

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

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

**Wednesday, the 5<sup>th</sup> day of July 2017**

**O.P.No.87/2015**

Petitioner : C.Mohammedali,  
S/o Kutty Hassan, Fathima Cottage,  
Iritty, Payancherry P.O.,  
Kannur District, PIN:670 703.  
Councillor, Ward No.11,  
Iritty Municipality

**(By Adv. K.Vinod)**

Respondent : M.P.AbdulRahiman,  
S/o Abdulla, Fathima Cottage,  
Near Municipal Office, Punnad P.O.,  
Kannur District, PIN 670 703.  
Councillor, Ward No.20,  
Iritty Municipality

**(Adv. Adv.R.Krishnappan Nair)**

This petition having come up for hearing on the 20<sup>th</sup> day of **June 2017**, in the presence of Adv. **K.Vinod** for the petitioner and **Adv.R.Krishnappan Nair** 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 Iritty 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 Iritty Municipality in the election held in November 2015 and they contested the election and were elected as the Councillors of Indian Union Muslim League (IUML) party. There are 33 wards (seats) in Iritty Municipality and out of which UDF secured 15 seats, LDF 13 seats and the BJP got the remaining 5 seats. Among the Congress led UDF Indian Union Muslim League (IUML) has 10 members and Indian National Congress (INC) has 5 members. The IUML and Congress contested the election on a common political platform by name UDF in Iritty Municipality and also at the state level. After the election, the UDF decided to form the Municipal board to rule the Municipality and to allot the post of Municipal Chairman to Congress and of the Vice Chairman to Indian Union Muslim League. Shri.P.V.Mohanan of Indian National Congress and Smt.P.K.Balkeesof Indian Union Muslim League were decided to be the candidates for the posts of Chairman and Vice Chairman

respectively. The election to the posts of Chairman and Vice Chairman was scheduled to be held on 18.11.2015. The Secretary of the Indian Union Muslim League, Kannur District Committee issued whip to all the elected IUML members in Iritty Municipality directing them to attend the election meeting and to cast vote in favour of Shri.P.V.Mohanan and Smt.Balkees respectively. As the respondent refused to receive the whip the same was affixed at his residence. The copies of the whip were served on the Returning Officer and also to the Secretary of Iritty Municipality.

3. When the election to the posts of Chairman and Vice Chairman was held on 18.11.2015 the respondent and two other IUML Councillors abstained from the meeting and voting, defying the direction of the party. They disobeyed the whip and colluded with LDF members. As they purposely abstained from the meeting and disobeyed the direction of the party the candidates of the UDF got only 12 votes and the candidate of LDF got 13 votes and the LDF candidates were elected as Chairman and Vice Chairman of Iritty Municipality. The BJP boycotted the election. The respondent and two other Indian Union Muslim League members deliberately abstained in collusion with rival LDF members with a view to defeat the UDF candidates and ensure the victory of LDF candidates. The respondent was fully aware of the whip and the stand of his party in the election meeting. But he defied the same. By doing so the respondent voluntarily abandoned his membership in Indian Union Muslim League.

He joined in another political party and he is now in CPI(M) camp and moving with LDF in the Municipality. By the conduct of the respondent the image of Indian Union Muslim League party is tarnished. The respondent committed defection and thereby incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. He voluntarily gave up his membership in IUML party. The petitioner seeks a declaration that the respondent committed defection and hence he became disqualified to be the Councillor of Iritty Municipality and also to contest the election to any local body for a period of six years.

4. The respondent filed counter statement contending as below. The petition is not maintainable. It is true that the respondent contested the election and was elected as the candidate of Indian Union Muslim League. In Iritty Municipality the UDF coalition was not effective. The Congress has only 5 seats in Iritty Municipality and the Indian Union Muslim League has 10 seats. So the Indian Union Muslim League claimed the post of Municipal Chairman and it was not acceded by the Indian National Congress. Consequently controversy was there even on the date of election of Chairman. No decision was taken to nominate Shri.P.V.Mohanan for the post of Chairman and Smt.Balkees for Vice Chairmanship. It is not correct to say that the District Secretary of Indian Union Muslim League issued whip to the elected Indian Union Muslim League members. No such whip

was issued. There was no direction from the Indian Union Muslim League party to attend the election meeting and vote for the posts of Chairman and Vice Chairman. The allegations that he refused the whip and thereafter it was affixed at his residence are false. It is not correct to say that the respondent and two others disobeyed the whip and they colluded with LDF members.

5. A meeting of the UDF members was convened at the Congress office at Iritty and it ended with clashes between the members and the workers assembled there sustained injuries. No decision was taken in that meeting. There was no direction from Indian Union Muslim League to the respondent till 18.11.2015. The respondent did not violate any of the directions of his party and he did not abandon his membership in the party. The respondent has not committed any act of defection incurring disqualification under Section 3(1)(a) of the Act. The respondent is a loyal worker of Indian Union Muslim League and office bearer of Uliyal Sakha of Indian Union Muslim League. The petitioner has some ill will towards the respondent and out of that he created false evidence and filed this case. The respondent is suffering from acute asthma and hypertension and was under treatment for a long time. On 07.11.2015 also he consulted with the Doctor and as his condition worsened he was taken to AKG Memorial Co-Operative Hospital, Kannur. He was unable to move on 18.11.2015 and

was kept under observation on that day. Because of his illness he could not attend the election meeting convened on 18.11.2015. His absence was not willful. There is no merit in the original petition and hence it is only to be dismissed.

6. The evidence in this case consists of the oral testimonies of PWs1 to 4, RWs1 to RW6 and Exts.A1to A7 and B1 to B7.

7. Both sides were heard.

8. The following points arise for consideration;

- (1) Whether the petition is Maintainable?
- (2) Whether the respondent has sufficient reason for not attending the election meeting held on 18.11.2015 as contended by him?
- (3) Whether the respondent has committed defection as contemplated under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (4) Whether the petitioner is entitled to the declaration prayed for?
- (5) Reliefs and costs?

9. **POINT No.(1)**: This is a petition filed under Section 4(1) 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 Iritty Municipality and also to contest the election to any local body for a period of six years.

10. The petitioner and respondent are elected Councillors of Iritty Municipality in the election held in November, 2015 and both of them were elected as the candidates of Indian Union Muslim League which is a part of Congress led United Democratic Front. A meeting of the Councillors to elect the Chairman and Vice Chairman of the Municipality was convened on 18.11.2015. According to the petitioner Shri.P.V.Mohanan of Indian National Congress and Smt. Balkeesof Indian Union Muslim League were decided to be the candidates of United Democratic Front for the posts of Chairman and Vice Chairman respectively. The Indian Union Muslim League Kannur District Secretary issued whip to all Indian Union Muslim League Councillors including the respondent directing them to vote infavour of Shri.P.V.Mohanan and Smt.Balkees aforesaid. But the respondent, it is alleged, disobeyed the direction of his party and he deliberately abstained from attending the election meeting on 18.11.2015 with a view to defeat the candidates of the UDF. As a result they were defeated and the LDF candidates became the Chairman and Vice Chairman.

11. According to petitioner the act of the respondent in abstaining from the said election meeting was in collusion with the LDF members with a view to defeat the UDF candidates and thereby he committed defection and became subject to disqualification under Section 3(1)(a) of the Act. Contention of the respondent on the other hand is that he has not committed any act of defection and he denied all allegations. According to him he

could not attend the election on 18.11.2015 due to illness and hospitalization and his absence was not willful. It is also his case that this petition is not maintainable.

12. It may be noted this original petition is filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. As per Section 4(1) of the Act, if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it in this behalf may file a petition before the State Election Commission for decision. Filing of such petitions is regulated by Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules.

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

13. The petitioner herein being a member of the local authority is certainly entitled to file this petition as per law. As this petition is filed by a competent person within the time limit and a question arises as to whether the respondent has become subject to disqualification as provided under



Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act this petition is held to be maintainable. Point is answered accordingly.

14. **POINT Nos.2 to 5:** As stated above, the petitioner and respondent are elected Councillors of Iritty Municipality in the election held in November 2015 and they were elected as IUML candidates. So Exts.A1 and A2 do not require any discussion. Exts.A1 and A2 are the copies of the register showing the party affiliation of the petitioner and respondent. The Indian Union Muslim League contested the election as part of the Congress led UDF. There are 33 wards(seats) in Iritty Municipality and out of which the UDF got 15 seats – IUML 10 seats and INC 5 seats. The LDF got 13 seats including the independent supported by the LDF. The remaining 5 seats were won by the BJP. As the UDF got major seats they decided to form the board. Election to the post of Chairman and Vice Chairman was scheduled to be held on 18.11.2015.

15. According to PW1 the petitioner, the UDF decided to nominate Shri.P.V.Mohanan of Indian National Congress for the post of Chairman and Smt.Balkees of Indian Union Muslim League for the post of Vice Chairman of the Municipality. It is stated that the District Secretary of Indian Union Muslim League issued whips to all IUML Councillors including the respondent directing them to vote in favour of the UDF nominees Shri.P.V.Mohanan and Smt.Balkees in the election on 18.11.2015 for the post of Chairman and Vice Chairman. Ext.A3 is the copy of the

said whip. Case of the petitioner is that the respondent disobeyed the direction of his party and deliberately abstained from attending the election meeting on 18.11.2015 colluding with the LDF members with a view to defeat the UDF candidates and to ensure the success of the LDF candidates and thereby he committed defection.

16. PW2 is the Secretary of IUML Kannur District Committee. He gave evidence supporting the case of the petitioner. It is stated by him that the Indian Union Muslim League contested the local body election in Iritty Municipality as part of United Democratic Front. There was an understanding in the UDF for sharing the post of the Municipal Chairman and as per the understanding the Chairmanship is to be given to the Indian National Congress of the first half and Vice Chairmanship to Indian Union Muslim League. Indian Union Muslim League nominee would become the Chairman during the second half and the Congress nominee the Vice Chairman. Accordingly Shri.P.V.Mohanan and Smt.Balkees were decided to be the candidates of the UDF for the posts of Chairman and Vice Chairman Respectively. It was PW2 who issued whips to all the elected Indian Union Muslim League members directing them to vote and elect the above persons and Ext.A3 is the copy of the whip. It is also stated by him that he authorized PW3 Shri.AbdulLatheef, Secretary, IUML IrittyMunicipal Committee to serve the whip to all the elected Councillors of Indian Union Muslim League. The respondent refused to accept the

whip when PW3 tendered the same and thereafter the same was served by affixture. According to PW2 the respondent violated the whip and abstained from attending the election meeting on 18.11.2015 with a view to defeat the above UDF candidates. On account of his abstention the LDF candidates came victorious and became the Chairman and Vice Chairman of the Municipality. By doing so the respondent voluntarily gave up his membership in Indian Union Muslim League party, PW2 further states.

17. PW3 is the Secretary, Indian Union Muslim League IrrittyMunicipal Committee. It was he who was authorised to serve the whips to all elected IUML Councillors. According to him all members except the respondent accepted the whips. The whip when tendered to the respondent he refused to accept the same and hence it was affixed on the wall of his house on 16.11.2015 in the presence of PW4 and one Ayooband the fact of affixture was endorsed on the copy of the whip. Ext.A4 would show the said endorsement with signatures of PW3 and PW4. PW4 admitted that he was present with PW3 while affixing the whip on the wall of the respondent's house and his signature is therein Ext.A4.

18. Case of the respondent as stated above is that there was no whip issued by his party and that his absence on 18.11.2015 was not willful. The respondent was examined as RW1. According to RW1 his abstention on the election meeting on 18.11.2015 was on account of his illness and hospitalization on 18.11.2015 and that his absence was not

deliberate. It is also his case that no whip was issued by his party to attend and vote in favour of any candidates. Till 17.11.2015 no decision was taken up by the party regarding the candidates of the Municipal Chairman and Vice Chairman. To him he has not done any act of defection incurring disqualification under Section 3(1)(a) of the Act.

19. RW2 was examined on the side of the respondent to say that no whip was issued to the IUML members in this case and that there was dispute in UDF regarding the candidates for the post of Chairman and Vice Chairman. According to him he was the President of IUML Uliyil Sakha at the time of the local body election in 2015. It is further stated by him that RW1 did not attend the election meeting on 18.11.2015 on account of his illness. It is to be stated here that as per his evidence the respondent admitted in the hospital on the evening of 18.11.2015. RW3 is the brother of the respondent. According to him the respondent was suffering from hypertension and respiratory problems and he was taken to A.K.G. Hospital at Kannur on the night of 17.11.2015 as the illness aggravated. The respondent was kept under observation for one day and was discharged in the evening of 18.11.2015, RW3 further states. RW5 is stated to be the Vice President of IUML Uliyil Sakha. According to him the respondent was given membership in IUML on 20.06.2016 and Ext.B7 is the receipt for the membership. It is to be stated here that even if the respondent was subsequently given membership by the IUML party and he was supporting

the party that will not absolve him for the liability for his previous acts of defection if any.

20. It is a matter of admission that the respondent contested the election and was elected to Iritty Municipality as Indian Union Muslim League candidate. It is also a fact that the election to the post of Chairman and Vice Chairman was held on 18.11.2015 and admittedly the respondent did not attend the said election meeting. It is in evidence that the District Secretary of Indian Union Muslim League Kannur District Committee issued whip to all elected Indian Union Muslim League members directing them to vote in favour of UDF candidates Shri.P.V.Mohanan and Smt.Balkees in the election to be held on 18.11.2015. Evidence of PWs1 to 3 and Ext.A3 would show the said fact. PW2 is the competent person to issue whips and directions to the elected IUML members in such matters and it is stated by him that he has issued Ext.A3 whip to all the members including the respondent. I do not find anything in this case to discard the evidence of PW2 the District Secretary. Evidence of PW3 is that he went to the house of the respondent on 16.11.2015 to serve the whip and when tendered he refused to accept it. On account of his refusal to receive the whip, it is stated, the same was affixed on the wall of the respondent's residence in the presence of PW4. Evidence of PW4 is on the same lines of PW3. The endorsement on Ext.A4 copy of whip and the evidence of PW3 and PW4 would show that there was affixture of the whip on the wall of the respondent's residence.

21. Argument of the learned counsel for the respondent is that there was no chance of affixing the whip on 16.11.2015 as stated by PW3. PW3 is working in Iritty Mahatma Gandhi Aided College and he was not on leave on 16.11.2015. As per the evidence of RW4 Principal of the College PW3 attended the office on 16.11.2015 and the office time is 9.30 am to 4.30 pm. Evidence of PW2 would show that PW3 went to the house of the respondent before 3 pm on that date and when PW3 informed him over phone at about 3 pm about the refusal of the whip by the respondent he directed him to serve the whip by affixture and thereafter it was affixed. As the office time is up to 4.30 pm there was no chance for the presence of PW3 at the house premises of the respondent at 3 pm on that day and hence the alleged affixture of whip as stated by PW3 cannot be believed, the counsel further submits.

22. It is true that the office time of the College is up to 4.30 pm. But that cannot be a ground to disbelieve the evidence of PW3 regarding the affixture of the whip. There may be occasions where a staff goes out of the office with permission or without permission and without making entry in the movement register. They are all matters to be considered by the supervisory staff of the office. It may be noted that the distance from the College office and the house of the respondent is only one kilometer as stated by RW4. PW3 and others with him went to the respondent's house in a car. So the absence of PW3 from his office will be for a short duration.

It is quite probable and there is nothing unusual in that. If PW3 went out of his office during office hours it is a matter to be considered by the authority concerned. Whether action is to be taken against PW3 for going out if it is without permission, is a matter to be considered by authorities of the College. Merely because PW3 was not on leave on 16.11.2015 it cannot be said that there was no possibility for PW3 to affix the whip at the residence of the respondent as stated by the learned counsel. Further, there was no cross examination regarding the time of affixture when PW3 was examined. Nothing was put to him regarding the time of the affixture in this case. Considering the above circumstances the argument of the learned counsel on that aspect is only to be ignored.

23. From the evidence and circumstances in this case it can be seen that the respondent was very well aware of the existence of the whip and the direction of his party to vote in favour of UDF candidates Shri.P.V.Mohanan and Smt.Balkees. According to the petitioner the respondent violated the whip and deliberately abstained from attending the meeting colluding with LDF members with a view to defeat the UDF candidates and to ensure the victory of LDF candidates.

24. Contention of the respondent is that he could not attend the election meeting on 18.11.2015 on account of his illness. To him he is suffering from asthma and hypertension and on the night of 17.11.2015 the illness got aggravated and in the morning of 18.11.2015 he was taken to AKG

Memorial Hospital at Kannur and he was kept under observation till the evening and was discharged on that day itself. To support his contention he has produced Ext.B2 medical certificate dated 28.01.2016 and examined RW6 who issued the same.

25. Submission of the learned counsel for the petitioner is that the case of illness put forward is false and the same is put forward only to have a defence in this case and to escape from the liability of disqualification. According to him the respondent abstained from the election meeting on 18.11.2015 to help the LDF and Ext.B2 was obtained from a hospital managed by the CPM leaders. There are several hospitals in and around Iritty near the house of the respondent and A.K.G. Memorial Hospital at Kannur is 40 kms away from his house. If the respondent was really suffering from the alleged illness he would have certainly approached the nearest doctor and the nearest hospital, the counsel further submits. It seems that there is some force in the above submission of the learned counsel considering the circumstances in this case.

26. According to RW1 he was suffering from acute asthma and hypertension and was under treatment for a long time. But there is no document to show that the respondent was suffering from any illness as alleged prior to 18.11.2015. It is stated by RW1 that on the night of 17.11.2015 his condition worsened and he was taken to A.K.G. Hospital, Kannur on 18.11.2015 and was kept under observation till the evening of



18.11.2015. But in the counter statement his case is vague on that aspect. As per the counter statement he consulted with a doctor on 07.11.2015 and as his condition worsened he was taken to A.K.G Hospital, Kannur and he was kept under observation on that date. He could not attend the meeting on 18.11.2015 on account of that, he further states. In the counter statement he has no case that on the night of 17.11.2015 his illness aggravated and was taken to hospital on 18.11.2015. RW1 has no case that the date 07.11.2015 shown in the counter statement was a mistake. Who was that doctor whom he consulted on 07.11.2015 is also not stated in the counter statement or in his evidence. As stated there is no evidence to show that he was suffering from any illness prior to 18.11.2015.

27. It may be noted that as per the case of the respondent he was admitted in A.K.G Hospital and was kept under observation for one day. So naturally there would be records in that hospital. But no such records are coming forth in this case. The respondent has not taken any steps to get the same produced. Instead, he has produced Ext.B2 medical certificate and examined RW6 Doctor. But Ext.B2 and the evidence of RW6 will not show at what time the respondent was brought to the hospital and at what time he was discharged.

28. Evidence of RW6 is that the respondent was treated in the hospital on 18.11.2015 and he was kept under observation in Semi ICU for one day. RW6 is not sure whether the respondent was brought there in the

morning of 18.11.2015 or in the evening of 18.11.2015. It may be noted that as per the evidence of respondent's witness RW2 the respondent was admitted in AKG Hospital, Kannur in the evening of 18.11.2015. It is here the non-production of the hospital records gets relevance especially when the petitioner has a case that Ext.B2 is a cooked up one after the filing of this case. According to RW6 he has prepared EXt.B2 on the basis of the hospital records and those records are available in the hospital. Why those records are not produced is not known. It is also stated by RW6 that the respondent must have been treated from the nearest hospital considering the serious of his illness instead of taking him to a hospital which is 40 kms away from his house. It is to be stated him that the respondent was not taking any treatment from A.K.G.Hospital previously. He belongs to Iritty and there are several hospitals between Iritty and Kannur.

29. Argument of the learned counsel for the petitioner is that the respondent was not suffering from any illness on 18.11.2015 and Ext.B2 is created in this case to put forward a defence in this case with a view to escape from the liability under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The evidence and circumstances in this case tempt me also to think on that lines. If really the respondent was laid up of the illness as alleged he would not have travelled up to Kannur to take treatment. At what time he was brought to A.K.G Hospital, Kannur is also not known. Further, he did not inform PW2 or

parliamentary party leader or the Returning Officer about his illness and his inability to attend the meeting. That is also a circumstance which goes against him. Moreover it is in evidence that he was against the decision of his party in supporting and electing an Indian National Congress nominee as the Chairman of the Municipality. According to him the Chairmanship is due to IUML and IUML nominee should have been the candidate for the post. The respondent's absence in the election meeting on 18.11.2015 is to be viewed in that background also. It has become a practice now to produce a medical certificate in cases like this to justify wilful abstention. That cannot be encouraged. There must be convincing and believable evidence for that. That is wanting in this case. From the available evidence it is not possible to say that the abstention of the respondent in the election meeting on 18.11.2015 was not deliberate. The alleged illness is put forward only to make out a defence in this case as submitted by the learned counsel for the petitioner. His absence is not so innocent as projected by him. Culpability is there on his part in the matter and he is to bear its consequences

30. It may be noted that Section 3(1)(a) of the Act has two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership of such political party and second limb comes to play when such member violates or disobeys the direction issued by the political party or a person authorized by it in this behalf. 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.

31. 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.”*

32. 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 respondent's party issued whip to him to attend the election meeting on 18.11.2015 and to vote in favour of UDF candidates and he was aware of the whip. But he chose to defy the direction and abstained from attending the meeting. It is also found that the reason stated by him for his absence is not believable. Contention of the respondent's counsel that the respondent subsequently supported the UDF nominees when election of members to the standing committee was conducted. But that will not help the respondent in this case. His subsequent remorseful act if any will not absolve him from the liability for his previous objectionable act. So the above contention of the counsel will not help the respondent in this case. The conduct of the respondent in abstaining from attending the election meeting on 18.11.2015 defying the direction of his party would clearly demonstrate that he became disloyal to the party which elected him as a Councillor of Iritty Municipality. The above acts would amount to defection inviting disqualification and the case

put forward by the petitioner against the respondent 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 is, certainly, to be curbed. The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it.

32. From the available evidence and the circumstances emanating therefrom it can be safely concluded that the respondent has committed defection and he has voluntarily given up his membership of the party which elected him as member, as provided by Section 3(1)(a) of the Act and therefore he became subject to disqualification for being a Councillor of Iritty Municipality. Points are answered accordingly.

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

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

Pronounced before the Commission on this the 5<sup>th</sup> day of July 2017

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

**APPENDIX**

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

PW1	:	Shri.C.Mohammedali
PW2	:	Shri.AbduRahiman
PW3	:	Shri.C.AbdulLatheef
PW4	:	Shri.P.K.Rafeek

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

RW1	:	Shri.M.P.AbdulRahiman
RW2	:	Shri.Hamsa.K.V
RW3	:	Shri.Nizar M.P
RW4	:	Shri.M.J.Mathew
RW5	:	Shri.Nazeer
RW6	:	Dr.RamMohan.K

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

A1	:	Copy of the Register showing the party affiliation of the members of Irritty Municipality(Page 20)
A2	:	Copy of the Register showing the party affiliation of the members of Irritty Municipality (Page No.11)
A3	:	Copy of the whip issued by the General Secretary, IUML, Kannur District Committee dated 15.11.2015
A4	:	Copy of the whip issued by the General Secretary, IUML, Kannur District Committee dated 15.11.2015
A5	:	Photograph of whip issued by the General Secretary, IUML, Kannur District Committee



- A6 : Copy of the letter dated 18.11.2015 of the President IUML, Municipal Committee, Iritty
- A7 : Copy of the minutes of the meeting to elect the Chairman, Iritty Municipality held on 18.11.2015

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

- B1 : Copy of the minutes of the meeting to elect members of Standing Committee, held on 02.12.2015
- B2 : Medical Certificate issued by Dr.K.Ram Mohan, Chief Medical Officer of Kannur Co-operative Hospital dated 28.01.2016
- B3 : Photograph of respondent's house
- B4 : Photograph of wall (House)
- B5 : Photograph
- B6 : MalayalaManorama daily dated 17.11.2015
- B6(a) : News article in Page No.3 of Malayala Manorama daily dated 17.11.2015
- B7 : Receipt of membership of (IUML) Kerala StateCommittee dated 20.10.2016

Sd/-

V.BHASKARAN

**STATE ELECTION COMMISSIONER**

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