this was as per the decision of the KPCC President also. In cross-examination he has deposed that he had convened the Congress parliamentary party meeting of this Panchayat and it was not on account of getting any complaint against the President of the Panchayat. He has further deposed that Ext.R1 was a complaint received by him and as it contained personal allegations against the President, he did not take any further action on the same. PW2 has further stated that the President was elected for the full time of five years. It was not even suggested in cross-examination to PW2 that the no confidence motion was moved as decided by the Congress party or that the respondents had sought his permission to move such a motion. The evidence of PW2 would categorically prove that the no confidence motion was moved without the permission or decision of the Congress party. Moreover it has also come out from the evidence of PW2 that immediately after getting information regarding the no confidence motion, he had

issued direction to all the Congress members including these respondents to vote against the no confidence motion.

11. The learned counsel for the respondents would argue that after the General Election, the Vice President was elected for three years and after his resignation, in the election to the post of Vice President, the respondent in O.P.No.29/2014 was decided as the candidate and the Panchayat President and others did not vote in his favour and so another member was elected which was against the decision and direction of the Congress party and that was the reason why the no confidence motion moved against the President. PW2, the DCC President has stated that no whip was issued in relation to the election to the post of Vice President and though the person elected as Vice President was not the member decided by the party, he had not issued any whip to the members in that election. There may have been an understanding to elect the respondent in O.P.No.29/2014 as the Vice President after the term of the former Vice President and the President may not have voted in his favour in the Vice President election. But that cannot be considered as a sufficient reason for moving the no confidence motion against the President. The evidence clearly spell out that the no confidence motion against the President was moved without any decision or direction of the Congress party. If the Congress party wanted the then President to resign, the DCC President would have given such a direction. But admittedly,

no such direction was given at any time. Moreover there was no possibility for the Congress party to permit or give consent to its members to move a no confidence motion against their own party nominated President by joining with the members of their rival political party. Such a move would be definitely against the policy and interest of the Congress party. The evidence of PW2 would clearly show that the no confidence motion was moved by the respondents along with the CPI(M) members without the consent or permission of the Congress party. The point is answered against the petitioner.

12. **POINT Nos.(iii) & (iv)**: The petitioner as PW1 has deposed that the respondents along with the CPI(M) members had moved the no confidence motion against the President and the decision of the Congress party was to defeat the said motion. Ext.P5 is the said no confidence motion moved by the respondents along with the four CPI(M) members. PW1 has further deposed that all the respondents had contested the election in the official symbol recommended by the Kollam DCC President and that the DCC President had issued direction to all the respondents to vote against the no confidence motion. PW1 has further deposed that the respondents by disobeying the direction issued by the DCC President had voted in favour of the no confidence motion along with the CPI(M) members and thus the President was ousted from that post. Ext.P6 is the minutes of the discussion and voting on the no confidence motion.

PW1 has further deposed that after removing the President by way of the no confidence motion, the respondents are working along with the CPI(M) members in the Panchayat and they have abandoned their membership from the Congress party. In cross-examination it was suggested to PW1 that the respondent in O.P.No.29/2014 was the candidate decided by the party for the post of Vice President, but the member Shri.Vijayan was elected against that decision with the support of the President and others to which PW1 has deposed that Sri.Vijayan became the Vice President as decided by the Congress party. Even though PW1 has been cross-examined at length, nothing has been brought out to discredit his testimony.

13. PW2, the DCC President has deposed that the Congress party secured clear majority in the Panchayat and the President belonging to Congress party was elected for five years. He has further deposed that the respondents along with the LDF members had moved a no confidence motion against the President in April 2014 and he has given direction to the respondents and all other Congress members to vote against the no confidence motion and he gave such a direction as instructed by the KPCC President also. PW2 has also deposed that the said whip was given by registered post and X1 series are the postal receipts of the same. PW2 has further deposed that the postal articles so sent by him were returned. The whip sent to the respondent in O.P.No.28/2014 which was returned

as 'refused' is marked as Ext.X2. The whip sent to the respondent in O.P.No.29/2014 was returned as 'addressee out of station' and it is marked as Ext.X3. PW2 has also deposed that the whip sent to the respondent in O.P.NO.30/2014 by post was returned and it happened to be misplaced.

14. From Ext.X1 series it is found that the DCC President had issued whip to the respondents by registered post on 16.04.2014. As a matter of fact, such a whip was issued to other Congress members also on the same date as seen from these documents. Ext.X2 sent to the respondent in O.P.No.28/2014 was returned as refused by the addressee and the postal whip sent to the respondent in O.P.No.29/2014 was returned to the addressee on the endorsement, 'addressee out of station'. But intimation of the same was given on 17.04.2014 itself as seen from Ext.X3. The fact that the returned postal cover of the respondent in O.P.No.30/2014 was misplaced and so could not be produced is not of any significance. From Exts.X1 series it is clear that the whip to that respondent also was sent by registered post on 16.04.2014 itself. The no confidence motion was taken up for discussion only on 24.04.2014. Since the registered articles were sent on 16.04.2014 itself and the whip given by post to the respondent in O.P.No.28/2014 was returned as refused on 19.04.2014 and intimation was given to the respondent in O.P.No.29/2014 on 17.04.2014, it has to be held that there was due service of the whip sent by post to all the respondents.

15. The respondents have taken a contention that the DCC President is not the competent person to issue whip to them. In this context clause (iva) of Section 2 of the Act as amended by Act 6/2013 which came into force on 17.01.2012 is important and it reads as follows,-

“(iva) “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 symbol to the candidates of the said political party for contesting in the election, for exercising the vote favorably or unfavorably or to abstain from voting.”

Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules also is relevant in this context and this Rule states that in the case of a member belonging to a political party, the direction in writing shall be given by the person authorized from time to time to recommend the symbol of the political party to its candidates. So from the above provision it is clear that the person competent to issue direction in writing, which is commonly called as whip, is the person competent to recommend symbol to the candidates of that party contesting in the election to the local bodies. The version of PW2 that the DCC President had recommended symbol to the respondents remains unchallenged. Not even a single question has been put to PW2 suggesting that he

was not competent to issue whip to the respondents. On the other hand the entire cross-examination of PW2 is in tune with the admission of the competence of the DCC President to issue whip to the members of the local body. PW2 had given the whip to the respondents in his capacity as the DCC President who is the competent person to recommend symbol to the candidates of that party contesting in the local bodies in the District. It has come out in evidence that PW2 had sent the whip by registered post to the respondents on 14.04.2014 itself. As per Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, a direction in writing is to be issued either directly or by registered post with acknowledgment due or by affixture. In the cases on hand, the direction in writing was delivered by registered post. Section 27 of the General Clauses Act states that when any document is required to be served by post, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. In this context the evidence of RW4 also is relevant. RW4 is the Postman of Peringanam Post Office. He has deposed that Ext.X2 was received in the post office on 17.04.2014 and he had seen the addressee on 18.04.2014 and as the party had refused to receive the same, he had made the endorsement 'refused' on the

envelop. The presumption of service under law on account of sending the whip by registered post in the correct address of the respondents stands not only unrebutted but also further strengthened by the evidence tendered by RW4. On a careful appreciation of the entire facts and materials on record, I find that the decision of the Congress party was to defeat the no confidence motion moved against the then President and that the DCC President had given direction in writing to the respondents to vote against the said no confidence motion. It is with full knowledge of such a direction and decision of the party that the respondents have voted in favour of the no confidence motion. The points are answered accordingly.

16. **POINT Nos.(v) & (vi)**: Whether the conduct of the respondents in having moved a no confidence motion along with the CPI(M) members against their own party President and in having voted in favour of the said motion by disobeying the direction and decision of the Congress party would constitute defection deserves consideration. At Para 6 of the petition it is specifically alleged that the respondents have signed the no confidence motion along with the LDF members against their own party nominated President and unseated her and thereby the respondents have voluntarily given up their membership from their political party. The respondents have not specifically denied Para wise, the allegations contained in the petition. However their definite contention is that

they have not voluntarily given up their membership from the party nor disobeyed any direction issued by the party. In the above context whether the petitioner has succeeded in proving that the respondents have voluntarily given up their membership from the party attracts attention. Admittedly the Congress party secured clear majority by winning nine wards out of 13 and Smt.Sobha belonging to Congress party was elected as President. Admittedly her election as President was for the full term of five years. The fact that the respondent had moved the no confidence motion against their own party nominated President by joining with the four CPI(M) members, vide Ext.P5, is not in dispute. I have already found that the DCC President had issued written direction to all the Congress members including these respondents to vote against the no confidence motion and the said direction was sent by registered post to these respondents evidenced by Exts.X1 series, X2 and X3. It is fully knowing the above decision and direction of the Congress party that these respondents had voted in favour of the no confidence motion along with the CPI(M) members.

17. Section 3(1)(a) of the Act deals with defection in respect of a member belonging to a political party and it reads as follows,-

“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.

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

18. 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 an elected member or a group of 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 from the party. Admittedly the respondents in these cases had moved the no confidence motion along with the four CPI(M) members. Then they, by disobeying the direction of the DCC President had voted in favour of the said motion along with CPI(M) members and ousted the President belonging to their own party. The above conduct of the respondents would definitely attract the first limb of Section 3(1)(a) of the Act. I am fortified to take this view by various decisions of the Hon'ble High Court. In **Varghese V.V. Vs. State Election Commission (2009 (3) KLT 1)** it has been held at Para 8 as follows,-

“To vote against the party is disloyalty. It was this principle as stated in Griffith and Ryle on Parliamentary Functions, Practice and Procedure which was taken note of by the Supreme Court in the celebrated decision in Kihota Hollohan V. Zachillhu, (1992 KHC 694 : 1992 Supp. (2) SCC 651 : AIR

1993 SC 412). The Apex Court held that “any freedom of its members to vote as they please independently of the political party’s declared policies 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 very survival.” Referring to the object behind the 10th Schedule to the Constitution of India dealing with disqualification on the ground of defection, it was held therein that, “the provision is to curb the evil of political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The only remedy would be to disqualify the member...” The Father of our Nation had foreseen the possibility of such cancerous and endangering tendencies in the practice of democracy and hence only the Mahatma said that politics without principle is a vice. No doubt politics is an art. But the beauty of the art is lost when no value is attached to the art. It is to check erosion of the values in democracy the 10th Schedule to the Constitution of India and the Kerala Local Authorities (Prohibition of Defection) Act, 1999 were brought into force.

Looking from that angle we find it difficult to agree with the dictum in Naseera Beevi's case. Not only that, there is no party as 'parliamentary party'. That expression only denotes the wing of the elected members of the political party. Therefore, if a member or a group of the elected members of the 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. In Naseera Beevi's case the rebel group in the parliamentary wing of the political party concerned had not only formed a separate group, but they had voted in favour of the no confidence motion moved by the rival political party. Thus, by their conduct of being disloyal to the political party in which they were members and by voting as they pleased independent of the political party's declared policy, they had incurred the disqualification."

19. This position has been further clarified in **Biju R.S.V.Kerala State Election Commission (2009(2) KHC 839)**. **At Para 17** of the above decision it has been held as follows,-

“Under the Act, a member can be disqualified if he has voluntarily given up the membership of the political party to which he belongs or acts in defiance of a whip/direction issued by the political party. Disqualification for voluntarily giving up the membership of one’s party, is not dependant on the violation of the whip. The intention of the Act is that the member who has violated the whip or has abandoned the membership of the political party to which he belongs shall be disqualified. It is not necessary to hold that the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. The grounds for disqualification are distinct and are not interlinked. Therefore even if this Court were to hold that the petitioner before the Commission has not proved that PW2 had issued and served on the writ petitioners a direction regarding the voting on the no confidence motions that were tabled on 14.05.2008, the Commission was justified in holding

that the petitioners have voluntarily abandoned their membership in the Indian National Congress.”

20. The above decision has been confirmed by the Division Bench of the Hon’ble High Court in Writ Appeal No.795/2009. In **Jancy Chandy V. Jose Puthenkala (2006(4) KLT 116)**. It has been held at **Para 1** as follows,-

“1. Politics without principle is one of the seven capital sins to be deprecated, according to the Father of our Nation, Mahatma Gandhi. Political defection is one of the grave vices in that group. In the statement of objects and reasons for the Fifty-second Amendment to the Constitution introducing Tenth Schedule in order to prevent frequent political defects, it is stated as follows:

“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”.

While up holding the constitutional validity of the Tenth Schedule, the Supreme Court in Kihoto Hollohan V.Zachillhu 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 the disqualification.....A political party functions on the strength of shared beliefs. Its own political stability and social utility depends as 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."

21. From the above decisions it cannot be doubted 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 and decisions of that political party, it is nothing but disloyalty and the moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership from such party. In **Muhammed Kunhi.B. Vs. K.Abdulla (2010 (2) KLT 736)** this position has been further clarified at **Para 24** as follows,-

“ 24. The conduct of the members being important, going by the decision of the Apex Court in Ravi S.Naik’s case, the conduct of the petitioners herein in signing the no confidence motion along with the members of the BJP, voting in favour of the no confidence motion against the 1st respondent, a member of the very same political party and the then Vice President who belonged to the UDF and voting against the candidates of the UDF in the subsequent election and the conduct of the petitioner in WP (C) No.28051/2010 in contesting and getting elected as President against the nominee of the UDF, will squarely attract the vice of disqualification and are sufficient to imply that they

have voluntarily given up membership of the political party which set them up as candidates in the election.”

22. The contention of the respondents is that the prior consensus to elect the respondent in O.P.No.29/2014 as Vice President after the resignation of Sri.Subramanian was not implemented and the then President and certain others had defeated the said respondent in the election to the post of Vice President and got elected another member and so these respondents had moved the no confidence motion as directed by the party. Ext.R1 is relied on in support of the above contention. I have already found that the no confidence motion was moved without seeking the consent or permission of the party and it has also been proved that the said motion was moved against the interest and policy of the party. Moreover it is also found that the respondents had voted in favour of the said motion along with the CPI(M) members by disobeying the decision and direction of the party. In Jancy Chandy's case cited supra, it is held that to vote against the party is disloyalty and joining with others in abstention or voting with other side smacks of conspiracy. It is settled law that the moment one becomes disloyal by his conduct, he is to be treated as having voluntarily given up his membership from the party. All these ingredients are available in these cases.

23. Another contention is that the respondents did not receive the whip said to have been issued by the DCC President and Exts. R2, R4 and R6 are

relied on to prove that they received the notices sent in their official address from this Commission. These records are not of any use to show that the postal articles containing the whip were not taken to them. The respondents do not have a case that the address shown in Exts. X1 to X3 are incorrect. The above communications have been sent in their own address and the presumption is that they had purposely evaded receipt of the same.

24. The respondent would also contend that they were invited to the subsequent parliamentary meeting convened at the DCC office and they had attended that meeting in which the KPCC Vice President Sri.M.M.Hassan and KPCC General Secretary Sri.Sooranadu Rajasekharan also were present and that the respondents are still continuing as active members of Congress party. Exts.R3, R5 and R7 are relied on to support the above contention. These are directions in writing said to have been given by the DCC President directing them to vote in favour of Smt.Achiyamma Elsi Samuvel in the subsequent election to the post of President. The learned counsel for the respondents would argue that even the Congress party did not consider them as having abandoned their membership from the party and that they had obeyed the direction in that meeting. The above argument will not hold hood for the simple reason that the relevant date to decide the issue of disqualification is the date on which the alleged defection has been committed and in these cases it was the date on which

the respondents had voted in favour of the no confidence motion. The subsequent events are not at all relevant for deciding as to whether the respondents have committed defection on account of their conduct exhibited on the date of discussion and voting on the no confidence motion. This position is clarified in **Faisal P.A. V. K.A.Abdulla Kunhi (2008 (3) KLT 534)**. In the above decision it has been held at **Para 14** as follows,-

“14. This submission made by the counsel for the petitioner is sought to be contradicted by the learned standing counsel appearing for the 2nd respondent, mainly relying on the judgment of the Apex Court in Rajendra Singh Rana and Others V.Swami Prasad Maurya and Others. In that case the Apex Court has held that the relevant date for deciding the question of disqualification is the date on which the member voluntarily gives up the membership or defies the whip. The fact that an application subsequently made for recognizing split in the original political party was held of no relevance to decide the issue of disqualification, which was to be decided with reference to the date of defection. It was also held that an interpretation of that nature would lead the disqualification to an indiscriminate point of

time and to the whims of the decision making authority defeating the very object of enacting the law.”

25. In **Muhammed Kunhi. B V. K.Abdulla**, cited supra, also the question whether the disqualification has to be decided with regard to the conduct of the person on the date of election was considered and it has been held that the question of disqualification is to be decided with regard to the conduct of the person on the date of either election or voting on the no confidence motion. In **Nazeerkhan.S. V. Kerala State Election Commission (2009 (1) KHC 681)** it has been held at **Para 11 and 12** as follows,-

“11. Significantly, the petitioner let in evidence to substantiate his contention that he continued to be a member of the Congress party. Reliance placed by him on his response to two whips which were issued subsequent to the date of the election was clearly intended to lent credence to his contention that he continued to be a member of the Congress party. The learned Single Judge has considered this contention in paragraph 24 of the judgment as follows,-

“(1) Counsel contended that even his party did not treat him as having given up his membership and relies on Exts.P5 and P7 whips issued on 16.08.2006 and 02.08.2006, which is subsequent to 17.07.2006 when the election in question was held. The question of

disqualification is a matter to be decided with reference to his conduct on 17.07.2006 and therefore even if he obeyed the subsequent whips, it is immaterial. In so far as Ext.P5 whip is concerned, as is evident from Ext.R2(a) produced by the 2nd respondent, it is obvious that he disobeyed that whip also. In so far as Ext.P7 is concerned, the ingenuity of the petitioner is evident from his conduct on that occasion also in the meeting, even if he had not voted against the whip. Still the no confidence motion would have been carried by the majority. This conclusion is irresistible from the fact that the motion sponsored by the LDF was carried by 11 votes against 9. It was therefore that after contesting against the party's official candidate in the election, petitioner had chosen to obey the subsequently given Ext.P7 whip. Therefore Exts.P5 and P7 do not improve the case of the petitioner in any manner."

12. We are in complete agreement with the said finding of the learned Single Judge."

26. So, in the light of the above settled position of law, I hold that the subsequent events referred to by the respondents in the pleadings and evidence do not have any bearing in deciding the question of defection in these cases. From the discussion held above, I hold that the respondents have voluntarily given up their membership from the Congress party as provided by the first limb as

Section 3(1)(a) of the Act. The petitioner would also allege that the respondents have committed defection by violating the whip issued by the DCC President also. The question whether the respondents have committed defection by voting in favour of the no confidence motion by disobeying the direction in writing issued by the DCC President does not seriously crop up for detailed discussion. However, since the DCC President, who had recommend symbol to these respondents while contesting in the election in this Panchayat has issued the direction in writing to them by registered post as provided by Section 3(1)(a) of the Act and Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, I find that there is substantial compliance of the relevant provisions of the Act and Rules in this behalf and so the second limb of Section 3(1)(a) of the Act also is attracted against them. Therefore I find that the respondents have committed defection as provided by Section 3(1) (a) of the Act and so they have become subject to disqualification for being members of Mantrothuruthu Grama Panchayat. The points are answered.

In the result, the petitions are allowed and the respondents are declared as disqualified for being members of Mantrothuruthu Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and they 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.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 19th day of March 2015

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri.K.Radhakrishnan, Manalithara Puthen Veedu,
Nenmeni, Mantrothuruthu
- PW2 : Sri.Prathapa Varma Thampan, Krishna Kripa,
Thevally P.O.

Witnesses examined on the side of the respondent

- RW1 : Sri.Rajendran, Sivamangalam, Pattamthuruthu P.O.
Mantrothuruthu
- RW2 : Smt.Valsala, Dhanya, Villimangalam,
Mantrothuruthu P.O.
- RW3 : Smt.Usha Shylok, Member,
Mantrothuruthu Grama Panchayat
- RW4 : Sri.John M.K, Munnuchurakkal Puthen Veedu,
Arinallur P.O.

Documents produced on the side of the petitioner

- P1 : Copy of the declaration in Form No.2 submitted by
Smt.Usha Shylok

- P2 : Copy of the declaration in Form No.2 submitted by Sri.G.Rajendran
- P3 : Copy of the declaration in Form No.2 submitted by Smt.Valsala.O
- P4 : Copy of the register showing the political affiliation of the members of Mantrothuruthu Grama Panchayat
- P5 : Copy of the notice to no confidence motion against Smt.S.Sobha, President, Mantrothuruthu Grama Panchayat
- P6 : Copy of the minutes of the meeting held on 24.04.2014 Mantrothuruthu Grama Panchayat

Documents produced on the side of the respondent

- R1 : Copy of the letter dated 06.02.2014 of Sri.M.K.Suresh Babu, President, Indian National Congress (I), Kollam addressed to Adv. G.Prathapa Varma Thampan, President, District Congress Committee, Kollam.
- R2 : Registered post envelop addressed to Sri.Rajendran
- R3 : Whip dated 18.05.2014 issued to Sri.Rajendran by the President, District Congress Committee, Kollam
- R4 : Registered post envelop addressed to Smt.Valsala.O
- R5 : Whip dated 18.05.2014 issued to Smt.O.Valsala by the President, District Congress Committee, Kollam
- R6 : Registered post envelop addressed to Smt.Usha Shylok

R7 : Whip dated 18.05.2014 issued to Smt.Usha Shylok
by the President, District Congress Committee, Kollam

Documents produced on the side of the witnesses:

X1 : Postal receipt of registered letter
X1(a) : Postal receipt of registered letter
X1(b) : Postal receipt of registered letter
X1(c) : Postal receipt of registered letter
X1(d) : Postal receipt of registered letter
X1(e) : Postal receipt of registered letter
X1(f) : Postal receipt of registered letter
X1(g) : Postal receipt of registered letter
X2 : Envelop of 'refused' registered letter addressed
to Smt.Usha Shylok
X3 : Envelop of 'addressee out of station' registered letter
addressed to Sri.G.Rajendran

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER