

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

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

**Friday, the 31<sup>st</sup> day of October 2014**

**O.P.No.15/2013**

Petitioner : Pareeth Muhammed @ K.M.Abdul Kharim,  
S/o K.P.Muhammed, Residing at  
Kallumpurathu, Pallarimangalam,  
Koovalloor.P.O., Pallarimangalam Panchayat,  
Ernakulam District.

**(By Adv.Kulathur S.V. Premakumaran Nair)**

Respondent : P.N.Hassanb,  
S/o Maitheen, Pazhampalli, Madiyoor,  
Pallarimangalam P.O., Pothanikkadu,  
Pallarimangalam Grama Panchayat,  
Ernakulam District.

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

This petition having come up for hearing on the 13<sup>th</sup> day of August 2014,  
in the presence of Advocate **S.V.Premakumaran Nair** for the petitioner 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 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent has become subject to disqualification for being a member of Pallarimangalam Grama Panhayat.

2. The short facts are as follows:- The petitioner and respondent are members of Pallarimangalam Grama Panchayat. The petitioner was elected as a member belonging to Indian Union Muslim League and the respondent was elected as an independent member without any political affiliation, in the election held on 25.10.2010. The petitioner came to know that the respondent has joined the Indian Union Muslim League and thus he has incurred disqualification for being a member of the Grama Panchayat. The petitioner did not have any knowledge regarding this aspect till recently, since the respondent did not attend any of the committee meetings of Indian Union Muslim League either in the Panchayat level or in the Niyojakamandalam level. In the Panchayat Committee meetings also he did not reveal his political stand and status. But on 05.12.2012 a pamphlet was published by the Muslim Youth League in which the respondent also was included along with the other Panchayat members belonging to Indian Union Muslim League. Based on this the petitioner contacted the Niyojakamandalam Committee President and District Committee Secretary of

Indian Union Muslim League and they informed him that with the help of some party leaders in the District level the respondent joined the Indian Union Muslim League on 13.08.2012. But that fact was not revealed before the Panchayat Committee and the Niyojakamandalam Committee. The petitioner is the general Secretary of Indian Union Muslim League, Pallarimangalam Panchayat Committee. He received a letter from the Niyojakamandalam Committee on 08.12.2012 stating that on the basis of the application of the respondent, membership was given to him by the District Committee. Since there was no other evidence regarding joining of the respondent in the Indian Union Muslim League, the petitioner could not file the application earlier. Since the respondent who was elected as an independent member without any political affiliation has joined the Indian Union Muslim League he has incurred disqualification as provided by the Kerala Local Authorities (Prohibition of Defection) Act. Hence this petition.

3. The objections raised by the respondent are in brief, as follows,- The petition is not maintainable either in law or on facts. The petitioner is none other than the parliamentary party member of Muslim League. If the respondent had joined the Muslim League that will only be advantageous to his party. Moreover as a member of the parliamentary party, the petitioner ought to have first hand information in the event of joining of the respondent in the political party.

Baseless allegations are raised against the respondent to wreak personal vengeance against him. In this Grama Panchayat, Muslim League is having six members including the petitioner. The petitioner was the Secretary of Muslim League Panchayat Committee and it is now learnt that he has been removed from that post due to anti party activities. The respondent is an independent member supporting the ruling front which includes Muslim League. The present attempt of the petitioner is to pressurize respondent to withdraw support to the UDF and to see that his own party is ousted from power. As per the byelaw of the Indian Union Muslim League the State President alone has the power to issue membership after closing the membership. The respondent has not joined the Muslim League or any other political party. Attending a public meeting of the youth wing cannot be equated to joining the political party. The respondent as a member of the Grama Panchayat has to attend the public meetings organised by political parties and other Social and Cultural Organizations. The person who signed the disputed letter is not the President of the Niyojakamandalam Committee. The respondent attended the function organized by Muslim Youth League only because he was invited for the same and he attended the meeting in his capacity as a member of the Panchayat. The petition is without bonafides and it is liable to be dismissed with costs and compensatory costs.

4. The evidence consists of the oral depositions of PWs1 to 3, RW1 and Exts.P1 to P9 series.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent who was elected as an independent member without any political affiliation has joined the Indian Union Muslim League as alleged?
- (iii) Whether the respondent has become subject to disqualification for being a member of Pallarimangalam Grama Panchayat?
- (iv) Reliefs and costs?

7. **ISSUE No.(i)**: The petition is filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, (hereinafter referred to as the 'Act'), for declaring that the respondent has become subject to disqualification for being a member of Pallarimangalam Grama Panchayat. 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. According to the petitioner the respondent, after having been elected as an independent member without any political affiliation has joined the Indian Union

Muslim League and thereby relinquished his independent status and thus he has incurred disqualification. Of course as per Section 3(1)(c) of the Act, if an independent member not belonging to any coalition joined any political party or coalition he shall be disqualified for being a member of that local authority. The respondent would deny the allegations and contend that he has not joined the Indian Union Muslim League or any other political party. In the light of the rival claims, a question arises as to whether the respondent has become subject to disqualification for being a member of Pallarimangalam Grama Panchayat as provided by Section 3(1)(c) of the Act. The petition has been filed by a member of the same Grama Panchayat of which the respondent also is a member. As per Section 4(1) of the Act, as well as Rule 4A of the Rules, a petition under the Act is to be filed either by a member of the local body or the political party concerned before the State Election Commission for decision. Since the petitioner is a member of the Grama Panchayat of which the respondent also is a member, he is competent to file the petition.

8. According to the petitioner he came to know on 11.12.2012 that the respondent has joined the Indian Union Muslim League and thereupon he filed the petition on 21.12.2012. According to the petitioner, though it is alleged that the respondent joined the Indian Union Muslim League on 13.08.2012 that was not revealed in the Panchayat Committee or the Niyojakamandalam Committee

of the Indian Union Muslim League and so the petitioner was unaware of such joining. Since according to the petitioner the above alleged joining of the respondent in Indian Union Muslim League was kept a secret, the cause of action arises only on the date on which the petitioner came to know of such joining which according to him is on 11.12.2012. As per Rule 4A(2) of the Rules, a petition under Section 4(1) of the Act is to be filed within 15 days from the date on which the member is said to have incurred disqualification. The respondent does not have a case that the petition is barred by limitation. Of course a question of limitation need not be pleaded. However in the present set of facts, as it is alleged that the joining of the respondent in Muslim League was deliberately kept a secret, this petition filed within 15 days from the date on which the petitioner came to know of such joining and the secrecy revealed, I find that the petition is not barred by limitation does not arise in this case. Hence I find that the petition is maintainable. The point is answered accordingly.

**9. POINT Nos.(ii) to (iv):** The petitioner would categorically allege that the respondent who was elected as an independent member has joined the Indian Union Muslim League on 13.08.2012 and thus he has incurred disqualification. The respondent would deny the allegation and contend that he is continuing as an independent member without any political affiliations.

10. The petitioner has been examined as PW1. Ext.P1 is the declaration given by the Returning Officer regarding his election as a member of Pallarimangalam Grama Panchayat. The fact that respondent was elected as a complete independent member is not in dispute. Ext.P2 is the copy of the nomination paper and Ext.P3 is the copy of the register maintained by the Secretary of the Panchayat under Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, wherein also the respondent is shown as an independent member without any political affiliation. PW1 would depose that the respondent had participated in the meeting convened by the Muslim Youth League on 05.12.2012 and Ext.P4 is the notice containing his photograph. PW1 would further depose that when he contacted the Nijoyakamandalam President and District Secretary, they informed him that the respondent had joined the Muslim League on 13.08.2012 with the help of some District Leaders Muslim League and that this fact was kept a secret. PW1 would also depose that he is the General Secretary of Muslim League, Pallarimangalam Panchayat Committee and that on 08.12.2012 a letter was given to him by Kothamangalam Niyojakamandalam Committee President stating that the respondent has joined the Indian Union Muslim League at the instance of the District Committee and the District Committee has advised the local committees to participate the respondent in the functions of Muslim League. The copy of the



above letter has been marked as Ext.P5. PW1 has also deposed that the fact that the respondent has joined in the Muslim League was reported in the Chandrika daily on 21.11.2012 and that paper containing the said report is marked as Ext.P6. It is also stated that there was news item with the photo of the respondent in Chandrika daily regarding the meeting of the Muslim Youth League held on 15.12.2012 and that paper is marked as Ext.P7. PW1 would further depose that the respondent has published notice on 13.12.2012 wherein he has stated that he has joined the Muslim League and that notice is marked as Ext.P8. Ext.P9 series are photographs along with the CD showing the respondent participating in the function of Muslim Youth League. According to the petitioner the respondent, after having been elected as a complete independent member has joined the Indian Union Muslim League and thus he has incurred disqualification as provided by Section 3(1)(c) of the Act.

11. PW1 in his cross-examination has stated that he was elected as an Indian Union Muslim League member which is having total six members in the Panchayat. He would further state that even now Muslim League has only these six members. He has admitted that he does not know whether the District President of Muslim League or the Parliamentary party leader of Muslim League in the Panchayat has given intimation to the Secretary that the respondent has joined the Muslim League. PW1 also admitted that Sri. K.M.Maitheen Mooza

who was the opposite candidate of the respondent who is the Vice President of the Muslim League Panchayat Committee had come along with PW1 before the Commission one or two times. According to PW1 since the respondent figures in the list of participants in the Youth League function held on 15.12.2012, he has filed this petition alleging that the respondent has joined the Muslim League. He has further admitted that in Ext.P4 the respondent is shown as a participant in his capacity as the ward member. He has also admitted that the other participants in this function are shown by their name and official position in the Indian Union Muslim League or the Youth League. PW1 further states that if a person joined in Muslim League it should be informed to the Muslim League Panchayat Committee. According to PW1 he came to know that the respondent had taken membership in the Muslim League at the instance of the Muslim League District Secretary Sri.K.M.Abdul Majeed. He has also admitted that he does not know whether the state President of Muslim League had given membership to the respondent. PW1 would also depose that no written information was given to him by the District Committee of Muslim League stating that the respondent had joined the Muslim League. PW1 also does not know whether the respondent is participating in any of the Muslim League Committees. It was suggested to PW1 that Ext.P5 was fraudulently created for the purpose of this case which he denies.

It is also admitted by PW1 that in Ext.P8 the signature of the respondent is not available.

12. On the side of the petitioner, PW2 who is stated to be a State Council member and District Council member of Muslim League has been examined. He would depose that the respondent is now working in Muslim League and according to him in August 2012, the respondent requested to join the Indian Union Muslim League and that application was known to have been given by the respondent before the District Committee and the District Committee has informed PW2 regarding this matter over phone and thereupon he gave Ext.P5 letter to the Muslim League, Pallarimangalam Panchayat Committee and he has identified his signature in that record. In cross-examination it is suggested to PW2 that as per the decision of the Muslim District Committee, the Niyojakamandalam Committee was dissolved on 05.10.2012 to which PW2 states that he was not informed of such a decision. Ext.R1 is stated to be the letter by which the District Committee has dissolved the Niyojakamandalam Committee. According to PW2 Ext.P5 was given by him as instructed by the District President and District Secretary.

13. PW3 is a Branch member of CPI(M), who is residing in ward No.2 of Pallarimangalam Grama Panchayat and he says that the respondent was elected as an independent member and during the last one year, the respondent is actively

involving in the functions of Muslim League and several notices and flux boards with the photographs of the respondent stating that the respondent is a member of Muslim League are displayed in that place. In cross examination he has admitted that he has not participate in any meetings of the Muslim League and he does not know regarding the organizational aspects of Muslim League.

14. The respondent has been examined as RW1. He has stated that he is still an independent member and that he never joined in the Muslim League or any other party. He would also depose that he has never applied from the membership in Muslim League and that his participation in the meeting mentioned in Ext.P4 was in his capacity as a ward member. He also denied to have published Ext.P8 notice. Exts.P9 and P9(a) are stated to be photographs which may have been taken before he stood as a candidate in the election and he also states that Ext.P9(b) was not published by him. He has further deposed that Ext.P9(c) is not in relation to a party function. According to him he has never participated in any meetings of Muslim League or in the Muslim Parliamentary party meetings. Though RW1 has been cross-examined at length nothing has been brought out to discredit his testimony. It was suggested to RW1 that he is the Joint Secretary of Muslim League Panchayat Committee which he denied.

15. The definite case of the petitioner is that the respondent, after having been elected as an independent member, has joined the Indian Union Muslim

League and thereby incurred disqualification. Section 3(1) (c) of the Act deals with an independent member and it states that if an independent member not belonging to any coalition, joins any political party or coalition, he shall be disqualified for being a member of that local authority. There is nothing on record to prove that the respondent had joined in any political party or coalition. PW1 admits that the respondent had not joined the Muslim League parliamentary party in his Panchayat. According to him six members belonging to Muslim League were elected and even now Muslim League is having only such six members. It is significant to note that the petitioner was elected as a member belonging to Muslim League. The respondent was admittedly elected as an independent member not belonging to any political party or coalition. This is clear from Exts.P1 to P3 Ext.P4 is the pamphlet relied on by the petitioner to prove that the respondent had joined the Muslim League. At first it is seen that Ext.P4 is only relating to a function organized by Muslim Youth League and it is not by Muslim League party. From Ext.Ext.P4 it is seen that persons not belonging to Muslim League also had attended that function. The respondent is shown as a participant in Ext.P4 in his capacity as a ward member. No official position in the Muslim League is shown against the name of the respondent in Ext.P4. So Ext.P4 cannot be considered as a reliable document to prove that the respondent had joined the Muslim League or that he had relinquished his

independent status. Ext.P5 is another record relied on by the petitioner to support his allegation regarding joining of the respondent in the Muslim League. This is stated to be a letter given by PW2 to the petitioner on 08.12.2012. In Ext.P5 it is stated that the respondent who was elected as an independent member has taken membership in the Muslim League on his request and that this was informed by PW2 by the District Muslim League Committee. If the statement in Ext.P5 is true, there should have been no difficulty for the petitioner to produce records relating to taking up membership by the respondent in Muslim League. None of the Muslim League Committee members has been examined in this case. Apart from Ext.P5, there is no acceptable evidence to show that the respondent had taken membership in the Muslim League. The petitioner has completely failed in adducing reliable evidence to prove his allegation that the respondent had taken membership in the Muslim League at the instance of the District Muslim League Committee. However Ext.P5 cannot be relied on as a material document to support the case of the petitioner. Exts.P6 and P7 are only Chandrika dailies. There is no reliable news item stating that the respondent has joined the Muslim League at any point of time. Ext.P8 is only a bit notice published in the name of the respondent. Even the name of the press which printed this bit notice is not shown therein. The contention of the respondent is that Ext.P8 is a fabricated record. Anyhow Ext.P8 being simply a bit notice cannot be relied on for any

purpose. Ext.P9 series are the photographs wherein the photos of the respondent are available. Simply because this respondent is available in these photographs it cannot be held that he has joined the Muslim League. Of course the CD of Ext.P9 series except that of Ext.P9 (b) also is produced which is Ext.P9 (d). Ext.P9 (b) if proved in evidence could have been considered as a relevant document to prove that the respondent has joined the Muslim League. But the authenticity and veracity of these records are seriously under challenge. Since Ext.P9 (b) is denied by the respondent and it is stated that the petitioner has fabricated record, the burden is upon the petitioner to prove its genuineness. However the petitioner has completely failed in proving that Ext.P9 (b) is genuine. Without either the negative or the CD of Ext.P9(b), it becomes an unreliable document. PWs1 and 2 were active leaders of Muslim League and from the evidence it appears that they are not on smooth terms with their party I find considering force in the contention of the respondent that the petition has been filed out of certain extraneous consideration on the part of PWs 1 and 2. Of course PW3 is a member belonging to rival political party and his evidence is not of any use to support the petitioner's case. On a careful consideration of all facts and materials on record, I am of the view that the petitioner has completely failed in proving that the respondent, after having been an elected as an independent

member, has joined Muslim League as alleged in the petition. 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 31<sup>st</sup> day of October 2014

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

**APPENDIX**

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

- PW1 : Sri.Pareethu Muhammed, Kallumpurathu Veedu,  
KoomalloorP.O., Pallarimangalam
- PW2 : Sri.Kunju Bava, Kallungal Veedu, Cheruvattoor P.O.,  
Kothamangalam, Ernakulam District
- PW3 : Sri. K.A.Makkar, Kurinjilikkadu, Koovalloor P.O.

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

- RW1 : Sri. P.N.Hassan, Pazhampilli, Pallarimangalam P.O.

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

- P1 : Copy of the election certificate in Form No.26
- P2 : Letter No.AB2-67/08 dated 12.12.2012 of the Assistant  
Engineer, MVIP Sub Division Vazhakulam
- P3 : Copy of the register showing Party Affiliation of the  
members of Pallarimangalam Grama Panchayat



- P4 : Notice of Muslim Youth League  
Pallarimangalam Panchayat Conference
- P5 : Letter dated 08.12.12 of the President IUML  
Kothamangal Niyojaka Mandalam Committee
- P6 : Chandrika daily dated 24.12.2012
- P7 : Chandrika daily dated 15.12.2012
- P8 : Statement published by Sri.P.M.Hassan, dated 13.08.2012
- P9 : Photograph
- P9(a) : Photograph
- P9(b) : Photograph
- P9(c) : Photograph
- P9(d) : C.D

Sd/-

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

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