

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

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

Tuesday, the 16th day of December 2014

O.P.Nos.20/2014, 21/2014, 22/2014, 23/2014 AND 24/2014

O.P.No.20/2014

Petitioner : K.P.Shahina,
W/o Abdul Rasheed,
Karuthedathu Pottamel House,
Pulliparambu.P.O., Chelambra,
Malappuram District. Pin: 673 634.
Member, Ward No.18,(Kutteriyil)
Chelambra Grama Panchayat

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

Respondent : P.Noushad Ali,
S/o Kunji Moidu, Puliyalil Veedu,
Kolakottuchali, Chelambra P.O.,
Malappuram District.
Member, Ward No.12, (Panayapuram)
Chelambra Grama Panchayat,

(By Adv. Abdul Shukkur Arakkal)

O.P.No.21/2014

Petitioner : K.P.Shahina,
W/o Abdul Rasheed,
Karuthedathu Pottamel House,
Pulliparambu.P.O., Chelambra,
Malappuram District. Pin: 673 634.
Member, Ward No.18,(Kutteriyil)
Chelambra Grama Panchayat

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

Respondent : K.K.Suhara,
Puthuvakkara Purai House,
Pulliparamb P.O., Chelambra,
Malappuram District.
Member, Ward No.16, (Pulliparamb)
Chelambra Grama Panchayat,

(By Adv.Abdul Shukkur Arakkal)

O.P.No.22/2014

Petitioner : K.P.Shahina,
W/o Abdul Rasheed,
Karuthedathu Pottamel House,
Pulliparambu.P.O., Chelambra,
Malappuram District. Pin: 673 634.
Member, Ward No.18,(Kutteriyil)
Chelambra Grama Panchayat

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

Respondent : Jameela Hussain,
W/o Hussain, Elanilavi Veedu,
Chelembra P.O.,
Malappuram District.
Member, Ward No.3, (Idimuzhickal)
Chelambra Grama Panchayat,

(By Adv. Abdul Shukkur Arakkal)

O.P.No.23/2014

Petitioner : K.P.Shahina,
W/o Abdul Rasheed,
Karuthedathu Pottamel House,
Pulliparambu.P.O., Chelambra,
Malappuram District. Pin: 673 634.
Member, Ward No.18,(Kutteriyil)
Chelambra Grama Panchayat

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

Respondent : K.P.Reghunathan,
Prashanthi, Chelambra P.O.,
Malappuram District.
Member, Ward No.6, (Pulumkunnu)
Chelambra Grama Panchayat,

(By Adv. Abdul Shukkur Arakkal)

O.P.No.24/2014

Petitioner : K.P.Shahina,
W/o Abdul Rasheed,
Karuthedathu Pottamel House,
Pulliparambu.P.O., Chelambra,
Malappuram District. Pin: 673 634.
Member, Ward No.18,(Kutteriyil)
Chelambra Grama Panchayat

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

Respondent : Makkadam Paramb Dilja,
W/o Krishnan,
Makkadan Paramb Veedu,
Pulliparamb P.O., Chelambra,
Malappuram District.
Member, Ward No.1, (Perunthodippada)
Chelambra Grama Panchayat,

(By Adv. Abdul Shukkur Arakkal)

These petitions having come up for hearing on the 15th day of October 2014, in the presence of Advs. **Hashim Babu.M & Sajitha.S** for the petitioner and Adv. **Abdul Shukkur Arakkal** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These are petitions filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have become subject to disqualification for being members of Chelambra Grama Panchayat. Since common questions of law and facts arise for consideration in all these cases, they have been taken up together as per order on I.A.No.80/2014 and O.P.No.20/2014 is treated as the main case.

2. The short facts are as follows,- The petitioner and respondents in O.P.Nos.20/2014, 22/2014 and 24/2014 contested as official candidates of Indian Union Muslim League and the respondent in O.P.No.23/2014 contested as official candidate of Indian National Congress in the General Election held in 2010 and were elected as members of Chelambra Grama Panchayat. Out of the total 18 seats the UDF secured 12 seats and the LDF secured 5 seats of which 3 seats were won by CPI(M) and 2 seats the LDF independents. The BJP found victory in one seat. The petitioner belonging to Indian Union Muslim League was elected as President and Sri.K.P.Devadas a member of Indian National Congress was elected as Vice President. The respondents, in collusion with LDF members, moved no confidence motions against the petitioner and Vice President without the permission or consent of the respective political parties in which they belong. The District Committees of Muslim League and Congress party were

against the proposal to move such no confidence motions. The motions were tabled for discussion on 01.04.2014. The Malappuram District General Secretary of Indian Union Muslim League issued direction on 24.03.2014 to the respondents in O.P.Nos.20/2014, 22/2014 and 24/2014 to vote against the no confidence motions moved against the President and Vice President. The Malappuram District General Secretary of Indian Union Muslim League is the competent person to recommend symbol to the candidates of Muslim League and so he is the person competent to issue whip to its members. The whip issued by the Malappuram District General Secretary of Muslim League was sent by registered post to the above respondents on 25.03.2014 and they are also affixed in front of the houses of the said members. Copy of the whip was handed over to the Secretary also. More over the whip was read over in the meeting hall by a member belonging to Muslim League for information to its members. The District President of Congress party who is the competent person to recommend symbol to the candidates of that party had issued whip to the respondent in O.P.No.23/2014 and the said whip was sent by registered post as well as affixed in front of the house of the said respondent. The respondents were having sufficient knowledge and notice regarding the decision and direction of the political parties in respect of the stand to be taken by them in the voting on the no confidence motions moved against the President and Vice President. But the

respondents, in gross defiance of the directions issued by the respective political parties have aligned with the LDF members and voted in favour of the said motions and ousted the President and Vice President on 01.04.2014. If the respondents had obeyed the instructions of their political parties as obedient party workers, the decision of such parties would have been protected. The respondents had purposefully disobeyed the directions issued by their political parties and voted in favour of the motions and thereby committed defection. The respondents in O.P.Nos.20/2014 to 22/2014 and 24/2014 have voluntarily abandoned their membership from Muslim League and the respondent in O.P.No.23/2014 voluntarily abandoned his membership from Congress party by moving and supporting the no confidence motions against the President and Vice President belonging to their own party and coalition. The respondents are now trying to be in power with the support of LDF members. Since the above respondents have violated the whip and voluntarily given up their membership from Muslim League and Congress Party respectively they are not entitled to continue as members of this Panchayat. Hence these petitions.

3. Common contentions are raised by the respondents in all these cases which are in short as follows,- The petitions are not maintainable either in law or on facts. There is no cause of action against these respondents for filing the petitions. The petitioner has suppressed material facts in the pleadings. A

written bilateral agreement was executed among the members of the Muslim League to the effect that the petitioner shall vacate the post of President after the expiry of 2 ½ years so as to enable the respondent in O.P.No.21/2014 Smt.K.K.Suhara to become the President and that agreement is in the custody of the District Secretary of the Muslim League. Similarly it was also agreed that the Vice President, Sri.Devadas a member belonging to Congress party will vacate the office to pave way for the respondent in O.P.No.23/2014 Sri.K.P.Reghunathan belonging to Congress party to become the Vice President and that agreement is with the Malappuram District President of Congress party. The petitioner has violated the said agreement. The respondents had raised the above issues several times before the party forum. Concerted efforts were made by the petitioner and their henchmen to flout the bilateral agreements. So expulsion proceedings were taken prior to the date of the discussion on the no confidence motions. The respondents have not received any whip either in person or by post and no whip was officially served by affixture. With reference to the averments that on the date of the meeting the whips were read over has no legal efficacy since the whip is to be served to a member as prescribed by the Rules. No whip has been served as provided by law. The respondents were expelled from the party even prior to the issuance of the whip and the subsequent acts and deeds committed by the political parties will not create any legal

obligations on these respondents. Since the respondents had agitated on the basis of the bilateral agreements they were expelled from the respective political parties. The allegation that the respondents have voluntarily abandoned their membership from the parties is not true and they were expelled from such political parties earlier. Since the respondents were expelled from the respective political parties, if at all any decision is taken by the political party as alleged, that is not at all applicable to the respondents. After expulsion the respondents are to be treated as only independent members. The cause of action if any arose on 18.03.2014 the date on which the respondents had signed the no confidence motions and so the petitions itself are barred by limitation. The respondents have not incurred any disqualification as alleged and the petitions are only to be dismissed.

4. The evidence consists of the oral depositions of PWs1 to 3, RWs1 and 2 and Exts.P1 to P16, R1 series.

5. All parties were heard

6. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the petitions are barred by limitation?
- (iii) Whether the direction in writing issued by the Indian Union Muslim League and Congress party were served on the respective members of the Muslim League and Congress arty as alleged?

- (iv) Whether the respondents have become subject to disqualification for being members of Chelambra Grama Panchayat?
- (v) Reliefs and costs?

7. **POINT Nos.(i) & (ii)**: The petitions are filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act' for declaring that the respondents have become subject to disqualification for being members of Chelambra Grama Panchayat. According to the common petitioner the respondents in O.P.Nos.20/2014, 21/2014, 22/2014 and 24/2014 by disobeying the direction issued by the Malappuram District General Secretary of Muslim League and the respondent in O.P.22/2014 by disobeying the direction issued by the District Congress President voted in favour of the no confidence motions moved by them along with LDF members against the President and Vice President of the Panchayat and thus ousted them from the respective posts and thereby committed defection. The respondents would contend that they were already expelled by the political parties in which they belonged on account of taking up the issue of sharing the posts of the President and Vice President after 2½ years and after their expulsion they are to be treated only as independent members and it is also contended that no whip was served to them as alleged and that they have not committed any defection. Section 3(1)(a) of the Act states that 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 of the political party or by a person or authority authorized by it in this behalf, vote in an election to the post of President, Vice President, Standing Committee Chairman or members or on a no confidence motion moved against any one of them except a Standing Committee member. Section 4(1) of the Act is relevant in this context and it reads as follows.-

“Decision on question as to disqualification on ground of defection,- if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this 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.”

8. From the facts and materials on record in these cases it is found that a question arises as to whether the respondents have become disqualified as provided by Section 3(1)(a) of the Act. The petitions have been filed by a member of the same Panchayat of which the respondents also are members. Since a question arises as to whether the respondents have become subject to

disqualification and so the petitions are filed by another member of the same Panchayat it is found to be maintainable.

9. The respondents would contend that the cause of action had arisen on the date on which the notice on the no confidence motions were submitted before the authorized officer which was on 18.03.2014 and as the petitions have been filed beyond the period prescribed by the Rules, they are barred by limitation. The cause of action according to the petitioner has arisen on 01.04.2014 the date on which the motions were taken up for discussion. As per Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) 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 deemed to have become disqualified on account of defection. Since as per Section 3(1)(a) of the Act, disqualification is incurred by way of defying the direction issued by the political party in respect of voting on the no confidence motions, or from the date on which the concerned member has voluntarily abandoned their membership from their respective political parties, the cause of action in these cases would arise only on 01.04.2014 which was the date on which the respondents were alleged to have voted in violation of the direction issued by the political parties. Signing in a no confidence motion will not create a cause of action and that case not be considered as an instance of defection under the Act. It is only the conduct or the act of the member in having

defied the direction or decision of his political party which is to be reckoned for constituting a cause of action for defection. In the cases on hand, the cause of action arose only on 01.04.2014, and as the petitions have been filed on 09.04.2014 they are found to be not barred by limitation. Hence I find that the petitions are maintainable and they are not barred by limitation. The points are answered accordingly.

10. **POINT Nos.(iii to v)**: Certain facts are not in dispute. Out of the total 18 wards in Chelambra Grama Panchayat, Indian Union Muslim League secured 9 seats, Indian National Congress secured 2 seats and one seat was won by the UDF Independent. 3 seats were won by the CPI(M) and two seats by LDF Independents and one seat was won by the BJP. Thus the UDF consisting of Indian Union Muslim League, Congress party and the UDF independent secured 12 seats and the petitioner belonging to Indian Union Muslim League was elected as President and Sri.K.P.Devadas belonging to Congress party was elected as Vice President. While so these respondents along with the LDF members moved no confidence motions against the President and Vice President and the motions were tabled for discussion on 01.04.2014. The respondents in O.P.Nos.20/2014, 21/2014, 22/2014 and 24/2014 were elected as members of Indian Union Muslim League and the respondent in O.P.No.23/2014 was elected as member belonging to Congress party. In the voting on the no confidence motions moved against the

President and Vice President all these respondents voted along with the LDF members in favour of the said motions and thus the President belonging to Muslim League and the Vice President belonging to Congress party were ousted from their respective posts. Exts.P1 to P3 are the records showing the political affiliations of the Respondents and these records also would reveal that the respondents in O.P.Nos.20/2014, 21/2014, 22/2014 and 24/2014 are belonging to Indian Union Muslim League and the respondent in O.P.No.23/2014 is belonging to Congress party. The fact that the no confidence motions against the President and Vice President were moved by these respondents along with LDF members is further proved by Exts.P4 and P5.

11. The definite case of the common petitioner is that these respondents had moved the no confidence motions against the President and Vice President without the consent and permission of their respective political parties and that in spite of the service of the directions in writing issued to them by the respective political parties, they voted in favour of the no confidence motions by defying such directions on colluding with the LDF members and thus the respondents have committed defection by voting contrary to the directions issued by the respective political parties and also by voluntarily giving up their membership from such political parties. The main contention of the respondents in this regard is that there was an agreement to share the post of President and Vice President

after 2 ½ years to the respondents in O.P.Nos.21/2014 and 23/2014 respectively and the petitioner and the then Vice President did not vacate their offices and when the respondents raised these issues before the party forums they were expelled from their political parties and that no whip was served to these respondents as required by law and after their expulsion, the respondents are having the status of independent members and so they have not committed any defection.

12. The common petitioner has been examined as PW1. She has deposed in terms of the averments contained in the petitions. She has stated that no confidence motion was moved against her by the respondents along with LDF members and that the Indian Union Muslim League and Congress parties were against moving any such no confidence motions. PW1 has further deposed that the District General Secretary of Indian Union Muslim League who is the competent person to recommend symbol to the candidates of Muslim League had issued whip to the respondents in O.P.Nos.20/2014, 21/2014, 22/2014 and 24/2014 and the same were sent by registered post and also were served by affixture. Ext.P7 series are stated to be the postal receipts regarding sending of the directions to the respondents and the postal articles sent to the respondents were returned as unclaimed and they are marked as Ext.P6 series. Exts.P6, P6(a) and (b) are the returned postal articles of respondents in O.P.Nos. 24/2014,

21/2014 and 22/2014 respectively and Ext.P6(c) is the postal article returned as unclaimed by the respondent in O.P.No.23/2014. Exts.P8, P8(a), P8(b) and Ext.P8(d) are found to be the copies of the whips served to the respondents in O.P.Nos. 21/2014, 20/2014, 22/2014 and 24/2014 respectively by affixture and Ext.P8(c) is the copy of the whip served to the respondent in O.P.No.23/2014 by affixture. PW1 would also depose that copies of the directions issued to the respondents were given to the Secretary of the Panchayat and Exts.P9 and P10 are the said directions in writing given to the Secretary by the Malappuram District General Secretary of Muslim League and District President of Congress Party respectively along with the acknowledgments received from the Secretary evidencing receipt of the same. Though PW1 has been cross-examined at length nothing has been brought out to discredit his testimony.

13. The Malappuram District General Secretary of Muslim League has been examined as PW3. He has deposed that the District General Secretary of Muslim League is the person competent to recommend symbol to the candidates of Muslim League contesting in local bodies and that the then Malappuram District General Secretary of Muslim League Sri.Abdu Rub had recommended symbols to the respondents in O.P.Nos. 20/2014, 21/2014, 22/2014 and 24/2014 for contesting in the election held in 2010. PW3 would further depose that the respondents had moved the no confidence motions against the President and Vice

President without getting permission or consent from the party and that he had issued whips to the Muslim League members to vote against the no confidence motions and such whips were sent by registered post on 24.03.2014 and also served by affixture. Exts.P6 series are stated to be the returned unclaimed postal articles sent to the respondents and Ext.P8 series are the copies of the whips served by affixture. PW3 would further depose that the respondents in O.P.Nos. 20/2014, 21/2014, 22/2014 and 24/2014 had voted infavour of the no confidence motions along with the LDF members by violating his whip and thereby they had committed defection. In cross-examination it was suggested to PW3 that there was an agreement to share the post of President between the petitioner and respondent in O.P.No.21/2014 after a term of 2 ½ years which PW3 denied. It was also suggested to PW3 that the District Secretary is not competent to issue whip to the members which also he denied. It was further suggested to PW3 that since the petitioner did not resign as per the agreement to pave way for the respondent in O.P.No.21/2014 to become the President, several issues had cropped up in the party and that as 7 members which formed majority group were against these respondents, the party had favoured them which also PW3 denied PW3 states that no such issues had arisen in the party. It was also suggested to PW3 that the respondents were not served with any whip which he denied.

14. The Malappuram DCC President has been examined as PW2. He has also given a consistent version as spoken by PWs1 and 3. PW2 has deposed that the no confidence motions were moved without the consent and concurrence of the Congress party and that he had issued whip to the respondent in O.P.No.23/2014 to vote against the no confidence motions and by violating that direction, the said respondent had voted in favour of the said motions along with other respondents and LDF members and thus ousted the Vice President belonging to his own party from that post. Ext.P6(c) is stated to be the postal article sent to the respondent in O.P.No.23/2014 which was returned as unclaimed and Ext.P8(c) is the copy of the whip served by affixture. It was suggested to PW2 in cross-examination that there was an agreement to elect the respondent in O.P.No.23/2014 as Vice President after 2 ½ years which he denied. It was also suggested to PW2 that no direction was served to him in respect of voting on the no confidence motions which also PW2 denied. It is further suggested to PW2 that the respondent in O.P.No.23/2014 was expelled from the party as he raised issues for not electing him Vice President which PW2 denied.

15. The respondent in O.P.No.20/2014 has been examined as RW1. He has deposed that there was an agreement to elect the respondent in O.P.No.21/2014 as President after 2 ½ years and that the said agreement is with the District Committee and as the petitioner did not vacate office for enabling the

respondent in O.P.21.2014 to become the President the matter was taken up with the party which cropped up several issues and in respect of Vice President also there was an agreement to elect the respondent in O.P.No.23/2014 which also was not implemented and it is further deposed that there were reports in the newspapers regarding the said agreement and the said papers containing such reports are marked as Ext.R1(a) to R1(j). RW1 would further depose that when the respondents in O.P.Nos. 20/2014, 21/2014, 22/2014 and 24/2014 raised these issues at the party office they were sent out from the office and the party leadership took a stand in favour of the other group and so they supported the no confidence motions. It is also deposed by RW1 that these respondents were not served with any whip regarding the voting on the no confidence motions. In cross-examination RW1 has admitted that the then Malappuram District General Secretary of Muslim League had recommended symbol to him and that if there was any issue with the party, the members should have sorted out such issues by taking up the same with the party itself. RW1 has also admitted that before moving no confidence motions the parliamentary party of Indian Union Muslim League was not convened and they also did not seek the permission or concurrence of the party to move the said motions and that such no confidence motions were moved without the consent of the party. RW1 would also admit that in the notice on the no confidence motions all these respondents along with

the five LDF members had joined. It is also deposed by RW1 that one reason for moving the no confidence motion was because of the stand of the party in not removing the petitioner from the post of President. RW1 would further depose that during the discussion on the no confidence motions it was stated that there was party whip to vote against the said motion and he adds the no such whip was served to him. He would admit that the address shown in the postal cover in Ext.P6series is his address. RW1 would further admit that on the date of discussing the no confidence motion he was technically a member of the Muslim League. He would also admit that he is not now involving in any activities of Muslim League.

16. The respondent in O.P.No.23/2014 has been examined as RW2. He has deposed that the DCC President had agreed to elect him as the Vice President after 2 ½ years which was not implemented and the matter was taken up with the party and even then the agreement was not implemented and the party took a stand in favour of the other group and that he did not receive any whip issued by the DCC President. In cross-examination he has admitted that he did not seek the permission or consent of the Congress party to move the no confidence motion against the Vice President and that he had joined in the motion along with other respondents and LDF members. He has admitted that the address contained on

Ext.P6(c) is his address. He has also admitted that the Congress party is not involving him in any of its activities now.

17. From the above evidence it is clearly found that these respondents had moved the no confidence motions without the consent and concurrence of their political parties. It is further seen that the person who is competent to recommend symbol to the candidates of Indian Union Muslim League contesting in the local body in Malappuram District is its General Secretary and Sri.Abdu Rub who was then the District General Secretary had recommended the symbol to the Muslim League candidates in the election held in 2010. The fact that PW3 is the person competent to recommend symbol to the candidates of Muslim League in Malappuram District is not in dispute. It is also seen that PW2 in his capacity as DCC President of Malappuram District is the person competent to recommend symbol to its candidates contesting the election to the local bodies. From Ext. P7 series it is found that directions in writing were sent to all the respondents by registered post well in advance. From Ext.P6 series it is found that the whips sent to the respondents in O.P.Nos.21/2014 to 24/2014 by registered post were returned as unclaimed. Since the directions in writing were sent by registered post and they were returned as unclaimed, it is clearly found that such directions were given to them as provided by law. A registered postal article if returned as unclaimed is to be treated as served. Moreover in these

cases the directions in writing to the respondents were served by affixture also as evidenced by Ext.P8 series. Direction in writing is defined in clause (iva) of Section 2 of the Kerala Local Authorities (Prohibition of Defection) Act, as amended by Act 6 of 2013 which came into force on 17.01.2012 and it reads as follows,-

“(iva) 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 recommend the symbol of the said political party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting.”

18. From the above provision it is clear that the person authorized by the political parties to recommend symbol to the candidates contesting in the election to local bodies is the person competent to issue whip to the members of such political parties. There is no contention in the objections that PWs2 and 3 were not the persons competent to recommend symbol for the candidates of their political parties. It is also not in dispute that PWs 2 and 3 are competent to issue whip. From the evidence of PWs 1 to 3 it is abundantly clear that PW3 is the person competent to recommend symbol to the candidates of Indian Union

Muslim League contesting in the election to local bodies and PW2 is the person competent to recommend symbol to the candidates of Congress party contesting in the election to local bodies of that District. It has also come out in evidence that they had issued whip to the respective respondents to vote against the no confidence motions moved against the President and Vice President. Admittedly the respondents moved the no confidence motions along with LDF members without the consent and concurrence of their respective political parties. The main contention of the respondents is that there was an agreement to elect the respondent in O.P.No.21/2014 as the President and the respondent in O.P.No.23/2014 as the Vice President after a term of 2 ½ years and since the political party leadership did not implement that agreement the said issue was taken up repeatedly in the party and on account of these reasons the Muslim League expelled the respondents in O.P.Nos. 20/2014, 21/2014, 22/2014 and 24/2014 and the Congress party expelled the respondent in O.P.No.23/2014 well before moving the no confidence motions and as such the said political parties did not have any right to issue directions to the respondents and they are only to be treated as independent members as on the date of considering the no confidence motions. Of course it is also their contention that no whip was served to them I have already found that the respondents were given the directions in writing by competent persons to vote against the no confidence motions. The

manner of service of whip is provided under Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and it reads as follows,-

“While issuing a direction under sub-rule (1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixing it shall be done in the presence of at least two witnesses.[Copy of the direction in writing shall also be given to the Secretary.]”

19. From the evidence on record it is found that the Malappuram District General Secretary of Muslim League had issued direction in writing to vote against the no confidence motions to the respondents in O.P.Nos. 20/2014, 22/2014 and 24/2014 by registered post and as well as the said whip was served by affixture in front of their houses and the Malappuram DCC President had issued direction in writing to vote against the no confidence motions to the respondent in O.P.No.23/2014 by registered post and the same was also served by affixture. The postal articles sent by registered post were returned by the respective respondents as unclaimed. The date of intimation contained on the

postal covers would show that the said postal articles were taken to these respondents well before the date of considering the no confidence motions and as the respondents were not inclined to receive the same, they were returned as unclaimed. It is settled law that the postal articles sent by registered post if returned as unclaimed is to be treated as due service. Therefore from the evidence on record I find that the directions in writing as provided by Clause 4 of Section 2 of the Act were issued by competent persons and there was due service of such directions as provided by law. It is also found from the records that copies of such directions were given to the Secretary of the Panchayat as provided by the above Rule.

20. The next question to be considered is whether the conduct of the respondents in having moved and voted in favour of the no confidence motions against the President and Vice President along with the LDF members would constitute defection as provided by law. Since all the respondents are the elected members belonging to political parties, Section 3(1)(a) of the Act would apply and it reads as follows,-

“3.(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.”

21. Section 3(1) (a) of the Act consists of two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership from the party and the second limb is attracted when such member, contrary to direction issued in writing by his political party or a person authorized by it in this behalf in the manner prescribed, votes or abstains from voting in an

election to the post of President, Vice President etc., or on a no confidence motion moved against the President, Vice President or Standing Committee Chairman. I have already found that there was due service of whip by the competent persons as provided by law. In this context Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules as amended by SRO 458/2014 assumes importance and the said Rule as amended would states “4(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 (1) In the case of a member belonging to 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 letterhead and seal of the political party.” It is significant notice that the remaining portion of Rule 4(1) as unamended has been omitted in the present Rule. It is also a mandate that the copy of the direction in writing shall be served to the Secretary of the Panchayat. In the cases on hand all these requirements have been satisfied. The petitioner at Para 7 of the petition has categorically stated that the respondents by defying the directions issued by the political parties and voting in favour of the motion and out seating the President and Vice President belonging to their own

political party or coalition have committed defection. The above ground is found to have been proved in these cases.

22. The main ground taken by the petitioner is the first limb of Section 3(1)(a) of the Act. Whether the conduct of the respondents in having moved the no confidence motions against their own President and Vice President without seeking the permission or consent of their political parties and voting in favour of the no confidence motions contrary to the directions issued by their respective political parties would constitute defection by voluntarily giving up membership from their respective political parties deserve consideration.

23. 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 **10th schedule to the**

Constitution of India. While considering the Constitutional validity of the 10th 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 10th 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.”

24. RW1 has admitted that during the discussion on the no confidence motions the UDF members have stated that there was whip issued to the members of the political parties. In Ext.P11 also it is stated that party whip was given to the members belonging to the Muslim League and Congress party. The

fact that the respondents were fully aware of the decision and direction of the respective political parties cannot be doubted. Their contention that they were already expelled from the political parties is totally untenable. Even according to RW1 he along with the respondents belonging to Muslim League were only sent out from the office of the Muslim League and not from the party. RW2 has stated that the Mandalam President had informed him that he was expelled from the party. But he then admits that only the DCC President or the KPCC President alone has right to expel him from the Congress party. He has no case that the DCC President or the KPCC President had expelled him from the Congress party. So all the respondents were members belonging to their respective political parties as on the date of considering the no confidence motions. They were bound by the decision and direction of their political parties. Whether there was an agreement to share the post of President and Vice President after 2 ½ years is not of serious concern in these cases. If there was such an understanding, the respondents should have sorted out the issue at party level itself and they should not have proceeded to move no confidence motions against their own President and Vice President against the party decisions and directions on aligning with the opposition members. In this context the decision tendered **in Dharmamani Vs. Parassala Block Panchayat (2009(3) KLT 29)** is relevant and at **Paras 16 and 17** it has been held as follows,-

“16. In the instant case, it is not in dispute that the petitioners were elected to the Parassala Block Panchayat as official candidates of the Indian National Congress. The Indian national Congress is admittedly a political party registered under Section 29A of the Representation of the People Act, 1951. It is also not in dispute that they had actively participated in the no confidence motions moved by the opposition against the President and Vice President, of the Parassala Block Panchayat, who were also official candidates of the Indian National Congress. The petitioners are admittedly signatories to the no confidence motions and the motions were carried with their support. Though their contention that no whip was issued was accepted by the Commission, the Commission disqualified them on the ground that they have voluntarily given up their membership of the Indian National Congress. Though the learned counsel for the petitioners contend that the finding of the Commission that the petitioners had acted contrary to the directions issued by PW2, the President of the Thiruvananthapuram District Committee of the Indian

National Congress cannot be sustained, I am of the opinion that on the admitted facts of this case, it is not necessary to go into the correctness of the said finding.

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 **Muhammed Kunhi.B. Vs. K.Abdulla (2010 (4) KLT 736). At Para 24** of the above decision 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 1st 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.”

In Varghese V. Kerala State Election Commission (2009(3)KLT 1) at Paras 8 and 9 it has been held as follows,-

“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. It appears the learned Single Judge had omitted to take note of the fact that the conduct of the revolting members was not the letter given to the Secretary to the Grama Panchayat to form a separate block; those members had in fact supported the no confidence motion moved by the rival political parties. Thus the inevitably inferential conduct was the shifting the loyalty. Loyalty to the party is the norm. To vote against the party is disloyalty. The Father of Our Nation had foreseen the possibility of such cancerous and endangering tendencies in the practice of democracy and hence only the Mahatma said that politics without principle is a vice. No doubt politics is an art. But the beauty of the art is lost when no value is attached to the art. It is to check erosion of the values in democracy the

10th Schedule to the Constitution of India and the Kerala Local Authorities (Prohibition of Defection) Act, 1999 were brought into force. Looking from that angle we find it difficult to agree with the dictum in Naseera Beevi's case. Not only that, there is no party as 'parliamentary party'. That expression only denotes the wing of the elected members of the political party. Therefore, if a member or a group of the elected members of the political party takes a different stand from that of the political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. In Naseera Beevi's case the rebel group in the parliamentary wing of the political party concerned had not only formed a separate group, but they had voted in favour of the no confidence motion moved by the rival political party. Thus, by their conduct of being disloyal to the political party in which they were

members and by voting as they pleased independent of the political party's declared policy, they had incurred the disqualification."

26. The learned counsel for the respondent would argue that moving no confidence motions against the President or Vice President by a group of members belonging to their own political party will not always constitute defection and the decision in **Babychan Mulangassery Vs. State Election Commission (2013(3)KLT 633)** is relied to support the above position. It is true that in the above case it has been held that in addition to moving a resolution of no confidence motion there should be concrete proof that the members have become disloyal to their political parties and have acted against the directions of the said parties. It is also true that the above decision was confirmed by the Division Bench in Writ Appeal No.1227/2013 and connected cases vide judgment dated 10.11.2014. In the above decision the Division Bench has quoted the decisions in **Kihoto Hollohan V.Zachillhu (1992) Supp.2 SCC 651**, **Ravi S.Naik V. Union of India (1994 Suppl.(2) SCC 641)**, **Rajendra Singh Rana V. Swami Prasad Maurya (2007 (4) SCC 270)**, **Varghese V.Kerala State Election Commission (2009 (3) KLT 1)**, **Dharma Mani V. Parassala Block Panchayat (2009 (3) KLT 29)**, the Division Bench Judgment in **Dharma Mani's case, Nazeerkhan S.V.Kerala State Election Commission (2009 (1)**

KGC 681), Shiny Augustine V. Kerala State Election Commission (2009(4) KHC 527) and Muhammedkunhi V.K.Abdulla (2010 (4) KLT 736) with approval which consistently held that the moment a member becomes disloyal to his political party or acts against the decision and direction of the said party, that conduct would constitute defection by voluntarily giving up membership of such party and the above decisions were held to be not applicable to the facts of the cases mentioned in the above Writ Appeals for the reason that in all such reported cases the respondents had aligned with the members belonging to the rival political party in the matter of voting on the no confidence motion or voting in the election to the post of President or Vice President. In the cases on hand, the respondents had succeeded in ousting the President and Vice President by way of moving and voting on the no confidence motions by aligning with LDF members and therefore the decision rendered in **Babychan Mulangassery Vs. State Election Commission (2013(3)KLT 633)** and its appeal Judgment are not applicable to the facts of these case. The learned counsel for the respondents would also rely on the decision in **Chinnamma Varghese V. State Election Commission (2010 (3) KLT 426)** to buttress the position that voting in favour of the no confidence motions will not by itself constitute defection. However in the above decision the main ground of attack was lack of leadings and after extracting the allegations in the petition the Hon'ble Court held that the above

pleadings was imprecise and confusing. Even the respondents in the cases on hand do not have a contention that the pleadings in these cases are evasive or imprecise. So the above decision also does not in any way help the respondents in escaping from the clutches of the vice of defection.

27. On a careful consideration of all facts and materials on record in the light of the settled position of law, I am of the view that the conduct of the respondents in having aligned with the LDF members and moving no confidence motions against the President and Vice President who belonged in their own party or coalition and by voting in favour of the said no confidence motions contrary to the decision and direction of their political parties and ousting the President and Vice President with the help of the members belonging to the rival political party would definitely constitute defection by voluntarily giving up membership from their political parties. So the respondents would incur disqualification as provided by Section 3(1)(a) r/w Section 4(1) of the Act. The points are answered accordingly.

In the result, the petitions are allowed and the respondents are declared as disqualified for being members of Chelambra Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and they are also declared as disqualified for contesting as candidates 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 16th day of December 2014

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Smt.K.P.Shahina, Karuthedath Pottammal House,
Pullepparamba P.O., (Via) Chelembra
- PW2 : Sri.Muhammed Kunju, DCC President,
Chathangottupuram P.O.,Vandur, Malappuram.
- PW3 : Sri.Abdul Hammed, Pattikkad P.O. Malappuram.

Witnesses examined on the side of the respondent

- RW1 : Sri.Noushad Ali, Puliyalil Veedu, Kolakattuchali P.O.,
Chelembra, Malappuram
- RW2 : Sri.Reghunathan, Prasanthi, Chelembra P.O.,
Malappuram District.

Documents produced on the side of the petitioner

- P1 : Copy of the Declaration in form No.2 filed by
Smt.K.K.Suhara
- P1(a) : Copy of the Declaration in form No.2 filed by
Sri.P.Noushad Ali

- P1(b) : Copy of the Declaration in form No.2 filed by Sri.K.P.Reghunathan
- P1(c) : Copy of the Declaration in form No.2 filed by Smt.Jameela Hussain
- P1(d) : Copy of the Declaration in form No.2 filed by Smt.Dilja.P.K
- P2 : Copy of the Declaration in form No.2 filed by Smt.K.P.Shahina
- P3 : True copy of the register showing the political affiliation of the members of Chelembra Grama Panchayat
- P4 : Copy of the notice to no confidence motion against president signed by 10 members, Chelembra Grama Panchayat
- P5 : Copy of the notice to no confidence motion against Vice president signed by 10 members, Chelembra Grama Panchayat
- P6 : Returned Registered letter addressed to Smt.Makkadam Parambu Dilja dated
- P6(a) : Returned Registered letter addressed to Smt.K.K.Suhara dated
- P6(b) : Returned Registered letter addressed to Smt.Jameela Hussain dated
- P6(c) : Returned Registered letter addressed to Sri.K.P.Reghunathan dated
- P7 : Receipts of registered letters dated 25.03.2014
- P7(a) : Receipt of registered letter dated 25.03.2014
- P7(b) : Receipts of registered letter dated 25.03.2014

- P7(c) : Receipts of registered letter dated 27.03.2014
- P8 : Copy of the whip dated 24.03.2014 issued by Sri.P.Abdul Hameed, General Secretary, IUML, Malappuram District Committee addressed to Smt.K.K.Suhara,
- P8(a) : Copy of the whip dated 24.03.2014 issued by Sri.P.Abdul Hameed, General Secretary, IUML, Malappuram District Committee addressed to Sri.P.Noushad Ali
- P8(b) : Copy of the whip dated 24.03.2014 issued by Sri.P.Abdul Hameed, General Secretary, IUML, Malappuram District Committee addressed to Smt.Jameela Hussain
- P8(c) : Copy of the whip dated 26.03.2014 issued by Sri.E. Muhammed Kunhi, President, District Congress Committee, addressed to Sri.K.P.Reghunathan
- P8(d) : Copy of the whip dated 24.03.2014 issued by Sri.P.Abdul Hameed, General Secretary, IUML, Malappuram District Committee addressed to Smt.Makkadan Paramb Dilja
- P9 : Copy of the Front office receipt showing inward No.A2-1963/2014dated 25.03.2014 of Chelambra Grama Panchayat
- P10 : Front office receipt showing inward No.2007/2014 dated 27.03.2014 of Chelambra Grama Panchayat
- P11 : Copy of the minutes of the meeting held on 01.04.2014 Chelembra Grama Panchayat
- P12 : Copy of the minutes of the meeting held on 01.04.2014 Chelembra Grama Panchayat

- P13 : Registered letter addressed to Smt.K.P.Shahina
- P14 : Copy of the minutes of the meeting held on 28.04.2014
Chelembra Grama Panchayat
- P15 : Front office receipt showing inward No.2466/2014
dated 26.04.2014 of Chelambra Grama Panchayat
- P16 : Copy of the whip dated 24.04.2014 issued by
Sri.E.Muhammed Kunhi, President, District Congress
Committee, Malappuram addressed to
Sri.K.P.Devadas

Documents produced on the side of the respondent

- R1 : Mathrubhoomi daily dated 08.11.2010
- R1(a) : Malayalamanorama daily dated 18.01.2014
- R1(b) : Malayalamanorama daily dated 19.01.2014
- R1(c) : Malayalamanorama daily dated 20.01.2014
- R1(d) : Malayalamanorama daily dated 22.01.2014
- R1(e) : Malayalamanorama daily dated 31.01.2014
- R1(f) : Malayalamanorama daily dated 25.01.2014
- R1(g) : Malayalamanorama daily dated 01.02.2014
- R1(h) : Malayalamanorama daily dated 05.02.2014
- R1(i) : Malayalamanorama daily dated 06.02.2014

Sd/-

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

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