

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

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

Wednesday, the 4th day of June 2014

**O.P.Nos.21/2013, 22/2013, 23/2013,
24/2013,25/2013, 26/2013, 27/2013,28 /2013,
29/2013, 30/2013, 31/2013 AND 32/2013**

O.P.No.21/2013

Petitioner : Sali Joseph,
S/o Joseph, Kakkathuruthel House,
Koomanthodu, Karokkottakari P.O.,
Kannur-670 704.
Member, Ward No.10,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocates Cherunniyoor
P.Sasidharan Nair & Kallambalam
S.Sree kumar)**

Respondents :1. Jessy Pediyekkal,
Member, Ward No.15,
Ayyankunnu Grama Panchayat,
Kannur District.
2. Joseph Antony Peruvamthodiyil,
Member, Ward No.6,
Ayyankunnu Grama Panchayat,
Kannuar District.

(By Adv. A.Santhosh Kumar)

O.P.No.22/2013

Petitioner : Sali Joseph,
S/o Joseph, Kakkathuruthel House,
Koomanthodu, Karokkottakari P.O.,
Kannur-670 704.
Member, Ward No.10,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocates Cherunniyoor
P.Sasidharan Nair & Kallambalam
S.Sree kumar)**

Respondent : Marykutty Sebastian,
Member, Ward No.05,
Ayyankunnu Grama Panchayat,
Kannur District.

(By Adv. A.Santhosh Kumar)

O.P.No.23/2013

Petitioner : Sali Joseph,
S/o Joseph, Kakkathuruthel House,
Koomanthodu, Karokkottakari P.O.,
Kannur-670 704.
Member, Ward No.10,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocates Cherunniyoor
P.Sasidharan Nair & Kallambalam
S.Sree kumar)**

Respondent : Anu Biju,
Member, Ward No.16,
Ayyankunnu Grama Panchayat,
Kannur District.

(By Adv. A.Santhosh Kumar)

O.P.No.24/2013

Petitioner : Sali Joseph,
S/o Joseph, Kakkathuruthel House,
Koomanthodu, Karokkottakari P.O.,
Kannur-670 704.
Member, Ward No.10,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocates Cherunniyoor
P.Sasidharan Nair & Kallambalam
S.Sree kumar)**

Respondent : Jayson Karakkat,
Member, Ward No.01,
Ayyankunnu Grama Panchayat,
Kannur District.

(By Adv. A.Santhosh Kumar)

O.P.No.25/2013

Petitioner : Sali Joseph,
S/o Joseph, Kakkathuruthel House,
Koomanthodu, Karokkottakari P.O.,
Kannur-670 704.
Member, Ward No.10,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocates Cherunniyoor
P.Sasidharan Nair & Kallambalam
S.Sree kumar)**

Respondent : Mini Viswanathan,
Member, Ward No.13,
Ayyankunnu Grama Panchayat,
Kannur District.

(By Adv. A.Santhosh Kumar)

O.P.No.26/2013

Petitioner : K.C.Chacko,
S/o Chacko, Kavungal House,
Koomanthodu P.O.,
Thalassery Taluk, Kannur-670 704.
Member, Ward No.11,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocate Sasthamangalam
R.Jayakrishnan)**

Respondent : Mini Viswanathan,
D/o Viswanathan, Panikkaruparambil
House, Mundayamparambu.P.O.,
Thalassery Taluk,
Kannur District.

(By Adv. A.Santhosh Kumar)

O.P.No.27/2013

Petitioner : K.C.Chacko,
S/o Chacko, Kavungal House,
Koomanthodu P.O.,
Thalassery Taluk, Kannur-670 704.
Member, Ward No.11,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocate Sasthamangalam
R.Jayakrishnan)**

Respondent : Marykutty Sebastian,
W/o Sebastian, Parakkanassery House,
Charal.P.O., Thalassery Taluk,
Kannur District, PIN – 670 706.

(By Adv. A.Santhosh Kumar)

O.P.No.28/2013

Petitioner : K.C.Chacko,
S/o Chacko, Kavungal House,
Koomanthodu P.O.,
Thalassery Taluk, Kannur-670 704.
Member, Ward No.11,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocate Sasthamangalam
R.Jayakrishnan)**

Respondent : Jessy Peedikayickal,
W/o Appachan, Peedikayickal House,
Angadikkadavu P.O, PIN – 670 706,
Thalassery Taluk,
Kannur District.
(By Adv. A.Santhosh Kumar)

O.P.No.29/2013

Petitioner : K.C.Chacko,
S/o Chacko, Kavungal House,
Koomanthodu P.O.,
Thalassery Taluk, Kannur-670 704.
Member, Ward No.11,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocate Sasthamangalam
R.Jayakrishnan)**

Respondent : Anu Biju,
W/o Biju, Pulichamakkal House,
Charal.P.O., Thalassery Taluk,
Kannur District.
(By Adv. A.Santhosh Kumar)

O.P.No.30/2013

Petitioner : K.C.Chacko,
S/o Chacko, Kavungal House,
Koomanthodu P.O.,
Thalassery Taluk, Kannur-670 704.
Member, Ward No.11,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocate Sasthamangalam
R.Jayakrishnan)**

Respondent : Jaison Karakkat,
S/o Antony, Karakkat House,
Charal.P.O., PIN-670 706,
Thalassery Taluk,
Kannur District.

(By Adv. A.Santhosh Kumar)

O.P.No.31/2013

Petitioner : K.C.Chacko,
S/o Chacko, Kavungal House,
Koomanthodu P.O.,
Thalassery Taluk, Kannur-670 704.
Member, Ward No.11,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocate Sasthamangalam
R.Jayakrishnan)**

Respondent : Joseph Antony,
S/o Antony, Cheruvamthottiyil House,
Angadikkadavu.P.O. PIN-670 706,
Thalassery Taluk,
Kannur District.

(By Adv. A.Santhosh Kumar)

O.P.No.32/2013

Petitioner : K.C.Chacko,
S/o Chacko, Kavungal House,
Koomanthodu P.O.,
Thalassery Taluk, Kannur-670 704.
Member, Ward No.11,
Ayyankunnu Grama Panchayat,
Kannur District.

**(By Advocate Sasthamangalam
R.Jayakrishnan)**

Respondent : Philomina Joy,
W/o Joy Vilangolil, Vilangolil House,
Randamkadavu.P.O., PIN-670 706,
Thalassery Taluk,
Kannur District.

(By Adv. A.Santhosh Kumar)

These petitions having come up for hearing on the 21st day of May 2014, in the presence of Advocates **Cherunniyoor P.Sasidharan Nair & Kallambalam S.Sreekumar** for the common petitioner in O.P.Nos.21/2013 to 25/2013 and Advocate **Sasthamangalam R.Jayakrishnan** for the Common petitioner in O.P.Nos.26/13 to 32/13 and Advocate **A.Santhoshkumar** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

O.P.Nos. 21/2013 to 25/2013 are filed by a common petitioner against the respondents who are the members of the Ayyankunnu Grama Panchayat. O.P.Nos. 26/2013 to 31/2013 are filed by another common petitioner against the above same respondents and O.P.No.32/2013 is filed by the same petitioner against one Philomina Joy who is another member of the same Panchayat. All these petitions are filed under Section 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 Ayyankunnu Grama Panchayat. Since common questions of law and facts arise for consideration in all these cases, they have been taken up together and O.P.No.26/2013 is treated as the main case;

2. Common allegations are raised by the common petitioner in O.P.Nos. 26/2013 to 31/2013 which are, in short, as follows:- The common petitioner and respondents in O.P.Nos. 26/2012,27/2013, 29/2013 & 30/2013 had contested the election from different wards of Ayyankunnu Grama Panchayat as candidates of Indian National Congress under UDF coalition and the respondents in O.P.Nos. 28/2013 & 31/2013 contested the election as candidates of Kerala Congress (M)

under UDF coalition and were elected as members. After election, Sri.Baby Thuparambil belonging to Indian National Congress became the President and he was elected by violating the whip issued by the Congress party and so he was disqualified for being a member as per Order in O.P.01/2011. In the subsequent election, this petitioner was elected as the President. Out of the total 16 members in the Panchayat, these respondents along with some others moved a no confidence motion against the petitioner and it was tabled for discussion on 05.06.2013. The respondents had moved the motion without the consent or concurrence of their political parties. The Kannur District Congress President as well as the District President of Kerala Congress (M) issued direction to their party members to defeat the no confidence motion and the said whips were issued to the respondents by registered post and copy of the same was given to the Secretary as well. More over the petitioner had read over the direction to the respondents and other members and the respondents were fully aware of the same. In the meeting held on 05.06.2013 for discussing the no confidence motion, the whips issued by the District Presidents were read over by the authorized officer for the information to the members. But these respondents, by defying the direction issued by the respective political parties, voted in favour of the no confidence motion by aligning with the LDF and independent members and thus the motion was passed and the petitioner was ousted from the post of

President. Thus the respondents have committed defection and so they are liable to be disqualified for being members of this Panchayat.

3. In O.P.No.32/2013 the same petitioner while raising common allegations has stated that the respondent by violating the direction issued by the political party had abstained from attending the meeting convened for discussing the no confidence motion and thus she had committed defection.

4. The common petitioner in O.P.Nos. 21/2013 to 25/2013 has raised the same allegations against the common respondents and prayed for declaring that the respondents have become disqualified for being members of the Panchayat on the ground of defection.

5. The respondents in O.P.Nos. 26/2013 to 31/2013 who are the same respondents in O.P.Nos. 21/2013 to 25/2013 have raised common contentions which are in short as follows,- The petitions are not maintainable either in law or on facts. Out of the 16 wards in this Panchayat, 9 members belonging to Congress party and two members belonging to Kerala Congress (M) were elected under UDF coalition, two members belonging to LDF and 3 independent members also found victory. Out of the 9 Congress members, one member by name Baby Thuparambil who was elected as President was disqualified by the Commission as per order in O.P.1.2011. The common petitioner in O.P.Nos. 26/2013 to 31/2013 was then elected as President. Since the petitioner was not

working for the benefit of the public and was not hearing the complaints of members of various wards, a no confidence motion was moved against him after discussing the matter in detail with the sitting MLA Adv.Sunny Joseph and other ward members. Sri.Sunny Joseph informed the matter to the President of the District Congress Committee and the DCC President instructed him to intervene in the matter and thereby it was decided to move the no confidence motion against the petitioner. The respondents never sought any support from the members belonging to LDF 12 out of 15 UDF members moved the said no confidence motion. The District President of Congress party or the Kerala Congress(M) has not issued any direction or whips to the respective respondents and no such whips were communicated to the respondents as alleged. The Congress party has absolute majority to elect any person as President. The allegation that the whip was read over by the authorized Officer in the meeting is absolutely false. These respondents voted in favour of the no confidence motion as per the decision of the UDF and their constituent parties. The respondents have never committed any defection and petitions are filed to wreck vengeance. The petitions are false and vexatious and they are liable to be dismissed.

6. The respondent in O.P.No.32/2013 has raised common contentions as raised by other respondents and she would further contend that he was laid up and admitted at P.T.Chacko Memorial Hospital, Iritty and so she could not attend

in the meeting convened for discussing the no confidence motion and that she has never committed any defection and prays for dismissal of the petition.

7. The evidence consists of the oral depositions of PWs1 to PW5 and RW1 and Exts.P1 to P24

8. All parties were head

9. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondents in O.P.Nos. 21/2013 to 25/2013 who are the respondents in O.P.Nos. 26/2013 to 31/2013 have committed defection as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act?
- (iii) Whether the respondents in O.P.Nos. 21/2013 to 31/2013 have become subject to disqualification for being members of Ayyankunnu Grama Panchayat?
- (iii) Whether the respondent in O.P.No.32/2013 has committed defection and thereby became disqualified for being a member of Ayyankunnu Grama Panchayat?
- (v) Reliefs and costs?

9. **POINT No.(i)**: O.P.Nos. 21/2013 to 25/2013 are filed by common petitioner and O.P.Nos. 26/2013 to 31/2013 are filed by another common petitioner and except in O.P.No.32/2013, the other respondents are common in both sets of cases. According to the petitioners, the respondents have moved a no confidence motion against the petitioner in O.P.Nos. 26/2013 to 32/2013 without

the consent or concurrence of their respective political parties and by defying the direction issued by the political parties they had ousted the said petitioner and thereby committed defection. The respondents would contend that the no confidence motion was moved as per the decision of the UDF coalition and majority of the members belonging to Congress party and Kerala Congress (M) and that they had not aligned with any other party and they have not received any direction from their political parties to defeat the no confidence motion and so they have not committed any defection.

11. The petitions are filed under Section 4(1) of the Kerala Local (Authorities Prohibition of Defection) Act, hereinafter referred to as the 'Act'. Section 4(1) of the Act reads as follows,-

“4.Decision on question as to disqualification on ground of defection, (1) if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it in this behalf can file a petition before the State Election Commission for decision.”

The petitions are filed by the members of the same Panchayat in which the respondents also are members. So the petitioners are competent to file the

petitions as provided by Section 4(1) of the Act. The cause of action alleged is the voting by the respondents on the no confidence motion moved against the President belonging to their own political party or coalition. The petitions are filed within the time limit prescribed under Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. The above Rules states that a petition under Section 4 of the Act is to be filed within 15 days from the date on which the member is deemed to have become disqualified. Bar of limitation is not taken up as a ground of attack by the respondents. Apart from a casual contention that the petitions are not maintainable, nothing has been brought out to challenge the maintainability of these petitions. As the petitions are filed by competent persons and a question arises as to whether the respondents have become subject to disqualification under Section 3(1)(a) of the Act and the petitions are filed within the time limit prescribed under the Rules, I find that the petitions are maintainable. The point is answered accordingly.

12. POINT Nos.(ii) & (iii): Certain facts are not in dispute. Ayyankunnu Grama Panchayat consists of 16 wards. One member by name Baby Thuparambil was already disqualified for being a member of this Panchayat as per order in O.P.No.01/2011 by this Commission. Out of the remaining 15 members, 8 members are belonging to Indian National Congress, 2 members are belonging to Kerala Congress(M), 2 members are belonging to LDF and 3

members are complete independents. The common petitioner in O.P.Nos. 26/2013 to 32/2013 has been examined as PW1. Ext.P1 is the copy of the register maintained by the Panchayat under Rule 3(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules showing the political affiliations of the members. The allegation that the respondents in O.P.Nos. 26/2013, 27/2013, 29/2013 & 30/2013 are belonging to Indian National Congress and the respondents in O.P.Nos. 28/2013 & 31/2013 are belonging to Kerala Congress (M) is not in dispute. The respondents moved a no confidence motion against the petitioner in O.P.Nos. 26/2013 to 32/2013 and it was tabled for discussion on 05.06.2013. Ext.P2 is the copy of the notice issued by the authorized Officer intimating the date of discussion on the motion. Except the respondent in O.P.No.32/2013 all the other 14 members attended the meeting on the no confidence motion and 10 members including the respondents in O.P. Nos.26/2013 to 31/2013 voted in favour of the motion and it was passed and thereby the petitioner was ousted from the post of President. Ext.P21 is the copy of the minutes recorded by the authorized officer regarding the discussion and voting on the no confidence motion.

13. The definite case of the common petitioners is that these respondents have defied the direction and decision of their respective political parties and voted in favour of the no confidence motion and ousted the petitioner belonging

to their own political party or coalition from the post of President and thus they have voluntarily abandoned their membership from the party. PW1 has deposed that on receiving the notice on the no confidence motion, the Kannur District Congress Committee President had issued whips to all the Congress members to defeat the no confidence motion and the said whips were received by them before 05.06.2013 on which date the motion was tabled for discussion. PW1 has further deposed that the Kannur District Congress Committee President had recommended the official symbol of Congress party to all the candidates of Congress party who contested in this Panchayat and so he is competent to issue whips to the elected members of Congress party.

14. The President of the Kannur District Committee has been examined as PW4. He has deposed that he had recommended symbol for the respondents in O.P.Nos. 26/2013, 27/2013, 29/2013, & 30/2013 for contesting in different wards of Ayyankunnu Grama Panchayat and that on 20.05.2013 the above respondents along with certain other members had moved a no confidence motion against PW1 and it was tabled for discussion on 06.06.2013. He has further deposed that the respondents had moved the no confidence motion without the knowledge or consent of the Congress party or the Kerala Congress (M) and that he had issued whips to all the Congress members to vote against the no confidence motion. Exts.P14 to P18 are the copies of the whips issued to the

respondents in O.P. 26/2013, 27/2013, 29/2013, & 30/2013 and all of them had received the same. Exts.P9, P11 and P12 are the postal acknowledgments evidencing receipt of the whip sent by PW4 by the respondents in O.P.Nos. 26/2013, 29/2013, & 30/2013 and Ext.P10 is the record given by the postal authorities stating that the postal communication addressed to the respondent in O.P.No.27/2013 was received by that respondent on 03.06.2013. He has also deposed that copies of whips were given to the Secretary of the Grama Panchayat and Block Panchayat and the copies of the same are Exts.P3and P6,P7 and P8 are the postal acknowledgments relating to service of the whips by post to the Secretary of the Block Panchayat and Grama Panchayat. PW4 has further deposed that after receiving the information regarding the no confidence motion, the UDF leaders convened a meeting of the members and in that meeting it was decided that the no confidence motion moved against PW1 should be defeated and thereafter the Vice President Smt.Marykutty Sebastian should be directed to resign from that post and Kerala Congress (M) member Smt.Jessy PEDIYEKKAL should be elected as Vice President and in case Smt. Marykutty Sebastian refuses to resign, she should be removed from that post by way of a no confidence motion. Ext.P5 is the minutes regarding the said meeting held on 01.06.2013 and it is stated that the District Congress Committee President as well as Sri.K.Sudhakaran, M.P., and the leaders of Kerala Congress (M) were present in

that meeting. PW4 has deposed that he was present in that meeting. Seven members of this Panchayat including some of these respondents had attended that meeting as seen from Ext.P5. PW4 has categorically deposed that the respondents had voted in favour of the no confidence motion by defying the decision and direction of the Congress party and Kerala Congress (M). Even though PW4 has been cross-examined at length, nothing has been brought out to discredit his evidence. Another member of this Panchayat belonging Congress party has been examined as PW2. She has deposed that she was present in the meeting held on 01.06.2013 and that the District Congress Committee President also was present. She has further deposed that she complied with the direction issued by the Congress party in respect of the no confidence motion moved against PW1 and Ext.P22 is the copy of the whip issued to her and Ext.P23 is the postal acknowledgment. From the evidence of PWs1 and 4 along with Exts.P9,P10,P11 and P12 it is clearly found that the respondents in O.P.Nos. 26/2013, 27/2013, 29/2013, & 30/2013 had received the originals of Ext.P14 to P17 directing them to vote against the no confidence motion and from Ext.P21 and other evidence it is found that they had defied the direction and decision of the Congress party by supporting the no confidence motion and thereby ousted PW1 belonging to their own party from the post of President.

15. PW5 is the Kannuar District President of Kerala Congress(M) and he has deposed that he had recommended symbol for the candidates of Kerala Congress (M) who contested in the General Election in this Panchayat and that Kerala Congress (M) had contested the election under UDF coalition. He has further stated that on getting information regarding the no confidence motion moved against PW1, he had issued direction to his party members who are the respondents in O.P.Nos.28/2013 and 31/2013 to vote against the said motion. Exts.P9 and P20 are the copies of such whips issued to the above respondents. Exts.P6 and P8 are the postal acknowledgments regarding the service of the whips issued to the Secretary of the Grama Panchayat and Block Panchayat. PW5 has further deposed that the written directions sent to the respondents in O.P.Nos. 28/2013 and 31/2013 were received by them and Ext.P10 is the record issued by the Postal Department regarding service of the postal article to the respondent in O.P.No.28/2013 and Ext.P24 is the postal acknowledgment regarding the service of the whip to the respondent in O.P.No.31/2013. PW5 has further deposed that the said respondents, by violating the directions and decisions of the Kerala Congress (M) had voted in favour of the no confidence motion and ousted PW1 belonging to Congress party from the post of President. PW5 has also deposed that on receiving the information regarding the no confidence motion, the UDF leaders convened a meeting in which he also was

present and it was decided that the no confidence motion should be defeated and Ext.P5 is the minutes of that meeting in which the said decision is written. Though PW5 has been strenuously cross examined, his evidence remains unshaken. From the evidence of PW5 along with Exts.P19,P20,P10 and P24 it is clearly found that PW5 had issued whip to the respondents in O.P.Nos. 28/2013 and 31/2013 to vote against the no confidence motion and that they had accepted the said directions sent by post and by disobeying the decision and direction of their party, they had voted in favour of the said motion as seen from Ext.P21.

16. Common contentions have been raised in all these cases. It is stated in the objection that PW1 was not working for the benefit of the public and he was not hearing the problems of the members and so a no confidence motion was moved against him and the matter was discussed with the sitting MLA Adv.Sunny Joseph who in turn informed the matter to the DCC President and they also proceeded in moving the said motion and no whip as provided by law was issued to them. The respondent in O.P.No.30/2013 has been examined for and on behalf of all respondents as RW1. Even though he has reproduced the contentions of the respondents in the chief affidavit filed by him, he has categorically admitted all the relevant facts in his cross-examination. He has admitted that no written consent or concurrence was received by the respondents from the District Congress Committee for moving the no confidence motion. To

suggestive question put to RW1 that he was bound to comply with the direction of the DCC President, his answer is that he stood along with the decision of majority members. RW1 has admitted receipt of the whip sent by the DCC President and the relevant portion in his depositions reads as follows,-

“അവിശ്വാസപ്രമേയത്തിനെതിരായി വോട്ട് ചെയ്യണമെന്ന് നിർദ്ദേശിച്ച് നിങ്ങൾക്ക് DCC പ്രസിഡന്റ് വിഷ് നൽകിയിരുന്നു എന്നു പറയുന്നു (Q) വിഷ് അയച്ചിട്ടു ായിരുന്നു (Ans.) നിങ്ങൾ ആ വിഷ് കൈപ്പറ്റിയ a/c ആണല്ലോ ഇത് shows Ext.P12 (Q) അതെ (Ans.) Congress party – യിലെ മറ്റു Congress members-നും DCC President ഒപ്പിട്ട വിഷ് കിട്ടിയിരുന്നല്ലോ (Q) കിട്ടി (Ans.). വിഷ് ലംഘിച്ചാണ് നിങ്ങൾ അവിശ്വാസപ്രമേയത്തിനനുകൂലമായി വോട്ട് ചെയ്തത് (Q) അതെ (Ans.). Election-ൽ മത്സരിക്കാൻ ചിഹ്നം നൽകിയ DCC President നൽകിയ വിഷ് ലംഘിച്ചാണ് നിങ്ങളും മറ്റു members-ഉം അവിശ്വാസപ്രമേയത്തിനനുകൂലമായി വോട്ട് ചെയ്തതെന്നു പറയുന്നു (Q) ശരിയാണ് (Ans.).”

17. It is significant notice that RW1 has been examined for and on behalf of all other members also. No other witness has been examined on the side of the respondents. So the admissions made by RW1 as noted above are only to be accepted as true. The position of law is that admission is conclusive as against the party who made it. RW1 has been examined for

and on behalf of all respondents. He has admitted that all respondents had received the directions issued by their party President to vote against the no confidence motion moved against PW1 and they had defied such directions and voted on the said motion and ousted PW1 from the post of President. From Ext.P21 it is further clear that these respondents has supported the no confidence motion along with the two LDF members and without their support the no confidence motion could not have been passed. Therefore, it is clear that these respondents had aligned with the LDF members in ousting PW1 from the post of President.

16. Whether the conduct of these respondents in moving a no confidence motion and against the President of their own party or coalition and voting in favour of the said motion along with the LDF members by defying the direction and decision of their political parties would constitute defection deserves consideration. The main ground alleged against these respondents is under Section 3(1)(a) of the Act. According to the petitioners the respondents have voluntarily abandoned their membership from the party and thus committed defection. Section 3(1)(a) of the Act reads as follows,-

“3. Disqualification on ground of Defection,-

1)Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act,

1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act.

(a) if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorized by it in this behalf in the manner prescribed, votes or abstains from voting.

(i) in a meeting of Municipality, in an election of its Chairperson, Deputy Chairperson, a member of standing committee or the Chairman of a standing committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee, or the Chairman of the Standing Committee; or

in an voting on a no-confidence motion against any one of them except a member of a Standing Committee.

he shall be disqualified for being a member of that local authority.”

18. 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.”

19. The version of RW1 that the respondents had stood with the decision of the majority members in having moved the no confidence motion and that the party leaders had conceded their action cannot stand to legal scrutiny. It is true that out of the 10 UDF members, 6 members had supported the no confidence motion. But even the majority of the parliamentary party members cannot defy a direction and decision of their political party. It is to be pointed out that there is substantial distinction between the 10th Schedule of the Constitution of India with the provisions of Kerala Local Authorities (Prohibition of Defection) Act. As per Section 3(1)(a) of the Act, when a member of a local authority belonging to any political party voluntarily gives up membership from such party or if that member votes or abstains from voting against the direction of such party as enumerated in Sub Clauses (i) and (ii) thereof he commits defection. But under the 10th Schedule, under Clause (iv) disqualification on the ground of defection

will not apply in the case of merger. As per sub clause (ii) of Clause (iv) of the 10th schedule, the merger of original political party of a member shall be deemed to have taken place if not less than two third of the members of the legislature party concerned have agreed to such merger and so such two third members can claim exemption from defection by taking up a contention of merger as per Xth schedule. But under this Act no such exemption is provided and even if all the members of a political party in a local body commits defection by way of giving up their membership from the political party or by defying the whip issued by their party, they would become subject to disqualification. So the concept of parliamentary party is not conceived under this Act. In **Varghese Vs. Kerala State Election Commission (2009 (3) KLT1)** at **Paras 8 and 9** it has been held as follows,-

“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. One has to be loyal to his political party.”

20. The fact that the respondents were moving a no confidence motion against the President belonging to their own party or coalition cannot be overlooked. If their political parties wanted the said President to be removed from that post, PWs 4 and 5 would have directed PW1 to resign from that post and in case of his refusal they would have directed other members of their party to move a no confidence motion and ousted him from such post. But admittedly these respondents had moved and supported the no confidence motion against the decision and direction of their political parties. The fact that PWs 4 and 5 are the competent persons to issue direction to these respondents is not in dispute and it is legally recognized as provided by clause (iv) of sub Section 2 of the Kerala Local Authorities (Prohibition of Defection) Act. The above provision has been introduced by an amendment in the Act on 17.01.2012. The above amended provision states that the direction given in writing means the direction given by the person competent to recommend symbol to the candidates of his political party contesting in the election as party candidates or candidates having the support of such party and as regards Congress party is concerned it is a DCC President and regarding Kerala Congress (M) it is their District President and this has been admitted by RW1 also. So PWs 4 and 5 were the competent persons to

take decisions and give directions to their party members regarding the stand to be taken in the no confidence motion. Admittedly the decision of the political parties and the directions to the members was to vote against the no confidence motion. But the respondents, by defying the decisions and directions of their political parties, had voted in favour of the no confidence motion along with LDF members and ousted PW1 from the post of President. Definitely the above conduct of these respondents would constitute defection by voluntarily giving up their membership from the party. The above position has been clarified in a catena of decisions. In **Dharmamani Vs. Parassala Block Panchayat (2009(3) KLT 29)** it has been held at **Paras 16 and 17** as follows,-

“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”.

21. It is also the settled position of law that for attracting the vice of disqualification on the ground of voluntarily giving up membership from the party, it is not even necessary to prove that a member has disobeyed the whip issued by the competent person. It is the conduct of such member which is relevant and if such member becomes disloyal by his conduct to the party it is to be held that he has committed defection in **Muhammed Kunhi.B. Vs. K.Abdulla (2010 (4) KLT 736)** it has been held at **Para 24** 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.”

22. In the cases on hand these respondents had actually defied the decisions and directions of their political parties in having supported the no confidence motion along with LDF members and ousted the President belonging to Congress party and UDF and thus became disloyal to their political parties. Therefore I find that these respondents have voluntarily given up their membership from the party by supporting the no confidence motion by

disobeying the decisions and directions of their political parties and aligning with LDF members and ousting the petitioner from the post of President.

23. The petitioners would also allege that the respondents by defying the whips issued by the competent persons of their political parties had committed defection. Section 3(1)(a) of the Act consists of two limbs. The first limb is attracted when a member belonging to a political party gives up his membership from the party and the second limb is attracted when such member votes or abstains from voting by violating the direction in writing given to him by the competent person in an election to the office bearers or on a no confidence motion. The petitioners have mainly taken up the first limb of Section 3(1) (a) of the Act in these cases. For attracting the second limb, a direction in writing issued by the political party to a member of such party should be in the manner as may be prescribed and as per Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, such direction is to be read over in a meeting of the members of that political party by the person chosen from among the members by majority and if such person refuses to do so, by another person for information to the members. Such a complicated procedure is not being followed while giving direction. Here also it is not proved that such a procedure was followed. So technically speaking, the second limb of Section 3(1)(a) of the Act is not applicable to the facts of these cases. However it is

proved beyond any doubt that these respondents have voluntarily given up their membership from the political parties in which they belonged as provided by the 1st limb of Section 3(1)(a) of the Act and so they have become subject to disqualification for being members of Ayyankunnu Grama Panchayat.

24. **POINT Nos.(iv) & (v)**: The case of the respondent in O.P.No.32/2013 stands on a different footing and so it is being separately considered. Admittedly this respondent had abstained from voting on the no confidence motion moved against PW1. The contention of the respondent is that she could not attend the meeting on the no confidence motion as she was unwell. For passing a no confidence motion a member has to be present in the meeting and should vote in favour of the same. An abstention from voting on the no confidence motion is as good as opposing the no confidence motion or voting against a no confidence motion. Though the direction given by the Congress party was to vote against the no confidence motion, that direction has been substantially complied with by this respondent by her abstention from the meeting on the no confidence motion. On the other hand the other respondents along with two LDF members and an independent member voted in favour of the said motion and thus it was passed. The conduct of the respondent in O.P.No.32/2013 in respect of her stand taken on the no confidence motion was not disloyal to the party in which she belonged. Admittedly from the evidence it is found that she received the direction given by

PW4 and that direction was to vote against the no confidence motion. As already pointed out since the respondent in O.P.No.32/2013 had abstained from attending the no confidence motion for whatever reasons, her conduct cannot be considered as disloyal to the party because abstention is as good as voting against the no confidence motion. Even if this respondent was a signatory to the notice on the no confidence motion moved against PW1, that will not attract defection and only by voting in favour of a no confidence motion would attract the vice of defection. Therefore I find that the respondent O.P.No.32/2013 has not committed any defection and the petitioner has failed to prove the necessary ingredients to attract defection against her in this case. The points are answered accordingly.

In the result, O.P.Nos.21/2013 to 31/2013 are allowed and it is declared that the respondents in O.P.Nos. 26/2013 to 31/2013 who are the respondents in O.P.Nos. 21/2013 to 25/2013 have become subject to disqualification for being members of the Ayyankunnu 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.

O.P.No.32/2013 is dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 4th day of June 2014

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

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri. K.C.Chacko, Teacher (Rtd), Koomanthodu P.O.,
Kannur District
- PW2 : Smt.Mercy Jose, Member, Ayyankunnu Grama
Panchayat
- PW3 : Sri.P.T.Thomas, Poovathinkal
- PW4 : Shri.K.Surendran, Soorya Palad, Kannur
- PW5 : Sri.Joys Puthenpura, Kozhichal P.O., Kannur

Witnesse examined on the side of the respondent

- RW1 : Sri.Jaison Karakkattu, Karakkattu Veedu, Charal P.O.,
Kannur

Documents produced on the side of the petitioner

- P1 : Copy of the register showing party affiliation of the
members of Ayyankunnu Grama Panchayat

- P2 : Letter No.A.385/13 dated 21.05.2013 of the Secretary, Iritty Block Panchayat
- P3 : Letter dated 24.05.2013 of the President, DCC, Kannur addressed to Sri.K.C.Chacko Master
- P4 : Copy of the letter dated 02.06.2013 of the President Kerala Congress(M), District Committee, Kannur
- P5 : Agreement of UDF dated 01.06.2013
- P6 : Acknowledgment card addressed to the Secretary, Iritty Block Panchayat
- P7 : Acknowledgment card addressed to the Secretary, Iritty Block Panchayat
- P8 : Acknowledgment card addressed to the Secretary, Ayyankunnu Grama Panchayat
- P9 : Acknowledgment card addressed to Smt.Mini Viswanathan.
- P10 : Letter No.CRF2/iii/89-90 dated 10.10.2013 of the Manager, Customer Care Centre (Postal) Thalassery
- P11 : Acknowledgment addressed to Smt.Anu Biju
- P12 : Acknowledgment addressed to Sri.Jaison K.A
- P13 : Acknowledgment addressed to Smt.Philomina Joy
- P14 : Copy of the letter dated 24.05.2013 of the President DCC, Kannur addressed to Smt.Mini Viswanathan
- P15 : Copy of the letter dated 24.05.2013 of the President DCC, Kannur addressed to Smt.Marykutty Sebastian
- P16 : Copy of the letter dated 24.05.2013 of the President DCC, Kannur addressed to Smt.Anu Biju

- P17 : Copy of the letter dated 24.05.2013 of the President DCC, Kannur addressed to Sri.Jaison K.A.Karakkat
- P18 : Copy of the letter dated 24.05.2013 of the President DCC, Kannur addressed to Smt.Philomina Joy
- P19 : Copy of the letter dated 02.06.2013 of the President, Kerala Congress (M), District Committee, Kannur
- P20 : Copy of the letter dated 02.06.2013 of the President, Kerala Congress (M), District Committee, Kannur
- P21 : Minutes of the meeting to discuss the no confidence motion against Sri.K.C.Chacko, President, Ayyankunnu Grama Panchayat held on 25.06.2013
- P22 : Letter dated 24.05.2013 of the President, DCC, Kannur addressed to Smt.Mercy Jose, Meledathu
- P23 : Acknowledgment card addressed to Smt.Mercy Jose
- P24 : Acknowledgment card addressed to Sri.Cheruvanthottiyil

Documents produced on the side of the respondents : Nil

Documents produced on the side of the witnesses : Nil

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