

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

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

Tuesday, the 5th day of August 2014

O.P.Nos.17/2013AND 18/2013

O.P.No.17/2013

Petitioner : Pallickal Nazeer @ Nazeer,
Member, Ward No.10,
Pallickal Grama Panchayat,
Thiruvananthapuram District 695 604.

(By Advs. P.A.Ahamed & C.Jayachandran)

Respondents : Lisa Nizam,
Member, Ward No.5,
Pallickal Grama Panchayat,
Thiruvananthapuram District.
(By Advs. Hashim Babu & Sajitha.S)

O.P.No.18/2013

Petitioner : Pallickal Nazeer @ Nazeer,
Member, Ward No.10,
Pallickal Grama Panchayat,
Thiruvananthapuram District 695 604.

(By Advs. P.A.Ahmed & C.Jayachandran)

Respondent : Asbar,
Member, Ward No.08,
Pallickal Grama Panchayat,
Thiruvananthapuram District.

(By Advs. Hashim Babu & Sajitha.S)

These petitions having come up for hearing on the 27th day of June 2014, in the presence of Advs. **P.A.Ahamed & C.Jayachandran** for the petitioner and Advs. **M.Hashim Babu & Sajitha.S** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These petitions are filed under Section 3 and 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have become subject to disqualification for being members of Pallickal Grama Panchayat. Since the petitions are filed by a common petitioner and as common questions of law and facts arise for consideration in both these cases, they have been taken up jointly and O.P.No.17/2013 is treated as the leading case;

2. Common allegations are raised by the petitioner in both these cases which are, in short, as follows:- The petitioner and respondents are members of Pallickal Grama Panchayat belonging to Indian National Congress. After the general election, the respondent in O.P.No.17/2013 was elected as President and the petitioner was elected as Vice President of the Pallickal Grama Panchayat. The above respondent as President was acting in an arbitrary manner and she was also not respecting the majority decisions of the members. So a no confidence motion was moved against her and she was removed from that post. Thereupon

this respondent filed original petitions before this Commission against the elected members of the Panchayat and those petitions are still pending. The respondents by their various conduct have voluntarily given up their membership from the Indian National Congress and they were warned repeatedly by the District leaders of Congress party. While so the election to the post of President was decided to be conducted on 14.05.2013. There was a common decision among the elected UDF members to defeat the official candidate of CPI(M). Smt.Ambika Kumari was decided by the Congress party as the official candidate for the post of President and she was opposed by Smt. Baby Sudha belonging to CPI(M). There was a common decision that all Congress members should vote in favour of Smt.Ambika Kumari. But in the election to the post of President, the respondents voted in favour of Baby Sudha the official candidate of CPI(M) and thereby they have voluntarily given up their membership from Congress party and thus committed defection. Hence these petitions.

3. Common contentions are raised by the respondents in their objections which are in brief as follows,- The petitions are not maintainable either in law or on facts. These petitions are filed as a counter blast to the original petitions filed by the respondent in O.P.No.17/2013 against this petitioner and four others who have defected from the party. The petitioner who had disobeyed the direction of the Congress party and its parliamentary party filed these petitions with the

ulterior motive of harassing these respondents. Out of the 13 wards, in Pallickal Grama Panchayat, Indian National Congress under UDF secured 8 seats and 4 seats were won by CPI(M) under LDF and the remaining seat was won by BJP. Thus the Congress party secured majority in the election and as decided by the District leadership the respondent in O.P.No.17/2013 was elected as President and the petitioner was elected as Vice President. The petitioner became in hostile terms with the respondent in O.P.No.17/2013 when she objected the corrupt acts of the petitioner in relation to quarrying of rock. The District leadership of Congress party conducted detailed enquiry and instructed not to permit quarrying the rock. In the above circumstances the petitioner in connivance with LDF and BJP members moved a no confidence motion against the respondent in O.P.No.17/2013 without the permission of the Congress party. The District leadership of the Indian National Congress including its President was against the no confidence motion and the DCC President issued direction to all the Congress members to vote against the motion. The petitioner, in gross defiance of the above direction, voted in favour of the said motion and out seated this respondent on 10.04.2013. Thus the petitioner and four other members had voluntarily given up their membership from the party. Subsequently in the election to the post of President held on 14.05.2013, the Congress party did not declare anybody as its official candidate. But Smt.Ambika Kumari a member who had already defected

from Congress party contested to that post with the support of BJP which was against the declared political stand of the Congress party. To defeat such a stand taken by Smt.Ambika Kumari, the respondents voted in favour of Smt.Baby Sudha and it was not a political support but only as a strategy to defeat the alliance with BJP. Smt.Ambika Kumari was not belonging to Indian National Congress as on the date of the election to the post of President and there was no obligation to vote in her favour. The respondents have not voluntarily given up their membership from the party and they have not committed any defection. The petitions are frivolous and vexatious and they are liable to be dismissed with compensatory costs of ₹2,000/- each.

4. The evidence consists of the oral depositions of PW1 and RW1 and Exts.P1 and R1 to R4.

5. Both sides were heard

6. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondents have voluntarily given up their membership from the Congress party as alleged?
- (iii) Whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection Act)?
- (v) Reliefs and costs?

7. **POINT No.(i)**: The petitions are filed under Sections 3 and 4 of the Kerala Local Authorities (Prohibition of Defection) Act, (hereinafter referred to as the Act,). As per Section 3(1) (a) of the Act, if a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction 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 in respect of an election to the post of President, Vice President, Standing Committee Chairman or members or on a no-confidence motion, he shall be disqualified for being a member of that local authority. As per Section 4 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 can file a petition before the State Election Commission for decision. These petitions are filed by a member of the same local authority of which the respondents are members. So the petitioner is having competency to file these petitions. In the present set of facts, a question arises as to whether the respondents have become subject to disqualification for being members of the Panchayat for having voted in favour of a CPI(M) candidate in the election to the post of President. These petitions are seen filed within the period prescribed

under Section 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. Even though the respondents have raised a casual contention that the petitions are not maintainable there is no specific pleading as to why such petitions are not maintainable. Considering all facts I am of the view that these petitions filed under Section 4 of the Act by a member of the same local authority for a decision regarding the alleged disqualification are maintainable. The point is answered accordingly.

8. POINT Nos.(ii) to (iv): The definite case of the petitioner is that in the election to the post of President held on 14.05.2013 these respondents have not voted in favour of Smt.Ambika Kumari who was decided as the official candidate of Congress party and instead they voted in favour of the candidate set up by CPI(M) Smt.Baby Sudha and thereby the respondents have voluntarily given up their membership from the party. The respondents would contend that these petitions are filed only as a counter blast to the original petitions filed by the respondent in O.P.No.17/2013 against the petitioner and others who had voluntarily given up their membership from the party by moving a no confidence motion against their own President and voting in favour of that motion along with the BJP member and as Smt.Ambika Kumari and others had already given up their membership from the Congress party, the respondents did not vote in her favour. More over it is contended that Smt.Ambika Kumari colluded with BJP

member against the stand and policy of the Congress party and it was to defeat such an unholy alliance that the respondents have voted against her.

9. The petitioner has been examined as PW1. He has filed a detailed affidavit in lieu of chief examination reproducing almost all the averments contained in these original petitions. The respondent in O.P.No.18/2012 has been examined as RW1 and the minutes regarding the election to a member of the Welfare Standing Committee held on 04.09.2013 has been marked as Ext.R1. Ext.R2 is the copy of the FIR registered against the petitioner, Exts.R3 and R4 are minutes regarding the elections to the members of Standing Committees.

10. Certain facts are not in dispute. The petitioner and respondents were elected as members belonging to Congress party. After the election the respondent in O.P.No.17/2013 was elected as the President and the petitioner was elected as Vice President. A no confidence motion was moved against the President by the petitioner and others along with BJP member and she was removed from that post. Thereupon cases were filed against the petitioner and four others to disqualify them under the provisions of the Act. Subsequently in the election to the post of President, Smt.Ambika Kumari who had allegedly defected from the Congress party, stood as a candidate against a CPI(M) candidate by name Smt.Baby Sudha and the respondents voted in favour of Smt.Baby Sudha which is now taken as a ground to disqualify them under the

provisions of this Act. The petitioner in his evidence has deposed that Smt.Ambika Kumari was decided by the party as official candidate to the post of President and to defeat her the respondents had voted in favour of the CPI(M) candidate and thereby they have already given up their membership from the party. Of course from Ext.P1 it is found that the respondents have voted in favour of CPI(M) candidate Smt.Baby Sudha in the election to the post of President held on 14.05.2013. In cross-examination PW1 has admitted that the election to the post of President was necessitated on account of the removal of the respondent in O.P.No.17/2013 from that post by way of a no confidence motion moved against her by the petitioner and others. PW1 has admitted that on account of removing these respondents from the post of President by way of the no confidence motion, the petitioner and the other five members were suspended from the Congress party. He has also admitted that Smt.Ambika Kumari who was a candidate also was suspended consequent to passing of the no confidence motion against the respondent in O.P.NO.17/2013. He has also admitted that during the time of election to the post of President, Smt.Ambika Kumari and others were not taken back to the party. PW1 has further admitted that it is the District Congress Committee who is taking decision regarding the person who should contest as President of a Panchayat. PW1 has categorically admitted in his deposition that the DCC President did not give any whip in respect of the election

to the post of President. PW1 has further admitted that Sri.Viswanatha Pillai the member belonging to BJP also had voted in favour of Smt.Ambika Kumari in the election to the post of President. According to PW1 the Congress party has a policy not to share the rule of Panchayat along with BJP. PW1 has also stated that in the election to a Standing Committee member, the Petitioner and Smt.Ambika Kumari voted in favour of Sri.Viswanatha Pillai.

11. The respondent in O.P.No.18/2013 has deposed that a no confidence motion was moved against the respondent in O.P.No.17/2013 by the petitioner and five other Congress members and that was passed and thus all the six members belonging to Congress party who supported that motion were expelled from the party and thereafter in the election to the post of President there were only two members belonging to Congress party and as there were no persons capable of proposing and supporting the candidature of a Congress member, the Congress party members could not contest and as the respondents could not vote in favour of an expelled member they voted in favour of a CPI(M) candidate. PW1 has further deposed that these cases have been filed as a counter blast to the original petition filed by respondent in O.P.No.17/2013 against the defected members of Congress party.

12. On an evaluation of the entire evidence it is clearly found that at the time of the election held on 14.05.2013 Smt.Ambika Kumari was remaining

under suspension and she was not an official candidate of Congress party for that post. Even according to PW1 no direction was given by the DCC President to vote in favour of any person in the said election. Since according to the respondents they alone were then members of the Congress party in the Panchayat and there were not sufficient strength to propose and second a member belonging to Congress party they voted in favour of a CPI(M) candidate rather than to a defected member. From the evidence it is clear that out of the 8 members belonging to Congress party 6 members were under suspension for having moved a no confidence motion against the respondent in O.P.No.17/2013 and as such only these respondents were alone belonging to Congress party and since there was no official candidate for Congress party and as there was no possibility for setting up a candidate belonging to Congress party in the election to the post of President, the action of the respondents in having not voted in favour of Smt.Ambika Kumari who was remaining under suspension cannot be considered as disloyalty to the party. It is further found that Smt.Ambika Kumari was supported by a BJP member which was admittedly against the policy of the Congress party that also was found to have weighed with the respondents in not voting in favour of Smt.Ambika Kumari. More over in the absence of a direction or decision by the Congress party in an election to the post of President and in the absence of an official candidate for that party, the members belonging to that

party are free to cast their vote according to their conscience. The respondent in O.P No.17/2013 was removed from the post of President by the petitioner and five others along with a BJP member by moving a no confidence motion. The learned counsel for the respondents would argue that this Commission, by way of order dated 26.02.2014 had disqualified them for being members of this Panchayat. In the above set of facts, I find considerable force in the contention of the respondents that these cases have been filed as a counter blast to the Original Petitions filed against the petitioner and Smt.Ambika Kumari and others.

13. According to the petitioner, the respondents have voluntarily given up their membership as provided by Section 3(1)(a) of the Act. This consists of two limbs. The first limb is attracted when a member belonging to a political party voluntarily gives up his membership from the party and the second limb is attracted when such member votes or abstains from voting in an election to the post of President, Vice President, Standing Committee Chairman or members or on a no confidence motion in defiance of a direction issued by the party or a person or authority authorized by it in this behalf. Admittedly neither the DCC President nor the Congress party had issued by direction to these respondents to vote in favour of Smt.Ambika Kumari in the election to the post of President. Therefore the second limb not attracted in this case. For attracting the first limb of this section, the conduct of the member should be such that it amounts to

disloyalty to the party. Of course if a member belonging to a political party votes or abstains from voting against the decision or direction of the party, that would constitute defection by voluntarily giving up membership from the party. At the same time if a member belonging to a political party cast his vote to any candidate in the absence of a direction or decision of his party and in the absence of a candidate belonging to his party, that would not attract defection. In the present case, in the election to the post of President, Smt.Ambika Kumari though was originally elected as a Congress member was remaining under suspension for having moved a no confidence motion against the President belonging to that party and so the conduct of the respondent in having not voted to her cannot constitute any defection. It is more so in view of the reason that there was no candidate set up by Congress party and there was no direction or decision to vote in her favour from the DCC President or from any leaders of the Congress party. The petitioner alone has been examined in this case and only the minutes of the election meeting regarding the post of President is produced. The petitioner is found to have completely failed in proving that the respondents have, either on account of their conduct or on account of their action, had voluntarily given up their membership from the party or violated any direction given by the party or its leaders in the election to the post of President. Therefore I find that the respondents have not committed defection so as to attract the provisions of the

Act and so these petitions deserve only dismissal. The points are answered accordingly.

In the result, the petitions are dismissed with the costs.

Pronounced before the Commission on this the 5th day of August 2014

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

APPENDIX

Witness examined on the side of the petitioner

PW1 : Sri. Pallickal Nazeer, Thazhavila Veedu, Pallickal P.O.

Witness examined on the side of the respondent

RW1 : Sri.Asbar, AlummoottinVeedu, K.K.Konam P.O.

Documents produced on the side of the petitioner

P1 : Copy of the minutes of the meeting held on 14.05.2013

Documents produced on the side of the respondents :

R1 : Copy of the minutes of the meeting held on 04.09.2013

R2 : Copy of the FIR

R3 : Copy of the minutes of the meeting held on 03.10.2013

R4 : Copy of the minutes of the meeting to elect the member of Health and Education Standing Committee

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