

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Tuesday, the 18th day of June 2019

O.P.No.75/2018

Petitioner : Benny Thomas,
S/o Thomas,
Anchanickal House,
Anikkadu.P.O.,
Kottayam District.

Member, Ward No.01,
Pallikkathodu Grama Panchayat

**(By Advs. Cherunniyoor P.Sasidharan Nair
& Ajith Kumar)**

Respondent : Moly George,
Member, Ward No.04,
Pallikkathodu Grama Panchayat

(By Adv. A.G.Shyam Kumar)

This petition having come up for hearing on the 31st day of **May 2019**, in the presence of Advs. **Cherunniyoor P.Sasidharan Nair & Ajith Kumar** for the petitioner and **Adv.A.G.Shyam Kumar** 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 PallikkathoduGramma Panchayat and also for declaring her as disqualified to contest as candidate in any election to the local body for a period of six years.

2. The petitioner's case in brief is as below:- The petitioner and respondent are elected members of PallikkathoduGramma Panchayat in the election held in November 2015. Both of them contested the election and were elected as the candidates of Kerala Congress(M)[KC(M)] which is a part of a political coalition by name United Democratic Front (UDF). There are 13 wards (seats) in PallikkathoduGramma Panchayat and out of which the Indian National Congress (INC) and Kerala Congress (M) [KC(M)] got 3seats each. The Bharathiya Janata Party (BJP) got 5 seats and the remaining two seats were won by the Left Democratic Front (LDF). As the UDF got 6 seats it formed the Panchayat board. Initially the petitioner was elected as the President of the Panchayat and later he resigned from the post as per the decision in the UDF and thereafter Shri.JiJimonJoseph of Indian National Congress was elected as the President. The petitioner was a member of Welfare Standing Committee and subsequently he resigned his membership from Welfare Standing Committee on 24.05.2018. Similarly Shri.ShajiIssac

who was a member in Development Standing Committee resigned his membership from that committee. Election to fill up the above vacancies was scheduled to be held on 29.06.2018. The petitioner was decided to be the candidate for the membership in Development Standing Committee. The District President of the KC(M) issued whip to the elected members of KC(M) including the respondent on 25.06.2018 directing them to vote infavour of the petitioner. When the whip was tendered on 25.06.2018 the respondent refused to accept the same. Hence the whip was affixed on the wall of the respondent's house in the presence witnesses.

3. Election was held on 29.06.2018 but the respondent did not act as per the decision and direction of her party. She deliberately made her vote invalid after voting infavour of the rival candidate, defying the direction of her party. The respondent was very well aware of the decision of the party. But she did not care to obey the direction of the party. The respondent has shown disloyalty to her party by violating the party whip and acting against the interest of the party. It was to help the rival party BJP the respondent took the above stand. She has voluntarily given up her membership from KC(M). The above conduct of the respondent amounts to defection and thereby she incurred disqualification as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act.

4. The respondent filed counter statement contending as below.-It is true that the respondent contested and was elected as the candidate of Kerala Congress (M). Presently Shri.Jijimon Joseph of the Indian National Congress is the President of the Panchayat and the respondent is the Vice President. The District President of KC(M) is not the authority to grant symbol of KC(M) to the candidates of KC(M). The President of the Mandalam Committee is the competent authority for that. The decision regarding the strategies to be taken in the election to various posts in the Panchayat by the members of UDF were taken in the parliamentary committee of UDF the decision regarding the term of office of the President, Vice President and members of various Standing Committees were taken by the parliamentary party of UDF. Regarding the election of the member of Development Standing Committee no meeting of the parliamentary party was convened and no direction was given also regarding that. The direction of the District President of KC(M) was not within the knowledge of the respondent. There was no whip and no whip was served on the respondent as alleged. The alleged affixture is false. Even though the respondent attended the election meeting on 29.06.2018 she was very much worried about the help of her father and that affected the validity of her vote. It was by mistake her vote became invalid. The respondent did not disobey the direction of the party.

She is a loyal worker of KC(M) and she has not voluntarily given up her membership from the party. The allegation that the respondent joined in BJP is false. The respondent did not commit any act of defection and she did not give up her membership from KC(M). The petitioner is not entitled to get any relief in the petition and hence the same is only to be dismissed.

5. The evidence in this case consists of the oral testimonies of PWs1 to 4, RW1 and Exts.A1 to A7.

6. Both sides were heard.

7. The following points arise for consideration;

- (1) Whether the respondent has disobeyed the decision and direction of her party KC(M) as alleged?
- (2) Whether the respondent has voluntarily given up her membership from Kerala Congress (M) as alleged?
- (3) Whether the respondent has committed defection as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (4) Whether the petitioner is entitled to the declaration prayed for?
- (5) Reliefs and costs?

8. **POINT Nos.(1) to 5:** The petitioner and respondent are elected members of Pallikkathodu Grama Panchayat in the election held in November 2015 and both of them were elected as the candidates of KC(M) party. The

KC(M) party contested the election as part of a political coalition by name UDF and INC is also a part of the UDF. There is no dispute over those aspects. Exts.A1 to A3 also would show the said facts. Exts.A1 and A2 are the declarations filed by the petitioner and respondent before the Panchayat Secretary after their election as members. Ext.A3 is the copy of the register showing the party affiliation of the members of PallikkathoduGramma Panchayat. Ext.A3 also would show that the petitioner and respondent were elected as the candidates of KC(M) and UDF. As there is no dispute over the party affiliation of the petitioner and respondent Ext.s A1 to A3 require no discussion.

9. There are 13 wards (seats) in PallikkathoduGramma Panchayat and out of which the Indian National Congress and KC(M) got 3 seats each, BJP got 5 seats and the LDF got 2 seats. As the UDF got 6 seats it formed the Panchayat Board and the petitioner was elected as the President of the Panchayat as a nominee of KC(M) and the nominee of the Indian National Congress became the Vice President. Later the petitioner resigned from the post of President on 01.04.2017 as per the understanding in UDF and in his place Shri.Jijimon Joseph from INC was elected as President. After resigning from the post of the President the petitioner became a member of Welfare Standing Committee. Later on 24.05.2018 he resigned his membership in Welfare Standing Committee and another member Shri.ShajiIssac resigned his

membership in Development Standing Committee. Election to fill up the vacancies in both the Standing Committees was held on 29.06.2018.

10. According to PW1 the petitioner he contested for the membership in Development Standing Committee as a nominee of KC(M). Ext.A4 is said to be the letter given by the petitioner to Returning officer declaring his candidature. The District President of KC(M), it is stated, issued whip to the respondent directing her to vote for the petitioner. Ext.A5 is the copy of the whip. When the whip was tendered to her directly she refused to accept the same. Hence the whip was affixed on the house of the respondent in the presence of witnesses and the witnesses put their signatures in Ext.A5. Though the respondent was aware of the decision and direction of the party she chose to disobey the whip. Defying the direction of the party she cast her vote infavour of the rival candidate Smt.SobhanaKunjumon, the nominee of the BJP. It is stated that she omitted to write her name on the reverse side of the ballot paper and hence her vote became invalid. Ext.A6 is the copy of the ballot paper. Ext.A7 is the copy of the minutes of the above election meeting held on 29.06.2018. The petitioner and BJP nominee got five votes each as the respondent's vote became invalid and in the lot the petitioner became the member of Development Standing Committee. Case of the petitioner is that the respondent committed defection by acting against the interest of her party and also by defying the direction of her party and thereby she incurred

disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The above conduct of the respondent would amount to voluntarily giving up her membership from KC(M), PW1 further states.

11. PWs 2 to 4 are the other witnesses examined on the side of the petitioner. PW2 is the District President of KC(M) Kottayam District and he gave evidence supporting the case of the petitioner. It is stated by him that he has issued whips to all the elected members of the KC(M) directing them to vote for the petitioner in the election to Development Standing Committee and Ext.A5 is the copy of the whip issued by him to the respondent. Though the respondent was directed to come and collect the whip from the District Committee office she did not come and collect. Hence the whip issued to the respondent was entrusted with the petitioner to be served on the respondent. As the respondent was not prepared to accept, the whip was served by affixture, PW2 further states. PW3 and 4 are the witnesses to the affixture of the whip in this case. It is stated by them that they went along with PW1 to the house of the respondent and they saw PW1 affixing the whip on the front door of the respondent's house. It is also stated by them that they put their signatures in Ext.A5 as witnesses for the affixture.

12. The respondent was examined as RW1. Case of RW1 is that she did not commit any act of defection inviting disqualification. According to

her she did not do any act against the interest of her party. There was no whip or direction from the party to vote infavour of the petitioner and no whip was served on the respondent. As there was no direction from the party, RW1 states, she took a decision of her own and cast her vote infavour of the BJP candidate. According to her she continues to be a member of KC(M) and she did not abandon her membership from KC(M).

13. Submission of the learned counsel for the petitioner is that the respondent instead of casting her vote infavour of her own party nominee, cast her vote infavour of the rival candidate Smt.SobhanaKunjumon, the nominee of rival party BJP defying and disobeying the direction of PW2, the District President of her party and thereby committed. defection. By doing so the respondent acted against the interest of her own political party and acting against the interest of her party alone is sufficient to hold that the respondent has voluntarily given up her membership from her political party. Contention of the learned counsel for the respondent on the other hand is that there was no whip issued and served on her. It is also the submission of the counsel that the authority to issue the whip to the respondent is the President of the Mandalam Committee and not the District President.

14. Whether the respondent has committed any acts of defection envisaged under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act is the question to be considered in this case. 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 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 form 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 Standing Committee or

(ii) in a meeting of a Panchayat in an election of its President/Vice President, a member of his 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.

(c) if an independent member not belonging to any coalition, joins any political party or coalition, he shall be disqualified for being a member of that local authority.

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

(2) The direction in writing issued for the purpose of clauses (a) and (b) of sub-section (1) shall be given to the members concerned in the manner as may be prescribed and copy of such direction in writing shall be given to the Secretary of the Local Self Government Institution concerned.

(3) Where any dispute arises regarding the direction issued under this section between the political party or coalition concerned and the member authorized in this behalf as prescribed under sub-section (2), the direction in writing issued in this regard by the person authorized by the political party from time to time to recommend the symbol of the political party concerned for contesting in election shall be deemed to be valid.

This case relates to the voting in the election of a member of Standing Committee.

15. It may be noted that Section 3(1)(a) of the Act has two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership of such political party and second limb comes in to play when such member violates or disobeys the direction issued by the political party or a person authorized by it in this behalf. As per clause (iva) of Section 2, a direction in writing means a direction in writing signed with date, issued to a member belonging to or having the support of a political party, by the person authorized by the political party from time to time to recommend the symbol of the said party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting.

16. To attract the second limb there must be a proper whip, the whip should be communicated and there must be violation of the whip. PW2 is the District President of KC(M) Kottayam District. RW1 has no case that PW2 is not the District President of KC(M). Though it is stated in the objection statement that it was the Mandalam President who recommended the official symbol of KC(M) from the respondent at the time of election she has no such case at the time of evidence. Neither in the chief affidavit nor in the cross-examination RW1 has a case that the District President of the KC(M) is not the authority to issue whip to the elected members of KC(M) in Kottayam District. Her case at the time of evidence is that the District President of KC(M) has not issued any whip/direction to the respondent or other members. As per Rule 4 of the Kerala Local Authorities (Disqualification of Defected

Members) Rules. The person authorised by the political party to recommend the official symbol to the candidate is the competent person to issue whip to the elected members of their party. PW2 is the District President of KC(M) and according to him it was he who recommended the official symbol of KC(M) for the respondent and being the District President he is the competent person to issue whip to the respondent. RW1 has no case in her evidence that PW2 is not competent person to issue the whip in this case. PW2 has clearly stated about the issuance of whip directing the respondent to vote infavour of the petitioner in the election to Development Standing Committee and Ext.A5 is the copy of the whip. It may also be noted that KC(M) has 3 members in Pallikkathodu Grama Panchayat and out of the 3, two members obeyed the decision and direction of the party. That also would show that the petitioner contested the election on 29.06.2018 as per the decision of the party.

17. As per Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules the whip/direction can be served by three modes--- (1) directly (2) sending by registered post and (3) by affixture. Admittedly the whip was not sent by registered post in this case. According to PW1 and PW2 the whip when tendered directly the respondent refused to accept the same. So the whip was not served directly. Case of the petitioner is that the whip was served on the respondent by affixture by affixing the whip on the front door of the respondent's house. Evidence of PWs1, 3 and 4 would show that the whip was affixed the whip on the front door of the respondent's house. It is clearly

stated by PW1, 3 and 4 that they went to the house of the respondent and affixed the whip on the front door of the respondent's house. PWs 3 and 4 are the witnesses to the affixture. PWs 3 and 4 stated that they were present with PW1 at the time of affixing the whip and they saw PW1 affixing the whip on the front door of the respondent's house and they put their signatures in Ext.A5 copy of the whip as witnesses to the affixture. I do not find anything to disbelieve the evidence of PWs 3 and 4 regarding the affixture of the whip. From the evidence of PWs 1, 3 and 4 it can be seen that the whip was affixed on the front door of the respondent's house and the whip was served on the respondent's by affixture. Affixture is a deemed service. Hence it is to be taken that the whip is served on the respondent. The respondent therefore cannot contend that there was no service of whip on her.

18. It may be noted that the respondent is a responsible elected member of Kerala Congress (M) Pallikkathodu Grama Panchayat and she cannot act according to her whims and fancies and that too against the direction of her own party in the election. She is bound by the direction and decision of her party and disobedience and acting against the interest of the party is nothing but disloyalty. It is found above that the District President of KC(M) issued whip to the respondent directing her to vote for the petitioner in the election to Development Standing Committee and whip was served by affixture. But she defied the direction and voted in favour of the rival candidate the nominee of BJP. She cast her vote against the nominee of her

own political party. That would only show that she has acted against the interest of her own party.

19. It may also be noted that as per Section 3(1)(a) of the Act a member can be disqualified if he has voluntarily given up the membership of the party to which he belongs or acts in defiance of a whip issued by that political party. It is the settled law that the disqualification for voluntarily giving up the membership of the political party to which he belongs is not dependent on any violation of the whip. It is not necessary to hold that the member has violated the whip in order to conclude that he has voluntarily given up the membership of the political party to which he belongs. The grounds for disqualification under the first and second limbs of Section 3(1)(a) of the Act are distinct and are not interlinked as held in the decisions reported in **2009(2) KHC 839 (Biju R.S. and others V. Kerala State Election Commission and others)** and **2015 KHC 454 (Suryaprakash and others V. State Election Commission, Thiruvananthapuram and others)**. From the conduct of a member an inference can be drawn that he has voluntarily given up his membership from his party.

20. As stated above, the respondent was elected as a member of KC(M) and she is bound by the decision of her party. She must be loyal to the party and cannot act against the interest of her party. The election to fill up the vacancy in Development Standing Committee was held on 29.06.2018. The petitioner the nominee of KC(M) and Smt.SobhanaKunjumon of BJP

were the candidates. It is in evidence that the District President of the KC(M) issued whip to the respondent directing her to vote infavour of the KC(M) nominee the petitioner. But the respondent defied the direction and cast her vote in favour of the rival candidate Smt.SobhanaKunjumon. It is true that her vote was declared invalid as she omitted to write her vote on the reverse side of the ballot paper. But that will not make any difference. Admittedly the respondent cast her vote infavour of the BJP nominee Smt.SobhanaKunjumon who contested against her own party nominee. Ext.A6 ballot paper would show the said fact. Contention of the respondent in the objection statement is that she was worried about the health disorder of her father and that affected the validity of her vote. She was referring her omission to write her name on the reverse side of the ballot paper which rendered her vote invalid. Voting infavour of Smt.ShobhanaKunjumon is not a mistake even according to the respondent. RW1 has clearly stated that she voted for BJP candidate on her own. As an elected member of KC(M) the respondent cannot take a stand different from that of herparty. The respondent'sact of voting against the candidate of her own party nominee and voting in favour of the candidate of the rival party is clearly an act of disloyalty and act against the interest of her own party.

21. The object sought to be achieved by the Act is to prohibit defection among members of the Local Authorities and to provide disqualification for

the defecting members. What is ultimately sought to be prevented is the evil of the political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. It is settled law that if a member or a group of elected members of a political party takes a different stand from that of the political party as such and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. The **Kerala Local Authorities (Prohibition of defection) Act**, derived its source from the *10th schedule to the Constitution of India*. While upholding the Constitutional validity of 10th schedule, the *Apex Court in KihotoHollohanVs.Zachillhu (1992) Supp.2 SCC 651*” observed as follows:-

“A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party.If a member while remaining a member of the political party which had set him up as a candidate at the election votes or abstains from voting contrary to any ‘direction’

issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, he incurs disqualification. A political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political party's declared politics will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance-nay indeed its survival.To vote against the party is disloyalty. To join with others in abstention or voting with other side smacks of conspiracy.”

22. In the decision reported in 2008 (3) KHC 267 in (Faisal P.A. Vs. K.A.AbdullaKunhi) it was held as follows,-

“Since the words voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by resignation, from the conduct of the petitioner if an inference can

be drawn that he has voluntarily given up his membership of his political party, he is liable to be disqualified. From the facts noticed by the second respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation.”

23. A member belonging to a political party has to be loyal to his party and the moment he becomes disloyal he/she would become subject to disqualification on the ground of voluntarily giving up his/her membership from the party. The conduct of the respondent in violating the direction of her party and voting against the nominee of her own party and in favour of the nominee of rival party defying the direction of her party would clearly demonstrate that she became disloyal to the party which elected her as a member of Pallikkathodu Grama Panchayat. The above acts 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 is, certainly, to be curbed. The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it.

24. From the above facts and circumstances it can be seen that the respondent has committed defection and she has voluntarily given up her membership of the party which elected her as member, as provided by Section 3(1)(a) of the Act and therefore she became subject to disqualification for being a member of Pallikkathodu Grama Panchayat. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being member of Pallikkathodu Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent is further declared as disqualified for contesting as a candidate in an election to any local authorities for a period of 6 years from this date, as provided by Section 4(3) of the Act.

Considering the circumstances of the case the parties are directed to bear their respective costs.

Pronounced before the Commission on this the 18th day of June 2019

Sd/-

**V. BHASKARAN,
STATE ELECTION COMMISSIONER**

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Shri.Benny Thomas
 PW2 : Shri.SunnyThekkedam
 PW3 : Shri.Jose A.J
 PW4 : Shri.Biju C.P

Witnesses examined on the side of the respondent

RW1 : Smt.Moly George

Documents produced on the side of the petitioner

A1 : Copy of the declaration in Form No.2 submitted by Shri.Benny Thomas, Member, Pallikkathodu Grama Panchayat

A2 : Copy of the declaration in Form No.2 submitted by Smt.Moly George, Member, Pallikkathodu Grama Panchayat

A3 : Copy of the register showing the party affiliation of the members of Pallikkathodu Grama Panchayat

A4 : Copy of the application submitted by Shri.Benny Thomas to the Returning Officer, Pallikkathodu Grama Panchayat

A5 : Copy of the whip issued by Shri. Sunny Thekkedam, President, (KC(M)Kottayam District Committee to Smt.Moly George

A6 : Copy of the ballot paper issued to Smt.Moly George for the election of the member of Development Standing Committee

A7 : Copy of the minutes of the meeting to elect

the members of Development and Welfare
Standing Committee held on 29.06.2018

Sd/-

V.BHASKARAN
STATE ELECTION COMMISSIONER

//True Copy//