

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

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

**Wednesday, the 19<sup>th</sup> day of February 2014**

**O.P.No.03/2012**

Petitioner : Sivarajan.D,  
Member, Ward No.13,  
Kottukal Grama Panchayat.  
Thiruvananthapuram District.

**(By Advs.Cherunniyoor P Sasidharan Nair  
& Kallambalam S.Sreekumar)**

Respondent : Surendran,  
Member, Ward No.12,  
Kottukal Grama Panchayat,  
Thiruvananthapuram District.

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

This petition having come up for hearing on 1<sup>st</sup> day of February 2014, in the presence of Advocate **Cherunniyoor P.Sasidharan Nair & Kallambalam S.Sreekumar** for the petitioners and Advocates **M.Hashim Babu & Sajitha.S** for the respondent and having stood over for consideration to this day, the Commission passed the following.

## **ORDER**

Petition filed under Section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent has become subject to disqualification for being a member of the Kottukal Grama Panhayat.

2. The short facts are as follows:- The petitioner contested the election to ward No.13 of Kottukal Grama Panchayat as an independent candidate and was elected as a member. The respondent contested the election as a candidate of Indian National Congress in the General Election held in October 2010 to the Kottukal Grama Panchayat consists of 19 wards of which Indian National Congress secured 9 seats, CPI(M) secured 4 seats, BJP secured 2 seats RSP, BSP and JD(S) secured one seat each and the petitioner was elected as an independent member. After the General Election Sri.Siva Kumar and Smt.Aliyamma from UDF were elected as President and Vice President respectively. A no confidence motion was moved against the President and Vice President and it was tabled for discussion on 24.10.11. The Congress party and UDF parliamentary party directed all of its members to vote against the no confidence motion. But the respondent, defying the direction of the Congress party, supported the no confidence motion and it was carried. The conduct of the respondent is against the interest of his political party. By way of defying the direction issued by the party, the respondent has voluntarily given up his membership from the party.

Thus he has become subject to disqualification for being a member of the Kottukal Grama Panchayat. Hence this petition.

3. The respondent filed objection contending in brief, as follows:- The petition is not maintainable either in law or on facts. There is no cause of action for the petitioner against the respondent. On 10.10.2011 this respondent was called by another member by name Sri. Y.S.Gopan and he was taken to Kattappana and then to Mahi and Thalasseri and he was kept there in illegal detention. The respondent was threatened by the petitioner and others and his mobile was kept under their custody and he was brought to the Panchayat Hall only on the date of the meeting on the no confidence motion. Due to the constant threat from the petitioner and Sri.Y.S.Gopan, the respondent happened to support of the motion and on getting release from the illegal confinement, he reported the matter to the Police and his party leadership. Since the party leadership was fully convinced in this regard, no disciplinary action was taken against the respondent. In the subsequent election to the post of President held on 17.11.2011, the respondent voted in favour of the Congress nominee. The respondent is still continuing as a member of the Indian National Congress and he has not given up his membership from the party. He happened to vote in favour of the no confidence motion only on account of the threat and coercion from the petitioner and others. The respondent is actively participating in all the activities of the

Congress party. So the petition is liable to be dismissed with compensatory costs of ₹ 3,000/-.

4. The evidence consists of the oral depositions of PW1, RWs 1 to 2 and Exts.P1 and P2.

5. Both sides were heard.

6. The following points arise for consideration;

(i) Whether the petition is not maintainable?

(ii) Whether the respondent has become subject to disqualification for being a member of the Kottukal Grama Panchayat on account of defection as alleged?

(iii) Reliefs and costs?

7. **POINT No.(i)**: The petition is filed under Section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act', for declaring that the respondent has become subject to disqualification for being a member of the Kottukal Grama Panchayat. According to the petitioner, the respondent has disobeyed the decision and direction of the Congress Party supported the no confidence motion moved against the President belonging to his own party and thus committed defection. The respondent would deny such allegation and states that he was taken in to illegal custody by the petitioner and Sri.Y.S.Gopan and under their threat and coercion, he happened to support the motion and immediately in his release he reported the matter to his party leaders and in the subsequent election to the post of President, he voted in favour of the

Congress nominee. 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.* In the present set of facts, a question arises as to whether the respondent has become subject to disqualification under Section 3(1) (a) of the Act. The petition has been filed by another member of the same local authority who is competent to file such a petition. As per Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules, such a petition is to be filed within 15 days from the date on which the concerned member is deemed to have become subject to disqualification and as per its proviso, any delay caused in filing such petition could be condoned on sufficient grounds. This petition was filed beyond the prescribed time limit with an application to condone the delay and it was allowed and the petition was taken on file. In the above circumstances, I find that the petition is maintainable. The point is answered accordingly.

8. **POINT Nos. (ii & iii):** According to the petitioner, the respondent, by defying the decision and direction of the Congress party and the UDF Parliamentary party, supported the no confidence motion moved against the President belonging to Congress party and out seated him from that post and

thereby committed defection. The respondent would contend that on 10.10.2011 he was taken to Kattappana and then to Mahi and Thalassery and was kept in illegal detention by the petitioner and Sri.Y.S.Gopan and he was threatened by them and brought to the Panchayat Hall only on the date of the meeting on the no confidence motion and due to such illegal detention and threat, he happened to vote in favour of the no confidence motion and that he has not committed any defection. The respondent would also contend that on his release from illegal confinement, he reported the matter to the police and his party leadership and in the subsequent election to the post of President, he obeyed the direction of the Congress party and voted in favour of the ousted President Sri.Siva Kumar and on account of these reasons, his party has not taken any action against him and he is continuing as a member of the Congress party.

9. The petitioner as PW1 has stated that he was elected as an independent member and that the respondent was elected as a Congress member and the respondent supported the no confidence motion moved against the President of the Panchayat belonging to Congress party by disobeying the direction of his party and thus committed defection. From the evidence of PW1 it is found that the petitioner was one of the member who moved the no confidence motion against the President and after removing the President, he contested for the post of President in the subsequent election and for that post and the respondent

supported the ousted President who was the candidate of the Congress party and the petitioner was defeated by him. It is after the election to the post of President that the present petition has been filed with an application to condone the delay. The respondent as RW1 has deposed in terms of his contentions. He has deposed that he voted in favour of the no confidence motion on account of the compulsion and threat from the petitioner and Sri.Y.S.Gopan and that he was illegally detained from 10.10.2011 and brought to the Panchayat Hall only on the dated of meeting on the no confidence motion, ie., 24.11.2011. He has also deposed that in the subsequent election to the post of President, he had obeyed the direction of the Congress party and voted in favour of Sri.Siva Kumar who had contested against the petitioner. RW2 is the Thiruvananthapuram District Congress Committee General Secretary and he has deposed that the Congress party had issued direction to these members to vote against the no confidence motion moved against the President and that this respondent was under illegal custody and under compulsion he voted in favour of that motion and the respondent had given explanation in this respect to the party and it was accepted and in the subsequent election to the post of President, he obeyed the direction of the Congress party and thus he is still continuing as a member of the Congress party. Ext.P1 is the copy of the petition filed as O.P.No.133/2011 against this respondent by another Congress member after ousting the President by way of

the no confidence motion alleging that the respondent has committed defection. It has come out in evidence that the said petition was dismissed as withdrawn by that petitioner. Ext.P2 is the copy of the minutes of the meeting of the no confidence motion.

10. The petition is filed for disqualified the respondent under Section 3(1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act'. **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.”*

11. The learned counsel for the petitioner would argue that the respondent who has supported the no confidence motion moved against the President of the Panchayat belonging to his own party against the decision and direction of that party has voluntarily given up his membership from the party as provided by Section 3(1)(a) of the Act. It is true that the respondent had supported the no confidence motion moved against the President belonging to his own party. But his case is that he was kept under illegal detention for several days by petitioner and Sri.Y.S.Gopan and under threat and coercion he supported the no confidence motion and that in the subsequent election to the post of President he voted in favour of the candidate set up by the Congress party itself. From the facts and

evidence it is clearly found that though the respondent had supported the no confidence motion, in the subsequent election to the post of President, he voted in favour of Sri.Siva Kumar, the ousted President, who was the candidate set up by the Congress party. It is further seen that this petitioner was the opposite candidate and only because he was defeated, he came up with this petition. The petitioner is an independent member not belonging to any political party or coalition. It is also seen that the petition filed against the respondent by another party member was dismissed as withdrawn. Simply because the respondent had supported the no confidence motion moved against the President belonging to his own party, it cannot be said that he has committed defection, particularly in the light of the facts and circumstances appearing in this case. The petitioner has completely failed in proving that the respondent has acted against the direction of the Congress party. The DCC President would have been the best person to say whether the respondent has voluntarily given up his membership and his non-examination is found to be fatal. It appears that the Congress party does not have any complaint or grievance against the respondent. It is further found from the conduct of the respondent in having voted in favour of the candidate set up for the Congress party for the post of President in the subsequent election that he has not voluntarily given up his membership nor became disloyal to the party. On an appreciation of the entire facts and evidence it is found that the petitioner has

completely failed in proving that the respondent has voluntarily given up his membership from the party as alleged and so the petition deserves only dismissal.

The points are answered accordingly.

In the result, the petition is dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 19<sup>th</sup> day of February 2014

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

**APPENDIX**

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

PW1 : Sri.Sivarajan, Rajbhavan, Pulimkudy, Mulloor P.O.,

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

RW1 : Sri.Surendran, Vysakh Bhavan, Chowara.P.O.

RW2 : Sri.Vattappara Chandran, Anil House, Venkode P.O.,  
Vattappara

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

P1 : Copy of the Original Petition No.O.P.133/2011 before  
the State Election Commission

P2 : Copy of the minutes of the meeting of no confidence  
motion against Sri.B.Sivakumar, President, Kottukal  
Grama Panchayat held on 24.10.2011

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

