

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 19th day of June 2019

O.P.No.42/2017

Petitioner : R.Jayakumar,
S/o K.R.C.Panichker,
Jayavihar, Kizhakkummury,
Kavumbhagam.P.O.,
Thiruvalla-689 102.

Councillor, Ward No.26,
Thiruvalla Municipality

(By Adv. G.K.Sudheer)

Respondent : Varghese.K.V.@ Thankachan
Kanjirakkattu, Kanirakkattu House,
Manjadi, Thiruvalla – 689 105.
Chairman,
Thiruvalla Municipality

**(By Advs. Cherunniyoor P.Sasidharan Nair
and Ajithkumar.S)**

This petition having come up for hearing on the 7th day of **June 2019**, in the presence of Adv. **G.K.Sudheer** for the petitioner and **Advs.Cherunniyoor P.Sasidharan Nair & Ajith Kumar.S** 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 Thiruvalla Municipality and also for declaring him 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 Councillors of Thivalla Municipality in the election held in November 2015. Both of them contested and were elected as the candidates of Indian National Congress (INC). There are 39 wards (seats) in Thiruvalla Municipality. The INC contested the election as part of a political coalition by name United Democratic Front (UDF). KC(M), RSP(B) are the other constituents in the UDF. Out of 39 seats the UDF got 22 seats-INC-11, KC(M)-10, RSP(B)-1. The CPI(M) got 9 seats, The BJP got 4 seats and the SDPI has secured one seat. The remaining 3 seats were won by independent candidates. As the UDF got majority it formed the Council. An understanding was there among the constituents of UDF regarding the sharing of Chairmanship and Vice Chairmanship. As per that the nominee of Indian National Congress would get the Chairmanship for the first 30 months and remaining 30 months to the nominee of KC(M). The parliamentary party meeting of Indian National Congress decided to

nominate the respondent as the candidate for the Chairmanship of Thiruvalla Municipality. It was also decided that the respondent would remain as the Chairman for a period of 15 months from the date of assuming charge and thereafter he should resign to enable the petitioner to become the Chairman. On the basis of the above decisions the respondent was elected as the Chairman of Thiruvalla Municipality on 18.11.2015. Smt.Aleyamma Thomas of the KC(M) was elected as the Vice Chairperson.

3. The term determined for the respondent to hold the post of Chairman as decided by the party was till 18.02.2017. But the respondent did not resign from the post despite the direction of the party and he continued further. The DCC President convened a meeting of the Councillors of the municipality and in the meeting it was decided to issue direction to the respondent to resign from the post on or before 31.03.2017. But the respondent chose to disobey the said direction also. Thereafter as a final warning the DCC President issued a further direction on 05.05.2017 directing him to resign from the post of Chairman within ten days of the receipt of the said notice. The said notice was sent to the respondent by registered post both in his residential address and his official address. The respondent received the said notice on 08.05.2017. But he did not obey that direction also. The repeated violation of the party decisions by the respondent has seriously affected the party. The open and continuing

defiance of the respondent of the collective decision of the party and continuing in the post of Chairman in absolute violation of the decision of the party has degraded the party and has lowered its status among the people. The continuing acts of the respondent amount to defying the party and his voluntarily giving up of membership from the party. As the respondent has acted against the interest of party he is liable to be disqualified. He has voluntarily given up his membership from INC and thereby incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act.

4. The respondent filed counter statement contending as below. The petition is not maintainable. It is true that the respondent was elected as the candidate of Indian National Congress as stated in the petition. The alleged refusal of the respondent to resign from the post of Chairman will not amount to voluntarily giving up of membership from Indian National Congress. The provisions of Section 3(1)(a) are not applicable to the facts of the case. The above original petition is the production of the rift and groupism in Indian National Congress in Pathanamthitta District. The direction issued by the DCC President directing the respondent to resign from the Chairmanship is against the circular issued by the KPCC. As per the said circular when a congress Councillor is elected as Chairman/President of local authority it is for a period of five years. At the

same time the Chairmanship can be subjected to agreements between the constituents in the UDF. The respondent had the knowledge regarding discussion of sharing the Chairman between INC and KC(M). But sharing of Chairmanship between congress members is against the circular of KPCC. There was no agreement regarding sharing of Chairmanship between congress members. There was no meeting on 11.02.2017 as stated in the petition and no intimation was given to the respondent. In the no confidence motion the respondent acted as per the direction of the party. Direction to resign from the post of Chairmanship will not come under the purview of voluntarily giving up of membership from the party. The DCC President issued the said direction due to the undue influence of the petitioner on the leaders. The respondent has not violated any direction of the party. He has not voluntarily given up his membership from the party. There is no merit in the petition and hence it is only to be dismissed.

5. The evidence in this case consists of the oral testimonies of PWs1 to3, RW1 and Exts.A1to A13.

6. Both sides were heard.

7. The following points arise for consideration;

- (1) Whether the original petition is maintainable?
- (2) Whether the respondent has voluntarily given up his membership from Indian National Congress as alleged?

- (3) Whether the respondent has become subject to disqualification as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (4) Whether the petitioner is entitled to the declaration prayed for?
- (5) Reliefs and costs?

8. **POINT Nos.(1):** As stated above this is a petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act to declare that the respondent has become disqualified to continue as a Councillor of Thiruvalla Municipality. The petitioner and respondent are elected Councillors of Thiruvalla Municipality and admittedly both of them were elected as the candidates of Indian National Congress (INC) which is a part of United Democratic Front (UDF).

9. According to the petitioner the respondent was elected as the Chairman of the Municipality as a nominee of Indian National Congress as per the understanding in the United Democratic Front. Later as per the decision of the party the DCC President directed the respondent to resign from the post of Chairman and the respondent did not obey the said direction. He, it is stated, became disloyal to the political party which elected him to the post. The respondent acted against the interest of the party and by doing so he has voluntarily given up his membership from that party, it is further contended. The respondent denied the allegations.

According to him he has not committed any act of defection and he did not abandon his membership in Indian National Congress. It is also his contention that the original petition is not maintainable. To him the DCC President has no authority to direct the respondent to resign from the post of Chairman and his refusal to resign can never be taken as voluntarily giving up his membership from the party.

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 parties 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 Councillor of the local authority in which the respondent is also a Councillor. The petitioner being a Councillor 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 petitions is held to be maintainable. Point is answered accordingly.

12. POINT Nos.2 to 5: Case of the petitioner is that the respondent committed defection by acting against the interest of his political party and defying the directive of the party and thereby incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. When the DCC President directed the respondent to step down from the post of Chairman of Thiruvalla Municipality he defied the direction and continued in the post. According to the petitioner the respondent's conduct of refusal to step down from the post defying the party directive would amount to voluntarily giving up of his membership from Indian National Congress.

13. There are 39 seats in Thiruvalla Municipality and out of that the Indian National Congress led UDF got 22 seats. As the UDF got majority it formed the Council. According to the petitioner there was an understanding among the constituents of UDF to share the posts of Chairman and Vice Chairman of the Municipality and as per that the Chairmanship would first go to the nominee of Indian National Congress for 30 months and thereafter to the nominee of KC(M) party. The respondent was decided to be the nominee of Indian National Congress for the post of Chairman and accordingly he became the Chairman.

14. As per the decision in the parliamentary party meeting of Indian National Congress the respondent was to hold the office of the Chairman for the first fifteen months and thereafter he should resign from the post to elect the petitioner in his place for the remaining 15 months. According to PW1 an agreement was executed to that effect by the respondent in favour of the then DCC President and Ext.A1 is the copy of the said agreement. The original of said the agreement was produced in O.P.23/2017 on the file of the Commission. As per that agreement the respondent had time only up to 18.02.2017. But he did not resign from the post as per Ext.A1 and he continued further. On 20.02.2018 PW3, the DCC President issued a notice to the respondent directing him to resign from the post and Ext.A2 is the copy of the notice. The respondent accepted the said notice when tendered and he made endorsement to that effect in Ext.A2. Besides, the notice was sent to him by registered post also and Ext.A3 is the copy of the postal receipt. But the respondent did not care to comply the said direction and the subsequent directions. As a final warning, it is stated that the DCC President issued a notice dated 05.05.2017 to the respondent directing him to resign from the post within ten days of the receipt of the notice. Ext.A9 is the copy of the said notice. It was sent to the respondent both in his residential address and official address. Exts.A10 and A11 are the postal receipts for that. The respondent received the notice on 08.05.2017. The time given to the respondent to resign from the post as per Ext.A9 was 10 days of the receipt of

the notice and the said period would expire on 18.05.2017. But the respondent did not comply the said direction also. As the respondent defied the direction of the party he became disloyal to the political party which elected him. He acted against the interest of the party. By disobeying and defying the party directive he has voluntarily given up his membership from Indian National Congress, it is further contended.

15. PWs 2 and 3 are the other witnesses examined on the side of the petitioner. PW2 is the President of Thiruvalla Block Congress Committee and PW3 is the DCC President, Pathanamthitta District. Both PWs 2 and 3 gave evidence supporting the case of the petitioner. It is stated by PWs 2 and 3 that the respondent executed Ext.A1 agreement in favour of the then DCC President and as per the agreement he was to resign from the post of Chairman on 18.02.2017 completing his term of 15 months. But the respondent did not resign from the post as agreed in Ext.A1. It is stated by PW2 that it was he who prepared Ext.A1 on stamp paper and it was in his handwriting. According to PW3 DCC President he issued Ext.A2 notice dated 20.02.2017 directing the respondent to resign from the post of Chairman to facilitate the election of the petitioner as the Chairman. The said notice was sent to the respondent by registered post. Ext.A3 is the postal receipt for that. The respondent, it is stated, did not care to consider that direction also. Thereafter a meeting of the Councillors of Thiruvalla Municipality was convened by PW3 DCC President. The respondent was

also present in that meeting and he sought time till 31.03.2017 to resign from the post and time was granted till 31.03.2017. Ext.A4 is the copy of the minutes of the said meeting. Ext.A4 is in the handwriting of PW2. But the respondent did not comply that direction also. Thereafter a no confidence motion was moved against the respondent. But the respondent survived the no confidence motion with the help of three Indian National Congress Councillors and two Kerala Congress (M) Councillors. It was thereafter PW3 issued Ext.A9 notice to the respondent directing the respondent to resign within ten days of the receipt of the notice. Ext.A9 notice was sent to the respondent both in his residential address and official address. Exts.A10 and A11 are the postal receipts for that. But the respondent did not comply the said direction also. As the respondent disobeyed and defied the direction of the party and acted against the interest of party he is liable to be disqualified, it is further stated.

16. Case of RW1 is that the DCC President has not issued any notice directing the respondent to resign from the Chairmanship of the Municipality and the DCC President has no authority also to issue such direction. According to him he did not voluntarily abandon his membership from Indian National Congress and he did not do any act of defection inviting disqualification under Section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.

17. The question now to be considered is whether the respondent has committed any act of defection inviting disqualification under Section 3(1)(a) of the Act. Case of the petitioner as stated above is that the respondent voluntarily given up his membership from Indian National Congress as he defied and disobeyed the party directives. 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 provision relevant in this case and it reads as below:-

“3. Disqualification on ground of Defection,-

1)Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act.

(a) “if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorized by it in

this behalf in the manner prescribed, votes or abstains from voting.

(i) in a meeting of Municipality, in an election of its Chairperson, Deputy Chairperson, a member of standing committee or the Chairman of a standing committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or

in a voting on a no-confidence motion against any one of them except a member of a Standing Committee.

X X X X X X X X X X

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

18. It may be noted that Section 3(1)(a) of the Act has two limbs. The first limb is attracted when a member of the local authority belonging to any political party voluntarily gives up his membership of such party. The second limb is attracted when such member violates or disobeys the direction issued in writing by the political party to which he belongs or by a person authorized by it in this behalf, votes in an election to the post of

President, Vice President, Chairman of the Standing Committee or of its members or in a no confidence motion moved against anyone of them except a member of the Standing Committee. In this case the first limb of Section 3(1)(a) of the Act alone is invoked by the petitioner. Further, the direction to resign from the post of the Chairman is not covered by second limb of Section 3(1)(a) of the Act. So the question to be decided is whether the respondent has voluntarily given up his membership from Congress party.

19. It is the settled position 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.

20. Indisputably, the respondent was elected as a Councillor of Indian National Congress and he became the Chairman of Thiruvalla Municipality as a nominee of Indian National Congress. He is bound by the decision of

his party and he cannot act against the interest of his party taking a stand different from that of his party. The respondent is a responsible elected member of Thiruvalla Municipality and he cannot act according to his whims and fancies. Acting against the interest of the party is nothing but disloyalty.

21. It is in evidence that there was an understanding in the United Democratic Front to share the Chairmanship among the nominees of Indian National Congress and Kerala Congress(M). As per that for the first 30 months the nominee of Indian National Congress would become the Chairman and the remaining 30 months the Chairmanship would go to Kerala Congress(M) nominee. It is also in evidence that the Indian National Congress decided to share the Chairmanship of 30 months among the respondent and petitioner equally i.e., 15 months each and it was as per that decision the respondent became the Chairman. As per that decision the respondent can continue as the Chairman till 18.02.2017. The respondent executed a consent letter on stamp paper to that effect in favour of the then DCC President and Ext.A1 is the copy of the consent letter. Evidence of PWs2 and 3 and Ext.A1 would show the said fact. Ext.A1 was prepared by PW2 the Block Congress Committee President and it was in his handwriting RW1 has no case that Ext.A1 agreement is cooked up for this case and a forged one. He has stated in his cross-examination that he has no such case.

As per Ext.A1 the respondent was to resign from the post on 18.02.2017. But he did not resign despite directions from the DCC President.

22. It is also in evidence that a meeting of the Councillors of Thiruvalla Municipality was convened on 20.03.2017. Ext.A4 is the copy of minutes of that meeting. The respondent participated in the said meeting and he is a signatory therein. In that meeting the respondent sought time till 31.03.2017 to resign from the post and that can be seen from Ext.A4. But the respondent did not resign as agreed in Ext.A4. It was thereafter PW3 DCC President issued Ext.A9 direction to the respondent. RW1 admitted that Ext.A9 was sent to him both in his residential and official address. Admittedly he did not comply the direction therein, also.

23. Submission of the learned counsel for the respondent is that there was no direction of voting or abstaining from voting in this case in an election or in a no confidence motion and hence the question of disqualifying the respondent under Section 3(1)(a) of the Act does not arise. The DCC President has no authority to direct the respondent to resign from the Chairmanship and his refusal will not invite the disqualification, the counsel further submits. It is true that the direction was not in a case of voting and hence the second limb is not attracted in this case. But that has nothing to do with the first limb. Whether the respondent has voluntarily given up his membership from Indian National Congress is to be decided with reference to the conduct of a member. It was the decision of the Congress party to

elect the respondent as the Chairman for the first 15 months and thereafter to nominate the petitioner. Failure to implement the decision of party would certainly affect the image of the party. As per Ext.A9 the DCC President directed the respondent to resign from the Chairmanship. The DCC President is the person competent to recommend symbol to the contesting candidates of the Congress party in a local body and he is also the person competent to issue whip to the members. Therefore the DCC President is the competent person to take decision as to who should be the Chairman or Vice Chairman from among the members of his party. The members are bound to obey his directions. The respondent in this case no doubt has disobeyed his direction.

24. A similar case was considered by the Hon'ble High Court in the decision reported in 2008 (3) KHC 267 in (Faisal P.A. Vs. K.A.Abdulla Kunhi) and in that decision it was observed as below,-

“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.”

25. It is in evidence that the respondent has disobeyed the direction issued earlier also. The respondent who was elected as a member of Indian National Congress defied the direction of the party and continued in the post. It is against the interest of the party. From the conduct of the respondent certainly an inference can be drawn that he has voluntarily given up his membership from Indian National Congress. Voluntarily giving up of his membership from the party is a ground to disqualify a member under Section 3(1)(a) of the Act.

26. 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 directive of the party leadership and his refusal to step down from the post of Chairman defying the direction of the party would clearly demonstrate that he became disloyal to the party which elected him as a

Councillor of Thiruvalla Municipality. The above act of the respondent would amount to defection inviting disqualification and the case put forward by the petitioner against the respondent is clearly established. There is nothing to think otherwise. According to Father of Nation Mahatma Gandhi politics without principle is one of the grave vices in that group. The menace of defection, certainly, is 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.

27. From the above facts and circumstances it can be seen that the respondent has committed defection and he has voluntarily given up his membership of the party which elected him as member, as provided by Section 3(1)(a) of the Act and therefore he became subject to disqualification for being a Councillor of Thiruvalla Municipality. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being Councillor of Thiruvalla Municipality 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 19th day of June 2019

Sd/-

**V.BHASKARAN,
STATE ELECTION COMMISSIONER**

APPENDIX

Witnesses examined on the side of the petitioner

PW1	:	Shri.Jayakumar.R
PW2	:	Adv.Rajesh Chathankari
PW3	:	Shri.Babu George

Witness examined on the side of the respondent

RW1	:	Shri.Varghese.K.V
-----	---	-------------------

Documents produced on the side of the petitioner

A1	:	Copy of agreement dated 18.11.2015
A2	:	Copy of the notice issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.K.V.Varghese
A3	:	Copy of the postal receipt dated 25.02.2017
A4	:	Copy of the minutes of the meeting of the Councillors of Thiruvalla Municipality held on 20.03.2017
A5	:	Copy of the letter dated 01.04.2017 issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.R.Jayakumar

- A6 : Copy of the receipt No.1066/2017 dated 05.04.2017
- A7 : Copy of the notice No.C.1066/2017 dated 07.04.2017
- A8 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.R.Jayakumar
- A9 : Copy of the letter dated 05.05.2017 issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.K.V.Varghese
- A10 : Postal receipt dated 06.05.2017
- A11 : Postal receipt dated 06.05.2017
- A12 : Returned postal article
- A13 : Acknowledgment card addressed to Shri.K.V.Varghese

Sd/-
V.BHASKARAN
STATE ELECTION COMMISSIONER

//True copy//