

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

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

**Friday, the 8<sup>th</sup> day of August 2014**

**O.P.No.3/2013**

Petitioner : Pallickal Nazeer,  
Member, Ward No.9,  
Chirathalakkal Ward,  
Manickal Grama Panchayat,  
Thiruvananthapuram District.

**(By Adv.V.S.Bhasurendran Nair)**

Respondent : T.Manikantan Nair,  
Member, Ward No.19,  
Manickal Grama Panchayat,  
Thiruvananthapuram District.

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

This petition having come up for hearing on the 28<sup>th</sup> day of May 2014, in the presence of Advocate **V.S.Bhasurendran Nair** for the petitioner and Advocates **Cherunniyoor P.Sasidharan Nair & Kallambalam S.Sreekumar** for the respondent and having stood over for consideration to this day, the Commission passed the following.

## **ORDER**

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 Manickal Grama Panhayat.

2. The short facts are as follows:- The petitioner and respondent are members of Manickal Grama Panchayat as elected from ward No.9 and 19 respectively. They contested the election as candidates of Indian National Congress under its official symbol hand. Out of the 21 wards, the Indian National Congress secured 9 wards and LDF won in 10 wards and independents were elected from the other two wards. After election the Congress party decided to rule the Panchayat with the help of two independent members and accordingly Shri.Thankappan Nair belonging to Congress party was elected as President and Smt.Sudharmmani an independent member was elected as Vice President. The petitioner was elected as parliamentary party leader and Shri.Surendran was elected as whip of the Congress party. While so the ten members belonging to LDF moved a no confidence motion against the President and it was passed with the support of the independent member Shri.Jayan. The respondent has played a major role in making Shri.Jayan to vote in favour of the no confidence motion and the party leadership was closely watching the involvement of the respondent

in this matter. Thereafter the LDF moved another no confidence motion against the Vice President Smt.Sudharmmani. The Congress parliamentary party decided to keep away from the no confidence motion which was tabled for discussion on 04.01.2013. But the respondent participated in the meeting convened for discussing the no confidence motion with an intention to make his relative the next Vice President by removing Smt.Sudharmmani from that post. The Congress District President issued direction in writing to all the members of Congress party to abstain from attending the meeting on the no confidence motion. An emergency meeting was convened on 03.01.2013 to serve the said direction to the members of the Congress party. The respondent though attended that meeting and received the direction, he did not give any acknowledgment and left the meeting venue without committing anything regarding his stand. Therefore as decided in the meeting, the direction issued by the DCC President was affixed in front of the house of the respondent in the presence of two witnesses. The respondent was fully aware of the said direction and the stand of the Congress party in respect of that no confidence motion. The petitioner had given letter in writing to the Secretary as well as the Returning Officer along with the copy of the direction issued by the DCC President. The respondent in defiance of the direction issued by the DCC President participated in the meeting on the no confidence motion and voted in favour of the said motion and on the

basis of the vote of the respondent, the no confidence motion was passed. The action of the respondent in attending the meeting and voting in favour of the no confidence motion against the decision and direction of the DCC President is nothing but disloyalty which attract disqualification under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act. Since the respondent, in gross defiance of the direction issued by the Congress party, purposefully voted in favour of the no confidence motion along with the LDF members and thus he has voluntarily given up his membership from the party. The respondent is now in the LDF camp and his shifting of loyalty has caused crack in the shared belief of the Congress members and tarnished the political image of the party in this Panchayat. Since the respondent has voluntarily given up his membership from the party, he is liable to be disqualified for being a member of Manickal Grama Panchayat and hence this petition.

3. The respondent filed objection contending in brief, as follows,- The petition is not maintainable either in law or on facts. It is true that the respondent contested the election as a candidate of Congress party and was elected as a member. Out of the 21 seats UDF secured 9 seats and LDF got 10 seats and with the help of the two independent members Sri.Thankappan Nair belonging to Congress party was elected as President and an independent member, Smt.Sudharmmani was elected as Vice President. The allegation that

the petitioner was elected as UDF parliamentary party leader is false. At the time of supporting the UDF nominated President there was an understanding with the independent member Sri.Jayan to the effect that he will be elected as President for the last one year. The Congress parliamentary party also took a decision to share the post of President for two years and the first term was allotted to Sri.Thankappan Nair. After two years Sri.Jayan wanted to become the President and with such a motive he along with the LDF members moved the no confidence motion against the President. The allegation that the respondent played a major role in making Sri.Jayan to vote in favour of the no confidence motion is totally false. It is the petitioner who played a major role in shifting Sri.Jayan to the LDF camp. The then Vice President Smt.Sudharmani joined the LDF camp and became part of the said front by not attending the no confidence motion. In the President election scheduled on 17.12.2012, the parliamentary party decided to elect the petitioner as the President and nominated him to that post in the election. The LDF nominated Shri.Jayan also contested as President and in the said election Smt.Sudharmani, who was elected as Vice President by the UDF members, voted in favour of Jayan, the candidate supported by LDF and defeated the petitioner. Subsequently the LDF decided to move a no confidence motion against the Vice President Smt.Sudharmani for the reason that she had contested against a CPI candidate. Smt. Sudharmani

contested as a CPI rebel candidate and so the CPI was against her. Smt.Sudharmmani with the help of Sri.Jayan tried to over come the no confidence motion moved against her. In order to protect the interest of the Congress party, the respondent attended the meeting on the no confidence motion and voted in favour of the said motion moved against the Vice President who caused the defeat of the Congress candidate for the post of President in the election held on 17.12.2012. The respondent has never voted against any Congress candidate nor voted infavour of any no confidence motion moved against any Congress member. The allegation that the parliamentary meeting was held on 03.01.2013 is totally false. The Congress party or its parliamentary party has never decided to oppose the no confidence motion moved against the Vice President who voted against the Congress candidate for the post of President. The allegation that the DCC President had issued direction to the Congress members not to attend the meeting on the no confidence motion moved against the Vice President is totally false. The allegations that the respondent received the direction and did not give acknowledgment are false. The allegation that the alleged direction was affixed in front of his house is utter falsehood. No such direction was issued by the DCC President and there was no service of any direction to the respondent. The allegation that the petitioner issued letter to the Secretary and Returning Officer along with the copy of the alleged direction is

not true. The respondent participated and voted in favour of the no confidence motion to protect the interest of the party. The respondent has never voluntarily given up his membership from the party and he is continuing as a member of the Congress party. The respondent has not committed any defection. So the petition deserves only dismissal.

4. Upon the above pleadings the following issues are settled for trial;
  - (i) Whether the petition is not maintainable?
  - (ii) Whether the respondent has committed defection by voluntarily giving up his membership from his party as alleged?
  - (iii) Whether the respondent was given direction by the DCC President not to attend the no confidence motion tabled for discussion on 04.01.2013 as alleged? Whether the respondent has defied such direction as alleged?
  - (iv) Whether the respondent has become subject to disqualification as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act?
  - (v) Reliefs and costs?
5. The evidence consists of the oral depositions of PWs1 to 3 and RWs1 to 3 and Exts.P1 to P3, X1 and X2.
6. Both sides were heard.
7. **ISSUE No.(i)**: The petition is filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, (hereinafter referred to as the 'Act'), for declaring that the respondent has become subject to disqualification for being

a member of Manickal Grama Panchayat. Section 4 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 the 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. In the case on hand according to the petitioner, the respondent who was elected as a member belonging to Congress party has disobeyed the direction and decision of the Congress party and voted in favour of the no confidence motion moved by the LDF members against the Vice President and thereby he has voluntarily given up his membership from the party and thus committed defection. The respondent on the other hand would contend that the Vice President Smt.Sudharmmani had voted in favour of Sri.Jayan along with LDF members in the election to the post of President and cheated the Congress party and in order to protect the interest of the party, the respondent attended the meeting on the no confidence motion and voted in its favour and that the respondent had not received any whip or direction issued by the DCC President in respect of the voting on the no confidence motion and he denies to have 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 such member, contrary to any direction issued by the party or by a person or authority authorized by it in this



behalf votes or abstains from voting in respect of 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. In the present set of facts a question arises as to whether the respondent has become subject to disqualification as provided by Section 4 of the Act. As per Section 4 of the Act and also as per Rule 4(A)(1) of the Local Authorities (Disqualification of Defected Members) Rules, a petition can be filed by any member of a Local authority against the concerned member who is deemed to have become subject to disqualification. So the petitioner is competent to file the petition. As per Rule 4A(2) of the Rules, such a petition is to be filed within 15 days from the date on which the concerned member is deemed to have become disqualified. The present petition has been filed within the above time limit. No other serious contentions are raised challenging the maintainability of the petition. Hence I find that the petition is maintainable. The point is answered accordingly.

**8. ISSUE Nos.(ii) to (v):** Since common questions of law and facts arise for consideration in all these issues, they are taken up together. Certain facts are not in dispute. The petitioner as well as the respondent contested the election as candidates of Indian National Congress and were elected as members of Manickal Grama Panchayat. Out of the 21 seats, Congress party secured 9 seats and the remaining two seats were won by independents. After election the

independent members supported the Congress party and thus Sri.Thankappan Nair belonging to Congress party was elected as President and Smt.Sudharmmani, an independent member was elected as Vice President. The 10 members of LDF moved a no confidence motion against the President and with the support of the other independent member Sri.Jayan, the motion was passed and Sri.Thankappan Nair was removed. Another no confidence motion was moved by the LDF members against the Vice President Smt.Sudharmmani and it was tabled for discussion on 04.01.2013. The respondent participated in the meeting on the no confidence motion and voted in its favour and as all the LDF members also supported the motion it was passed. According to the petitioner the decision of the Congress party was to oppose the no confidence motion moved against the Vice President and the DCC President issued direction to all the Congress members and in spite of service of such a direction the respondent, by aligning with the LDF members, voted in favour of the motion and thereby he had voluntarily given up his membership from the party.

9. The petitioner has been examined as PW1. His chief examination is by way of an affidavit wherein he was reproduced the allegations contained in the original petition. PW1 has stated that the direction issued by the DCC President dated 03.01.2013 requiring the respondent to abstain from attending the no confidence motion, which was tabled for discussion on 04.01.2013 against the

Vice president, was affixed in front of the house of the respondent in the presence of two witnesses and the copy of that affixed direction is marked as Ext.P1. Ext.P2 is the copy of the minutes in respect of the meeting on the no confidence motion moved against Vice President Smt.Sudharmmani. From Ext.P2 it is found that the respondent had voted in favour of the no confidence motion along with the LDF members. It is also found that except the respondent, all other members who supported the no confidence motion are belonging to LDF. Ext.P3 is the acknowledgment given by the Secretary of the Panchayat on 04.01.2013 at 10.50 am regarding the receipt of the direction issued by the DCC President to the nine Congress members. Ext.X1 is the original minutes of the Manickal Mandalam Committee of Congress party. Ext.X2 is the original of Ext.P1. In cross-examination PW1 has stated that the minutes of the Congress Mandalam Committee meetings will be produced and thus the minutes was subsequently produced and it is marked as Ext.X1. PW1 has further deposed that after election the Congress party decided to rule the Panchayat with the support of the two independent members and thereupon Sri.Thankappan Nair belonging to Congress party was elected as President and Smt.Sudharmmani, an independent member was elected as Vice President. PW1 has further deposed that Smt.Sudharmmani was elected as Vice President as decided by the party. PW1 has also deposed that when the no confidence motion was moved against the President, the decision of

the party was to defeat that motion and direction was given by the DCC President to the Congress members in this regard. He has also deposed that since an independent member Sri.Jayan supported the no confidence motion along with LDF members it was passed. According to PW1 in the next election to the post of President, he was decided as the candidate of the Congress party and as Smt.Sudharmani was then laid up he did not communicate any decision regarding voting in the President election. PW1 has further stated that in that election Smt.Sudharmani had voted in favour of Sri.Jayan the independent member and thus Sri.Jayan was elected as President. PW1 has also stated that the said action of Smt.Sudharmani does not have any relevancy regarding this case. PW1 has reiterated that when the no confidence motion was moved against Smt.Sudharmani by the LDF members, the Congress party decided to defeat that motion on account of the reason that she was at first elected as Vice President with their support and that the motion was moved by the LDF. PW1 has further deposed that such a decision was taken by the party in the meeting convened on 03.01.2013. PW1 has asserted that the respondent also had participated in that meeting. It was suggested to PW1 that no decision was taken in that meeting which PW1 denied. According to PW1 the respondent declared in the meeting that even if his membership is lost, he will vote in favour of the no confidence motion. PW1 has also deposed that another meeting was convened at 5-O'Clock

on 03.01.2013 in which also the respondent came and he left the meeting without marking his attendance in the minutes of the meeting.

10. PW2 is the Thiruvananthapuram DCC President and he has categorically deposed that he had given direction to all the Congress members to abstain from the discussion and voting on the no confidence motion which was tabled for discussion on 04.01.2013. He has also identified Ext.P1 as the copy of the whip issued by him to the respondent and according to him this direction was given on the basis of the decisions of the Mandalam Congress Committee and the Congress parliamentary party. In Cross-examination he has stated that the whip was entrusted to Congress Mandalam Committee President for service to the respondent. According to him the decision of the party was to defeat the no confidence motion moved against the Vice President.

11. PW3 is the Congress Mandalam President. He has deposed that on 03.01.2013 the Mandalam Congress Committee meeting was convened and the Panchayat Members of the Congress party also attended that meeting and the minutes of the said meeting is marked as Ext.X1(a). He has further deposed that the decision of the party including that of the parliamentary party members was to abstain from attending the discussion and voting on the no confidence motion moved against the Vice President. He has further deposed that this decision was communicated to the District Congress Committee and at 2pm on 03.01.2013 the

Congress parliamentary party meeting was convened in which the respondent also attended and the respondent asserted that he will support the no confidence motion and declared that he will not obey the party decision and without marking his attendance in the minutes, he left the meeting. PW3 has also deposed that the whip issued by the DCC President was taken to the house of the respondent by him along with the petitioner and one Surendran and as the respondent was not available in the house, it was affixed in front of his house and the copy of the whip so affixed in the presence of witnesses is marked as Ext.X2. He has further deposed that he sent SMS to the respondent informing that the decision of the party was to keep away from the meeting on the no confidence motion.

12. The respondent has been examined as RW1. He has stated that in the no confidence motion moved against the President Shri.Thankappan Nair, the Vice President Smt.Sudharmani supported that motion along with LDF members and thus he was ousted and in the subsequent election to the post of President, the petitioner was the candidate decided by the Congress party and Smt.Sudharmani the Vice President voted in favour of BJP independent Sri.Jayan who was elected with the support of LDF members and thus the Vice President Smt.Sudharmani had gone to the LDF camp and that was why he supported the no confidence motion moved against her. RW1 has further deposed that he had never voted against any Congress member in any election or

on a no confidence motion. He has also deposed that he was not served with any direction or whip of the DCC President or anybody in respect of the no confidence motion moved against the Vice President. RW2 is stated to be the Youth Congress ward President and he has deposed that the UDF came to power with the support of two independent members and in the no confidence motion moved against Sri.Thankappan Nair, the then President, Smt.Sudharmani voted along with LDF members and in the subsequent election to the post of President, Smt.Sudharmani voted against the petitioner who was the Congress candidate and thus along with LDF members she voted in favour of the independent member Sri.Jayan. He would then depose that Smt.Sudharmani had voted in favour of the petitioner in the President election and he does not know whether Smt.Sudharmani had voted in favour of the candidate set up by the LDF. In cross-examination it was suggested that on account of several criminal cases he was expelled from the party to which he pleaded ignorance. RW3 is stated to be the Congress Santhigiri ward President and he has stated that the Vice President Smt.Sudharmani had voted in favour of the LDF candidate in the election to the post of President and thereafter she was not having any connection with the Congress party and that the respondent had never voted against any Congress member in any election.

13. Admittedly a no confidence motion was moved against the Vice president Smt. Sudharmani by the LDF members and it was tabled for discussion on 04.01.2013. The definite case of the petitioner is that the respondent who belonged to Indian National Congress had supported that motion by disobeying the direction and decision of the DCC President and thereby he has voluntarily given up his membership from the party. The respondent's case is that he was not served with any direction said to have been issued by the DCC President and that he had supported the motion as Smt.Sudharmani had aligned with LDF members and voted against the petitioner in the election to the post of President. The DCC President as PW2 has clearly stated that he had issued the original of Ext.P1 whip to the respondent directing him to abstain from attending the discussion and voting on the no confidence motion moved by the LDF members against the Vice President and that the respondent by defying that direction supported that motion along with the LDF members and ousted the Vice President. PW3, the Manickal Mandalam Congress Committee President has deposed that on 03.01.2013 a meeting of the Congress Mandalam Committee and Congress parliamentary party was convened and in that meeting it was decided that the Congress members should abstain from attending the discussion and voting on the no confidence motion moved against the Vice President and the respondent openly declared that even if his membership in the Panchayat is lost,



he will support the no confidence motion and that the respondent thereafter left the meeting without marking his signature in the minutes. Ext.X1 is the original minutes of the Congress Manickal Mandalam Committee and Ext.X1(a) is the minutes of the meeting held on 03.01.2013. From Ext.X1(a) it is found that the decision was to abstain from attending the discussion and voting on the no confidence motion moved against the Vice President and it was also decided to communicate the said decision to the DCC President. Of course the signature of the respondent is not available in Ext.X1(a). However in the light of Ext.X1(a) it is clearly found that the Congress Mandalam Committee decision was to oppose the no confidence motion moved against the Vice President. The Mandalam President as PW3 has deposed that he along with the petitioner and one Surendran went to the house of the respondent to serve the whip issued by the DCC President and as he was not available, they affixed that whip in front of his house and Ext.X2 is the copy of the whip affixed in front of the house of the respondent. In the light of Exts.X1(a) and X2, I do not find any reason to disbelieve the version of PW3 that the decision of the Congress Mandalam Committee was to oppose the no confidence motion and that the said decision was approved by the DCC President who issued Ext.X2 whip to the respondent and it was served to the respondent by affixture. The contention of the respondent that the whip was not served to him cannot stand to legal scrutiny.

The manner in which a direction issued by the competent person is to be served to the members is prescribed under Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. The above Rule states as follows,-

*“While issuing a direction under sub-rule (1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixing it shall be done in the presence of at least two witnesses.”*

14. In the case on hand it appears that the due to paucity of time, the direction could not be sent by registered post and as the respondent refused to give acknowledgment regarding receipt of the whip, it was taken to his house and affixed in front of his house. The no confidence motion was moved by the 10 LDF members and all the Congress members and the Vice President against whom the motion was moved, abstained from attending the discussion and voting on the said motion. There is a clear evidence to prove that the whip issued to the respondent by the DCC President was served to him by affixture and he was fully aware that the decision of the Congress party was to abstain from attending the discussion and voting on the no confidence motion. Therefore I find that the whip issued by the DCC President was served to the respondent by affixture and

he was fully aware that the decision of the Congress party was to defeat the no confidence motion. It is also seen that copy of the said direction was given to the Secretary of the Panchayat before the motion was taken up for discussion on 04.01.2013 evidenced by Ext.P3.

15. Another contention of the respondent is that the Vice President against whom the no confidence motion was moved had already gone to the LDF camp and she had voted in favour of the candidate set up by the LDF in the election to the post of President which was held before moving no confidence motion and as such his action cannot be termed as attracting defection. The Manickal Grama Panchayat consists of 21 wards. Out of which LDF secured 10 seats and the Congress party secured 9 seats and two wards were won by independents and Vice President Smt.Sudharmani was one of that independent. After the General Election Congress party came into power with the support of the two independents and Smt.Sudharmani was elected as Vice President. Subsequently a no confidence motion was moved against the President Sri.Thankappan Nair by the LDF members and Sri.Jayan and it was passed. In Para 9 of the objection it is stated that the respondent Smt.Sudharmani did not attend the no confidence motion moved against Sri.Thankappan Nair. So admittedly Smt.Sudharmani did not support the said motion. Abstention from attending the meeting on the no confidence motion is as good as opposing that

motion. So admittedly the said motion was passed with the votes of the 10 LDF members and that of one independent member Sri.Jayan. In the subsequent election to the post of President, the petitioner was the candidate decided by Congress party. But Smt.Sudharmani voted in favour of the independent member Sri.Jayan and as all the LDF members also supported Jayan, he became the President. It is thereafter that the LDF members moved a no confidence motion against the Vice President Smt.Sudharmani. The fact that all the LDF members unanimously moved the no confidence motion against the Vice President Smt.Sudharmani cannot be over looked. The above action of the LDF would clearly spell out that they were against Sudharmani. The contention of the respondent that as Smt.Sudharmani had voted in favour of Sri.Jayan, it is to be presumed that she had gone to the LDF camp. If that be so, the LDF members would not have moved a no confidence motion against her. The very act of the LDF members in having moved a no confidence motion against Smt.Sudharmani would indicate that she was not co-operating with the LDF members and that is why the Congress party decided to defeat the no confidence motion. From Ext.P2 it is found that the no confidence motion moved against the Vice President was supported by all the LDF members and also this respondent. If this respondent had either voted against the no confidence motion or abstained from voting, the motion would not have passed.

Even the independent member Sri.Jayan who was elected as the President did not support the no confidence motion as seen from Ext.P2. This would definitely indicate that even though Sri.Jayan was elected as President with the votes of LDF members, he was not moving with LDF members after his election as President. It is in the above background that this respondent had voted in favour of the no confidence motion moved against the Vice President who was originally elected to that post with the support of the Congress members. The respondent should have been very well aware that he alone was participating in the discussion and supporting the no confidence motion along with the LDF members. Therefore the contention of the respondent that he has never voted against any Congress member in any election or on a no confidence motion and that he had supported the no confidence motion against the Vice President for the reason that she was already in the LDF camp is found to be absolutely untenable.

16. Whether the conduct of the respondent in having voted in favour of the no confidence motion moved against the Vice President by disobeying the direction of the DCC President would amount to voluntarily giving up his membership from the party as provided by the first limb of Section 3(1)(a) of the Act deserves consideration. 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.”*

17. 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 *10<sup>th</sup> schedule to the Constitution of India*. While considering the Constitutional validity of 10<sup>th</sup> 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.”*

18. 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”.*

19. In the case on hand I have already found that the respondent had aligned with the LDF members and ousted the Vice President who was elected with the support of all the Congress members and that he supported that motion by disobeying the decision and direction of the Congress party. The fact that the DCC President is the person competent to issue direction to the members belonging to Congress party in a local body is not in dispute. As per Section 3(1) (a) of the Act, a member belonging to a political party is bound by the decision and direction of his party. It is settled law that the two limbs under Section 3(1)(a) of the Act are distinct and not interlinked. When the ground alleged is voluntary giving up of membership, it is the conduct of the member that determined whether he has committed defection. In such a case it is not necessary to follow the procedure prescribed under Rule 4(1) of the Rules. To

Act against the direction of the party 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 from the party. This position is clarified in Varghese V.V. Vs. Kerala State Election Commission (2009(3)KLT(1), the relevant portion of the same 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 infavour 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".*

20. Even assuming that no whip was served to the respondent, it is clear from the facts and circumstances of this case that the conduct of the respondent in having voted in favour of the no confidence motion moved against the Vice President along with all the LDF members was against the decision of the party and was amounting disloyalty to the party. There cannot be any doubt that he was fully aware of the stand of his political party in respect of the no confidence motion which was to defeat the same. The political equations in the panchayat enabled the respondent to get the motion moved against the Vice President passed by aligning with all the LDF members. This was in fact a deliberate act on the part of the respondent and he was simply discarding the decision and

direction of his party. in **Biju R.S. Vs. Kerala State Election Commission (2009(3) KLT 29) 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.

21. When a member takes a different stand from that of the political party as such and acts against the policies and decisions of that party, it is nothing but disloyalty and the moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership as provided by the 1<sup>st</sup> limb as Section 3(1)(a) of the Act. In such a case it is not necessary to prove that the said member or members had dis-obeyed the direction issued by the competent person as provided by the 2<sup>nd</sup> limb Section 3(1)(a) of the Act. 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 1<sup>st</sup> 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.”*

22. Out of the 9 members belonging to Congress party, the respondent alone voted in favour of the no confidence motion along with the LDF members with a view to oust to the Vice President who was elected with the support of Congress party. Whether the said Vice President had voted against the petitioner in the election to the post of President was not at all material or relevant while taking a stand in respect of the no confidence motion moved by the LDF members against the said Vice President. The person who would have been aggrieved by the conduct of the respondent in the election to the post of President was the petitioner and he also has obeyed the decision and direction of the party. In that context it is futile to contend that the respondent had never voted against any Congress member in respect of the no confidence motion. The fact that he shifted his loyalty by aligning with the LDF members in getting the no confidence motion moved against the Vice President passed against the decision and direction of the party would clearly show that he has voluntarily given up his membership from the party and thereby 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 Manickal Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and he 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.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 8<sup>th</sup> day of August 2014

Sd/-  
**K.SASIDHARAN NAIR,**  
**STATE ELECTION COMMISSIONER**

### **APPENDIX**

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

- PW1 : Sri.Ibrahim Kunju, Member,  
Manickal Grama Panchayat
- PW2 : Sri.K.Mohan Kumar, Advocate, DCC Office,  
Nandavanam, Thiruvananthapuram
- PW3 : Sri. Ooruparambil Damodharan, Ooruparambil,  
Pirappancode

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

- RW1 : Sri. Manikantan Nair, M.K.Vilasam Pulathara,  
Santhigiri P.O.

- RW2 : Sri. Shaji, Driver, O.S.Mandiram
- RW3 : Sri.Shajahan, Driver, C.V.House, Anandapuram,  
Santhigiri P.O.

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

- P1 : Copy of the whip dated 03.01.2013 issued by the President  
DCC, Thiruvananthapuram
- P2 : Copy of the letter No.A-56/2013 dated 07.01.2013 of the  
Secretary, Vamanapuram Block Panchayat and enclosures
- P3 : Letter dated 04.01.2013 of Pallickal Nazeer addressed to the  
Secretary/Returning Officer, Manickal Grama Panchayat

**Document produced on the side of the witnesses**

- X1 : Minutes Book of Indian National Congress,  
Manickal Grama Panchayat
- X1(a) : Page No.57 of X1
- X2 : Copy of the whip dated 03.01.2013 issued by the President  
DCC, Thiruvananthapuram

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