

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

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

**Wednesday, the 18<sup>th</sup> day of February 2015**

**O.P.No.47/2014**

Petitioner : Shyjukumar,  
S/o Gopinathan Nair,  
Kuruvikonam, Vettemppailli,  
Irinjayam.P.O., Nedumangad  
Thiruvananthapuram District.

**(By Adv.K.O.Asokan)**

Respondent : Sadiya Beevi.A,  
W/o Akbar Shan, Residing at Akbar buildings,  
Manjakottu Moola, Chullimanoor.P.O.,  
Member, Ward No.11,  
Anad Grama Panchayat,  
Thiruvananthapuram District.

**(By Adv.Fathahudeen)**

This petition having come up for hearing on the 14<sup>th</sup> day of January 2015, in the presence of Advocate **K.O.Asokan** for the petitioner and Advocate **Fathahudeen** 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 3 (b)(ii) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent has become subject to disqualification for being a member of Anad Grama Panchayat.

2. The short facts are as follows:- The petitioner and the respondent are elected members of Anad Grama Panchayat. The respondent contested the election as an independent candidate of LDF in ward No.11 and she had given an undertaking agreeing to obey all the decisions and directions of the LDF and thus she was elected with the support of LDF. The UDF members moved a no confidence motion against the President and it was tabled for discussion on 15.05.2014. The leaders of LDF Committee issued whip to all the 8 LDF members directing them not participate in the meeting scheduled for discussing the motion. The leader of CPI(M) issued letter to the Returning Officer informing that direction has been given to six members of CPI(M) including the respondent to abstain from attending the meeting convened for discussing the motion. Copy of that letter has been issued by the leader of CPI(M) to this respondent also directing her not to attend the said meeting. But the respondent by violating the direction given by the leader of the CPI(M) attended and participated in the discussion and voting on the confidence motion moved by

the UDF. The above act of the respondent squarely comes under Section 3(b)(ii) of the Kerala Local Authorities (Prohibition of Defection) Act (which is wrongly mentioned as Kerala Local Self Government Institutions (Anti Defection) Act in the petition). Hence this petition for disqualifying the respondent as a member of Anad Grama Panchayat.

3. The Contention raised by the respondent in her objection are in brief, as follows:- The petition is not maintainable either in law or on facts. No political party or coalition can direct an elected member of a local body not to attend the meeting of the Panchayat and violation of any such direction will not attract the vice of defection laws applicable to local bodies. They can only issue direction either to vote or abstain from voting in a meeting in an election various office bearers or in the voting on a no confidence motion. Since the allegation is that direction was given not to attend the meeting and the respondent violated the same cannot raise a cause of action. The direction said to have been issued by the District Secretary of CPI(M) is against public policy and abinitio void. The respondent contested the election as a complete independent candidate without support from any political party or coalition. The alleged letter said to have been given by her stating that she is an independent candidate supported by LDF is a fabricated one. After election

Smt. Sheela, a UDF member was elected as President by defeating the LDF candidate. Even though the UDF members moved no confidence motion the LDF members including the petitioner opposed the said motion and supported the UDF President. As a matter of fact they had shown disloyalty to that party. The allegation that the respondent had received the whip and acknowledged the same is absolutely false. The District Secretary of CPI(M) has no right or authority to issue any such whip to this respondent and she is not bound to obey the same. Admittedly the respondent was not a CPI(M) candidate or an independent member having the support of CPI(M). Even assuming that the respondent contested the election as a candidate of LDF then also the CPI(M) has no authority to issue any direction to the respondent. Since the respondent won the election as an independent member she had supported the no confidence motions moved against the President of the UDF. There is no cause of action for the petition and the alleged cause of action does not constitute an act constituting defection under the provisions of Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act. Hence the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs 1 to 3 and RW 1 and Exts. P1 to P7 and R1.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent had contested the election as an independent candidate having the support of LDF as alleged?
- (iii) Whether the District Secretary of CPI(M) was competent to issue any whip to the respondent in the voting on the no confidence motion moved against the President?
- (iv) Whether the respondent has become subject to disqualification for being a member of Anad Grama Panchayat?
- (v) Reliefs and costs?

7. **POINT No.(ii)**: The petitioner would allege that the respondent had contested the election as an independent candidate with the support of LDF and she had given undertaking that she will abide by the directions and decisions of the LDF and thus she was elected as an independent member having the support of LDF coalition. The respondent would contend that she contested the election as a complete independent and that she was not having support from any political parties or coalition. The petitioner has been examined as PW1. He has deposed that he was elected as a candidate of CPI(M) and that the respondent had contested the election as an independent candidate with the support of LDF coalition. He has further deposed that the respondent had given a letter undertaking to obey the decisions and a direction of the LDF during election

and also after her election as a member and the said letter is marked as Ext.P1. PW1 has further deposed that the respondent was given full support from LDF during her election and after becoming a member she was obeying all the decisions and directions of LDF till 15.05.2014. Ext.P5 is stated to be a notice published during election campaign wherein the respondent also is shown as a candidate of LDF. The name of the petitioner also is available in Ext.P5. PW1 has further stated that the Returning Officer of Anad Grama Panchayat has given letter stating that the respondent was elected as a member with the support of LDF coalition and that is marked as Ext.P6. In cross-examination Exts.P1, P5 and P6 have been denied and it was suggested that they are fabricated records. But PW1 has asserted that they are genuine records. PW2 is stated to be a voter of ward No.11 and according to him he was the proposer in the nomination paper submitted by the respondent in the General Election and the copy of that nomination paper is marked as Ext.P7. In cross-examination it is suggested that Ext.P7 is a fabricated record which PW3 denied. PW3 is stated to be a CPI(M) activists and according to him he was functioning as the LDF election local committee Secretary and that Ext.P5 notice was published in respect of the election campaign of the LDF candidates and also that the respondent had contested the election as an independent candidate of CPI(M) under LDF coalition.

8. The respondent has been examined as RW1. She has deposed that she contested election as a complete independent candidate and she further states that she given declaration as provided under Rule (3) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and the record obtained from website regarding declaration of her election has been marked as Ext.R1. Ext.P1 is seen to be a letter given by the respondent on 27.09.2010 to the Secretary of Anad LDF Committee wherein she has declared that she along with her husband will co-operate with the LDF and that she will obey all the directions and decisions of the LDF in case of her election as a member. Even though the respondent has denied the record I find that this document was given by her for contesting as a candidate of LDF coalition. The respondent as RW1 has admitted that there was no other LDF candidate in her ward. Moreover Ext.P7 which is her nomination paper she has stated that she is an LDF independent . Her proposar in the election was none other than PW2 as seen from Ext.P7. Ext.P6 record given by the Returning Officer also would prove that she was a candidate having the support of LDF coalition. From these records and the evidence of PWs 1 and 2 it is clearly found that the respondent had contested the election as a candidate having the support of LDF coalition. Ext.R1 cannot be relied on for the reason that this may have been prepared on the basis of her declaration given after her election as a member. However the

respondent has not produced the said declaration. On a careful consideration of all facts I find that the respondent had contested the election as a candidate of LDF coalition and was thus elected as a member. The point is answered accordingly.

**9. POINT Nos.(i) & (iii) to (v):** Certain facts are not in dispute. A no confidence motion was moved by some of the UDF members against their own President and it was tabled for discussion on 23.10.2013. The LDF members abstained from attending the meeting convened for discussing that motion and so it was defeated.. Again another no confidence motion was moved against the President by UDF members and it was tabled for discussion on 15.05.2014. According to the petitioner various political parties of the LDF decided not to participate in the discussion and voting on the no confidence motion and except the respondent all the other LDF members abstained from attending that meeting and the respondent by disobeying the said direction voted in favour of the said motion and she by disobeying the direction issued by the party has committed defection.

10. The petitioner has been examined as PW1. He has deposed in terms of the allegations contained in his petition. Ext.P2 is the direction issued by the CPI(M) District Secretary. Ext.P3 is the said whip containing the signatures of the respondent and certain others and this was in relation to the no confidence



motion which was tabled for discussion on 22.10.2013. PW1 has further deposed that in respect of the no confidence motion which was tabled for discussion on 15.05.2014, whip was given by the District Secretary of CPI(M) directing the respondent and others not to participate in the meeting and copy of the direction given to the Returning Officer containing the signatures the respondent and others is Ext.P4. PW1 has further deposed that on the overleaf of Ext.P4 the signature of the respondent is available and that is separately marked as Ext.P4(a). Ext.P4 was given by the Returning Officer on accepting its original and there is also the endorsement of the authorized officer on Ext.P4 stating that he has received the original. So the definite case of the petitioner is that the District Secretary of CPI(M) had issued whip to the respondent directing her not to attend the meeting convened for discussing the no confidence motion on 15.05.2014 and respondent has violated that direction and attended the said meeting and thereby committed defection. The respondent on the other hand has inter alia contended that the District Secretary of CPI(M) does not have any competency to issue whip to her. The respondent as RW1 has asserted that the District Secretary of CPI(M) is not competent to issue any whip to her. In the light of the above rival claims the question to be considered is whether the Secretary of CPI(M) has authority to issue any direction to the

respondent in respect of voting or abstention from voting on a no confidence motion moved against the President of the Panchayat.

11. I have already found that the respondent was an independent member having the support of LDF coalition. Even the petitioner does not have a case that the respondent was elected as a candidate of CPI(M) or that she was considered to be a candidate having that support of CPI(M). Of course she was having the support of LDF coalition of which the CPI(M) is a constituent. The petitioner has categorically stated that the action of the respondent is squarely coming under Section 3(b)(ii) of the Kerala Local Authorities (Prohibition of Defection) Act. Section 3 of the Act is relevant in this context 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.*

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

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

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

11. Section 3(1)(a) of the Act is the provision which is applicable to a member belonging to a political party or a member considered to be included in it. As per Section 3(1)(a) of the Act the direction is to be issued to such member or a member considered to be included in it by the political party or by a person or authority authorized by it in this behalf in the manner prescribed. Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules prescribes the manner in which a political party or coalition may give direction to its members and as per Rule 4(1) of the above Rules, a direction to a member belonging to a political party or a member considered to be included in it, is to be issued by the person who is competent recommend symbol to the candidates of such party. Section 3(1)(b) of the Act is in respect of an independent member belonging to any coalition. If such a member was supported by political party which is a constituent of coalition

then only Section 3(1) (a) of the Act would apply against him. So Section 3(1)(b) of the Act deals with only independent members belonging to any coalition. Section 3(1)(a) of the Act is applicable to persons belonging to political parties and also to persons elected with the support of political parties where as Section 3(1)(b) is applicable to independent member elected with the support of coalition. In case on hand it has come out that the respondent was a member belonging to LDF coalition and so Section 3(1)(b) alone is attracted against her. The definite case of the petitioner is that the said member has violated the direction issued by the District Secretary of CPI(M). The manner in which a direction is to be issued to a member belonging to coalition is contained in Rule 4(1)(2) of the Rules which reads as follows,-

*“4. The manner in which a Political party or coalition may give direction to its members,- (1) if a political party or coalition gives any direction in respect of the casting of vote in an election or in a voting as has been mentioned in clause (a) or clause (b) of Section 3, it shall be in writing and such a direction shall be given,-*

*(ii) In the case of a member who belongs to a coalition or considered to be included in it by the member whom the members of the said coalition and the members considered*

*to be included in it in the local authority concerned elect for the purpose, on majority basis from among themselves.”*

12. So as per the above provision the person who is competent to issue direction is the member whom the members of such coalition and the members considered to be included in it in the local authority have elected for that purpose on majority basis from among themselves. Admittedly the direction was not issued by such a member elected by the members of the said coalition from among themselves on majority basis. The petitioner has no case that the respondent was given direction by the elected member of the coalition as provided by Rule 4(1)(ii) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. Since the respondent is a member belonging to LDF coalition the District Secretary of CPI(M) does not have any right to issue direction regarding voting on a no confidence motion. Therefore I find that the direction issued by the District Secretary of CPI(M) is totally invalid and not binding on the respondent. The only ground upon which the petitioner seeks disqualification is the violation of whip covered by Section 3(1)(b)(ii) of the Act and as no direction was given by any competent person as provided by the Kerala Local Authorities (Disqualification of Defected Members) Rules I find that the petition is not maintainable on this score and it is liable to be dismissed. The points are answered accordingly.

In the result, the petition is dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 18<sup>th</sup> day of February 2015

Sd/-  
**K.SASIDHARAN NAIR,**  
**STATE ELECTION COMMISSIONER**

**APPENDIX**

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

- PW1 : Sri.Shiju Kumar, Kuruvikonam, Vettamballi,  
Irinchayam P.O., Nedumangadu
- PW2 : Sri.K.Salahudeen, Twins Cottage, Mankuzhi,  
Chullimanur P.O., Nedumangadu
- PW3 : Girish Kumar, Jayabhavan, Iriyanadu,  
Panavur P.O., Nedumangadu

**Witness examined on the side of the respondent**

- RW1 : Smt. Sadiya Beevi, Akbar Building,  
Manjakkottu Moola

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

- P1 : Letter dated 27.09.2010 given by  
Smt.K.Sadiya Beevi to the Secretary, LDF, Anad
- P2 : Copy of the letter No.C-89/2013 dated 22.10.2013  
issued by Sri.Kadakampalli Surendran, Secretary  
CPI(M), Thiruvananthapuram District Committee  
addressed to the Returning Officer,  
Anad Grama Panchayat

- P3 : Whip No.C-90/2013 dated 22.10.2013 issued by Sri.Kadakampalli Surendran, Secretary CPI(M), Thiruvananthapuram District Committee addressed to the Returning Officer, Anad Grama Panchayat
- P4 : Copy of the whip No.C-12/2014 dated 13.05.2014 issued by Sri.Kadakampalli Surendran, Secretary CPI(M), Thiruvananthapuram District Committee to the Returning Officer, Anad Grama Panchayat
- P4(a) : 2<sup>nd</sup> page of Ext.P4
- P5 : Notice issued by LDF, Anad Grama Panchayat Committee
- P6 : Copy of the letter No.116/2014/SOD dated 24.05.2014 of Taluk Statistical Office, Nedumangadu
- P7 : Copy of the nomination paper in Form No.2A filed by Smt.Sadiya Beevi before the Returning Officer

**Document produced on the side of the respondent**

- R1 : Copy of the General Election details 2010

Sd/-

**K.SASIDHARAN NAIR  
STATE ELECTION COMMISSIONER**

**//True Copy//**