

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

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

**Wednesday, the 24<sup>th</sup> day of May 2017**

**O.P.No.03/2016**

Petitioner : Communist Party of India,  
Ernakulam District Council.  
Chadayanmuri Smarakam, Kaloor,  
Ernakulam, Represented by the  
present Secretary.

**(By Adv.K.P.Jayachandran)**

Respondent : Jessy Raju,  
Pookkottu House,  
Ramamangalam, Now the  
President of Ramamangalam  
Grama Panchayat.

**(By Adv.A.Mukthar)**

This petition having come up for hearing on the 12<sup>th</sup> day of **May 2017**, in the presence of **Adv.K.P.Jayachandran** for the petitioner and **Adv.A.Mukthar** 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

Ramamangalam Grama 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 is Communist Party of India represented by its Ernakulam District Secretary. The respondent was an elected member of Ramamangalam Grama Panchayat in the election held in October 2010. She contested the election and was elected as an independent candidate with the support of Communist Party of India (CPI) and LDF. She has given a declaration to that effect to the Panchayat Secretary after the election. The register in the Panchayat showing the party affiliation of the elected members would show the said fact. She was an independent member elected with the support of Communist Party of India (CPI) and LDF. While she was continuing as such she joined in Indian National Congress (INC). She filed nomination paper before the expiry of the term, on 14.10.2015 for contesting in ward No.13 of Ramamangalam Grama Panchayat as a candidate of Indian National Congress. By filing nomination paper and contesting as a candidate of Indian National Congress while she was a Panchayat member elected with the support of Communist Party of India (CPI) and LDF she gave up her membership of CPI and thereby incurred disqualification under Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection)

Act. She is hence liable to be disqualified to continue as member of Ramamangalam Grama Panchayat and to contest the election for a period of six years. This petition is for a declaration to that effect.

3. The respondent filed counter statement contending as below. The original petition is not maintainable. The petitioner has no locus standi to file the original petition. He is only the present District Secretary of the Communist Party of India, Ernakulam District and he has no knowledge about the facts of the case. It is true that the respondent was a candidate and contested the election held in October 2010 as an independent candidate. The petitioner's party and other parties supported her and voted in her favour. She is not a member of Communist Party of India (CPI). There is no case of defection in this case as the petitioner did not issue any whip to the respondent and others. A sitting member of a political party can contest as a candidate of another party in the subsequent election. The respondent has resigned from LDF before filing the nomination as the candidate of Indian National Congress. She has stopped her connection with the CPI and LDF much before the filing of nomination paper on 14.10.2015 as Indian National Congress candidate. There is no merit in the petition and hence it is to be dismissed.

4. The evidence in this case consists of the oral testimonies of PW1 and RW1 and Exts.A1 to A5 and B1 to B4.

5. Both sides were heard.

6. The following points arise for consideration;

- (1) Whether the petition is maintainable?
- (2) Whether the respondent has committed defection as contemplated under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (3) Whether the petitioner is entitled to the declaration prayed for?
- (4) Reliefs and costs?

7. **POINT No.(1)**: This petition is filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks a declaration that the respondent committed defection and hence she became disqualified to be the member of Ramamangalam Grama Panchayat and also to contest the election to any local body for a period of six years.

8. This petition is filed by the District Secretary of the Communist Party of India, Ernakulam District. Respondent was elected as a member of Ramamangalam Grama Panchayat in the election held in October 2010. She contested and was elected as an independent with the support of Communist Party of India (CPI). The term of the elected members for the period 2010-2015 was from 01.11.2010 to 31.10.2015. According to the petitioner the respondent after electing her as an independent member with the support of CPI and LDF joined Indian National Congress before the expiry of her term as Panchayat member and she filed nomination paper on 14.10.2010 as a

Congress candidate for the election to be held for the next term 2015-2020. Thus she incurred disqualification under Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act. She has withdrawn from the LDF coalition and joined in Indian National Congress and UDF. By doing so she committed defection and thereby became disqualified to be a member of Ramamangalam Grama Panchayat, it is further contended. As against that, the contention of the respondent is that she has not committed any act of defection and she denied all allegations. It is also her case that the original petition is not maintainable as the petitioner has no locus standi to file this petition.

9. It may be noted this 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.

10. The respondent contested and elected as a member of Ramamangalam Grama Panchayat as an independent with the support of Communist Party of India and hence she is a deemed member of CPI for the purpose of the Act. The petitioner in this case is Communist Party of India represented by its Secretary. The petitioner is certainly entitled to file this

petition as per Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. So the contention of the respondent that the petitioner has no locus standi to file this petition and that this petition is not maintainable, is unsustainable. As this petition is filed by a competent person and a question arises as to whether the respondent has become subject to disqualification as provided under Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act this petition is held to be maintainable. Point is answered accordingly.

11. **POINT Nos.2 to 4:** Case of the petitioner is that the respondent committed defection incurring disqualification under Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act and hence she is disqualified to be a member of Ramamangalam Grama Panchayat. According to PW1, the petitioner the respondent contested the election held in October 2010 and was elected from ward No.13 as independent with the support of CPI and LDF. Ext.A1 copy of the nomination paper and Ext.A2 copy of the register showing the party affiliation of the elected members of Ramamangalam Grama Panchayat would show that she contested the election as an independent candidate with the support of CPI and LDF and she was elected with the support of CPI and LDF. While she was continuing so as a member the respondent joined in Indian National Congress before the expiry of the term and filed nomination paper on 14.10.2015 as a candidate of Indian National Congress for the election for the period 2015-2020. By

doing so she committed defection inviting disqualification as provided under Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act, PW1 further states. Case of the respondent is that after the election notification she is entitled to contest as a candidate of any party even if she was an elected member of another party. That being the position her act of joining in Indian National Congress and filing nomination as the candidate of Indian National Congress, on 14.10.2010, according to her, will not amount to defection.

12. It is a matter of admission that the respondent was elected as an independent candidate with the support of Communist Party of India (CPI) and LDF. RW1 admitted the said fact in her evidence. So the respondent is to be considered as the deemed member of Communist Party of India. It is also admitted by RW1 that she joined in Indian National Congress and filed nomination paper on 14.10.2015 as the candidate of Indian National Congress for the next election for the period 2015-2020. Ext.A4 is the copy of her nomination paper filed on 14.10.2015. It is in evidence that she was later elected as the Indian National Congress candidate and presently she is the President of Ramamangalam Grama Panchayat. As it is admitted that she joined in Indian National Congress and contested as the candidate of Indian National Congress before the expiry of her term of Panchayat membership for the period 2010-2015 Ext.B3 requires no discussion. Ext.B3 is a copy of the register showing the party affiliation of the respondent maintained in

the Ramamangalam Grama Panchayat. Ext.B3 was prepared on the basis of the declaration given by the respondent after the election in November 2015. Exts.B2 and B4 are the copies of oath taken by her after the election in November 2015.

13. Contention of the learned counsel for the respondent is that Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act is not applicable for the acts committed by the respondent after the election notification issued by State Election Commission on 07.10.2015 for the next election. According to the counsel on the date of election notification the respondent ceased to be a member of the Panchayat and hence she is at liberty to join any political party and it will not amount to defection. It is to be stated that such a contention is not legally sustainable. The term of the elected members for the period 2010-2015 was from 01.11.2010 to 31.10.2015. RW1 also admitted the said fact in her evidence. According to RW1 it was 31.10.2010 to 31.10.2015. Instead of 01.11.2010 RW1 stated as 31.10.2015 and it can only be a mistake. As per Section 149 of the Kerala Panchayat Raj Act the term of the elected members is five years from the date of first meeting of the elected members. Admittedly the first meeting of the elected members of Ramamangalam Grama Panchayat in this case was on 01.11.2010 and the period of five years is to be calculated from 01.11.2010 onwards. Anyway it is admitted by RW1 that her term in this case expires



only on 31.10.2015. So till 31.10.2015 the respondent was a Panchayat member elected with the support of CPI and was a deemed member of CPI.

14. If the respondent wanted to join in Indian National Congress before 31.10.2015 she should have resigned her Panchayat ward membership to avoid disqualification under Section 3(1)(b) of the Act as contended by the learned counsel for the petitioner. Admittedly she did not resign her membership. Contention of the respondent is that she has stopped her connection with CPI and LDF before her joining in Indian National Congress and the said fact was intimated to LDF leader. But there is nothing to show that there was any such acts on her side. Further, even assuming that she has snapped all her connections with CPI before 14.10.2015 that will not save her in this case. It may be noted that she was elected as an independent with the support of CPI and she is a deemed member of CPI. Her said status would continue till the expiry of the term of her membership in the Panchayat ie., 31.10.2015. To avoid the disqualification under Section 3(1)(b) of the Act, as stated above, the respondent should have resigned her Panchayat membership before her joining in Indian National Congress and filing nomination on 14.10.2015 as INC candidate. But she did not do that. The argument of the learned counsel for the respondent that Section 3(1)(b) is not attracted in this case as the respondent has stopped her connection with the CPI and LDF before joining in Indian National Congress and filing nomination on 14.10.2015 is without any basis and is only to be rejected.

15. 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.

16. It is a matter of admission that the respondent joined in Indian National Congress while continuing as a Panchayat member elected with the support of CPI and LDF. As per Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act, if an independent member elected with the support of any party coalition withdraws from that coalition and joins in any political party or coalition, he/she can be disqualified for being a member of that local authority. The Kerala Local Authorities (Prohibition of Defection) Act, 1999 was enacted to prohibit defection among the members of local authority in the state and to provide for disqualification of the defecting members of the local authorities. The provisions under the 10<sup>th</sup> schedule of the constitution and under the Kerala Local Authorities (Prohibition of Defection) Act are intended to curb the evil of unprincipled and unethical political defection.

17. In the light of the above facts and circumstances I will have to necessarily hold and I hold that the respondent has committed defection as

provided under Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act and therefore she became subject to disqualification for being a member of Ramamangalam Grama Panchayat.

Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being a member of Ramamangalam Grama Panchayat as provided by Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent is further declared as disqualified for contesting as 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 24<sup>th</sup> day of May 2017

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

**APPENDIX**

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

PW1 : Shri.P.Raju, Secretary,CPIErnakulam District

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

RW1 : Smt.Jessy Raju, President, Ramamangalam GramaPanchayat

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

- A1 : Copy of the declaration in Form No.2 filed bySmt.Jessy George
- A2 : Attested copy (relevant portion of) register showing political affiliation of the members ofRamamangalamGrama Panchayat
- A3 : Statement furnished by Smt.Jessy Raju, respondent to the Secretary, CPI District Council willingness to contest.
- A4 : Copy of the declaration in Form No.2 filed by Smt.Jessy George
- A5 : Attested copy of letter fromShri.V.J.Poulose, DCC President,Ernakulam to the RO, RamamangalamGrama Panchayat requesting to allot party symbol to Smt.Jessy Raju

**Documents Produced on the side of the respondent**

- B1 : Certificate issued by Secretary, Ramamangalam Grama Panchayat dated 24.11.2016
- B2 : Form No.1 True Copy of the Oath register (relevant page) by Smt.JessyGeorge dated 12.11.2015
- B3 : Copy of the register showing the party affiliation of the members of Ramamangalam Grama Panchayat
- B4 : Form No.1 True copy of the Oath Register by Smt.Jessy George dated.01.11.2010

Sd/-

V.BHASKARAN  
**STATE ELECTION COMMISSIONER**

//True Copy//