

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

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

**Tuesday, the 1<sup>st</sup> day of July 2014**

**O.P.No.101/2013**

Petitioner : K.M.Abdulla Kunju,  
S/o Late Makkam Pillai,  
Karakyhnyil Veedu, Vadathupara P.O,  
Kuttampuzha P.O., Ernakulam District.

Member, Ward No.1,  
Kuttampuzha Grama Panchayat

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

Respondent : M.A.Viswambharan,  
Member, Ward No.3,  
Kuttampuzha Grama Panchayat.

**(By Adv .S.P.Sohanlal)**

This petition having come up for hearing on the 31<sup>st</sup> day of May 2014, in the presence of Advocates **Hashim Babu & Sajitha.S** for the petitioner and Advocate **S.P.Sohanlal** 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 Kuttampuzha Grama Panhayat.

2. The short facts are, as follows:- The petitioner and respondent are members of Kuttampuzha Grama Panchayat as elected in the General Election held in October 2010. The petitioner contested as an official candidate of Indian National Congress and the respondent contested as an independent candidate supported by Indian Union Muslim League. Indian National Congress, Indian Union Muslim League and Kerala Congress (M) fought the election under UDF coalition and in the election UDF secured majority and as decided by the District leadership of UDF, Sri.C.J. Eldos belonging to Indian National Congress was elected as President and Smt.Mary Kuriakose belonging to Kerala Congress(M) was elected as Vice President. Out of the total 17 wards in this Panchayat, Indian National Congress secured 6 seats, Kerala Congress (M) 2 seats and Indian Union Muslim League one seat and thus UDF secured the majority number of 9 seats. Under LDF coalition CPI(M) secured 6 seats and CPI 2 seats. A no confidence motion was moved against the President Sri.C.J.Eldos by LDF members and the respondent and it was done without the permission of his

political party. After passing the no confidence motion, the election to the post of President was scheduled to be held on 26.10.2013. The petitioner was decided as the candidate for the post of President by the UDF leaders and thereupon the District President of Muslim League Sri.M.P.Abdul Khadar issued whip to the respondent to vote in favour of the petitioner. He refused to receive the whip issued by the District President of Muslim League and so it was sent through courier which he did not accept and so it was sent by speed post also. The respondent, after fully knowing the direction and decision of his political party purposefully accepted the candidature offered by the LDF and he contested to the post of President against the official candidate of UDF and he was elected with the support of all the LDF members. The respondent in having contested against the official candidate of UDF by disobeying the direction and decision of Indian Union Muslim League and getting elected as President with the support of LDF members has voluntarily abandoned his membership from his party and thereby committed defection. Hence this petition.

3. The respondent filed objection contending in brief, as follows,- The petition is not maintainable either in law or on facts. The allegation that Sri.C.J.Eldos belonging to Indian National Congress and Smt.Mary Kuriakose belonging to Kerala Congress(M) were elected as President and Vice President respectively as per the decision of the District Leadership of the UDF is totally

false. In this matter the District Leadership has no role to play and it is only at Panchayat level that such decisions are taken. It was as decided by Indian Union Muslim League that the respondent has supported the no confidence motion. The President of the Indian Union Muslim League Panchayat Committee issued written direction to the respondent to vote in favour of the no confidence motion and accordingly the respondent supported the said motion. Being a member of Indian Union Muslim League party, the respondent is duty bound to obey the said direction. The allegation that the petitioner was nominated by UDF to the post of President in the election held on 26.10.2013 is false. As decided by Indian Union Muslim League and UDF the respondent contested to the post of President and won the said election. The Indian Union Muslim League party has issued written direction to the respondent to contest to the post of President and accordingly he contested in the said election and was got elected. The allegation that the District President of Indian Union Muslim League Sri.M.P.Abdul Khadar issued whip to him to vote in favour of the petitioner is totally false. No such whip was issued to the respondent and there was no reason to issue such a whip to the respondent by the District President. The respondent has no knowledge about the alleged whip of District President of Indian Union Muslim League. He obeyed the strict written direction given by the Indian Union Muslim League party in respect of election to the post of President. The respondent has not voluntarily abandoned

his membership from the party or the UDF and he is still continuing as a member of this party. The respondent has not committed any defection as alleged and the petition deserves only dismissal with compensatory cost of ₹3,000/-.

4. The evidence consists of the oral depositions of PWs1 and 2 and RWs1 to 3 and Exts.P1 to P8 and R1.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent contested to the post of President in the election held on 26.10.2013 against the official candidate of UDF and became the President with the support of LDF members by disobeying the direction and decision of his political party, the Indian Union Muslim League, as alleged?
- (iii) Whether the respondent has voted in favour of the no confidence motion moved against the then President Sri.K.C.Eldhos by the LDF members as per the decision and direction of his political party ?
- (iv) Whether the respondent contested to the post of President in the election held on 26.10.2013 as directed by Indian Union Muslim League?
- (v) Whether the respondent has voluntarily given up his membership from the party and thereby committed defection as alleged?
- (vi) Reliefs and costs?

7. **POINT No.(i)**: The petition is filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. According to the petitioner, the respondent, by disobeying the decision and direction of his political party contested against the official candidate of UDF and became the President with the support of LDF members and thereby he has voluntarily abandoned his membership from the party. The main contention of the respondent is that he has contested to the post of President as directed by his political party and that he has not committed any defection. So a question arises as to whether the respondent has voluntarily abandoned his membership from the party by contesting to the post of President and became the President with the support of LDF members against the decisions and directions of his political party. **Section 4(1)** of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act' states that 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 can file a petition before the State Election Commission for decision. The petition has been filed by a member of the same Panchayat in which the respondent also is a member. As per **Section 3(1)(a)** of the Act, if a member of local authority belonging to any political party voluntarily gives up his membership of such political party he shall be

disqualified for being a member of that local authority. I have already pointed out that a question arises as to whether the respondent has given up his membership from the political party, the Indian Union Muslim League, as provided by Section 3(1)(a) of the Act. As the petition is filed by a competent person within the time limit prescribed by Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, I find that the petition is maintainable. The point is answered accordingly.

**8. POINT Nos.(ii) to (vi):** Certain facts are not in dispute. Kuttampuzha Grama Panchayat consists of 17 wards. The election was fought between UDF and LDF coalitions. The UDF coalition consisted of Indian National Congress, Kerala Congress(M) and Indian Union Muslim League. The LDF coalition consisted of CPI(M) and CPI. The existing party position is under UDF coalition, Indian National Congress secured 6 seats, Kerala Congress(M) -2 seats and Indian Union Muslim League one seat and under LDF coalition, CPI(M)-6 seats and CPI-2 seats. Since the UDF secured majority, Sri.C.J.Eldos belonging to Indian National Congress was elected as President and Smt.Mary Kuriakose from Kerala Congress (M) was elected as Vice President. The respondent contested the election as an independent candidate with the support of Indian Union Muslim League. He admits that he was a member belonging to Muslim League. Even otherwise as per the Kerala Local Authorities (Prohibition of

Defection) Act, an independent candidate contesting with the support of a political party is to be treated as a member belonging to that party after his election. Such a member also is bound by the decision and direction of the person competent to issue direction as provided by clause (iva) of Section 2 of the Act as amended by Act 6 of 2013. The above clause defines 'direction in writing' as follows,-

*“direction in writing means a direction in writing, signed with date, issued to a member belonging to, or having the support of a political party, by the person authorized by the political party from time to time to recommend symbol to the candidates of the said political party for contesting in the election, for exercising the vote favorably or unfavorably or to abstain from voting.”*

9. Admittedly PW2 is the person competent to recommend symbol to the candidates belonging to Muslim League contesting in the election to a local body and so he is the competent person to issue direction not only to a member belonging to his party but also to a member elected with the support of his political party. As per Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Rules, also a direction to a member belonging to a political party or to a member elected with the support of such political party is to be



issued by a person who is competent to recommend symbol to the candidate of such party. Thus the respondent who has been elected with the support of Muslim League is to be treated as a member belonging to that party. Admittedly a no confidence motion was moved against the President Sri.C.J.Eldos by the respondent and the members belonging to LDF and that motion was carried with the support of LDF members and this respondent. It is also not in dispute that in the subsequent election to the post of President which was held on 26.10.2013, the respondent contested against the petitioner who was the candidate of the UDF and with the votes of LDF members and himself, he was elected. The respondent who was a member belonging to UDF contested against the official candidate of UDF and was elected with the support of LDF members.

10. The petitioner has been examined as PW1. He has stated in detailed regarding the party position and the no confidence motion moved against Sri.Eldos the then President who was elected by the UDF members including this respondent. Ext.P1 is the copy of the declaration submitted by the respondent stating that he is member elected with the support of Muslim League under UDF coalition and Ext.P2 is the copy of the register maintained by the Secretary showing the political affiliations of members as provided by Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and in this record also the respondent is shown as a member elected with the support of

Indian Union Muslim League under UDF coalition. PW1 has further deposed that Sri.C.J.Eldos was ousted by way of a no confidence motion moved against him by the respondent and the members of LDF and in the subsequent election to the post of President, the petitioner was nominated as the President candidate of UDF and the District President of Indian Union Muslim League issued direction to the respondent to vote in favour of the petitioner. Ext.P3 is the copy of the whip sent to the respondent by registered post and Ext.P4 is the copy of the whip along with the acknowledgment of the Secretary regarding the receipt of the same. PW1 has stated that Ext.P5 is the acknowledgment given by Secretary stating that intimation regarding the whip was informed to the members of Indian National Congress and Muslim League before the election to the post of President and Ext.P6 is the whip sent to the respondent by courier which was returned. According to PW1 the name of the respondent was proposed by a CPI(M) member and supported by a CPI member and that the respondent had contested against him and in that election the respondent was elected with the votes cast by him and all the members belonging to LDF. PW1 has also deposed that the respondent is now in the LDF camp and he has committed defection. Even though PW1 has been cross-examined at length, nothing has been brought out to discredit his testimony. It was suggested to PW1 that the respondent did

not receive any whip issued by the District President of Indian Union Muslim League which PW1 denied.

11. PW2 is the Ernakulam District President of Indian Union Muslim League and as such his evidence is of considerable importance. He has deposed that the respondent was a member belonging to Indian Union Muslim League and he contested as an independent candidate with the support of Indian Union Muslim League on account of the special circumstances of that ward. PW2 has further deposed that Indian Union Muslim League had fought the election under UDF and that the UDF secured majority and thus the member belonging to major political party, the Congress party, was elected as President and a member from Kerala Congress (M) which secured two seats was elected as Vice President. PW2 has also deposed that the 8 LDF members along with the respondent moved a no confidence motion against the then President and with the support of all of them the motion was carried and in the subsequent election to the post of President, the petitioner was decided as the candidate of the UDF. PW2 has categorically deposed that the decision of the Indian Union Muslim League was to support the candidate of the Congress party under UDF and accordingly whip was given to the respondent who was the sole member of Indian Union Muslim League. According to PW2 the whip was sent by registered post and by courier and also by certificate of posting and the whip sent by courier was returned by

the respondent and it is Ext.P6. PW2 has further deposed that the respondent contested against the official candidate of UDF and became the President with the support of all the LDF members and now the respondent is moving with the LDF and he has voluntarily given up his membership from the Indian Union Muslim League. In cross-examination PW2 has stated that he did not issue whip to the respondent in respect of the no confidence motion as there was no reason for such a whip at that time. According to PW2 whip was issued by him only in respect of the election to the post of President held on 26.10.2013. To the suggestive question to PW2 that none of the whip was returned as declined, he has answered that the respondent has returned such a whip. It was then suggested to PW2 that the respondent had contested as directed by the Indian Union Muslim League Panchayat Committee which he denied.

12. The respondent has been examined as RW1. He has deposed that after General Election, even though the CPI(M) and CPI managed to obtain two Standing Committees he was not elected as Chairman of any Standing Committee and moreover the Chairman of the UDF Panchayat Committee Sri.M.P.Abdul Khadar belonging to Indian Union Muslim League was removed from that post and a Congress man took charge of that post and from that time, Indian Union Muslim League and Congress party were not co-operating with each other. Thereafter in the election to the post of President, the Indian Union

Muslim League Panchayat Committee President Sri.M.P.Abdul Khadar directed him to contest as president and accordingly he was elected with the support of LDF members. RW1 has further deposed that he received the whip issued by PW2 only on 29.10.2013. In cross-examination RW1 has admitted that PW2 had recommended symbol to the official candidate of Muslim League and that he was opposed by a CPI candidate in the election. RW1 has further admitted that he fought the election as an independent candidate of Muslim League under UDF coalition. He has also admitted that the no confidence motion was moved against the then President by him and the LDF members. According to RW1 he did not receive any whip issued by PW2 and he came to know that the petitioner was the official candidate of Congress party only after entering in to the hall on the date of election. He has further stated that the name of the petitioner was proposed and supported by UDF members where as his name was proposed and supported by the LDF members. According to RW1, since he was not given any post of Chairman of a Standing Committee, he contested for the post of President as decided by the Panchayat committee of the Muslim league. To the suggestive question to RW1 in cross-examination as to whether he had sought the permission of District President of Indian Union Muslim League for contesting to the post of President, he answered in the negative and he further admitted that he was elected in the General Election in the seat allotted to the Muslim League with

the support of Congress party and UDF also. He has also admitted that the District leadership of Indian Union Muslim League had expelled him from the party as seen in the newspapers. RW1 has also stated that the Vice President Smt. Sheela Rajeev belonging to Kerala Congress (M) also was ousted by way of a no confidence motion. He has categorically stated that he is now functioning as President with the support of LDF members and that the Indian Union Muslim League District Committee has not given any written permission to him to function as President with the support of LDF members.

13. The Indian Union Muslim League Kuttampuzha Panchayat Committee President has been examined as RW2. He has deposed that he was elected as the UDF Chairman of the Panchayat and subsequently he was removed from that post and a Congress leader assumed that post and that the Muslim League was not given the deserving positions and so there was some issues between Congress party and Indian Union Muslim League. RW2 has further deposed that the respondent became the candidate to the post of President as directed by the Panchayat Committee of Muslim League and also with the consent of District Committee. In cross-examination he states that he does not know whether any written permission was given by the District Committee President of the Indian Union Muslim League to the petitioner to contest to the post of President. According to RW2 since there was a rift between his party and Congress party,

they decided to defeat the member belonging to Congress party in becoming the President. RW2 has further stated that the respondent is functioning as President with the sole support of the LDF members. According to RW2 the respondent is bound to obey the decisions of the Panchayat Committee Indian Union Muslim League only and he is not bound by the decisions of the District leadership. RW3 is stated to be the District General Secretary of Indian Union Muslim League. He has also deposed regarding the issues between the Congress party and Muslim League and according to him the respondent contested to the post of President as decided by the local level committee of Muslim League. He has also admitted that Indian Union Muslim League was a constituent of LDF in fighting the General Election. He has further admitted that the petitioner was the official candidate to the post of President in the election held on 26.10.2013 and the respondent contested against that official candidate and became the President. He has also admitted that the District leadership did not seek any permission to the respondent to contest to the post of President.

14. On an evaluation of the entire facts and materials on record, it is clearly found that out of the 17 wards, the UDF consisting of Indian National Congress, Kerala Congress (M) and Indian Union Muslim League secured 9 seats and the LDF consisting of CPI(M) and CPI secured 8 seats and the respondent along with all the 8 LDF members moved the no confidence motion against the

president and Vice President and ousted them and in the subsequent election to the post of President held on 26.10.2013, the petitioner belonging to Indian National Congress was the candidate of UDF and the respondent was proposed and seconded by the members of the LDF and the respondent accepted that candidature and contested against the official candidate of UDF and became the President with the support of all the LDF members. The fact that the respondent was to obey the decision and direction of the Ernakulam District President of Indian Union Muslim League is not in dispute. Whip was issued by PW2, the District President of Indian Union Muslim League, to the respondent and it was sent to him by registered post and courier. The whip was sent by registered post on 24.10.2013 as seen from the receipt attached along with Ext.P3. The whip sent by courier was returned which is Ext.P6. This whip also was sent on 24.10.2013. The respondent did not receive that whip. According to him the Muslim League Panchayat Committee President directed him to keep away from that locality and accordingly he was staying in his wife's house from 22.10.2013 to 26.10.2013 and he came back only on the date of election. So the respondent was fully aware of the political development and his decision to contest in the election against the official candidate of UDF was well planned sufficiently early. His own admission that he came to know that the petitioner was the candidate for the post of President when he entered the hall on the date of election would itself



be sufficient to come to a conclusion that he was fully aware of the decision of the UDF including his party to elect the petitioner as President. In the light of such an admission, it is futile to contend that he did not receive any direction from PW2. Moreover Ext.P6 would substantially prove that the courier containing the whip was taken to his house and as the respondent either declined to receive or was avoiding such a postal communication, it could not be served. On a careful appreciation of the entire facts, it is clearly found that the respondent was fully aware of the decision and direction of the District President of Muslim League regarding the candidature of the petitioner to the post of President and that the respondent, by defying that direction and decision colluded with the LDF members and became the President with their support. Admittedly the respondent is now within the camp of LDF. He has admitted that he is functioning as President with the sole support of LDF members which means that he has already become disloyal to his party. The version of RWs 1 to 3 that the respondent contested as decided by the Muslim League Panchayat Committee cannot stand to legal scrutiny. As I have already pointed out it is the decision of the District President of the Indian Union Muslim League which is binding on the respondent in respect of an election to the post of President and the Panchayat Committee of that political party cannot have any say in that matter. Even assuming that the respondent contested to the post of President as decided by the

local unit of his party on account of the issues with Congress party, since that was done by deviating from the policy and decision of his party, that conduct would constitute disloyalty to his party. In such circumstances, the decision of the local unit of Muslim League is totally irrelevant and for that reason the evidence of RWs 2 and 3 and Ext.R1 is also becomes unacceptable. The Indian Union Muslim League is a constituent of UDF and they fought the election under such banner and the respondent was fully aware of the decision of the District leadership of his party that the petitioner was the official candidate of UDF in the election to the post of President and so he should not have contested against him with the support of LDF members.

15. Whether the conduct of the respondent in having contested against the official candidate of UDF in the election to the post of President as proposed and seconded by LDF members and having voted in his favour, by disobeying the decision and direction of PW2 the District President of Indian Union Muslim League which elected him as a member, along with LDF members would constitute defection deserves consideration. Section 3 of the Act deals with disqualification on the ground of defection and Section 3(1)(a) is in respect of a member belonging to a political party which is relevant in this case. **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.”*

16. 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 the 10<sup>th</sup> schedule, the Apex Court in **Kihoto Hollohan Vs.Zachillhu (1992) Supp.2 SCC 651**) has held as follows,-

*“Any freedom of its members to vote as they please independently of the political party’s declared policies 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 very survival.”*

Referring to the object behind the provision dealing with disqualification on the ground of defection in the 10<sup>th</sup> Schedule, the Apex Court has further held as follows:-

*“the provision is to curb the evil of political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The only remedy would be to disqualify the member.”*

17. It has come out in evidence that the respondent had aligned with the LDF members and ousted the then President belonging to Congress party under UDF by moving a no confidence motion against the policy of his party and UDF. However since PW2 did not issue any direction to vote against the no confidence motion, no case was filed against the respondent on that cause of action. From the facts and circumstances it is clear that this respondent had colluded with the LDF members and ousted the then President by way of a no confidence motion with the ulterior motive of becoming the President. **In Dharmamani Vs. Parassala Block Panchayat (2009(3) KLT 29)**. It has been held at **Para 17** 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 had issued and served on the writ petitioners a direction regarding the voting on the no confidence motions that were 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 Division Bench of the **Hon'ble High Court in Writ Appeal No.795/2009** has confirmed the judgment in **Dharma Mani's** case and held at **Para 8** as follows,-

*“The appellants, who were elected from the Indian National Congress party were parties to elect the President and Vice President of the Panchayat. Whatever may be their differences with the President and the Vice President, they could not have joined hands with the opposite LDF party, to move no confidence motion against their own party men, and vote against their own men. Further, the fact that these appellants proposed and seconded the new President and Vice President belonging to the opposite group, clearly indicates that, they were aligning themselves with the LDF and were not loyal to their party on the symbol of which they were elected. In our view, this conduct of the appellants, joining hands with the opposite party, clearly establishes that they had voluntarily given up their membership in the party”.*

This position has been further clarified in the decision in **Muhammed Kunhi.B. Vs. K.Abdulla (2010 (4) KLT 736)** and at **Para 24**. It has been held 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.”*

18. In the case on hand, the respondent had not only joined in moving the no confidence along with the LDF members by parting way with UDF but also has contested to the post of President against the official candidate of UDF. In **Faisal Vs.Abdulla Kunhi, 2008(3)KHC 267** it has been held as follows:-

*“Since the words voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by resignation, from the conduct of the*



*petitioner if an inference can be drawn that he has voluntarily given up his membership of his political party, he is liable to be disqualified. From the facts noticed by the second respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation.”*

19. The above decision is squarely applicable to the facts of this case. The issue decided therein was whether by accepting nomination as President by members of rival coalition would amount to voluntarily giving up membership from his political party. In **Varghese V.Vs. Kerala State Election Commission (2009(3) KLT 1)** it has been held by Division Bench as follows,-

*“The expression ‘defection’ as such is not defined in the Act. Probably the expression does not require a definition since the concept is so plain. But the Legislature has left the disqualification to be decided on the defined conduct of the*

*member. We are concerned with the conduct of voluntarily giving up membership in the political party. It is now settled law that in order to attract the disqualification on the ground of voluntary giving up membership in the political party, the elected member need not resign from the party. In Ravi S.Naik V. Union of India (AIR 1994 SC 1558) it was held that voluntarily giving up membership is not synonymous with resignation. Voluntary giving up membership has a wider meaning than resignation as observed by a Division Bench of this court in Shajahan V. Chathannoor Grama Panchayat (2002 (2) KLJ 451). In Ravi S.Naik's case the Apex Court made it clear that "Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs". In Rajendra Singh Rana Vs.Swami Prasad Maurya ((2007)4 SCC 270) also the Supreme Court held that it is the conduct of the elected members that is to be looked into while considering whether an elected member has become disqualified on the ground of defection based on voluntary*

*giving up membership in the political party. In G.Viswanathan V. Speaker, Tamil Nadu Legislative Assembly, ((1996) 2 SCC 353) the Apex Court held that “the Act of voluntary giving up the membership of the political party may be either express or implied.”*

Definitely in this case the respondent had taken a different stand from that of his political party and acted against the policies of that party. In the decision cited supra it has been further held 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.”*

20. In **Nazeerkhan.S Vs. Kerala State Election Commission (2009(1) KHC 681)** the Division Bench of the Hon’ble High Court has held at **Para 13** as follows,-

*“We are also in agreement with the reasoning and findings of the learned Single Judge that the very act by which the writ*

*petitioner had stood for election to the post of Vice President of the Panchayat against the official Congress (I) candidate and that he had been elected on the basis of the votes cast in his favour en-bloc by the opposition LDF is clearly proof of the petitioner having acted in such a manner as to render himself disqualified under the provisions of the Act. We are also in agreement with the findings of the learned Single Judge that a Court exercising power under Article 226 of the Constitution of India in proceedings, where in a challenge is mounted a challenge against the order passed by the State Election Commission is only expected to act in judicial review of the order impugned and not approach the same as an appellate Court.”*

21. In the decision of the Division Bench of the Hon’ble High Court in V.V.Kurian Vs. Kerala State Election Commission (WA No.2351/2005, dated 06.11.2005) it has been held at Para 8 as follows,-

*“8. Admittedly, the opposite candidate for Chairmanship was a member of the political party to which the appellant also belonged. Of course, the appellant has got a contention that the rival candidate was not the official*

*candidate of his party, but he himself was the official candidate of the party. He heavily relies on the fact that among members who won the election under the banner of the political party INC(I), there were two groups, one group supporting the rival candidate and the other supporting the appellant. However, the undisputed fact remains that the appellant's candidature was proposed by a member of the rival coalition, namely, LDF and was also seconded by a member of the rival coalition, namely LDF. That would mean that the appellant himself could not muster support from his own party members to propose him and second him as a candidate of their party. On the other hand, he readily accepted the nomination by proposal and seconding by the members of the rival coalition. We are of opinion that the same would certainly amount to voluntary abandonment of the membership of his political party. In so far as he could have very well refused the support offered by the rival coalition members. After having accepted their support and contested against a candidate who was a member of his political party, he cannot now turn around and claim that he*

*has not voluntarily abandoned the membership of his own political party. Since this ground alone is sufficient to hold that the appellant has voluntarily given up the membership of the political party on whose banner he was elected as a member of the Municipality, we need not go into the other reasons upheld by the 1<sup>st</sup> respondent-Election Commission.”*

22. In the decision in *Daisy Tomy V. Kerala State Election Commission (Writ Appeal No.1248/2011)* the **Hon’ble High Court** has held, on a more or less similar set of facts, at **Para 11** as follows,-

*“11. The facts are not in dispute. The only question of law, which arises for our consideration is that, what is the meaning to be ascribed to the expression “voluntarily giving up his membership” occurring under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. The substance of the three decisions of this Court relied upon by the Election Commission is that, it is not necessary that a member of a political party (elected to a local body, having been sponsored by that political party) need either resign or vote in contravention of a whip issued by the political party to be described as having voluntarily given up his membership of the said political party. There can be other*

*contingencies in which it can be inferred from the conduct of such a person that the person had voluntarily given up his membership of the political party. We do not find any reason, which requires a reconsideration of the correctness of the above mentioned three judgments, in view of the law declared by the Supreme Court in 2004(8) SCC 747. It was a case, where the petitioner before the Supreme Court was elected as a member of the Bihar Legislative Council as a candidate of the Indian National Congress. But, subsequently in an election to the Fourteenth Lok Sabha, the petitioner contested from Maharajganj Parliamentary Constituency of Bihar as an independent candidate. Thereupon a complaint came to be lodged before the Chairman of the Legislative Council to the effect that the petitioner had voluntarily given up his membership of the Congress party and therefore disqualified for being a member of the Legislative Council of the Bihar. By the order dated 26.06.2004, the Chairman of the Legislative Council accepted the petition and declared that the petitioner before the Supreme Court did incur disqualification as contemplated under Paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India, on the ground that, he had voluntarily given up the membership of the political party, to*

*which he belonged to and therefore disqualified to be a member of the Legislative Council of the Bihar. The Supreme Court affirmed the conclusion reached by the Chairman of the Legislative Council of Bihar. The Supreme Court affirmed the conclusion reached by the Chairman of the Legislative Council of Bihar. In Paragraph 11 of the judgment it was held as follows,-*

*“11. In the present case, the Chairman of the Legislative Council has held that the petitioner had been elected to the Legislative Council on the ticket of Indian National Congress but he contested the parliamentary election as an independent candidate. On these facts a conclusion has been drawn that he has given up his membership of Indian National congress. This being a matter of record, the petitioner could not possibly dispute them, and that is why he has admitted these facts in the writ petition as well. In such a situation, there can be no escape from the conclusion that the petitioner has incurred the disqualification under Paragraph 2(1) (a) of the Schedule and the decision of the Chairman is perfectly correct.”*

*12. It can thus be clearly seen that not only in the cases of resignation or defiance of a direction (whip) given by the political*



*party that the person can be said to have voluntarily given up his membership of the political party, but there can also be other circumstances, from which such an inference can be legitimately drawn.”*

23. In the above case also the political equations were similar to the case on hand and the respondent therein accepted the nomination made by the members of LDF to the post of President and became the President with their support and the above conduct was held to be constituting defection by voluntarily giving up his membership from the party. In the present case the respondent had colluded with the members of rival coalition and hatched a plan to become the President of the Panchayat and to achieve that object, he along with the LDF members moved a no confidence motion against the then President and ousted him from that post and then became the President with the sole support of the members belonging to LDF. The above conduct of the respondent is nothing but disloyalty to his party and the UDF coalition. Therefore I find that the respondent has voluntarily given up his membership from his party and thus become subject to disqualification for being a member of Kuttampuzha Grama Panchayat. The points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being a member of Kuttampuzha 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 1<sup>st</sup> day of July 2014

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

### APPENDIX

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

- PW1 : Sri.K.M.Abdulla Kunju, Member, Ward No.1,  
Kuttampuzha Grama Panchayat
- PW2 : Sri.M.P.Abdulla Khadar, Mundakkal House, Kandathara,  
Allapra P.O., Perumbavur

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

- RW1 : Sri.M.A.Viswambharan, Mecheriyil, Vadattupara P.O
- RW2 : Sri. P.M.Abdul Khadar, Kodunjapillil, Vadattupara P.O.  
Kothamangalam
- RW3 : Sri.Abdul Majeed.K.M., Kottupadikkal, Kizhakkekara,  
Moovattupuzha

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

- P1 : Copy of the declaration in Form No.2 submitted by Sri.Viswambharan
- P2 : Copy of the register showing the party affiliation of the members of Kuttampuzha Grama Panchayat
- P3 : Copy of the direction issued by the President District Muslim League Committee, Ernakulam District addressed to Sri.Viswambharan
- P4 : Copy of the letter No.A3 6321/13 dated 26.10.2013 of the Secretary, Kuttampuzha Grama panchayat
- P5 : Letter No.A3 6321/13 dated 26.10.2013 of the Secretary, Kuttampuzha Grama Panchayat
- P6 : Returned letter addressed to Sri.M.A.Viswambharan
- P7 : Copy of the minutes of the meeting of Kuttampuzha Grama Panchayat held on 26.10.2013 to elect the President, Kuttampuzha Grama Panchayat
- P8 : Copy of the minutes of meeting of Kuttampuzha Grama Panchayat for the discussion of no confidence motion against the President, Kuttampuzha Grama Panchayat

**Documents produced on the side of the Respondent:**

- R1 : Minutes book of the Indian Union Muslim League Kuttampuzha Grama Panchayat Committee

Sd/-

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

//True Copy//