

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

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

Tuesday, the 31st day of March 2015

O.P.No.82/2014

Petitioner : E.Kesavankutty,
S/o Lekshmikutty Amma,
Elamthiruthil Veedu,
Kuzur P.O.,
Thrissur District. PIN 680 734.
Member, Ward No.04,
Kuzhur Grama Panchayat

(By Advs. K.S.Gopinathan Nair & S.K.Vinod)

Respondent : K.F.James,
S/o Fransis, Kandamkulathi Veedu,
Iranikulam. P.O., Thrissur District.
Member, Ward No.13,
Kuzhur Grama Panchayat,

(By Adv. Kallampally Manu)

This petition having come up for hearing on the **24th day of February 2015**, in the presence of Advs. **K.S.Gopinathan Nair & S.K.Vinod** for the petitioner and Adv. **Kallampally Manu** 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 has become subject to disqualification for being a member of Kuzhur Grama Panchayat on the ground of defection.

2. The short facts are as follows,- The petitioner and respondent contested the election as candidates of Indian National Congress and they were elected as members of Kuzhur Grama Panchayat. Out of the 14 seats, the UDF secured 8 seats and LDF secured 6 seats. The member of ward No.14 was disqualified and thus the party position has been changed as UDF-7, LDF-6. After the General Election the respondent was elected as President for a term of 3½ years and the last 1½ year was allotted to the respondent. As per the direction of the District Congress Committee, the respondent resigned from the post of President on 02.06.2014 and the election to the post of President was scheduled on 25.06.2014. The petitioner was the candidate decided by the Congress party and the UDF in the said election and the Thrissur DCC President has given whip to the respondent to vote in favour of the petitioner in the President election scheduled on 25.06.2014. In spite of receiving the whip, the respondent abstained from attending the election meeting and he did not give intimation regarding his absence from voting either orally or in writing or otherwise to the

DCC President or any others. In the election which ensued, the UDF and LDF candidates secured 6 votes each and in the draw of lots and the petitioner was declared as elected. The respondent filed application for leave for two months with effect from 01.06.2014 with a view to absent himself from the election meeting and on 02.06.2014, he resigned from the post of President. The respondent did not take any leave even when he underwent heart surgery before two years. More over he has been attending many public meetings during the said leave period. He was also a frequent visitor to the Panchayat during the said period. Even though the respondent is residing about 1½ km away from the Panchayat office, he did not participate in the election meeting and he disobeyed the direction issued by the DCC President and abstained from voting and the above conduct of the respondent in having disobeyed the direction of the Congress party would amount to voluntarily giving up his membership from Indian National Congress and by violating the whip and direction given by the DCC President he has committed defection. Hence this petition.

3. The respondent filed objection contenting in brief as follows:- The petition is not maintainable either in law or on facts. The respondent was elected as President of the Panchayat and he acted as such till 02.06.2014 and due to severe medical reasons he applied for two months leave before the Panchayat committee on 25.05.2014. The election to the post of President was held on

25.06.2014 and the respondent failed to attend the election meeting due to the reason that he was physically unfit and was suffering from chest pain and discomfort on that day. The respondent is a heart patient and he was subjected to Cardio vascular and Thoracic surgery on 26.07.2011 at Amritha Institute of Medical Sciences, Ernakulam and he is continuing treatment for chest discomfort and hypertension at St. James Hospital, Chalakkudi. Due to heart related deceases and discomfort, the respondent applied for medical leave on 26.05.2014 for a period of two months and that was granted by Panchayat Committee on 30.05.2014 and he was thus on leave from 01.06.2014 to 01.08.2014. On 02.06.2014 he resigned as President and due to his medical inability even his resignation letter was collected by the Secretary from his residence. There was no willful latches from the part of the respondent in attending the President election held on 25.06.2014 and he has not committed any defection. The respondent has not disobeyed the direction of the Congress party and he did not help the rival political party at any time. It was only due to his physical incapacity that he failed to attend the election meeting held on 25.06.2014 and he has not committed any defection and the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1 to 4, RWs1 and 2 and Exts.P1 to P8, R1 to R3 and X1 to X4.

5. Both sides were heard

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent was prevented by sufficient cause from attending the election meeting held on 25.06.2014 as contended by the respondent?
- (iii) Whether the respondent has voluntarily given up his membership from the party by violating the direction issued by the party as alleged?
- (iv) Whether the respondent has become subject to disqualification for being a member of Kuzhur Grama Panchayat?
- (v) Reliefs and costs?

7. **POINT No.(i)** : This is a petition filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, (hereinafter referred to as the 'Act'). Section 4(1) of the Act states that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act, a member of that local authority or the political party concerned or a person authorized by it in this behalf can file a petition before the State Election Commission for decision. According to the petitioner the respondent who is a member belonging to Congress party, by defying the direction issued by the DCC President has abstained from attending the election meeting held on 25.06.2014 with the intention of helping the rival political party and thereby committed defection. Section 3(1) (a) of the Act states that if a

member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if he, contrary to any direction issued by the political party or a person or authority authorized by the party in this behalf, votes or abstains from voting, in an election to the post of President, Vice President etc., or on a no confidence motion, he shall be disqualified for being a member of that local authority. The respondent would contend that due to his physical inability, being a patient who had undergone bypass surgery, was unable to attend the meeting convened for electing the President on 25.06.2014 and that was the reason for his abstention and that he has not committed any defection. In the light of the rival claims, a question arises as to whether the respondent has become disqualified to continue as a member of Kuzhur Grama Panchayat as provided by Section 4 r/w Section 3(1)(a) of the Act. The petitioner is also a member belonging to Congress party in this Panchayat. As per Rule 4A(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules as amended by SRO No.458/2014, any member of the said local Authority is competent to file a petition before this Commission for decision and as per Rule 4A(2) of the Rules, such a petition is to be filed within 15 days from the date on which the cause of action is alleged to have arisen. This petition is filed by a member of the same local authority of which the respondent also is a member. It is further seen that the petition has been filed within 15 days from the date on

which the meeting for election of the President was convened. No specific contentions are raised as to why or how the original petition becomes not maintainable. Therefore I find that this petition is maintainable and the point is answered accordingly.

8. **POINT No.(ii)**: The petitioner would allege that the respondent resigned as President of the Panchayat on 02.06.2014 and election to that post was held on 25.06.2014 and the petitioner was decided by the Congress party as the candidate for the post of President and the DCC President had issued direction to all the members belonging to Congress party including this respondent and despite accepting that direction, the respondent purposefully abstained from attending the election meeting with a view to help the rival political party and thus the respondent has voluntarily abandoned his membership from the party and also violated the direction issued by the party and thus committed defection. The definite contention of the respondent is that he was subjected to Cardiovascular and Thoracic surgery on 26.07.2011 from Amritha Institute of Medical Sciences, Ernakulam and he is continuing treatment for chest discomfort and hypertension at St. James Hospital, Chalakkudi and he failed to attend the election meeting held on 25.06.2014 only because he was physically unfit and he was suffering from chest pain and discomfort on that day. The respondent would further contend that he applied for medical leave before the

Panchayat Committee on 26.05.2014 and the committee which held on 30.05.2014 sanctioned leave from 01.06.2014 to 01.08.2014 and on 02.06.2014 he resigned from the post of President and as he was physically unfit, that resignation letter was collected from his residence and that he has not purposefully disobeyed any direction of the Congress party in respect of the election to the post of President. In the light of the above contention the burden is upon the respondent to prove that he was prevented by sufficient grounds from attending the election meeting held on 25.06.2014.

9. The respondent has been examined as RW1. His chief examination is by way of an affidavit. In the first Para of his affidavit it is stated that he has resigned from the post of President on 02.06.2014 as directed by the party. He has further deposed that he had undergone Cardio Vascular and Thoracic surgery at Amritha Institute of Medical Sciences, Ernakulam on 26.07.2011 and his treatment is continuing at St.James Hospital, Chalakkudi. At Para 3 of his affidavit it is stated that due to chest pain and discomfort, he applied for leave for the period from 01.06.2014 to 02.08.2014 and it was sanctioned by the committee on 30.05.2014 and the election meeting was held during this leave period. He has admitted at Para 9 of his affidavit that he had accepted the party whip directing him to attend the election meeting scheduled on 25.06.2014 and according to him on that date, while he was getting ready for going to the office

to attend the meeting, he experienced considerable chest discomfort and so he took the medicine which was given by the doctors and took rest at his house and so he could not attend the election meeting. He would also depose that this matter was informed to the Congress leaders and that he had no intention to disobey the direction given by the party or to help the LDF members in the said election. In cross-examination he has stated that for the last 17 years he is functioning as Panchayat member and after the General Election in 2010, he was elected as President. It was suggested to RW1 whether he had resigned from the post of President as directed by the DCC President to which he stated that the party did not direct him to resign. At the same time in his chief examination, he has admitted that he had resigned from the post of President as directed by the Congress party. In cross-examination RW1 has further stated that either for his Cardio Vascular and Thoracic surgery held on 26.07.2011 or at any time thereafter, he had not taken leave. Admittedly except for the period from 01.06.2014 to 02.08.2014, he has not taken any leave. It is surprising to notice that even when he had undergone heart bypass surgery, he did not take any leave and the said surgery was in 2011 and even thereafter till 01.06.2014, he did not take any leave either from functioning as President or as member. It is in the committee convened on 30.05.2014 which he presided that his leave application was granted as admitted by him in cross-examination. RW1 would also depose

that there is only a distance of 2 kms from his house to the Panchayat office. In cross-examination RW1 was asked whether he had given written letter to the DCC President or Mandalam President regarding his failure to attend the election meeting and his answer is that he had given such a letter to the DCC President. But no record has been produced to show that he had informed the Congress leaders or other members regarding his absence in the election meeting or regarding his inability to attend such meeting. He has also deposed in cross-examination that he is still having the same discomfort as he had on 25.6.2014 and that he has come to give evidence before this Commission with such discomfort. He has also produced Ext.R3 which is a Medical Certificate in support of this contention. But in cross examination he has admitted that this record was obtained on 10.01.2015 and it does not mention the period for which rest was advised to him.

10. The wife of the respondent has been examined as RW2. She has also filed an affidavit in lieu of chief examination. In Para 3 of her affidavit it is stated that on 25.06.2014 at about 9.30am, the respondent felt chest pain and discomfort and so he took rest at the house and he experienced the discomfort when he was about to go to the Panchayat office. RW2 has also deposed that on account of chest pain, her husband had taken leave for two months from June 2014 onwards and during that period he was not attending any public functions or

going out of their house. In cross-examination RW2 has deposed that her husband was on leave during the above period and that he was having chest pain continuously and he used to attend the phone calls made to him. She has also deposed that her husband experienced chest pain when he went out of the house for going to the Panchayat office. She has stated that except the leave period from June 2014, the respondent has not taken any leave from the Panchayat. Ext.R3 is the only record produced by the respondent to show that he was physically unfit on account of his heart disease. Ext.R1 is the resolution taken by the Panchayat Committee whereby the respondent has been granted leave from the post of President during the period from 01.06.2014 for two months. Even though the respondent has stated that the leave was from functioning as member also, from Exts.R1 and R2 it is found that the leave sanctioned was only from functioning as President as provided by Section 156(3) of the Kerala Panchayat Raj Act. Ext.R2 is a curious certificate issued by the Secretary wherein he has stated that the leave granted was on medical grounds and that he has received the resignation letter of the respondent from his house. Ext.R3 is dated 10.01.2015. In this record it is stated that the respondent is under treatment of the doctor for uncontrolled Hypertension and that he directed the respondent to avoid undue exertion and advised rest. Ext.R1 being a certificate issued on 10.01.2015 stating his then condition is not at all relevant for deciding the facts in issue in

this case. Now the evidence tendered on the side of the petitioner also deserves consideration.

11. The petitioner has deposed that the respondent after accepting the whip issued by DCC President purposely abstained from attending the election meeting held on 25.06.2014 and thereby the respondent has disobeyed the direction issued by the party and he had voluntarily given up his membership from the party. It is further stated by him that the respondent did not inform either the DCC President or the Returning Officer or any others regarding his inability, if any, to attend the meeting scheduled on 25.06.2014. He would also depose that the respondent has assured him as well as the DCC President that he will definitely attend the meeting and vote in favour of the party candidate. PW1 has also deposed that as the respondent abstained from attending the election meeting, the petitioner and the LDF candidate secured six votes each and only by luck he was elected as President in the draw of lots. According to PW1 the conduct of the respondent in having disobeyed the direction issued by the party was with a view to defeat the petitioner in the election. Ext.P1 is the certificate issued by the Secretary of the Panchayat stating that the respondent did not attend the election meeting held on 25.06.2014. Exts.P2 and P3 are the receipts issued by the Secretary. Ext.P4 is the declaration that the respondent was elected as a member of Ward No.13. Ext.P5 is the minutes of the election meeting held on

25.06.2014. Ext.P6 is the notice issued by the Returning Officer to the members regarding the said meeting. Ext.P7 is the copy of the record maintained by the Secretary of the Panchayat regarding the political relationship of the members. Ext.P8 is the whip issued by the DCC President to the petitioner and Ext.P9 is the whip issued to the respondent. The above documents are not in dispute. In cross-examination it was suggested to PW1 that the respondent had undergone a heart surgery at Amritha Hospital in 2011 and his treatment continues at Chalakudi St.James Hospital to which PW1 answered that he is unaware of the same. It was also suggested to PW1 that due to the ailments of the respondent, he had taken leave for two months from 1.06.2014 onwards to which PW1 stated he availed leave only in respect of the post of President and even thereafter he was coming to the Panchayat office often. It was then suggested that the respondent could not attend the election meeting on account of his illness which PW1 denied and stated that the respondent purposely abstained from attending the meeting with a view to defeat the petitioner.

12. PW2 is none other than the DCC President. He has deposed that in the election to the post of President scheduled on 25.06.2014 he issued direction to all the Congress members to vote in favour of the petitioner who was the party candidate and that whip is marked as Ext.P9 and that the respondent after accepting the said whip purposely failed to attend the election meeting and thus

the petitioner and LDF candidate happened to secure six votes each and in the draw of lots the petitioner happened to win the election. In cross-examination PW2 has stated that the respondent has resigned from the post of President as directed by him. PW2 has further stated that the respondent had never informed regarding the heart surgery undergone by him and he would further state that the respondent had never informed him that he was having any illness or ailments. PW2 has repeatedly stated that the respondent did not inform his inability if any in attending the election meeting and that the absence of the respondent was, according to PW2, deliberate. PW2 has also deposed that the conduct of the respondent was with a view to support the CPI(M) party. It was suggested to PW2 that the respondent could not attend the meeting due to his illness which PW2 denied and stated that the respondent had never informed him about any illness or reason for his absence. It is also stated that the respondent had a bounden duty to attend the election meeting and vote in favour of the party candidate and that if he had any inability that should have been informed to the DCC President. It was further stated by PW2 that even though the Congress party had absolute majority, due to the conduct of the respondent, that was lost and that the respondent had defied the whip issued by him deliberately. It is also stated by him that the party had taken further action against the respondent for his mis-conduct.

13. PW3 is the Kuzhur Congress Mandalam President and he also has given a consistent version as given by PW2. PW3 has deposed that there was an agreement to share the post of President between the respondent and petitioner and the first 3 ½ years was allotted to the respondent and the remaining 1½ years to the petitioner and the respondent did not comply with the said agreement and it was only after repeated directions from the DCC President that the respondent had resigned from the post on 02.06.2014. According to PW3 the term allotted to the respondent expired on 30.04.2014 and the respondent should have resigned on that date and it was due to strict direction that the respondent resigned at least on 02.06.2014. PW3 has further deposed that on 21.06.2014, he served the whip issued by the DCC President to the respondent and he has identified the same as Ext.P9. PW3 has also deposed that he went to the house of the respondent on 25.06.2014 and told the respondent that he should participate in the election meeting and vote in favour of the party candidate and the respondent gave assurance to do so and thereafter he purposely abstained from attending that meeting with a view to support the LDF candidate. Even though PW3 has been cross-examined at length, nothing has been brought out to discredit his testimony.

14. PW4 is the Secretary of the Panchahayt and Ext.X1 is the register showing the payment of sitting fee and honorarium for the period from 01.01.2014 onwards. PW4 has deposed that the respondent had received the

honorarium and sitting fee in June and July 2014. According to PW4 the respondent received the honorarium for the month of June on 01.07.2014 and the honorarium for the month of July was received on 01.08.2014 and the respondent has put the date of receipt as 04.08.2014 in a different ink. PW4 has asserted that the respondent had received the honorarium for the month of June in July 2014 itself and the honorarium for the month July was received by him on 01.08.2014. According to PW4 the respondent had put the date 04.08.2014 in a different ink and that the members do not use to put the date while receiving honorarium. It is further deposed by PW4 that the honorarium for the month of September was received on 10.10.2014 and the respondent put the date regarding that receipt on 10.10.2014 and it was on the said date that he had put the date 04.08.2014 in respect of receipt of honorarium for the months of June and July using the same pen. Ext.X2 is the copy of the contingent bill regarding the honorarium for the month of May and the sitting fee for the month of May was received by the respondent on 02.06.2014 and Exts.X3 and X4 are the contingent bills in respect of the honorarium of the respondent for the months due to him. PW4 has further deposed that the respondent had received honorarium and sitting fee as and when it became due. In cross-examination PW1 has stated that the leave application of the respondent was granted on 30.05.2014 and it was during the said leave period that the election to the post of President was held on 25.06.2014. It was

suggested to PW4 that the respondent had received the honorarium for the months of June and July only on 04.08.2014 which PW4 denied. PW4 has also deposed that the ink used for putting the date as 04.08.2014 is different from the ink for his signatures. Ext.R1 is the copy of the resolution regarding the leave sanctioned to the respondent. It was put to PW4 that the resignation letter of the respondent was received by PW4 at the residence of the respondent which PW4 admitted and he has also had given a letter stating that respondent had not participated in any official functions during his leave period. PW4 has stated that as per Ext.R1, the respondent had taken leave only for functioning as president.

15. On an evaluation of the entire evidence it is clearly found that the respondent had deliberately abstained from attending the meeting convened for electing the President on 25.06.2014. No evidence has been adduced by the respondent to show that he was under such ailments as to abstain from the meeting held on 25.06.2014. No medical record is produced to show his physical condition on the relevant date. The bypass surgery was conducted in 2011. It is significant note that even for undergoing bypass surgery, he did not take any leave either from functioning as member or President. The only period in which he availed leave was during the period from 01.06.2014 to 01.08.2014. Surprisingly after taking such leave, he resigned from the post of President on 02.06.2014. In order to make it appear that he had taken leave due to his

ailments, he summoned the Secretary of the Panchayat to his house and gave his resignation letter. It is significant to notice that the Secretary had gone to the house of the President to receive the resignation letter whereas as per the provisions of the Kerala Panchayat Raj Act, a resignation letter has to be either submitted by the President or member to the Secretary directly or should sent the same by registered post with an attestation by a Gazetted Officer. It is also relevant to note that the respondent in his capacity as the President had presided over the meeting of the Panchayat held on 30.05.2014 in which his application for leave was granted. Just after two days he summoned to the Secretary to his house to give his resignation on the pretext of his illness. It is also relevant to note that the respondent had received the honorarium and sitting fee by going to the Panchayat office in June and July 2014 as deposed by PW4. A careful scrutiny of the evidence as a whole will definitely indicate that the respondent was unwilling to resign from the post of President and on account of the strict direction of the DCC President he had to resign on 02.06.2014 and he wanted to see that the petitioner was defeated in the subsequent election to the post of President and the political equation also was such that if he had abstained from voting, the candidates of LDF and UDF will get equal votes which then would need draw of lot and by sheer luck the petitioner happened to win.

16. Apart from the oral evidence of RWs1 and 2 there is no material to show that the respondent was unable to attend the meeting convened for electing the President. RW1 has admitted that he was having only the same illness on 25.06.2014 as he was having on the date on which he gave evidence before the Commission and it cannot be forgotten that the respondent had come all the way from Thrissur to Thiruvananthapuram for giving evidence in this case. The Panchayat office is only about 2 kms away from his house. PWs 1 to 3 had categorically deposed that the respondent did not inform that he will not be present in the election meeting and PWs 1 and 3 have deposed that the respondent had given assurance regarding his presence on 25.06.2014. If the respondent was prevented by any illness from attending the election meeting, he would have immediately informed the same to the party leaders and other Congress members. In the case on hand the DCC President, the Mandalam President as well as the petitioner who is the present President of the Panchayat have deposed in consistent terms that the respondent did not inform them regarding his inability to attend the election meeting. From the evidence on record it is clear that the respondent was trying to cook up a false story of illness based on the heart surgery undergone by him in 2011 and he was creating documents and taking leave only to make it appear that he was under ailments during the date on which the election meeting was held. RWs1 and 2 would

depose that while RW1 was getting ready for going to the Panchayat office at about 8.45 am, he became suddenly ill and after taking the medicine prescribed to him, he took rest in his house. If the respondent became suddenly ill in furtherance of his heart ailments, he would have definitely gone to hospital. But the respondent does not have a case that he had gone to the hospital or taken treatment from any doctor on that day. The medical record produced by him is totally unacceptable to show that he was having serious illness on the relevant date of election to the post of President. If a party member who was all along functioning as President of the Panchayat had become suddenly ill in the usual course, such a person would have informed about his illness to other members and leaders and would have been taken to the hospital by them. But in this case even accordingly to RWs 1 and 2, RW1 felt illness at about 8.45am and took rest in his house. The political equation in the Panchayat is such that one vote of either front would become decisive and in such a context even if a member is having some illness, such a member also would cast his vote despite his physical condition. In the case on hand there is no evidence to show that the respondent was unable to attend the election meeting held on 25.06.2014 on account of his ailments and he was only taking advantage of his bypass surgery conducted in 2011 so as to make it appear that he was ill with a view to deliberately abstain from attending the election meeting. Therefore I find that the respondent was not

prevented by sufficient cause from attending the election meeting held on 25.06.2014 and his contention in this respect is totally unsustainable. The point is answered accordingly.

17. **POINT Nos. (iii) to (v):** Whether the conduct of the respondent in having deliberately abstained from attending the election meeting held on 25.06.2014 by disobeying the direction issued by the party would constitute defection deserves consideration. The respondent was admittedly as member belonging to Congress party. Section 3 of the Act deals with disqualification on the ground of defection and Section 3(1)(a) is in respect of a member belonging to a political party which is relevant in this case. Section 3(1)(a) of the Act reads as follows,-

“3. Disqualification on ground of Defection,-

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

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

person or authority authorized by it in this behalf in the manner prescribed, votes or abstains from voting.

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

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or in an voting on a no-confidence motion against any one of them except a member of a Standing Committee.

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

18. At Para 6 of the petition it is stated that the intention of the respondent was to defeat the official candidate of Indian national Congress party in the election and his conduct since he was disobeying the direction of the party, he had voluntarily given up the his membership of the Indian National Congress and it is also stated that he by violating the whip and direction issued by the DCC President had committed defection. As per Section 3(1)(a) of the Act, if a member of a 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 in an election to the post of President, he shall be disqualified for being a member of that local authority. The first limb of Section 3(1)(a) of the Act is voluntarily giving up membership from the party by a member and the second limb is violation of whip by such member. They are distinct and not interlinked.

19. 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 an elected member or a group of 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 considering the Constitutional validity of 10th schedule the *Apex Court in Kihoto Hollohan Vs.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.”

In ***Jancy Chandy Vs. Jose Puthenkala (2006 (4) KLT 116)*** the Division Bench of the Hon’ble High Court has held as follows:-

“Politics without principle is one of the seven capital sins to be deprecated, according to the Father of our Nation, Mahatma Gandhi. Political defection is one of the grave vices in that group. In the statement of objects and reasons for the Fifty – second Amendment to the Constitution introducing Tenth Schedule in order to prevent frequent political defects, it is stated as follows:- “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”.

20. In the case on hand the respondent is found to have defied the direction issued by the DCC President by abstaining from attending the election meeting held on 25.06.2014. It is not in dispute that the DCC President is a person competent to recommend symbol to the candidates contesting in the

election to the local bodies. The direction in writing as defined in clause (iva) of Section 2 reads as follows,-

“(iva) “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.”

21. DCC President is the person competent to recommend symbol to the candidates of Congress party contesting in local body election and so he is the person competent to issue whip to such members. Admittedly the PW2 in such capacity had issued whip to the respondent which he disobeyed. The above conduct of the respondent was definitely with a view to help the members belonging to the rival political party. Such a conduct is nothing but disloyalty. It is settled law that the moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily abandoned his membership from the party. This position is further clarified in **Varghese V.V. Vs. Kerala State Election Commission (2009 (3) KLT 1)**, the relevant portion of which reads as follows,-

“Therefore, if a member or a group of the elected members of the 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. In Naseera Beevi’s case the rebel group in the parliamentary party wing of the political party concerned had not only formed a separate group, but they had voted in favour of the no confidence motion moved by the rival political party. Thus by their conduct of being disloyal to the political party in which they were members and by voting as they pleased independent of the political party’s declared policy, they had incurred the disqualification. In view of both factual and legal position as above, the dictum laid in Naseera Beevi’s case that having the parliamentary party and exercising the right to vote according to the choice of the elected member would not attract disqualification on the ground of voluntarily giving up membership in the political party is not good law”

22. This position is further clarified in the decision in **Biju R.S. Vs. Kerala State Election Commission (2009(3) KLT 29)** and at **Para 17** it has been held as follows,-

“17. Under the Act, a member can be disqualified if he has voluntarily given up the membership of the political party to which he belongs or acts in defiance of a whip/direction issued by the political party. Disqualification for voluntarily giving up the membership of one’s party is not dependant on the violation of the whip. The intention of the Act is that the member who has violated the whip or has abandoned the membership of the 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. Therefore even if this Court were to hold that the petitioner before the Commission has not proved that PW2 has issued and served on the writ petitioners a direction regarding the voting on the no confidence motions that there tabled on 14.05.2008, the Commission was justified in holding

that the petitioners have voluntarily abandoned their membership in the Indian National Congress.”

The above decision has been confirmed by the Division Bench of the Hon'ble High Court in Writ Appeal No.795/2009.

23. In Muhammed Kunhi.B. Vs. K.Abdulla (2010 (4) KLT 736) this position has been clarified at Para 24 as follows,-

“ 24. The conduct of the members being important, going by the decision of the Apex Court in Ravi S.Naik's case, the conduct of the petitioners herein in signing the no confidence motion along with the members of the BJP, voting in favour of the no confidence motion against the 1st respondent, a member of the very same political party and the then Vice President who belonged to the UDF and voting against the candidates of the UDF in the subsequent election and the conduct of the petitioner in WP (C) No.28051/2010 in contesting and getting elected as President against the nominee of the UDF, will squarely attract the vice of disqualification and are sufficient to imply that they have voluntarily given up membership of the political party which set them up as candidates in the election.”

24. Having regard to all the facts and circumstances, in the light of the settled position of law as noted above it is clearly found that the respondent has voluntarily abandoned his membership from the party by abstaining from attending the meeting for electing the President by disobeying the direction issued by his political party. Since the respondent, after accepting the whip issued by the DCC President had abstained from voting in defiance of the said whip, he is also liable to be disqualified under the second limb of Section 3(1)(a) of the Act. Therefore I find that the respondent has committed defection as provided by Section 3(1)(a) of the Act. The points are answered accordingly.

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

The parties shall bear their respective costs.

Pronounced before the Commission on this the 31st day of March 2015

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER**

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri.E.Kesavan Kutty, Ilamthiruthil House, Kuzhur P.O., Thrissur District
- PW2 : Sri.Abdurahiman Kutty, Onnarakattayil Veedu, Vadakkekadu, Punnayur P.O., Thrissur District
- PW3 : Sri.N.S.Vijayan, LIC Agent, Naduvileparambil, Padathumpadi P.O. (Via) Poyya, PIN: 680 733.
- PW4 : Sri.Vijayan, Punathikkudi Veedu, Annamanada P.O

Witnesses examined on the side of the respondent

- RW1 : Sri.James, Kandamkulathi Veedu, Iranikulam P.O., Kuzhur, Thrissur District, PIN: 680 734.
- RW2 : Smt.Tessi James, Kandamkulathi Veedu, Iranikulam, Thalikulam P.O.

Documents produced on the side of the petitioner

- P1 : Certificate issued by the Secretary dated 26.06.2014, Kuzhur Grama Panchayat
- P2 : Receipt No.M(2)51/2013-14 dated 24.06.2014 of Assistant Director of Agriculture, Mala
- P3 : Receipt No.A2-2461/2014 dated 24.06.2014 by Secretary, Kuzhur Grama Panchayat
- P4 : Copy of the oath in Form No.1 submitted by Sri.K.F.James
- P5 : Copy of the minutes of the meeting to elect the President of Kuzhur Grama Panchayat held on 25.06.2014

- P6 : Copy of the Election Notice to elect the President, Kuzhur Grama Panchayat.
- P7 : Copy of the register showing the political affiliation of the members of Kuzhur Grama Panchayat
- P8 : Copy of the whip dated 21.06.2014 issued by the president, District Congress Committee, addressed to Sri. E.Kesavankutty

Documents produced on the side of the respondent

- R1 : Copy of the resolution dated 30.05.2014 of Kuzhur Grama Panchayat
- R2 : letter dated 19.07.2014 by the Secretary of Kuzhur Grama Panchayat
- R3 : Medical certificate issued by Dr.Thomas John, dated 10.01.2014

Documents produced on the side of the witnesses:

- X1 : Copy of the Acquittance Roll of the President and Members of Kuzhur Grama Panchayat
- X2 : Copy of the Contingent Bill of honorarium to the President for the month of May 2014
- X3 : Copy of the Contingent Bill of sitting fee of the President for the month of May 2014
- X4 : Copy of the Contingent Bill of honorarium to the President for the month of June 2014

Sd/-

K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER