

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

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

**Friday, the 13<sup>th</sup> day of October 2017**

**O.P.Nos.79/2015, 80/2015 & 81/2015**

**O.P.No.79/2015**

Petitioner : Sadasivan Nair,  
S/o Gopala Pillai,  
Cherikunnil Veedu,  
Kanjiraveli, Aranmula,  
Mallapuzhassery, Pathanamthitta.

Member, Ward No.12,  
Mallapuzhassery Grama Panchayat

**(By Adv.N.Binu)**

Respondent : Manoj Madhavasseril,  
Omthekkadu, Kanjireveli,  
Aranmula P.O.,  
Pathanamthitta District.  
Member, Ward No.03,  
North Mallapuzhassery Grama Panchayat

**(By Advs.M.Hashim Babu & Sajitha.S)**

**O.P.No.80/2015**

Petitioner : Sadasivan Nair,  
S/o Gopala Pillai,  
Cherikunnil Veedu,  
Kanjiraveli, Aranmula,  
Mallapuzhassery, Pathanamthitta.

Member, Ward No.12,  
Mallapuzhassery Grama Panchayat

**(By Adv.N.Binu)**

Respondent : Rema Bhaskar,  
Pannivellil, CherayilVeedu,  
Omthekkadu, Thekkemala P.O.,  
Pathanamthitta District.  
MallapuzhasseryGrama Panchayat

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

**O.P.No.81/2015**

Petitioner : Sadasivan Nair,  
S/o Gopala Pillai,  
CherikunnilVeedu,  
Kanjiraveli, Aranmula,  
Mallapuzhassery ,Pathanamthitta.

Member, Ward No.12,  
MallapuzhasseryGrama Panchayat

**(By Adv.N.Binu)**

Respondent : P.A.Narayanan,  
KuzhikkalaKizhakku Ward  
Puttalil, PuttalilVeedu,  
Kuzhikkala P.O.,  
Pathanamthitta District.

Member, Ward No.9,  
MallapuzhasseryGrama Panchayat.

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

These petitions having come up for hearing on the 26<sup>th</sup> day of September 2017, in the presence of **Adv.N.Binu** for the petitioner and Advs. **M.HashimBabu&Sajitha.S** for the respondents and having stood over for consideration to this day, the Commission passed the following.

## **COMMON ORDER**

These petitions are filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have committed defection and hence became disqualified to continue as members of Mallapuzhassery Grama Panchayat and also for declaring them as disqualified to contest as candidates in any election of the local body for a period of six years.

2. As the questions of law and facts involved in all the petitions are common, they were taken up together treating O.P.No.79/2015 as the main case. Petitioner in all the petitions is one and the same person.

3. Common case of the petitioner in all the petitions in brief is as below:-  
The Petitioner and respondents are elected members of Mallapuzhassery Grama Panchayat in Pathanamthitta District in the election held in November 2015. Petitioner was elected from ward No.12 as the candidate of Indian National Congress (INC). Respondents in O.P.Nos.79/2015, 80/2015 and 81/2015 are elected as the candidates of Janata Dal (U), Kerala Congress (M) and Indian National Congress respectively and they were elected from ward Nos.3, 4 and 9 respectively. The Indian National Congress (INC), Kerala Congress (M) (KC(M)) and Janata Dal (U) contested the election on a common political platform by name United Democratic Front (UDF) in Mallapuzhassery Grama Panchayat and also at the state level.

4. There are 13 wards in Mallapuzhassery Grama Panchayat and out of that the Congress led UDF got 5 seats, the LDF got 4 seats, 3 seats by BJP and the remaining one seat was won by an independent member, a rebel candidate of Indian National Congress (INC). After the election parliamentary party of Indian National Congress (INC), Kerala Congress (M) and Janata Dal (U) and District committees of Indian National Congress, Kerala Congress (M) and Janata Dal (U) decided to elect the petitioner as the President of Mallapuzhassery Grama Panchayat and directions were issued to the respective elected members by the authorized persons in that behalf to cast their votes in favour of the petitioner for the post of the President and they accepted the whips. The election to the post of the President and Vice President was held on 19.11.2015. But quite surprisingly the respondent in O.P.79/2015 Shri.ManojMadhavasseril joined hands with the LDF and contested for the post of President against the petitioner violating the direction of his party and became the Panchayat President. The respondent in O.P.80/2015 Smt.Remabhaskar, a Kerala Congress (M) member also voted in favour of Shri.ManojMadhavasseril violating the direction of her party. The respondent in O.P.81/2015 Shri.P.A.Narayanan, a Congress member deliberately abstained from voting violating the direction of his party. The respondents violated the decision and directions of their political parties and acted against the interest of the parties and the political coalition UDF. Their conduct amounts to defection. The respondents were well aware of the decision and the interest of their parties. By

defying the direction and acting against the interest of their political parties the respondent in O.P.79/2015 contested against the official candidate of United Democratic Front, the respondent in O.P.80/2015 voted against the official candidate of United Democratic Front and the respondent in O.P.81/2015 deliberately abstained from voting. By doing so they committed defection. The Respondents have shown disloyalty towards their political parties and front and they betrayed the electorate. By their conduct the respondent in O.P.79/2015 voluntarily gave up his membership in Janata Dal (U), the respondent in O.P.80/2015 from his membership in Kerala Congress (M) and the respondent in O.P.81/2015 from his membership in Indian National Congress. The respondents thus incurred disqualification as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the petitioner filed these petitions for a declaration to that effect.

5. The respondents filed statement of objections raising common contentions which in brief are as below,- These petitions are not maintainable. The petitioner and respondents are elected members of Mallapuzhassery Grama Panchayat as stated in the petition. After the election the UDF got majority in various Grama Panchayats in Pathanamthitta District. In Mallapuzhassery Grama Panchayat the UDF got 5 seats- 3 by INC and one each by KC(M) and JD(U). In the District level discussion of United Democratic Front the Presidentship of Mallapuzhassery Grama Panchayat was allotted to Janata Dal (U) and Vice Presidentship to Kerala Congress (M). Some local

leaders of Indian National Congress who are doing anti party activities in Mallapuzhassery Grama Panchayat decided to keep other political parties away from the power and the petitioner contested for the post of President with the support of a fraction in Indian National Congress and it was against the decision of the United Democratic Front at the District level. Shri. Manoj Madhavasseril, the respondent in O.P.79/2015 contested for the post of President as per the decision of the District Committee of UDF. As there were two nominations from the UDF, the LDF did not propose any candidate and supported Shri. Manoj Madhavasseril. The petitioner is not the official candidate of Indian National Congress. The District Committee of Janata Dal (U) decided the respondent as the Presidential candidate in Mallapuzhassery Grama Panchayat and it was communicated to the District Leadership of UDF. The District Committee of UDF approved his candidature and directions were given to all UDF members to vote in favour of Shri. Manoj Madhavasseril. The state President of Janata Dal (U) is the authorized person to give direction to the member of JD(U) and the respondent in O.P.79/2015 obeyed the direction of the State President. The petitioner acted against the direction of the UDF. The respondent Shri. Manoj Madhavasseril did not seek support from the LDF as alleged. The respondent in O.P.80/2015 Smt. Rema Bhaskar supported Shri. Manoj Madhavasseril as it was the decision of UDF. The respondents did not commit any act of defection and they did not give up their membership in their respective parties. These petitions are vexatious in nature. Some of the

local leaders misled the District leadership of Kerala Congress(M) and they caused to issue a whip to the respondent in O.P.80/2015 directing her to vote in favour of the petitioner. Later when the foul play was known to the District President of KC(M) he gave a direction over phone to vote in favour of Shri.ManojMadhavasseril and to contest for the post of Vice President. Accordingly she supported Shri.ManojMadhavasseril. Respondent in O.P.81/2015 has a further contention that he met with a motor accident and was incapable of moving. It was on account of that he could not attend and participate in the election meeting held on 19.11.2015. The petitioner and INC leaders were aware of that. The allegation that the abstention of the respondent in O.P.81/2015 was deliberate is not correct. He has not acted against the interest of this political party. The respondent has not violated the whip of the DCC President. His absence was not intentional. These petitions are without any bonafides. The petitioner is not entitled to get any reliefs in these petitions and the same are only to be dismissed with costs.

6. The evidence in these cases consists of the oral testimonies of PWs1 to 9, RWs1 to 5 and Exts.A1 to A11,B1 and X1 to X17(b).

7. Both sides were heard.

8.The following points arise for consideration;

(1) Whether the petitions are maintainable?

(2) Whether the respondents have disobeyed the decision and direction of their respective parties as alleged?

- (3) Whether the respondents have committed defection as contemplated under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (4) Whether the abstention of the respondent in O.P.81/2015 in the election meeting held on 19.11.2015 is justifiable?
- (5) Whether the respondent in O.P.79/2015 has voluntarily given up his membership in Janata Dal (U) as alleged?
- (6) Whether the respondent in O.P.80/2015 has voluntarily given up membership in Kerala Congress (M) as alleged?
- (7) Whether the respondent in O.P.81/2015 has voluntarily given up his membership in Indian National Congress as alleged?
- (8) Whether the petitioner is entitled to the declaration prayed for?
- (9) Reliefs and costs?

9. **POINT No.(1)**: These petitions are filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks a declaration that the respondents have committed defection and hence they became disqualified to be the members of Mallapuzhassery Grama Panchayat and also from contesting as candidates in any election to local body for a period of six years. The respondents in their objections statement raised a contention that the above petitions are not maintainable and that the political party of the petitioner is not authorized to file these petitions.



10. It may be noted that these petitions are 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. From the contentions of the respondents in their objection statement it can be seen that a question arises as to whether the respondents have 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 member of the local authority in which the respondents are also members. The petitioner being a member of the local authority he is entitled to file these petitions as per law. The consent or authorization of a political party is not necessary for a member for filing a petition under Section 4 of the Act. As these petitions are filed by a competent person within the time limit and a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, these petitions are held to be maintainable. Point is answered accordingly.

**12. POINT Nos.2 to9:** Case of the petitioner is that the respondents committed defection by acting against the interest of their political parties and

defying the direction of their parties and thereby they incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner and respondents are elected members of Mallapuzhassery Grama Panchayat in the election held in November 2015. The petitioner and respondent in O.P.No.81/2015 were elected as candidates of Indian National Congress and the respondents in O.P.Nos.79/2015 and 80/2015 as the candidates of Janata Dal (U) and Kerala Congress (M) respectively. Exts.X4,X5 and X7 declarations given by the respondents and Ext.X8 register would show the party affiliation of the respondents and there is no dispute over those aspects. It is also not in dispute that the Indian National Congress, Janata Dal (U) and Kerala Congress (M) contested the local body election as part of a political coalition by name United Democratic Front.

13. There are 13 wards in Mallapuzhassery Grama Panchayat and out of which the Indian National Congress led UDF got 5 seats - 3 by INC and one each by KC(M) and JD(U). The LDF secured 4 seats and the BJP 3 seats. The remaining one seat was won by an independent. Election to the post of the President and Vice President was scheduled to be held on 19.11.2015. According to PW1, the Indian National Congress and UDF parliamentary party decided to elect the petitioner as the President of Panchayat. The Pathanamthitta DCC President issued whips to the elected member of Indian National Congress directing them to vote in favour of the petitioner. Ext.A10 is the copy of the whip issued to Shri.P.A.Narayanan the respondent in O.P.81.2015. Similarly,

the Pathanamthitta District President of Kerala Congress(M) also issued whip to KC(M) member Smt.RemaBhaskar to vote in favour of the petitioner in the President election held on 19.11.2015. Ext.A6 is the copy of the whip issued to Smt.RemaBhaskar. Exts.X1, X2 and A6 and A10 are the copies of the whips issued to KC(M) member Smt.RemaBhaskar and a Congress member Shri.P.A.Narayanan. Ext.X3 is the copy of the whip issued to another INC member Smt.Rosamma Mathai. It is stated that the state President of Janata Dal (U) also issued such direction.

14. When election to the post of the President was held on 19.11.2015 the respondent in O.P.No.79/2015 Shri.ManojMadhasseril himself became the candidate and contested against the official candidate of INC/UDF with the support of other respondents and LDF members disobeying and defying the decision and direction of the United Democratic Front and their respective political parties. Respondent in O.P.No.80/2015 supported and cast her vote in favour of Shri.ManojMadavasseril defying the direction of her party and the respondent in O.P.81/2015 facilitated the victory of Shri.ManojMadhavasserilas President by deliberately abstaining from voting and thereby he violated the whip issued by the DCC President, PW1 further states. By contesting against the official candidate of Indian National Congress and UDF the respondent in O.P.No.79/2015 and by supporting him and voting against the official candidate the other respondents, committed defection. By their above conducts of the

respondents incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, it is further contended.

15. PW2 is the Assistant Secretary, MallapuzhasseryGramma Panchayat and he is holding the additional charge of the Secretary. He was examined to speak about Exts. X1 to X8. According to him Exts.X1 to X3 are the copies of the whips received by him in the office and they relate to Smt.RemaBhaskar, Shri.P.A.Narayanan and another member Smt.Rosamma Mathai. Exts.X4 to X7 are the declarations submitted by the respondents and one Rosamma Mathai after their election as members of MallapuzhasseryGramma Panchayat showing their party affiliation. Exts.X8 is the register showing the party affiliation of the respondents and other elected member of MallapuzhasseryGramma Panchayat. As there is no dispute over Exts.X4 to X8 they require no discussion.

16. PW3 was the Returning Officer for the election of the President and Vice President of MallapuzhasseryGramma Panchayat held on 19.11.2015. According to him Ext.X9(a) and X9(b) are the minutes of the election meeting held for electing the President and Vice President respectively. Copies of the whips issued to the respondent in O.P.Nos.80/2015, 81/2015 and another member Smt.Rosamma Mathai were received by him and Ext.A11 is the receipt for that.When PW3 retired PW5 took charge of the Returning Officer. PW4 is the then DCC President of Pathanamthitta and he gave evidence supporting the case of PW1. According to him the petitioner was the Presidential candidate of Indian National Congress in MallapuzhasseryGramma Panchayat and he has

issued whips to all the elected member of Indian National Congress to vote in favour of the petitioner Shri.Sadasivan Nair. To him Ext. A10 is the copy of the whip issued to Shri.P.A.Narayanan, the respondent in O.P.81/2015. There was no decision in the UDF to give the Presidentship in Mallapuzhassery Grama Panchayat to Janata Dal(U), PW4 further states.

17. PW6 is the then Mandalam President of Kerala Congress(M). According to him Kerala Congress (M) District President issued whip to KC(M) member Smt.Remabhaskar (Respondent in O.P.80/2015) to vote in favour of the petitioner in the President election held on 19.11.2015 and Ext.X1 is the copy of the said whip. To him it was he who served the whip to Smt.Remabhaskar. PW7 is another elected member of Indian National Congress. Her evidence also would show that the petitioner was decided to be the candidate of the INC/UDF for the post of the Panchayat President. Issuance of whips to INC members was also admitted by PW7. PW8 is the Secretary of Congress Mandalam Committee. His evidence is also on the same lines of PWs 1 and 7. According to him also the petitioner was the presidential candidate of INC and UDF.

18. PW9 is the District President of Kerala Congress (M) Pathanamthitta. Besides, he was the District Chairman of United Democratic Front at the time of the local body elections held in 2015. It is admitted by PW 9 that he has issued a whip to KC(M) member Smt.Remabhaskar and Ext.X1 is the copy of the said whip. But his case now is that he did not write the name of the person to whom Smt.Remabhaskar was to vote in the election. To him he has kept that portion

blank while handing over the whip for service. It is further stated by him that he has later directed Smt.RemaBhaskar over phone to vote in favour of Shri.ManojMadhavasserilin the election for the post of the President. In fact he supports the respondent in O.P.80/2015.

19. Case of the respondents, as stated above, is that they did not do any act of defection inviting any disqualification. According to them the District level leaders of UDF allotted the Presidentship of MallapuzhasseryGrama Panchayat to the Janata Dal (U) and the respondent in O.P.79/2015 Shri.ManojMadhavasseril was nominated as the candidate of UDF. To them it was the petitioner who contested against the official candidate of UDF and not the respondent in O.P.79/2015. Contention of the respondent in O.P.80/2015 in her objection statement is that she supported Shri.ManojMadhavasseril as per the direction of the Pathanamthitta District President of KC(M) given to her over phone. According to her Ext.A6 whip given to her earlier by the District President was the result of a foul play. Some local leaders misled the District President and made him to issue the said whip. Later PW9 the District President of KC(M) realized the fact and directed her to vote in favour of Shri.ManojMadhavasseril.

20. The respondent in O.P.79/2015 was examined as RW1. The respondent in O.P.81/2015 was examined as RW3. Respondent in O.P.80/2015 has not come before the Commission to give evidence. According to RWs1 and 3 the petitioner was never decided to be the candidate for the post of

PresidentMallapuzhasseryGrama Panchayat. The Presidentship of MallapuzhasseryGramapanchayat was allotted to the Janata Dal (U) by the District leaders of UDF and it was on that basis RW1 contested for the post of the President. The decision of the District leaders was not relished by the petitioner and some local leaders of Indian National Congress and they put the petitioner as a candidate against the official candidate of UDF. Further case of RW3 is that on 18.11.2015 evening he met with an accident and he was admitted in Muthoot Health Care Private Limited. According to him he fell down from his scooter and sustained injuries. It was because of that he could not be present in the election meeting on 19.11.2015 and participate in voting. His abstention, RW3 further states, was not deliberate and intentional.

21. There is no dispute over the party affiliation of the respondents. It is a matter of admission that the petitioner and respondent in O.P.81/2015 were elected as candidates of Indian national Congress and respondents in O.P.79/2015 and 80/2015 were elected as candidates of Janata Dal (U) and Kerala Congress (M) respectively. Exts.X4, X5 and X7 declarations given by them after election and Ext.X8 register showing the party affiliation also would show the said fact.

22. Submission of the learned counsel for the petitioner is that the petitioner was the official candidate of INC/UDF and direction was issued to the respondents by their respective parties. But the respondents disobeyed the directions. The respondent Shri.ManojMadhavasseril himself became a

candidate against the petitioner, the official candidate of UDF and other respondents supported him and thereby they committed defection. Acting in violation of the direction of the political parties alone is sufficient to hold that the respondents have voluntarily given up their membership of the party and hence they are to be disqualified, the counsel further submits. As against that the contention of the learned counsel for the respondents is that there was no decision to nominate the petitioner as the candidate for the President and it was as per the decision of the JD(U) and UDF the respondent in O.P.79/2015 contested for the post of the President and other respondents supported him. The respondent in O.P.81/2015 could not be present in the election meeting on 19.11.2015 as he was hospitalized for the injury he sustained in a motor accident. The act of the respondents in these circumstances would never amount to defection, the counsel contends.

23. 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 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*

*Explanation,- For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was set up or given support as a candidate for the election*

24. Section 3(1)(a) is the provision relevant in these cases. 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.

25. Now let us first examine the case of the parties in O.P.81/2015. Admittedly the petitioner and respondent in O.P.81/2015 were elected as candidates of Indian National Congress. It is also a matter of admission that the respondent has received the whip issued by PW4 DCC President directing him to vote in favour of the petitioner. At the time of evidence RW3 admitted the said fact and Ext.X2 is the copy of the said whip. It is also a fact that RW3 did not turn up for the election meeting on 19.11.2015 and he did not act as per the direction issued to him by the DCC President. According to the petitioner RW3 deliberately abstained from voting to help the respondent in O.P.79/2015 and thereby violated the direction of his political party and acted against the interest of the INC and UDF.

26. Contention of RW3 is that he could not attend the election meeting on 19.11.2015 as he was hospitalized for the injuries he sustained on 18.11.2015 in a motor accident. While he was going to DCC office on 18.11.2015 evening in his scooter, it is stated, he fell down from his scooter and sustained injuries. He was first taken to a hospital at Elanthoorand later to a hospital by name Muthoot Health Care, Kozhencherry and was admitted there. He was discharged from there on 20.11.2015. To support his contention RW3 produced Ext.B1 Medical Certificate and examined and RW4 who issued the same. Besides the hospital records were also produced. Exts.X16 series and X17 series are the photocopies

of the treatment records produced from the above hospital. The injuries sustained by RW3 as per the medical records are grade 2 ankle sprain (RIGHT) with minor soft tissue abrasions. There is no bony injury. It is to be stated that the injuries noted in the medical records are minor injuries. Evidence of RW4 Doctor is also to that effect. In the cross-examination it is stated by RW4 that the injuries sustained by RW3 are not serious injuries. When it was suggested to the doctor in the cross-examination that RW3 was admitted in the hospital as he insisted for admission the answer given by RW4 was that he did not know. It may be noted that RW3 was admitted not by RW4. According to RW4, Shri.Narayanan was admitted by a Junior Doctor Ashal George. But as per Ext.X17(b) he was admitted as per the direction of Dr.Bincy M Thomas. Ext.X17(b) is the copy of the initial assessment made by the casualty Medical Officer Dr.BincyMThomas and the injuries noted therein are only tenderness and abrasions on right ankle and knee. Anyway both the above doctors are not seen examined in this case and there is no explanation also for that

27. Argument of the learned counsel for the petitioner is that the case of alleged accident and injuries are put forward only with a view to escape from the liability under Section 3(1) (a) of the Act and there was no inability for him to participate in the election meeting on 19.11.2015. The evidence and circumstances in this case tempt me also to think on that line. It may be noted in the objection statement filed by the respondent in O.P.81/2015 nothing is seen stated regarding the date of the accident and the name of the hospital where he

was allegedly admitted. What is stated in the objection is that he fell down from his scooter and sustained injuries and that he was hospitalised. When was the accident and in which hospital he was admitted are not there in the objection statement. It is further to be noted that Ext.B1 was produced after the examination of PW1. At the time of cross-examination of PW1 also the name of the hospital was not mentioned and put to PW1. The name of the hospital surfaces only after the examination of PW1.

28. In the evidence it is stated by RW3 that he was first treated in a hospital at Elanthoor and after taking first aid from there he went to his house. Later, it is stated, he felt some uneasiness and following that he went to Muthoot Health Care, Kozhencherry. But he has no such case in his objection statement. Further, no treatment record from Elanthoor Hospital is produced in this case. Why he has suppressed those records is not known. Contention of the petitioner that the abstention of RW3 in the election meeting on 19.11.2015 was deliberate, is to be considered under the above circumstances. Anyway even assuming that RW3 met with an accident on 18.11.2015 as claimed by him it can be seen from the evidence of RW4 doctor and medical records that the injuries sustained by RW3 were minor ones and there was no difficulty for him to participate in the voting on 19.11.2015. From the available evidence it is not possible to say that the absence of RW3 in the election meeting on 19.11.2015 is justifiable. Moreover it is an evidence that RW3 was against the decision of the party to support the petitioner and electing him as the Panchayat President. It is stated by

RW3 that Shri. Manoj Madhavasseril was the candidate of UDF and he justifies the election of Shri. Manoj Madhavasseril as the President of Mallapuzhassery Grama Panchayat. His absence in the election meeting on 19.11.2015 is to be viewed in that background also.

29. It has become a practice now to produce some medical certificate in cases like this to justify willful abstention and that cannot be encouraged. There is no satisfactory evidence in this case to support the case put forward by the respondent in O.P.81/2015. Even assuming that RW3 sustained injuries as alleged that cannot be put forward to abstain from voting on 19.11.2015 as the injuries were minor ones. His absence is not so innocent as projected by him. His abstention on 19.11.2015 is not justifiable and hence he is to bear the consequences. It is a fact that PW4, the DCC President issued Ext.A10 whip to RW3 directing him to vote in favour of the petitioner in the election held on 19.11.2015. He did not comply the said direction of his party. He did not attend the election meeting. It is found above that his abstention is not justifiable. Under the above circumstances he cannot escape from the liability under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act.

30. In O.P.80/2015 it is in evidence that a whip was issued to the respondent by the District President of her party directing her to vote in favour of the petitioner in the election for the post of the President and Exts.A6 and X1 are the copies of the said whip. The respondent has received the said whip. In the objection statement her case is that some local leaders misled the District

President to issue a whip and that was how Ext.A6 whip was issued to her. According to her direction was later given to her over phone to support and vote Shri.ManojMadhavasseril and she acted accordingly. The Pathanamthitta District President of KC(M) was examined as PW9. He has no case that he was misled by the local leaders and Ext.A6 was the result of that. It is admitted by PW9 that Ext.A6 whip is the one issued by him. But the stand taken by him now is that he has issued Ext.A6 whip without naming the person to whom Smt.Remabhaskar was to vote. Nowhere in the objection statement Smt.Remabhaskar has such a case. She was not examined in this case. It may be noted that PW9 is the District President of KC(M). He cannot say that he has issued only a blank whip to the members of his party leaving the members to take any decision. The very purpose of issuing the whip would be defeated in such case and no responsible party and the persons can take such a stand. It is difficult to believe that the whip issued by PW9 was blank one. The evidence of PW9 would show that he has come before the Commission only to save the respondent in O.P.80/2015 from the liability under Section 3 of the Act.

31. It is further stated by PW9 that before the voting on 19.11.2015 he directed Smt.Remabhaskar over phone to vote in favour of Shri.ManojMadhavasseril. If really he wanted to change the direction given by him earlier as per Ext.A6 whip he must have issued further direction in writing as required under clause (iva) of Section (2) of the Act. 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 symbol to the candidates of the said political party for contesting in the election, for exercising the vote favorably or unfavorably or to abstain from voting. Thus a whip to be proper and valid it should be in writing and cannot be an oral one. When the law says that the whip should be in writing the alleged oral whip cannot be taken as a whip. Further PW9 has no case that he has cancelled the earlier whip. So Smt.RemaBhaskar is bound to obey Ext.A6 whip and the violation of which would certainly invite disqualification.

32. Further, it may be noted that even after the alleged oral direction Smt.RemaBhaskar cast her vote in favour of the petitioner in the first round of voting for electing the President. There were two rounds of voting for electing the President. Ext.X9(a) would show the procedure and details of the election. Ext.X9(a) is the minutes of the meeting held on 19.11.2015 for electing the President. Three candidates were in the fray and they are the petitioner, RW1 and one Geetha Krishan from BJP. The petitioner got four votes, RW1 got 5 votes and BJP nominee Smt.Geetha Krishnan got 3 votes. As the total votes received by the other two candidates were more than the five votes polled in favour of RW1, second round of voting was necessitated. Accordingly second round of voting was conducted after eliminating the 3<sup>rd</sup> candidate Geetha Krishan from the contest. In the second round the respondent in O.P.80/2015 Smt.RemaBhaskar cast her vote in favour of SHri.ManojMadhavasserilviolating

the whip issued by her party. If really the alleged oral direction was there at that time Smt. Rema Bhaskar would not have cast her vote in favour of the petitioner obeying Ext.A6 whip. The introduction of the alleged oral direction over phone can only be the result of an afterthought with a view to escape from the mischief of disqualification under Section 3(1)(a) of the Act as contended by the learned counsel for the petitioner.

33. It is in evidence that the District President of KC(M) who is admittedly the person competent to issue the whip, issued Ext.A6 whip to Smt. Rema Bhaskar and she has violated the said whip. She cannot now contend that she has violated Ext.A6 whip as per an oral direction from the District President. Regarding oral direction I have already discussed above and found that it was a result of an afterthought. As the respondent in O.P.80/2015 violated the direction in Ext.A6 whip and voted against the interest of KC(M) she incurred disqualification under Section 3 of the Act. The present stand of PW9 cannot save her.

34. Now let us verify the case in O.P.79/2015. RW1 is the respondent in O.P.79/2015 and he is the lone member of JD(U) in Mallapuzhassery Grama Panchayat. As stated above JD(U) is a part of UDF and JD(U) contested the local body elections as part of UDF. The INC and KC(M) are the other constituents of UDF. According to RW1 the District Committee of the JD(U) decided the respondent as the candidate for the post of President in Mallapuzhassery Grama Panchayat and the District leadership of UDF approved

his candidature. It was on that basis he contested for the post. To support his contention he has examined RW2. RW2 is stated to be the General Secretary of JD(U) Pathanamthitta District Committee. RW2 also stated that RW1 contested for the post of Panchayat President as per the decision of the UDF District Committee. Further contention of RW1 is that the petitioner contested for the post of the instance of some local leaders of INC and he was not the candidate of UDF.

35. Both PW1 and RW1 claim to be the official candidate of UDF for the post of the Mallapuzhasery Grama Panchayat. Though it is contended by RW1 that he was the official candidate of UDF and his candidature was approved by the District committee of UDF in its meeting there is absolutely no material to substantiate the said contention except the oral version of RW1 and his party man RW2. To RW1 the petitioner contested against him for the post as a rebel candidate at the instance of some local leaders of INC and he was not the candidate of UDF. But the evidence and circumstances in this case would only belie that contention. It is in evidence that the District leadership of INC and KC(M) approved the candidature of PW1 for the post of President. The District Presidents of INC and KC(M) issued whips to the members of their respective parties to vote in favour of the petitioner and Ext.A6 and A10 are the copies of the said whips. The contention of RW1 that he is the official candidate of UDF cannot be believed under the above circumstances. Further it is in evidence that RW1 contested the election for the post of President not as a UDF candidate. He

was a candidate sponsored by the LDF. Admittedly his name was proposed by the LDF member Smt.Suchithra M.S and seconded by another LDF member Smt.LathaVikraman. Ext.X9(a) minutes of the election meeting held on 19.11.2015 also would show the said fact. He became the President of the Panchayat only with the support of LDF members. It may be noted that none of the UDF members proposed or seconded his name for the post of the President. At the same time the name of the petitioner was proposed and seconded only by the UDF members. Only the UDF members cast votes in favour of the petitioner.

36. As stated above RW1 was elected from ward No.3 of MallapuzhasseryGramma Panchayat as a candidate of JD(U)/UDF defeating the LDF candidate. As he is an elected member of JD(U)/UDF he is bound to protect the interest of his party and political front. He cannot take a different stand from that of his party/Front especially in the matters of election to the post of President, Vice President, standing committee members and on no confidence motion. It is true that issuance of whip to RW1 though alleged by the petitioner, is not proved in this case. There is no evidence in this case to show that the State President of JD(U) who is the competent person to issue whip has issued whip to RW1 in this case. As there is no whip it cannot be said that there is any violation of whip in this O.P.79/2015. So the second limb of Section 3(1)(a) is not attracted in this case.

37. As per Section 3 of the Act, as stated above, 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 or direction 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) are distinct and are not interlinked as held in the decision reported in **2009(2)KHC 839 (Biju R.S. and others V Kerala State Election Commission and others)**. From the conduct of a member an inference can be drawn that he has voluntarily given up his membership of his political party.

38. It is a fact that the respondent in O.P.79/2015 was proposed for the post of President by a member of the rival coalition LDF and was seconded by a member of the same rival coalition LDF. The proceedings of the election meeting on 19.11.2015 as detailed in Ext.X9(a) minutes would show that he was really a candidate of LDF and not of his political front UDF. There was nobody from UDF to propose and second him. He was elected as President with the support of the entire LDF members. Except the respondent in O.P.80/2015 no other UDF member voted in his favour. When a member of rival coalition LDF proposed and seconded his nomination RW1 accepted it. The said conduct

would certainly amount to voluntary abandonment of the membership of his party. RW1 could have very well refused the support offered by the rival coalition members. Instead he accepted it against the interest of his party JD(U) and his political front UDF. He has no case that it was with the prior permission of his party and the State President of JD(U) who is competent to issue whip, he joined with the LDF members. Admittedly his party did not tell him to contest for the post of President with the support of LDF members. RW1 stated so in his evidence. But he did otherwise and became the Panchayat President with the support of rival coalition members.

39. It is in evidence that RW1 contested for the post of the President as a nominee of LDF and with their support. By contesting so with the support of LDF members he betrayed his electorate and acted against the interest of JD(U) and UDF. The above conduct of RW1 and the attendant circumstances would show that he has voluntarily given up his membership from his political party.

40. 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."*

41. 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. It is found above that the political parties of the respondents in O.P.Nos.80/2015 and 81/2015 issued whips to them to attend the election meeting on 19.11.2015 and to vote in favour of the petitioner. But they chose to defy the direction of their parties. The respondent in O.P.79/2015 contested against the petitioner for the post of the Panchayat President as a nominee of the rival coalition LDF. The conduct of all the three respondents would clearly demonstrate that they became disloyal to the respective political parties which elected them as members of the Panchayat. The above acts would amount to defection inviting disqualification and the case put forward by the petitioner against the respondents is clearly established. 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.

42. From the available evidence and the circumstances emanating there from it can be safely concluded that the respondents have committed defection and they have voluntarily given up their membership from the respective parties which elected them as members, as provided by under Section 3(1) (a) of the Kerala Local Authorities (Prohibition of defection) Act and therefore they became subject to disqualification for being members of Mallapuzhassery Grama Panchayat. Points are answered accordingly.

In the result, the petitions are allowed and the respondents are declared as disqualified for being members of Mallapuzhassery Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of defection) Act and the respondents are further declared as disqualified for contesting as candidates 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 13<sup>th</sup> day of October 2017

Sd/-

**V.BHASKARAN,**  
**STATE ELECTION COMMISSIONER**

**APPENDIX**

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

PW1	:	Shri.Sadasivan Nair
PW2	:	Shri.Sethu, Assistant Secretary, Mallappuzhassery Grama Panchayat
PW3	:	Shri. Ramesh Kumar
PW4	:	Shri.Mohan Raj
PW5	:	Smt.Girija
PW6	:	K.P.Radhakrishna Kurup
PW7	:	Smt.Rosamma Mathai
PW8	:	Shri.JijiCheriyam
PW9	:	Shri.Victor T.Thomas, President, KC(M) DC, Pathanamthitta

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

RW1	:	Shri. Manoj Madhavasseril
RW2	:	Shri. Mohandas
RW3	:	Shri.P.A.Narayanan
RW4	:	Shri.Dr.Muralikrishnan.N
RW5	:	Shri.Samuel

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

A1	:	True copy of the letter issued by Shri.M.P.Veerendra Kumar, President of Janata Dal(U) Kerala State Committee addressed to the Returning Officer dated 07.10.2015
A2	:	Notice-Election campaign of Manoj Madhavasseril, dated 14.10.2015
A3	:	UDF Election campaign poster
A4	:	Copy of the declaration in Form No. 2 filed by Shri.Manoj Kumar
A5	:	Mangalam Daily dated 20.11.2015 (Page No.2)
A6	:	Copy of the whip issued by Shri.Victor T.Thomas, President of Kerala Congress (M) Pathanamthitta DC addressed to Rema Bhaskar
A7	:	Malayala Manorama Daily dated 20.11.2015
A8	:	The book showing the receipt of whip issued by P.Mohanraj addressed to P.A.Narayanan, Rossamma Mathai, Sadasivan Nair dated 18.11.2015

- A9 : MalayalaManorama Daily dated 21.11.2015
- A10 : Copy of the whip issued by Shri.P.Mohanraj, President, Pathanamthitta DCC (I) addressed to Shri.P.A.Narayanan dated 18.11.2015
- A11 : Receipt of whip copy by Returning Officer, MallappuzhasseryGrama Panchayat dated 19.11.2015

**Document Produced on the side of the respondents**

- B1 : Medical Certificate from Muthoot Health Care Private Limited

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

- X1 : Whip issued by Shri.VictorT.Thomas, President, Kerla Congress (M) Pathanamthitta DCC Addressed to Smt.Remabhaskar
- X2 : Copy of whip issued by Shri.P.Mohanraj, President of DCC(I)Pathanamthittaaddressed to Shri.P.A.Narayanan dated 18.11.2015
- X3 : Copy of whip issued by Shri.P.Mohanraj, President of DCC(I) Pathanamthitta addressed to Smt.Rosamma Mathai dated 18.11.2015
- X4 : Declaration in Form No.2 submitted by Smt.Remabhaskar, Member,MallappuzasseryGramapanchayat dated12.11.2015
- X5 : Declaration in Form No.2 submitted by Shri.P.A.Narayanan, Member Mallappuzassery G.P dated 12.11.2015
- X6 : Declaration in Form No.2 submitted by Smt.Rosamma Mathai, Member Mallappuzassery G.P dated 12.11.2015
- X7 : Declaration in Form No.2 submitted by Shri.Manoj Madhavasseril, Member Mallappuzassery G.P dated 12.11.2015

- X8 : Copy of the register showing the party affiliation of the members of MallappuzhasseryGrama Panchayat
- X9 : The minutes book of MallappuzhasseryGrama Panchayat
- X9(a) : The minutes of the meeting to elect the president of MallappuzhasseryGrama Panchayat held on 19.11.2015
- X9(b) : The minutes of the meeting to elect the President of MallappuzhasseryGrama Panchayat held on 19.11.2015
- X10 : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat to Smt.MiniJiju Joseph
- X10(a) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat to Smt.Suchithra M.S
- X10(b) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat to Smt.KunhammaThankan
- X10(c) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat to Smt.LathaVikraman
- X10(d) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat to Shri.ManojMadhavasseril
- X11 : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramaPanchayat to Smt.Rosamma Mathai
- X11(a) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramaPanchayat to Smt.Remabhaskar

- X11(b) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Shri.Thomas
- X11(c) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Shri.Sadasivan Nair
- X12 : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Smt.Geetha Krishnan
- X12(a) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Smt.PrabhaRaveendran
- X12(b) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Smt.Ragini Viswanathan
- X13 : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Smt.LathaVikraman
- X13(a) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Smt.Remabhasker dated 19.11.2015
- X13(b) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Smt.Suchithra M.S
- X13(c) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Shri.ManojMadhavasseril dated 19.11.2015
- X13(d) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Smt.KunhammaThankan dated 19.11.2015
- X13(e) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGramapanchayat to Smt.MiniJijuJoseph dated 19.11.2015

- X14 : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat to Shri.Sadasivan Nair dated 19.11.2015
- X14(a) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat to Smt.Rosamma Mathai dated 19.11.2015
- X14(b) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat to Shri.Thomas dated 19.11.2015
- X15 : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat dated 19.11.2015(Invalid)
- X15(a) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat dated 19.11.2015(Invalid)
- X15(b) : The Ballot paper in Form No.1 issued by the Returning Officer of MallappuzhasseryGrama Panchayat dated 19.11.2015 (Invalid)
- X16 : Medical Records file of Shri.P.A.Narayanan in MGM.Muthoot Medical Centre, Kozhencherry
- X16(a) : Discharge summary of Shri.P.A.Narayanan
- X16(b) : Admission Record of Shri.P.A.Narayanan
- X16(c) : Initial Assessment of Shri.P.A.Narayanan
- X16(d) : Doctor's Orders
- X17 : Treatment file (OP) of Shri.P.A.Narayanan in Muthoot Health Care Private Limited
- X17(a) : Wound Certificate of Shri.P.A.Narayanan
- X17(b) : Initial Assessment of Sri.P.A.Narayanan

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

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