

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

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

**Friday, the 12<sup>th</sup> day of May 2017**

**O.P.No.78/2015**

Petitioner : Suresh Pillai,  
S/o Kesavan Pillai,  
Elanjipurath, Kanghazha P.O.,  
Kottayam District.

Member, Ward No.09,  
KangazhaGram Panchayat

**(By Advs. HashimBabu&Sajitha .S)**

Respondent : K.M.Joseph,  
S/o Mathew, Kondodikkal,  
Edayaarikkapuzha P.O.,  
Kottayam District.  
Member, Ward No.05,  
KangazhaGram Panchayat,

**(Adv. Adv.PallichalS.K.Pramod)**

This petition having come up for hearing on the 5<sup>th</sup> day of **April 2017**, in the presence of Advs. **HashimBabu&Sajitha.S** for the petitioner and **Adv.PallichalS.K.Pramod** 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 KangazhaGramma Panchayat 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 members of KangazhaGramma Panchayat in the election held in November 2015. Both of them contested and were elected as the candidates of Indian National Congress (INC). There are 15 wards (seats) in KangazhaGramma Panchayat and out of which Indian National Congress secured 6 seats, CPI(M) got 4 seats, CPI got 2 seats, one seat BJP and one seat Kerala Congress (M). The remaining one seat went to an independent in KangazhaGramma Panchayat. There was no coalition between Indian National Congress and Kerala Congress (M) in KangazhaGramma Panchayat. As the Indian National Congress got 6 seats and one independent member offered his support the party decided to try a chance to form the Panchayat board. The Indian national Congress nominated the petitioner as the candidate for the post of Panchayat President and Smt.SheebaMol as the Vice President candidate. The DCC President issued whip to all Indian National Congress members to elect the above persons as President and Vice President respectively. Election

to the posts of the President and Vice President was held on 19.11.2015. The respondent in gross defiance of the direction of the party voted in favour of the President candidate of LDF Shri.B.Pradeep. The BJP and Kerala Congress (M) members did not cast their votes. The petitioner got six votes including the vote of the independent member. The LDF candidate got 7 votes including the vote of the respondent. The LDF candidate Shri.B.Pradeep became the Panchayat President with the support of the respondent. Similarly the respondent cast his vote in favour of the LDF candidate in the election of the Vice President. He committed defection by voting against the candidates of his own party and voting in favour of the rival party candidates. Respondent was very well aware of the contents of the whip. He has voluntarily abandoned his membership, Indian National Congress by acting against the interest of his party and supporting the rival party. The respondent is hence to be disqualified to continue as member of Kangazha Grama panchayat and this petition is for a declaration to that effect.

3. The respondent filed counter statement contending as below. The petition is not maintainable. It is true that the respondent contested and was elected as the candidate of Indian National Congress. But he has never given up his membership of Indian National Congress. The averment that the independent member offered his support to Indian National Congress to form the board is false. There was no whip as alleged. A false story is put forward regarding the

issuance of whip. The respondent has no information regarding the alleged whip. The whip was not communicated to the respondent. The Indian National Congress did not field any candidate for the posts of President and Vice President. Earlier the petitioner belonged to CPI(M). Later he became the candidate of Indian National Congress by influencing the District leaders of Indian National Congress. The respondent has never shown any disloyalty to his party and he did not disobey any of the directions of the party. It was the petitioner who had once betrayed his party CPI(M). The KPCC has taken a decision to the effect that the members came from other parties would not be considered for the post of the President or Vice President. Contesting for the post of President and Vice President was ruled out by the KangazhaMandalam Committee of Indian National Congress due to lack of majority for the party. The petitioner was a self-declared candidate for the posts of President and the Vice President candidate was his nominee. The petitioner's name was proposed by an independent member and not by a member of Indian National Congress. There was no act of defection from the side of the respondent and he is still a follower of Indian National Congress. The petition is filed due to personal vengeance. There is no merit in the petition and it is only to be dismissed.

4. The evidence in this case consists of the oral testimonies of PWs1 to 7, RW1 and RW2 and Exts.A1to A17, B1 and X1 to X5.

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 alleged?
- (3) Whether the respondent has voluntarily given up his membership from the Indian National Congress as alleged?
- (4) Whether the petitioner is entitled to get the declaration as prayed for?
- (5) Reliefs and costs?

7. **POINT No.(1)**: As stated above, this is a petition 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 he became disqualified to be the member of KangazhaGramapanchayat and also to contest the election to any local body for a period of six years.

8. The petitioner and respondent were elected members of KangazhaGramapanchayat in the election held in November, 2015. Both of them were elected as the candidates of Indian National Congress. According to the petitioner the respondent, after getting elected as a candidate of Indian National Congress supported the rival LDF candidate in the election to the post of President and Vice President of KangazhaGramapanchayat defying the direction of his own party. By voting against the nominee of his own party in the President election and supporting the rival party candidate the respondent

committed defection and thereby became disqualified to be the member of KangazhaGramma Panchayat, it is further contended. As against that the contention of the respondent is that he has not committed any act of defection and he denied all the allegations. It is also his case that this petition is not maintainable.

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. Filing of such petitions is regulated by Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules.

**Rule 4A** reads as below,-“ (1).If any subject arises as to whether a member of a local authority has become subject to disqualification by the act, a member of that local authority or a member authorized to give directions to that member as per sub-rule (1) of Rule 4 may file a petition before the State Election Commission to decide the matter.”

10. The petitioner herein being a member of local authority is certainly 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 under Section 3(1)(a) 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 5**: Case of the petitioner is that the respondent committed defection incurring disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and hence he is to be disqualified to be a member of KangazhaGramam Panchayat. It is also the case of the petitioner that the respondent has voluntarily given up his membership in Indian National Congress party by acting against the interest of his party and supporting the rival party.

12. The petitioner and respondent, as stated above, are elected members of KangazhaGramam Panchayat and admittedly they are elected as candidates of Indian National Congress. There are 15 wards in KangazhaGramam Panchayat. As stated above the Indian National Congress got 6 seats. The CPI(M) and CPI secured 4 seats and 2 seats respectively. The Kerala Congress (M) and BJP have one seat each and the remaining one seat was won by the independent. As the Indian National Congress got more seats than the other parties, it is stated, they decided to contest for the post of Panchayat President and Vice President with the support of the independent member. The election to the post of President and Vice President was decided to be held on 19.11.2015. According to PW1, in the parliamentary party meeting of the Indian National Congress members held in the office of the DCC it was decided to nominate the petitioner as the candidate for the post of President and

Smt.SheebaMol for the post of Vice President. The DCC President issued whips to all the Indian National Congress members to vote and elect the petitioner and Smt.SheebaMol as the President and Vice President of KangazhaGramma Panchayat. Ext.A3 is the copy of the said whip. Exts.A4 to A15 are said to be the acknowledgments for the receipt of the whips by the Indian National Congress members. The whip when tendered to the respondent was returned after reading its contents. When the meeting was held on 19.11.2015 for the election of the President and Vice President the respondent took a different stand from that of his party and committed disloyalty to the party by voting against the candidate of his own party and voting in favour of the rival LDF candidates. By doing so he committed defection and he voluntarily gave up his membership in the party. It was because of his above act of disloyalty the rival LDF candidates became the President and Vice President of the Panchayat, PW1 further states.

13. PW2 is the President of Kottayam DCC. He gave evidence supporting the case of the petitioner. It is stated by him that the parliamentary party meeting held in the DCC office on 18.11.2015 decided to nominate the petitioner as the candidate for the Panchayat President and Smt.SheebaMol for the Vice President and the same was approved by him. It is also stated by him that he has issued whips to all the elected Indian National Congress members to vote elect the petitioner and Smt.Sheeba Mol. Despite the direction the respondent supported the rival LDF candidate and by voting in favour of the LDF



candidate he facilitated the defeat of his own party nominees in the election. As he acted against the interest of the Indian National Congress party, PW2 states, he was expelled from the party. PW3 is the President of Indian National Congress, KangazhaGramam panchayat. His evidence is also more or less on the same lines of PW1 and PW2. According to him he went to the house of the respondent to serve the whip. But the respondent returned the whip after reading the contents and he did not acknowledge the receipt. According to him Exts. A4 and A5 are the whips tendered to the respondent.

14. PW4 is the Returning Officer for the election in KangazhaGramam Panchayat. PW5 and PW6 are the present previous Secretaries of KangazhaGramam Panchayat and PW7 is the Assistant Secretary. PWs 4 to 7 were examined to speak about the party affiliation of the petitioner and respondent. The petitioner and respondent admittedly contested and were elected as Indian National Congress candidates and there is no dispute over that. As there is no dispute regarding the party affiliation the evidence of PWs 4 to 7 and Exts.A1 and A2 letters and Exts.X1 and X2 require no discussion.

15. Contention of the respondent is that he did not do any act inviting disqualification. There was no whip from the party and therefore violation of the same does not arise. As there was no direction from the party he was free to vote in favour of any candidate and accordingly he cast his vote in favour of the LDF candidates. According to him the Indian National Congress did not take a decision to contest the post of President and Vice President as it has no

majority. To him the petitioner was a self-declared candidate and the party has not decided his candidature. The Vice President candidate Smt. Sheeba Mol is the nominee of the petitioner and not the nominee of the Indian National Congress. It is also his contention that the petitioner was earlier a CPI(M) man and later he defected from CPI(M) and joined Indian National Congress.

16. Whether the respondent committed any act of defection as envisaged in Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act is the question then to be considered. As per Section **3 (1)(a) of the Act**, if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, defies the direction issued in writing by the political party to which the member belongs or by a person or authority authorized by it in this behalf in the manner prescribed, in an election to the post of President or Vice President he shall be disqualified for being a member of the said local authority.

17. 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 to play when such member violates or disobeys the direction issued by the political party or a person authorized by it in this behalf.

18. To attract the second limb there must be violation of the written direction issued by the competent authority in the party. But in this case the alleged violation to attract the second limb does not arise. It is in evidence that the

DCC President who is competent to issue whip the Indian National Congress members including respondent issued the whip to vote in favour of the petitioner and Smt.Sheeba Mol. But it is to be stated that there is no evidence to show that the whip issued in this case was served on the respondent. 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. The said written direction should be served on the respondent in accordance with the provisions of Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. But the whip in this case was not served on the respondent either personally or by affixture as per law. There is nothing in evidence to show the whip in this case was served on the respondent. As the whip was not served on the respondent it cannot be said that there is violation of the whip. So the second limb is not attracted in this case. But that is not the case with regard to the first limb.

19. It is a fact that the respondent contested and was elected as a candidate of Indian National Congress party and he is bound by the decision of his party. He must be loyal to his party and he cannot act against the interest of his party. It is in evidence that the petitioner and Smt.SheebaMol contested for the posts of President and Vice President as the candidates of Indian National Congress.

Though it is contended by the respondent in the counter statement that contesting for the posts of President and Vice President was ruled out by the Indian National Congress, KangazhaMandalam Committee due to lack of majority, Ext.B1 document produced by the respondent would show that the party has decided to contest for the posts of President and Vice President. Ext.B1 is said to be a copy of the minutes of the parliamentary party meeting of Indian National Congress members of KangazhaGramma Panchayat held on 17.11.2015. Ext.B1 would show that the parliamentary party meeting of the Indian National Congress members decided to contest for the posts of President and Vice President. As there was dispute regarding the election of the presidential candidate it was decided to approach the DCC President for a decision.

20.Evidence of PW2 DCC President is that the parliamentary party meeting of Indian National Congress members of KangazhaGramma Panchayat was held in DCC office under his President ship on 18.11.2015 and the petitioner and Smt.SheebaMol were decided to be the candidates of the Indian National Congress. The respondent did not attend the said meeting. It may be noted that PW2, the DCC President approved the candidature of the petitioner and Smt.SheebaMol for the posts of President and Vice President. Except the respondent all other Indian National Congress members cast their votesinfavour of the petitioner and Smt.Sheeba Mol. Admittedly,the loneindependent member also supported the petitioner and Smt.Sheeba Mol. It

is stated by RW1, the respondent that he did not enquire with the DCC President regarding the candidates of Indian National Congress for the posts of President and Vice President. It may be noted that the petitioner and Smt.SheebaMol contested and were elected as Indian National Congress members along with the respondent. There is nothing in evidence to show that the petitioner and Smt.SheebaMol contested for the posts of President and Vice President on their own without the support and decision of the Indian National Congress party.

21. It is to be stated that the respondent is a responsible elected member of KangazhaGramma Panchayat and he cannot act according to his whims and fancies. He is bound by the decision of the party and disobedience and acting against the interest of the party is nothing but disloyalty. He is very well aware of the decision of the party to vote and elect the petitioner as Panchayat President and Smt.SheebaMol as Vice President. But he ignored the decision of the party and cast his vote in favour of the rival LDF candidate to defeat the party's candidates as submitted by the petitioner's counsel. Even if the respondent is not satisfied with the candidature of the petitioner he cannot take a different stand from that of Indian National Congress and support the rival LDF candidate and defeat his own party nominee. It is admitted by RW1 that he cast his vote infavour of LDF candidates and they became President and Vice President of KangazhaGramma Panchayat.

22. The argument of the learned counsel for the respondent is that the respondent can be said to have voluntarily given up his membership of Indian National Congress only if it is proved that he has acted in violation of any direction issued by the DCC President and same has been served on him in accordance with the provisions of law. A member of the local authority can be disqualified on the ground that he has voluntarily given up his membership of the political party to which he belongs only if it is proved that he has voted contrary to the direction issued by the party. As no whip was served on the respondent in the manner prescribed the respondent cannot be disqualified on the ground that he has voluntarily given up his membership of the party, the counsel further contends. According to the counsel the respondent can be disqualified in this case only when there is violation of the direction issued by the DCC President. As against that the contention of the learned counsel for the petitioner is that from the conduct of the respondent it can be seen that he has voluntarily given up his membership in Indian National Congress and to incur disqualification on that ground the issuance of whip or direction and its service are not necessary. A member of a local authority can be disqualified if he has voluntarily given up his membership of the party to which he belongs. By voting in favour of the rival candidate and against his own party nominee the respondent has voluntarily given up his membership of Indian National Congress and thereby incurred the disqualification under Section 3(1)(a) of the Act, it is further submitted.

23. As stated above a member can be disqualified as per the Act if he has voluntarily given up the membership of the political party to which he belongs or acts in defiance of the whip/direction issued by the political party. It is the settled law that the disqualification for voluntarily giving up the membership of one's party is not dependent on the violation of the whip. The intention of the Act is that the member who has violated the whip or abandoned the membership of his political party to which he belongs shall be disqualified. It is not necessary to hold that the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. The grounds for disqualification are distinct and are not interlinked. So even if the issuance and service of whip are not proved the respondent cannot escape from the liability. His above act of supporting the LDF and voting in favour of the rival LDF candidate is against the interest of his political party. By doing so he has voluntarily given up his membership of Indian National Congress. It has nothing to do with the issuance of whip and its violation. Therefore the argument of the learned counsel for the respondent, that the respondent can be disqualified on the ground that he has voluntarily given up his membership of Indian National Congress only if it is proved that he has violated the whip/direction issued by his party cannot be accepted.

24. The evidence and circumstances would clearly show that the respondent has deliberately acted against the interest of his party by voting in favour of the

rival candidates of LDF in the election for the post of President and Vice President. According to the learned counsel for the petitioner the respondent engineered the defeat of his own party nominees by colluding with the LDF and it was because of his acts the LDF candidates could win the election. The evidence and circumstances would only lend support to the said contention. It was the decision of the party to elect the petitioner as President and Smt. Sheeba Mol as Vice President. The respondent was aware of that. But he did not vote in favour of his own party nominees and he ensured the success of rival LDF candidates.

25. 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 *10<sup>th</sup> schedule to the Constitution of India*. While upholding the



Constitutional validity of 10<sup>th</sup> 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.”*

26. 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.”*

27. A member belonging to a political party has to be loyal to his party and the moment he becomes disloyal he would become subject to disqualification on the ground of voluntarily giving up his membership from the party. The conduct of the respondent supporting the LDF and casting his vote in favour of

the rival LDF candidate to facilitate the defeat of his own party nominee would clearly demonstrate that he became disloyal to the party which elected him as a member. His above act would amount to defection inviting disqualification and the case put forward by the petitioner in that regard is clearly established in this case. I do not find anything in this case to take a different view. According to the 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.

28. From the available evidence and the circumstances it can be safely concluded 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 member of KangazhaGramma Panchayat. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being member of KangazhaGramma Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and 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 12<sup>th</sup> day of May 2017

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

**APPENDIX**

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

PW1	:	Shri.Suresh Pillai
PW2	:	Shri.TomyKallani
PW3	:	Shri.V.A.Jamaludeen
PW4	:	Shri.James Joseph Kunnappalli
PW5	:	Smt.Geetha Mary Maman
PW6	:	Smt.K.K.Remabhai
PW7	:	Shri.N.R.Muraleedharan Nair, Secretary, KangazhaGrama Panchayat

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

RW1	:	Shri.K.M.Joseph
RW2	:	Shri.Faizal V.M

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

A1	:	Letter No.A2994/2015 dated 14.01.2016 of the Commercial Taxes Officer, 2 <sup>nd</sup> Circle, Changanassery
A2	:	Copy of the Register showing the party affiliation of the members of KangazhaGrama Panchayat Page No.1

- A2(a) : Copy of the Register showing the party affiliation of the members of KangazhaGrama panchayat Page No.5
- A3 : Copy of the letter dated 19.11.2015 of the President, DCC, Kottayam addressed to the Returning Officer, KangazhaGrama Panchayat
- A4 to A15 : Receipts of whip (acknowledgment) of various members of KangazhaGrama panchayat
- A16 : Copy of the application submitted to the Commercial taxes officer, IInd circle, Changanassery, by AjiThakadiyel
- A17 : Copy of the letter No.A2944/2015 dated 01.01.2016 of the commercial Taxes Officer, 2<sup>nd</sup> Circle, Changanassery

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

- B1 : Copy of the minutes of Congress Parliamentary Leaders meeting held on 17.11.2015

**Documents produced on the side of the Court Witnesses**

- X1 : Letter from DCC President, Kottayam to the Returning Officer, KangazhaGrama Panchayat- Request for issuing Party symbol
- X2 : Letter from DCC President, Kottayam to Shri.K.M.Joseph to the Returning Officer, KangazhaGrama Panchayat to issue party symbol to Shri.SureshK.Pillai
- X3 : Copy of the Register showing the political affiliation of members of KangazhaGrama Panchayat
- X4 : Minutes of the meeting for election to the post of President, KangazhaGramaPnchayat held on 19.11.2015

X5 : Minutes of the meeting for election to the post of Vice President, Kangazha Grama Panchayat, held on 19.11.2015

Sd/-

V.BHASKARAN

**STATE ELECTION COMMISSIONER**

//True Copy//