

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

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

**Saturday, the 22<sup>nd</sup> day of November 2014**

**O.P.No.3/2014**

Petitioner : Thomas Mathew,  
S/o P.T.Mathew, Parolickal,  
Anikkadu P.O., Mallapally West,  
Pathanamthitta District, PIN: 689 585,  
Member, Ward No.2,  
Anikkadu Grama Panchayat

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

Respondent : Usha Sasi,  
W/o Sasi, Plankal Veedu,  
Anikkadu P.O., Pathanamthitta District,  
PIN: 689 585.  
Member, Ward No.1,  
Anikkadu Grama Panchayat

**(By Advs.Kallambalam S.Sreekumar &  
Balaramapuram Ajithkumar)**

This petition having come up for hearing on the 8<sup>th</sup> day of October 2014,  
in the presence of Advocates **Hashim Babu & Sajitha** for the petitioner and  
Advocates **Kallambalam S.Sreekumar & Balaramapuram Ajithkumar** 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(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 Anikkadu Grama Panhayat.

2. The short facts are as follows:- The petitioner and respondent are members of Anikkadu Grama Panchayat. They contested in the General Election held to the Panchayat in October 2010 as official candidates of Kerala Congress (M) in its official symbol 'two leaves'. After election UDF secured 6 seats of which Congress party won in 4 seats and Kerala Congress (M) 2 seats. The LDF secured 4 seats and BJP 1 seat and the remaining 2 seats were won by complete independent. The post of President was allotted to Indian National Congress and that of Vice President was allotted to Kerala Congress (M). There was a decision to share the post of President between one Santhamma Varghese and Smt.Sophiyamma. As per this decision Smt.Santhamma Varghese was elected as President and she was to resign after three years. Accordingly she resigned on 03.12.2013 and in the subsequent election to the post of President, Smt.Sophiyamma was decided as the candidate of the Congress party and UDF. The UDF parliamentary party also decided to support Smt.Sophiyamma. The election to the post of President was fixed on 27.12.2013. The District President

of Kerala Congress (M) Sri.Victor T. Thomas has issued direction to the petitioner and respondent to vote in favour of Smt.Sophiyamma for the post of President and he issued whip in this regard on 23.12.2013. The petitioner served the whip to the respondent on 24.12.2013 in his capacity as the Manadalam President of Kerala Congress (M) and she accepted the same by acknowledging on the covering letter. The respondent was having sufficient notice regarding the direction of the political party. But she, in gross defiance of the direction issued by her political party and the parliamentary party voted against the President candidate of the UDF in the election held on 27.12.2013 and thereby the President candidate of the UDF was defeated. The respondent voted in favour of LDF candidate Smt. Shylamma Isac. If the respondent had obeyed the instruction of her political party and voted in favour of the UDF candidate, the decision of the political party would have been protected. The action of the respondent has tarnished the image and integrity of the Kerala Congress(M). Moreover the respondent had signed in the no confidence motion moved against the Vice President along with LDF members and that also shows her present political stand. The respondent has voluntarily abandoned her membership from Kerala Congress (M) and UDF which fielded her as a candidate in the General Election. She is now moving with LDF in the Panchayat. Since the respondent had voluntarily abandoned her membership from Kerala Congress (M) and

disobeyed the instructions of the party in the election to the post of President and voted in favour of the LDF candidate she has become subject to disqualification. Acting in violation of the instruction of the political party in the election to the post of President along with LDF members would be sufficient to hold that the respondent had voluntarily given up her membership from the party and her subsequent conduct also affirmed this position. Hence this petition for declaring that the respondent has become subject to disqualification for being a member of Anikkadu Grama Panchayat on the ground of defection and to declare that she is disqualified to contest in any election to the local bodies for a period of six years.

3. The respondent filed objection contenting in brief, as follows:- The petition is not maintainable either in law or on facts. The respondent was elected from ward No.1 of Anikkadu Grama Panchayat without any contest. She is submitted nomination as a complete independent candidate. She is not a member of Kerala Congress (M) or UDF and she was elected as member for the first time without any political affiliations. Since after election two independent members supported the UDF and the UDF requested the respondent to give support to them, she gave support the UDF. It was also agreed that by giving her support she would be elected as Chairman of the Health and Education Standing Committee after three years period. But the UDF leadership did not give her the post of Chairman of Health and Education Standing Committee even after three

years and so she withdrew her support to UDF. The respondent had filed a nomination as an independent candidate without any political affiliation and as the nomination of the opposite candidate was rejected she was declared elected without any contest. Since the respondent is a complete independent member she is entitled take her own decision in respect of any election in the Panchayat. The Kerala Congress (M) has no right to give any direction to the respondent. The respondent is unaware of any agreement in the UDF as alleged in the petition. The District President of Kerala Congress (M) has never given any direction to the respondent and he has no right to give any such direction to her. Since the agreement between the respondent and UDF to elect her as Chairman of the Health and Education Standing Committee was not implemented, she supported the LDF candidate in the election to the post of President held on 27.12.2013. The allegation that the respondent has voluntarily given up her membership from Kerala Congress (M) is totally false. She has no connection with Kerala Congress (M) and so there is no possibility to abandon her membership from that party. The respondent has not joined any party and as she is a complete independent she is entitled to take independent decision of her own and the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1and 2 and RWs1and 2 and Exts.P1 to P10.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent contested the election as a candidate of Kerala Congress (M) and whether she was elected as a member belonging to Kerala Congress (M) as alleged?
- (iii) Whether the respondent submitted nomination in the General Election in ward No.1 of Anikkadu Grama Panchayat as a complete independent candidate?
- (iv) Whether the respondent was bound by the decision and direction of the District President of Kerala Congress (M) in the election to the post of President of the Panchayat?
- (v) Whether the respondent has voluntarily given up her membership from Kerala Congress(M) as alleged?
- (vi) Whether the respondent has become subject to disqualification for being a member of Anikkadu Grama Panchayat?
- (vii) Reliefs and costs?

7. **ISSUE No.(i)**: The petition is filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act', alleging that the respondent has voluntarily abandoned her membership from Kerala Congress (M) and thereby committed defection. Section 4 (1) of the Act states that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of 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. As per Section 3(1) of the Act, a member of the local authority belonging to any political party shall be disqualified for being a member that local authority, if he voluntarily gives up his membership of such political party, or if he violates the direction in writing issued by the political party or by a person or authority authorized by it in this behalf in an election to President, Vice President, Standing Committee Chairman or members or in a voting on a no confidence motion moved against any of them except a member of a Standing Committee . So in the case on hand a question arises as to whether the respondent has become subject to disqualification for being a member of Anikkadu Grama Panchayat. The petition is filed by a member of the same Panchayat of which the respondent also is a member. So the petitioner is competent to file the petition as provided by Section 4(1) of the Act. It is further seen that the petition has been filed within the time prescribed under Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. In the above Rule it is stated that a petition under the provisions of the Act is to be filed within 15 days reckoned from the date on which the cause of action arises and as per its proviso a petition filed beyond such period can be entertained on sufficient grounds. As the present petition has been filed within 15 days from the date of election to the post of President in which the respondent is stated to have acted against her own political

party and since the petition is filed by a member of the same Panchayat and a question arises as to whether the respondent has become disqualified as provided by Section 3(1)(a) of the Act, I find that the petition is maintainable. The point is answered accordingly.

**8. Point Nos.(ii) and (iii):** The definite case of the petitioner is that the respondent had contested the election as a candidate of Kerala Congress (M) under UDF coalition and as she is a member of Kerala Congress (M) she is bound by the direction and decision of Kerala Congress(M) party and its Pathanamthitta District President. The respondent would contend that she submitted nomination as a complete independent candidate and she became a member without having any political affiliation and so she is entitled to take independent decision being a complete independent member and that she is not bound by any decision or direction of the Kerala Congress (M) party or the UDF coalition.

9. The petitioner has been examined as PW1. He has deposed that out of the 13 members, 2 members including the respondent belong to Kerala Congress (M) and 4 members belong to Congress party and the CPI(M) secured 4 seats, 1 seat was won by BJP and 2 independent members also were elected and as UDF secured majority, Smt.Santhamma Varghese was elected as the President for a term of three years. He would further depose that the respondent had submitted



nomination as a candidate of Kerala Congress (M) and she was allotted the official symbol of Kerala Congress (M). Ext.P1 is the copy of the nomination submitted by the petitioner before the Returning Officer. In Ext.P1 the respondent has categorically stated that she is having affiliation with Kerala Congress (M). The symbol shown in Ext.P1 is 'two leaves' which is the official symbol of Kerala Congress (M). The fact that the Pathanamthitta District President of that party who is examined as PW2 had allotted the respondent the official symbol of Kerala Congress (M) is borne out by Ext.P2. Which is the recommendation letter given by PW2 to the Returning Officer of Anikkadu Grama Panchayat to allot 'two leaves' symbol to the respondent. It so happened that the nomination submitted by the opposite candidate of the respondent was rejected and thereupon the respondent was declared elected without any contest. Ext.P3 is the copy of the declaration regarding election of the respondent as a member of Anikkad Grama Panchayat. In Ext.P3 also the respondent is shown as belonging to Kerala Congress (M). It is significant notice that the respondent had accepted the copy of this declaration and affixed her signatures in token of such acceptance. Her signature also is seen attested as seen from Ext.P3. PW1 further deposed that the respondent immediately after swearing as a member had given a declaration stating her political affiliation and its copy is marked as Ext.P4. In this record it is clearly stated by the respondent that she belongs to Kerala

Congress (M) and all the other members belonging to UDF coalition also are shown in this record. Based on Ext.P4, the Secretary of the Panchayat has prepared the register as provided by Rule 3(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and Ext.P5 is the copy of the register relating to the respondent. In Ext.P5 also the respondent is stated as belonging to Kerala Congress (M) under UDF coalition and that her symbol was 'two leaves'. The fact that the petitioner had submitted nomination as a candidate belonging to Kerala Congress (M) and that she was recommended the official symbol of Kerala Congress (M) has been deposed by PW2, the Pathanamthitta District President of Kerala Congress (M).

10. PW2 has further deposed that the petitioner and respondent were elected as members of Kerala Congress (M) and after election Smt.Santhamma George belonging to Congress party was elected as President as decided by the Congress party and UDF for a period of three years and the remaining two years was set apart to Smt.Sophiyamma and in the subsequent election to the post of President, he had issued direction to the respondent to vote in favour of Smt.Sophiyamma which she violated and voted in favour of the LDF candidate.

11. The respondent has reiterated in her evidence as RW1 that she had submitted nomination as a complete independent candidate and that she became an independent member without affiliation of any political parties and that she

had not written in the nomination paper that she is a candidate belonging to Kerala Congress (M). She has further deposed that she did not seek the help of Kerala Congress (M) nor requested the symbol of that party in the election. According to RW1 she is free to cast conscious vote and that she was not bound by any direction or decision of the Kerala Congress (M) party. A witness has been examined on the side of the respondent as RW2 and he has deposed that the respondent was not a worker of any political party. He has admitted that in Ext.P2 it is stated that the symbol allotted to the respondent is 'two leaves' and the political party is shown as Kerala Congress (M). She has further stated that another person also had submitted nomination in this ward and that her nomination happened to be rejected and so the respondent was declared as elected without contest.

12. On a careful appreciation of the facts and materials on record it is clearly found that the respondent had submitted nomination as a candidate of Kerala Congress (M) and she was recommended the official symbol of Kerala Congress (M) by PW2 the Pathanamthitta District President of this party and that she was declared elected by the Returning Officer as a member belonging to Kerala Congress (M) with symbol 'two leaves' and she had accepted that declaration without any objection as seen from Ext.P3. It is also proved beyond doubt that the respondent after swearing in as a member submitted Ext.P4

declaration stating that she is a member belonging to Kerala Congress (M) under UDF coalition and the Secretary also had prepared register based on Ext.P4 stating that the respondent belongs to Kerala Congress (M) under UDF coalition. Ext.P4 declaration is found to have been given as provided by Section 3(2)(a) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. The above Rule reads as follows,-

*“3(2). if a member elected to a local authority is,-*

*(a) a person who contested as a candidate of a political party or as a candidate having the support of political party shall file a declaration to that effect before the Officer authorized under sub-rule (1) and accordingly that member shall be treated as a member of that political party or as a member with the support of that political party, as the case may be;”*

13. So Ext.P4 is a statutorily prepared and submitted document. Based on Ext.P4 the Secretary of the Panchayat is found to have prepared Ext.P5 as provided by the Rule 3(1) of the above Rule which reads as follows,-

*“3. To maintain register to record the party connections of members,- (1) The Officer authorized for the purpose by the State Election Commission shall*

*record in the Register in Form 1 appended to these rules, the details as to whether a member duly elected to a local authority is one who belongs to a political party or coalition or is having the support of any one of them or is an independent member not belonging to any political party or coalition.”*

14. So Exts.P4 and P5 are documents prepared as provided by the above Rule and so its correctness and veracity cannot be doubted. There is no evidence to disprove the contents of these records. The version of the respondent that she is an independent member and that she had submitted nomination as an independent member and that these records are not reliable cannot stand to legal scrutiny. In the light of Exts. P1 to P5 and PWs 1 and 2 it is clearly established that the respondent had submitted nomination as a candidate belonging to Kerala Congress (M) with the symbol ‘two leaves’ which is the official symbol of Kerala Congress (M) and that she was declared as elected as a member belonging to Kerala Congress (M) and that she declared herself before the Panchayat that she belongs to Kerala Congress (M) under UDF coalition. From the evidence on record it clearly found that the respondent was a member belonging to Kerala Congress (M) under UDF coalition and so she was bound by the decision or direction of that party. The points are answered accordingly.

15. **POINT Nos. (iv) to (vii)**: Since common questions of law and facts arise for consideration in all these points, they are taken up together for together for brevity and convenience. I have already found that the respondent was elected as a member of Kerala Congress (M) under UDF coalition. According to the petitioner Smt.Sophiyamma was decided as the candidate for the post of President by the Congress party as well as the UDF parliamentary party and the District President Kerala Congress (M) Sri.Victor T.Thomas had given direction to all members of Kerala Congress (M) to vote in favour of Smt.Sophiyamma in the said election and he issued whip in this behalf on 23.12.2013. The petitioner would further depose that the respondent, by disobeying the decision and direction of the Kerala Congress (M) party and the decision of the UDF parliamentary party, had voted in favour of Smt.Shylamma Issac the candidate of LDF in the election to the post of President and thus she violated the decision and direction of her party and thereby committed defection. The petitioner as PW1 has deposed that the District President of Kerala Congress (M) had given direction to him and the respondent and it was served to the respondent by him with a covering letter on 24.12.2012 and the respondent on receiving that whip has made endorsement in the covering letter regarding acceptance of the same and that the copy of the whip was given to the Secretary of the Panchayat also. PW1 would further depose that the respondent, instead of voting in favour of the

UDF candidate had voted in favour of the candidate set up by the LDF and thus it became a tie with six votes each to both the candidates and in the lot Smt.Sophiyamma was declared as elected. Ext.P6 is the notice given by the Returning Officer scheduling the date of election of President as 27.12.2013 and Exts.P7 and P7(a) are whip and the acknowledging on covering letter and Ext.P8 is the copy of the whip of the District President of Kerala Congress (M) given to the Secretary of the Panchayat. Ext.P9 is the copy of the minutes regarding the election to the post of President.

16. The respondent would contend that she being an independent member was not bound by the decision or direction of the UDF or the Kerala Congress (M) and that the understanding to elect her the Chairman of Health and Education Standing Committee made by the UDF leadership was not implemented and so she withdrew her support and voted in favour of an LDF candidate in the election to the post of President. She would also depose that no whip was served to her as alleged. The respondent as RW1 has reiterated her contentions in her evidence as RW1.

17. I have already found that the respondent was elected as a member belonging to Kerala Congress (M) and so she was bound by the decision and direction of that party. The fact that Smt.Sophiyamma Thomas was decided by the Congress party as well as Kerala Congress (M) as the candidate for the post

of President in the election scheduled on 27.12.2013 cannot be doubted. There was no other candidate proposed by the UDF or the Kerala Congress (M) to the post of President. Admittedly the respondent voted in favour of a candidate set up by the LDF. Her contention that she being an independent member was entitled to vote according to her conscience is totally untenable. I have already found that she was elected as a member belonging to Kerala Congress (M) and therefore she has to cast conscious vote rather than conscience vote in the election to the post of President. The Pathanamthitta District President of Kerala Congress (M) as PW2 has deposed that Smt.Sophiyamma belonging to Congress party was decided as a candidate for the post of President and that whip was issued to the respondent through PW1 and the copy of the whip and acknowledgments regarding acceptance of the same given by the respondent are Exts.P7 and P7(a). PW2 has further deposed that the respondent by disobeying his direction and decision of the party has voted against the candidate set up by the UDF and so the respondent has abandoned her membership from the party. She has also deposed that copy of the whip was given to the Secretary of the Panchayat.

18. The respondent as RW1 has deposed that Ext.P7 whip was not served to her and that Ext.P7(a) does not contain her signature. The learned counsel for the respondent would argue that the signature appearing on Ext.P7(a) does not



belong to the respondent and that it has no similarity with her signature. However in her anxiety to deny the signature appearing on Ext.P7(a) the respondent has even disowned her signature in her vakkalath. Of course there is some difference between the signature appearing in Ext.P7(a) with her other admitted signatures. However whether the whip issued by PW2 was served to the respondent dwindles in to insignificance in the light of the admitted fact that the respondent had withdrawn her support which was being given to the UDF by voting in favour of the LDF candidate in the election to the post of President and left the company of UDF. RW1 has admitted in her evidence that the UDF candidate for the post of President was Smt.Sophiyamma the member belonging to Congress party. Admittedly she did not vote in favour of that candidate and she voted in favour of Smt.Shylamma Issac the candidate set up by LDF. Being a member belonging to Kerala Congress(M) under UDF coalition the respondent was bound to vote in favour of the candidate decided by her party.

19. Whether the conduct of the respondent in having voted in favour of the LDF candidate as against the candidate set up by UDF and her party would constitute defection arise for consideration. Since the respondent was elected as a member belonging to Kerala Congress (M). **Section 3(1)(a) of the Act** would apply and 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.”*

20. 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 incurse 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."*

21. As per Section 3(1)(a) of the Act, a member belonging to a political party is bound by the decision and direction of that party. To Act against the direction or decision of the party would amount to disloyalty to the political party and in such a context the inevitable inference is that member 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 which reads as follows,-

*“Therefore, if a member or a group of the elected members of the political party takes a different stand from that of the political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. In Naseera Beevi’s case the rebel group in the parliamentary party wing of the political party concerned had not only formed a separate group, but they had voted 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".*

22. For attracting defection as provided by Section 3(1) (a) of the Act, it is not necessary that the member should violate the party whip. Even if no whip is issued if the conduct of the member is such that the said member has acted against the decision and policies of his or her party, that would amount to voluntarily giving up his or her membership from the party. This position is further clarified in the decision in **Biju R.S. Vs. Kerala State Election Commission (2009(3) KLT 29)** and at Para 17 it has been held as follows,-

*"17. Under the Act, a member can be disqualified if he has voluntarily given up the membership of the political party to which he belongs or acts in defiance of a whip/direction issued by the political party. Disqualification for voluntarily giving up the membership of one's party is not dependant on the violation of the whip. The intention of the Act is that the member who has*

*violated the whip or has abandoned the membership of the political party to which he belongs shall be disqualified. It is not necessary to hold that the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. The grounds for disqualification are distinct and are not interlinked. Therefore even if this Court were to hold that the petitioner before the Commission has not proved that PW2 has issued and served on the writ petitioners a direction regarding the voting on the no confidence motions that there tabled on 14.05.2008, the Commission was justified in holding that the petitioners have voluntarily abandoned their membership in the Indian National Congress.”*

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

23. The contention of the respondent that she being an independent member is entitled vote according to her conscience cannot stand to legal scrutiny. I have already found that she was elected as a member belonging to Kerala Congress (M) and so she was bound to obey the decision of her party. A party member is not entitled to cast conscience vote. In Varghese V. Kerala State

Election Commission (2009(3) KLT 1) cited supra it has been held at Para 9 as follows,-

*“9. The learned Senior Counsel Sri.Ramakumar contends that in modern democracy the elected member is free to vote according to his conscience, in the absence of a specific whip, particularly in view of the modern trends in democracy – infra party groups. We are afraid, the court will not be justified in taking judicial notice of such developments and in re-writing the law. The court shall only analyze the facts and decide the case in accordance with law and upholding the spirit of laws. The law, as it stands now, is unambiguously clear that one has to be loyal to his political party. The situation would be different if the political party itself, taking note of such strange realities, permits the elected members to cast conscience vote. In such situations the whip itself is for decision by the individual concerned according to his conscience. The Oxford dictionary defines conscience to mean “the part of your mind that tells*



*you whether your actions are right or wrong.” In the absence of a specific whip for conscience vote, an elected member, under law, is entitled and liable to cast only a conscious vote, being aware of the consequences of his decision, in terms of Section 3 of the Kerala Local Authorities (prohibition of Defection) Act, 1999 on disqualification on the ground of defection on account of voluntarily giving up membership in the political party. Conscience vote is hence a matter of express whip in the absence of which an elected member is bound by the policies of his political party and he can cast only a conscious vote. That is nothing but an expected expression of his obligation to the political party and responsiveness to the people, by doing things carefully and correctly and if not the conduct would amount to betrayal of the political conscience which is impermissible under law. According to Harry S.Truman “Democracy is based on the conviction that man has the moral and intellectual capacity, as well*

*as the inalienable right, to govern himself with reason and justice". The reason and justice are the two mandates of the conscious vote under Section 3 of the Act. There is no case that the political party in which they belonged had given them the whip to vote according to their conscience."*

24. In the case on hand the respondent has even put forward a totally untenable contention that she was elected as an independent member having no relationship with any political parties. But the evidence would abundantly show that the respondent was elected as a member belonging to Kerala Congress (M). After the election she voted in favour of the candidates sponsored by the UDF as decided by the Kerala Congress (M) party. But in the election to the post of President held on 27.12.2013, she purposely defied the decision of her party and the UDF and voted in favour of the candidate set up by the LDF who stood against the candidate of UDF. The respondent has admitted that she had withdrawn support to the UDF. She left the UDF camp and now she is sailing with LDF members. This conduct of the respondent would substantially prove that she has voluntarily given up her membership from Kerala Congress (M) party which set up her as a candidate in the election. Therefore I find that the

respondent has voluntarily given up her membership from Kerala Congress (M) party and thus committed defection. The points are answered accordingly.

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

The parties shall bear their respective costs.

Pronounced before the Commission on this the 22<sup>nd</sup> day of November 2014

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

### APPENDIX

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

- PW1 : Sri.Thomams Mathew, Manager Technical Education Institute Anikkadu P.O., Mallappally West
- PW2 : Sri.Victor T.Thomas, Mulanookil, Kozhencherry P.O

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

- RW1 : Smt. Usha Sasi, Plackal, Anikkad P.O., Mallappalli, Pathanamthitta
- RW2 : T.K.Rajappan, Thalachuttuparambil, Anikkadu P.O., Mallappally

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

- P1 : Copy of the nomination in Form No.2 filed by Smt.Usha Sasi
- P2 : Copy of the letter of the President, Kerala Congress (M) District Committee, Pathanamthitta for issuing symbol to Smt.Usha Sasi
- P3 : Copy of the result declaration in Form No.7 in the election held in Nalloorpadam ward of Anikkadu Grama Panchayat
- P4 : Copy of the declaration in Form No.2 filed by Smt.Usha Sasi
- P5 : Copy of the register showing party affiliation of the members of Anikkadu Grama Panchayat
- P6 : Copy of the notice of election to the post of Grama Panchayat President, Anikkadu Grama Panchayat
- P7 : Copy of the letter dated 23.12.2013 of the President, Kerala Congress (M) District Committee, Pathanamthitta
- P7(a) : Letter dated 24.12.2013 of the Mandalam President, Kerala Congress, Anikkadu, Mandalam Committee
- P8 : Copy of the letter dated 23.12.2013 of the President, District Committee, Kerala Congress Mandalam Committee
- P9 : Copy of the minutes of the meeting to elect the President, Anikkadu Grama Panchayat held on 27.12.2013
- P10 : Copy of the notice to no confidence motion against Vice President, Anikkadu Grama Panchayat

Sd/-

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

//True Copy//