

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

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

**Tuesday, the 4<sup>th</sup> day of April 2017**

**O.P.No.82/2015**

Petitioner : E.C.Mohammed,  
S/o Ali Kunju,  
Residing at Elavanchall House,  
Koduvally, PIN – 673 572,  
Kozhikode District.  
Councillor, Division No.29,  
Koduvally Municipality.

**(By Adv. KallambalamS.Sreekumar)**

Respondent : K.Sivadasan,  
Residing at Kanjirattukunnummel,  
Koduvally-673 572,  
Kozhikode District.  
Councillor, Division No.28,  
Koduvally Municipality.

**(By Adv.N.Anil Kumar)**

This petition having come up for hearing on the 15<sup>th</sup> day of **March 2017**,  
in the presence of **Adv.KallambalamS.Sreekumar** for the petitioner and  
**Adv.N.Anil Kumar** for the respondent and having stood over for  
consideration to this day, the Commission passed the following.

## **ORDER**

This is a petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent committed defection and hence disqualified to continue as Councillor of Koduvally Municipality and also for declaring him as disqualified to contest as candidate in any election to the local body for a period of six years.

2. The petitioner's case in brief is as below:- The petitioner and respondent are elected Councillors of Koduvally Municipality in the election held in November 2015. Petitioner contested the election and was elected as the candidate of National Secular Conference (NSC) supported by Left Democratic Front (LDF). The respondent contested and was elected as an independent candidate from ward No.28 without the support of any political party or front. Initially the respondent filed nomination stating that he was a candidate of Indian National Congress (INC). But his candidature was not admitted by Indian National Congress. In ward No.28 one C.M.Gopalan was the official candidate of Indian National Congress and the official symbol '**PALM**' was allotted to him. As the candidature of the respondent was not admitted by the UDF and INC he contested as an independent candidate and an independent symbol was allotted to him at his request. The main contest in ward No.28 was in between the respondent and the Congress led UDF. As the respondent did not withdraw his nomination the

Congress party expelled him from Indian National Congress. After election as an independent Councillor he, while taking oath, declared that he was joining in United Democratic Front. He gave a declaration before the Municipal Secretary stating that he was a member of UDF. The respondent defeated the United Democratic Front candidate Shri.C.M.Gopalan in the election and after election he joined in United Democratic Front. Now the respondent is an active Councillor of United Democratic Front. The act of the respondent is against the interest of the voters in the ward. By his joining in United Democratic Front he committed defection and hence he is disqualified to continue as a Councillor of Koduvally Municipality as per Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act. He voluntarily abandoned independent status and joined in a political front. He is hence liable to be disqualified to contest the election for a period of six years. Hence this petition.

3.The respondent filed counter statement contending as below. The petition is not maintainable as the petitioner has no locus standi to file the petition. Respondent has not violated any of the provisions of the Kerala Local Authority (Prohibition of Defection) Act. He contested the election as an independent candidate with the support of United Democratic Front. At the time of filing nomination the local functionaries of the Congress party asked him to contest the election as a candidate of Congress party and

accordingly he recorded the name of the party as Indian National Congress and the symbol “**HAND**” in the nomination paper. But that was not accepted by the other constituents in the United Democratic Front and they insisted the respondent to contest as an independent candidate with the support of United Democratic Front. But the Indian National Congress fielded Shri.C.M.Gopalan as their own candidate in the election in ward No.28 and it was against the understanding in the United Democratic Front. The claim of Shri.C.M.Gopalan as United Democratic Front candidate is false. The United Democratic Front officially decided to support the respondent in the election. But the Congress party breached the understanding in the United Democratic Front by fielding their own candidate.

4. Respondent contested in the election as an independent candidate with the support of United Democratic Front and the symbol “**BUS**” was allotted to him as per his request. There were altogether three candidates in ward No.28 Koduvally East ward. The candidate of Indian National Congress party Shri.C.M.Gopalan got 228 votes and the independent candidate supported by Left Democratic Front secured 179 votes. The respondent who was supported by United Democratic Front obtained 360 votes out of the polled valid votes and he was declared elected. The respondent defeated the candidate of Indian National Congress and the

independent supported by Left Democratic Front. The respondent is a part of the United Democratic Front coalition. He has not joined in any political party. He contested the election as an independent with the support of United Democratic Front and was elected as such and he has not violated the provisions of the Kerala Local Authorities (Prohibition of Defection) Act. There is no merit in the petition and hence it is to be dismissed.

5. The evidence in this case consists of the oral testimonies of PWs1 to 5, RW1 and RW2 and Exts.A1 to A5, B1 to B9 and X1 to X11.

6. Both sides were heard.

7.The following points arise for consideration;

(1) Whether the petition is maintainable?

(2) Whether the respondent was elected as an independent member without the support of any political party or political front as alleged?

(3) Whether the respondent has committed defection as contemplated under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?

(4) Whether the petitioner is entitled to get the declaration as prayed for

(5) Reliefs and costs?

8. **POINT No.(1)**: As stated above, this is a petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks a declaration that the respondent committed defection and

hence he became disqualified to be the Councillor of Koduvally Municipality and also to contest the election to any local body for a period of six years.

9. The petitioner and respondent are elected Councillors of Koduvally Municipality in the election held in November, 2015. The petitioner was elected as a candidate of National Secular Conference and the respondent was elected as an independent member. According to the petitioner the respondent, after electing him as an independent member, joined in UDF coalition incurring disqualification under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act. By joining in United Democratic Front the respondent committed defection and thereby became disqualified to be the Councillor of Koduvally Municipality, it is further contended. Per contra, the contention of the respondent is that he has not committed any act of defection and he denied all allegations. It is also his case that this original petition is not maintainable as the petitioner has no locus standi to file this petition.

10. It may be noted this original petition is filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. As per Section 4(1) of the Act, if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it in this behalf may file a petition before the State

Election Commission for decision. Filing of such petition is regulated by Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules.

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

11. The petitioner herein being a member of the local authority is certainly entitled to file this petition as per law. So the contention of the respondent that the petitioner has no locus standi to file this petition and that this petition is not maintainable is unsustainable. As this petition is filed by a competent person within the time limit and a question arises as to whether the respondent has become subject to disqualification as provided under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act this petition is held to be maintainable. Point is answered accordingly.

12. **POINT Nos.2 to 5**: Case of the petitioner is that the respondent committed defection incurring disqualification under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act and hence he is to be disqualified to be a Councillor of Koduvally Municipality. According to PW1, the petitioner the respondent contested the election and was elected

from ward No.28 of Koduvally Municipality as an independent candidate without the support of any political party or front. The respondent, after elected as an independent Councillor, joined in United Democratic Front (UDF). He gave a declaration that he was elected as a UDF Councillor. By joining in UDF the respondent committed defection inviting disqualification as provided under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act and thereby he abandoned his independent status, PW1 further states.

13. Case of the respondent is that he contested the election as an independent candidate with the support of UDF. As he is elected with the support of UDF the respondent is a UDF Councillor and hence according to him, the question of the alleged disqualification does not arise.

14. There is dispute over the status of the respondent. According to the petitioner he is an independent Councillor and to the respondent he is a UDF Councillor. Requisition then to be considered is whether the respondent contested the election as an independent candidate without the support of any political party or front or with the support of the political front UDF. It is a fact that the Indian National Congress (INC), Indian Union Muslim League (IUMML), and Socialist Janata Dal (SJD) are constituents of the United Democratic Front coalition and they contested the election in Koduvally Municipality as UDF.



15. It is stated by PW1 that one C.M.Gopalan of the Indian National Congress was the candidate of United Democratic Front in ward No.28 of Koduvally Municipality and the respondent contested the election in ward No.28 as an independent candidate. In the election the respondent found victory defeating Congress led United Democratic Front candidate Shri.C.M.Gopalan and the independent supported by Left Democratic Front. But after electing as Councilor the respondent joined in United Democratic Front and gave a declaration to that effect to the Secretary, Koduvally Municipality. Exts.A5 and X2 are the copies of the said declaration given by the respondent. Ext.X1 is the declaration given by the petitioner. The respondent who was elected as an independent candidate committed defection by joining in UDF and his above act warrants disqualification, PW1 states.

16. PW3 is the President of Kozhikode District Congress Committee. He gave evidence supporting the case of the petitioner. It is stated by him that the Indian National Congress contested the local body election in Koduvally Municipality as part of United Democratic Front. The UDF Committee divided the total 36 seats of Koduvally Municipality among the constituents of United Democratic Front including Indian National Congress, Indian Union Muslim League (IUML) and Socialist Janata Dal (SJD). Out of the 36 seats, 10 seats including ward No.28 were allotted to Indian National Congress, by the UDF Committee. It was PW3 who recommended

the official symbol of Indian National Congress to the Congress candidates and he is the authority for that Shri.C.M.Gopalan contested the election as the candidate of INC and UDF. PW3 denied the suggestion that the respondent was the candidate of United Democratic Front. According to PW3 Ext.A2 is the election campaign notice issued by the Convenor of the UDF election committee seeking votes for Shri. C.M.Gopalan.

17. PW2 is the Secretary of Koduvally Municipality and he was examined to speak about Exts.X1 and X2 declarations given by the petitioner and respondent after their election as Councillors and Ext.X4 register showing the party affiliation of the Councillors. There is no dispute over Exts.X1 and X2 declarations and X4 register.

18. PW4 is the Returning Officer of ward Nos.19 to 36 of Koduvally Municipality. He produced Ext.X11 containing nomination papers filed by the petitioner, respondent and others. According to him there were three candidates in ward No.28 and Shri.C.M.Gopalan was the Congress candidate and the respondent contested as an independent with the symbol “**BUS**”.

19. PW5 is another Councillor of Koduvally Municipality and he is a voter in ward No.28. According to him the Congress nominee Shri.C.M.Gopalan was the candidate of United Democratic Front in ward No.28. To him the respondent contested the election as an independent candidate and he sought votes from the voters as an independent candidate. It is further stated by him that the respondent joined in UDF after the

election and for that he was given the Chairmanship of Public Works and Registration Standing Committee by the UDF.

20. The respondent has no dispute over Ext.A5/X2. It is admitted by him that he gave Ext.A5/X2 declaration showing him as UDF Councillor. The respondent was examined as RW1. According to him he contested the election and was elected from ward No.28 as UDF candidate. As he contested and was elected as UDF candidate the question of the alleged disqualification does not arise. The UDF Koduvally Municipal Committee, it is stated, prepared a list of UDF candidates in Koduvally Municipality and Ext.B1 is said to be the list. In Ext.B1 list the respondent is shown as the UDF candidate from ward No.28. Ext.B4 is the campaign notice published during electioneering. It is an appeal to voters to vote and according to him Ext.B4 will show him as UDF candidate. It is to be stated here that Exts.B1 and B4 were produced after the examination of the witnesses on the side of the petitioner and Exts.B1 and B4 were not put to PW1 or PW3 DCC President.

21. RW2 is said to be the Chairman of UDF Koduvally Municipal Committee. He belongs to Indian Union Muslim League party and he gave evidence supporting the case of the respondent. According to him the UDF Municipal Committee decided to field the respondent as an independent candidate and he contested the election from ward No.28. According to him Ext.B9 would show the said fact. Ext.B9 is said to be the minutes of the

meetings of UDF Koduvally Panchayat/Municipal Committee (earlier Koduvally was a Grama Panchayat and later it become a Municipality). Here also it is to be stated that Ext.B9 was not put to PW3 and it was produced after the examination of the witnesses on the petitioner's side. No Congress nominee in the UDF Koduvally Municipal Committee was also examined to support the said alleged decision. Submission of the learned counsel for the petitioner is that Ext.B9 is a forged one.

22. As stated above the Indian National Congress, Indian Union Muslim League and Socialist Janata Dal are part of the political front United Democratic Front (UDF) and they contested the election as UDF at the state level and also in the Koduvally Municipality. There are 36 wards (seats) in Koduvally Municipality. The UDF committee divided the total 36 seats among the constituents of UDF. Admittedly 10 seats including ward No.28 were allotted to Indian National Congress (INC). It is also a matter of admission that Shri.C.M.Gopalan was the Congress candidate in ward No.28 and official symbol of the Congress party was allotted to him. Both RW1 and RW2 admitted the said facts. It is also admitted by RW1 and RW2 that Indian National Congress is a constituent of UDF. That being the situation there cannot be two candidates for UDF in ward No.28 as submitted by the learned counsel for the petitioner.

23. It is contended by the learned counsel for the petitioner that the respondent initially filed his nomination showing him as a candidate of

Indian National Congress. But the Indian National Congress did not approve his candidature and the candidate of the Congress was Shri.C.M.Gopalan. As Congress fielded Shri.C.M.Gopalan as the official candidate of Congress the respondent became a rebel candidate and contested as an independent against the official candidate and found victorious defeating the INC/UDF and LDF candidates. As there are candidates for UDF and LDF the respondent cannot be a candidate of UDF as submitted by the learned counsel. RW1 also admitted that the Congress party did not approve his candidature.

24. Contention of the learned counsel for the respondent is that the respondent contested the election as an independent candidate with the support of United Democratic Front and hence he is to be considered as a UDF Councillor. To him Ext.B4 election campaign notice, Ext.B5 poster and Ext.B7 to B8(a) newspaper reports would show that the respondent was a UDF candidate.

25. It is to be stated that Exts.B4, B5 and B7 to B8(a) documents are not properly proved and they will not take us anywhere especially when RW1 and RW2 admit that Shri.C.M.Gopalan is the Congress candidate and that Congress is part of UDF. Further, if the contention of the respondent's counsel is accepted there must be two candidates from the UDF. The respondent has no case that the UDF has two candidates in ward No.28. While making the above argument the learned counsel conveniently forgets

the fact that the Indian National Congress is part of United Democratic Front and Shri.C.M.Gopalan is the official candidate of Congress in Ward No.28 which is admittedly included in the 10 seats allotted to Congress for contest. Further, RW2 admitted that when a seat is allotted to one of the constituents in UDF another constituent of UDF cannot field its candidate and there cannot be two candidates for UDF in the same ward. It is also the evidence of RW2 that when one of the constituents fields its candidate in a ward allotted to that constituent the UDF should work for the said candidate. So the claim of the respondent that he was the UDF candidate cannot be accepted and it is only to be rejected.

26.Ext.B4 campaign notice and Ext.B5 poster will not take away the status of Shri.C.M.Gopalan as Congress/UDF candidate. It may also be noted no representative of the Congress party in the UDF committee was examined by the respondent to say that the respondent was a candidate supported by the UDF. When a seat is allotted to Congress party and the party fielded a candidate the United Democratic Front cannot take a different decision and support a rival candidate and to defeat the candidate of the Congress party so long as it continues to be a constituent of UDF. Evidence of RW2 also would show the said fact.

27. From the above facts and circumstances it is to be taken that the respondent contested the election as an independent candidate without the support of UDF as claimed by him. Probably, he might have taken

advantage of the factionalism if any in the UDF. But that will not make him a UDF Councillor as claimed by him. He can be considered only as an independent member without the support of any political coalition.

28. It is a matter of admission that the respondent gave a declaration to the Municipal Secretary declaring him as United Democratic front Councillor. As per Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act, 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. The Kerala Local Authorities (Prohibition of Defection) Act, 1999 was enacted to prohibit defection among the members of local authority in the state and to provide for disqualification of the defecting members of the local authorities. The provisions under the 10<sup>th</sup> schedule of the constitution and under the Kerala Local Authorities (Prohibition of Defection) Act are intended to curb the evil of unprincipled and unethical political defection.

29. From the available evidence and the circumstances emanating there from it can be safely concluded that the respondent has committed defection as provided under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act and therefore he became subject to disqualification for being a Councillor of Koduvally Municipality. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being a Councillor of Koduvally Municipality as provided by Section 3(1)(c) 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 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 4<sup>th</sup> day of April 2017

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

### APPENDIX

#### Witnesses examined on the side of the petitioner

- PW1 : Shri.E.C.Mohammed
- PW2 : Shri.Babu Prasad, Municipal Secretary,  
Koduvally Municipality
- PW3 : Shri.K.C.Abu, DCC President, Kozhikode
- PW4 : Shri.C.Vinod Kumar, Tribal Development  
Officer, Kozhikode
- PW5 : Shri.Abubacker, Municipal Councillor

#### Witnesses examined on the side of the respondent



- RW1 : Shri.K.Sivadasan
- RW2 : Shri.P.C.Ahamed Haji, Liaison Committee  
Chairman, KoduvallyMunicipaity

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

- A1 : Letter No.A.3604/2015 dated 27.11.2015  
of the Tribal Development Officer,  
Kozhikode
- A2 : Brochure published by  
Shri.C.M.Gopalan in General Election to  
Koduvally Municipality
- A3 : Copy of the letter dated 17.10.2015 from  
K.Sivadasan to the Returning Officer
- A4 : Copy of the Form No.27, ie the  
declaration of result in the election on  
07.11.2015
- A5 : True copy of the declaration in Form  
No.2 filed by Shri.K.Sivadasan

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

- B1 : List of persons selected as contestants by  
Koduvally Municipality UDF committee  
for the 36 divisions of Koduvally  
Municipality
- B2 : Copy of the letter from K.Sivadasan  
given to Returning Officer, requesting  
allotment of symbol
- B3 : Copy of the letter from Chairman, UDF  
Koduvally Panchayat Committee  
addressing State Election Commission
- B4 : Notice-Election campaign of

- B5 : Shri.K.Sivadasan  
UDF Election Campaign Poster
- B6 : Receipt issued by Inspector of Police,  
Koduvally, Kozhikode Rural-  
Acknowledgment of petition
- B7 : Mathrubhoomidaily dated 19.10.2015
- B7(a) : News article in Page 11 of  
Mathrubhoomidaily dated 19.10.2015
- B8 : Mathrubhoomi daily dated 25.10.2015
- B8(a) : News article in Page 13 of  
Mathrubhoomi daily dated 25.10.2015
- B9 : UDF Koduvally Panchayat Committee  
Meeting Minutes Book

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

- X1 : Form No.2 filed by Shri.E.C.Mohammed
- X2 : Declaration in Form No.2 filed by  
Shri.K.Sivadasan
- X3 : Copy of the letter dated 28.11.2015 of the  
President, DCC, Kozhikode
- X4 : Register showing political affiliation of  
members, KoduvallyMunicipaliaty
- X5 : Smt.RejishaThemeem
- X6 : Minutes of the meetings conducted for  
theelection of Chairperson, Vice  
Chairperson, Standing Committee  
Chairperson, Standing Committee  
Members
- X7 : Nomination filed by Ahri.A.P.Majeed

Master in the election to the post of Vice  
Chairman, Koduvally Municipality

- X8 : Nomination of Shri.Vayyali Mohammed  
in the election to the Post of Vice  
Chairman, Koduvally Municipality
- X9 : Nomination of Smt.Shareefa  
Kannadippoyil for contesting the election  
to the post of Chairperson, Koduvally  
Municipality
- X10 : Nomination of Smt.Jameela.K for  
contesting the election to the Post of  
Chairperson, Koduvally Municipality
- X11 : Form-6: list of contesting candidates in  
Koduvally East Division of Koduvally  
Municipality

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

//True Copy//