

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

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

Friday, the 14th day of February 2014

O.P.No.148/2011

Petitioner : (1) Sivarajan.D,
Member, Ward No.13,
Kottukal Grama Panchayat.
Thiruvananthapuram District.

(2) Kaithakode Radhakrishnan,
District President BSP,
Thiruvananthapuram,
Jijo Motors Building, Nanthancode,
Kowdiar P.O.

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

Respondent : Binu.T,
Member, Ward No.02,
Kottukal Grama Panchayat,
Thiruvananthapuram District.

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

This petition having come up for hearing on 24th day of January 2014, in the presence of Advocate **Cherunniyoor P.Sasidharan Nair & Kallambalam S.Sreekumar** for the petitioners and Advocates **M.Hashim Babu & Sajitha.S** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

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

2. The short facts are as follows:- The 1st petitioner is an independent member elected from ward No.13 of Kottukal Grama Panchayat. The 2nd petitioner is the District President of BSP, Thiruvananthapuram. The respondent contested the General Election held in October, 2010, Kottukal Grama Panchayat as a candidate of BSP in its official symbol 'Elephant' and was elected as a member. The Kottukal Grama Panchayat consists of 19 wards, out of which, Indian National Congress secured 9 seats, CPI(M) got 4 seats, BJP got 2 seats, RSP,BSP and Janatha Dal(S) secured one seat each and 1st petitioner is the independent member. After the election Sri.Siva Kumar and Smt.Aliyamma

belonging to UDF were elected as President and Vice President respectively and as per the party decision the respondent voted in their favour. Due to serious allegations of corruptions, no confidence motions were moved against the President and as directed by the BSP the respondent voted in favour of the motion and it was carried. In the subsequent election to the post of President scheduled on 17.11.2011, 2nd petitioner who is the District President of BSP issued direction to the respondent to vote in favour of the petitioner and copy of the whip was given to the Secretary of the Panchayat and to the Returning Officer. The respondent by disobeying the direction given by the District President of BSP, voted in favour of Sri.Siva Kumar and thus he had violated the whip issued by the competent authority and therefore he has voluntarily given up his membership from BSP. So the respondent is disqualified to continue as a member of Kottukal 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. The 1st petitioner has no locus-standi to file the petition against the respondent. 1st petitioner, though elected as an independent member, is now sailing with CPI(M). 2nd petitioner being not a member of the Panchayat is not entitled to file the petition against the respondent. The respondent is the only member of BSP and he is functioning as

per the instructions of his political party. The respondent is still continuing as a member of BSP. After the General Election, UDF secured majority and Sri. Siva Kumar and Smt.Aliyamma from UDF were elected as President and Vice President respectively. The BSP decided to support the UDF and accordingly this respondent supported them in the election. Subsequently no confidence motion against the President and Vice President and the respondent supported the motion as instructed by the party. The 2nd petitioner has never issued any whip to this respondent as alleged. In the subsequent election to post of President held on 17.11.2011, this respondent supported Sri.Siva Kumar as per the decision of the party. No written direction was issued by the party in this regard. The respondent has only obeyed the direction given by the party in the election to the post of President. The party has not issued any direction to elect Sri.Sivarajan as President. The respondent has not violated any whip and no such whip was issued to him. The respondent is still an active member of BSP and he has not voluntarily given up his membership from the party. The petition is false and vexatious and it is only to be dismissed with compensatory costs of ₹3,000/-.

4. The evidence consists of the oral depositions of PWs1 and 2, RWs 1 to 2 and Exts.P1 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 has voluntarily given up his membership from the party by disobeying the direction given by the party in the election to the post of President held on 17.11.2011?
 - (iii) Whether the respondent has become subject to disqualification for being a member of the Kottukal Grama Panchayat as prayed for?
 - (iv) Reliefs and costs?

7. **POINT No.(i)**: The petition is filed under Section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act', for declaring that the respondent has become subject to disqualification for being a member of the Kottukal Grama Panchayat. According to the 1st petitioner, the respondent has disobeyed the direction given by 2nd petitioner, who is the District President of BSP, and voted in favour of Sri.Sivakumar in the election to the post of President held on 17.11.2011 and thus committed defection. The respondent would deny such allegation and states that he has only obeyed his party and that no direction was issued by 2nd petitioner in this respect. As per Section 4(1) of the Act, *if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it*

in this behalf may file a petition before the State Election Commission for decision. In the present set of facts, a question arises as to whether the respondent has become subject to disqualification under Section 3(1) (a) of the Act. The petition has been filed by another member of the same local authority who is competent to file such a petition. As per Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules, such a petition is to be filed within 15 days from the date on which the concerned member is deemed to have become subject to disqualification. The petition is filed within the prescribed time limit by competent person. In the above circumstances, I find that the petition is maintainable. The point is answered accordingly.

8 **POINT Nos. (ii to iv):** The case of the petitioner is that the respondent has dis-obeyed the direction issued by the 2nd petitioner who is the District President of BSP to vote in favour of Sri.Siva Rajan in the election to the post of President held on 17.11.11 and thus the respondent has committed defection. The 1st petitioner as PW1 has deposed that after ousting Sri.Siva Kumar from the post of President by way of a no confidence motion in which the respondent also voted in favour of the said motion, he had, in the subsequent election to the post of President, by disobeying the direction issued by the 2nd petitioner to vote in favour of this petitioner, voted in favour of Sri.Siva Kumar and thus committed

defection. Ext.P1 is the minutes in respect of the election to the post of President held on 17.11.11 and the respondent is found to have voted in favour of Sri.Siva Kumar in the said election and he was declared as elected. PW2 has been examined to show that the respondent has subsequently joined the Janata Dal(S) and Ext.X1 is marked to support the above version. The respondent as RW1 has deposed that he has voted in favour of Shri.Siva Kumar as directed by the party and that no written direction was given by the party to vote in favour of the 1st petitioner in the election to the post of President. It was suggested to RW1 that 2nd petitioner had issued direction to him to vote in favour of 1st petitioner which RW1 denied. RW2 is stated to be State President of BSP and he has deposed that the person who is competent to recommend symbol of BSP in the election to a local authority is the State President and that the former State President had recommended symbol of BSP to its candidate in the General Election held in 2010 and that the State President alone is competent to issue whip to the members of BSP in local authorities. Ext.R1 is produced to prove that the person competent to recommend symbol to the candidate of the BSP in local authorities is the State President and that the then President Sri.Saji K.Cherman had recommended symbol to the candidates of the party who contested in the General Election to local authorities held in 2010.

9. On a careful evaluation of the entire evidence it is found that the respondent has contested as a candidate of BSP in the General Election held in October 2010 to Kottukal Grama Panchayat and he was elected as a member. After election the respondent voted in favour of the UDF candidates for the post of President and Vice President respectively. Subsequently a no confidence motion was moved against the President and the respondent has voted in favour of that motion and it was carried. In the subsequent election to the post of President the respondent voted in favour of the ousted President Sri. Siva Kumar. The 1st petitioner also was a candidate for the post of President in that election. Even though 1st petitioner states that the respondent has violated the direction issued by the 2nd petitioner to vote in his favour in the election to the post of President, no acceptable evidence is forthcoming to support the same. 2nd petitioner has not been examined in this case. The evidence of RW2 would show that the person who is competent to recommend symbol to the candidates contesting for local authorities is the State President. So the person who is competent to issue direction also is the State President.

10. Section 3 of the Kerala Local Authorities (Prohibition of Defection) deals with disqualification on the ground of defection. Section 3(1) (a) of the above Act relates to a member of the local authority belonging to a political party and that provision is relevant in this case. **Section 3(1)(a)** of 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.”

The definite case of the petitioner is that 2nd petitioner in his capacity as the District President of BSP issued direction to the respondent to vote in favour of 1st petitioner and the respondent by defying that whip voted in favour of Sri.Siva Kumar and thus committed defection. The State President of BSP as RW2 has deposed that he is the authorized person competent to recommend symbol to the candidates contesting for the election in local authorities.

Rule 4(1)(i) of the Kerala Local Authorities (Disqualification of Defected Members) Rules is relevant in this context and it reads as follows,-

“4. The manner in which a Political Party or Coalition may give direction to its members,- (1) if a political party or coalition gives any direction in respect of the casting of vote in an election or in a voting as has been mentioned in clause (a) or clause (b) of Section 3, it shall be in writing and such a direction shall be given,-

(i) in the case of a member belonging to a political party or a member considered as included therein, it shall be the person authorized from time to time to recommend the symbol belonging to the political party in order to contest the said member in the

election. Provided, the above said direction shall be in the letter head and seal of the political party and for the information of the members, the contents therein shall be read over by the member who shall be elected by the members belonging to the political party and the members considered as included in the political party jointly, based on majority from among themselves, and the direction so read shall be deemed to have given directly to the members. In any case, in the absence of the member elected by majority or if that member refuses, another member belonging to the same party shall read over the said direction.”

11. So in the light of the above provision it is found that the person who is competent to recommend symbol alone can issue a whip to the members of his political party in an election to the post of President, Vice President or in a no confidence motion. In the case on hand the petitioners have completely failed in proving that a proper direction was issued by the competent person to vote in favour of the 1st petitioner in the election to the post of President held on 17.11.2011. Apart from the oral evidence tendered by PW1 that such a direction was given by 2nd petitioner, no acceptable evidence is adduced to prove that BSP had issued such a direction. So what was the decision of the political party in respect of the election to the post of President held on 17.11.2011 has not been

proved in this case. The 1st petitioner is an independent member. The respondent is a member belonging to a political party. There is no evidence to prove that the respondent has dis-obeyed the decision or direction of BSP in the election to the post of President held on 17.11.2011. The evidence tendered by PW2 and Ext.X1 is totally irrelevant for deciding this case. Even assuming that the respondent has now joined another political party, given such a case is not pleaded in the petition, the evidence adduced through PW2 and Ext.X1 cannot be looked into at all in this case. No serious discussion is warranted to come to a conclusion that the petitioner has failed in proving that the respondent has either voluntarily given up his membership from the party or dis-obeyed any direction issued by the competent person of that party. Therefore, the petition deserves only dismissal. The points are answered accordingly.

In the result, the petition is dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 14th day of February 2014

Sd/-

K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER
APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Shri.Sivarajan, Raj Bhavan, Pulimkudy,
Mulloor.P.O

PW2 : Sri.Lien Xavier, Janathadal Mandalam President
Jerry House, Adimalathura, Chowara P.O.

Witnesses examined on the side of the respondent

RW1 : Sri.Binu .T, Member, Kottukal Grama Panchayat

RW2 : Adv.S.Prahladan, Vallivilayil House,
Patharam.P.O., Sooranad South

Document produced on the side of the petitioner

P1 : Copy of the minutes of the meeting to elect the
President, Kottukal Grama Panchayat held on
17.11.2011.

Document produced on the side of the Respondent

R1 : Letter dated 06.03.2013 of Adv.S.Prahladan,
State President, Bahujan Samaj Party.

Document produced on the side of the witness

X1 : Minutes Book of Janathadal (S), Kovalam
Mandalam Committee

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

//True Copy//