

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

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

Saturday, the 5th day of July 2014

O.P.No.44/2013

Petitioner : Biju,
S/o Padmanabha Pilla,
Mathenaveli Veedu, Aroor P.O,
Alappuzha District.

Member, Ward No.4,
Aroor Grama Panchayat

(By Adv.Salin .S Rajan)

Respondent : Treesa Peter,
Member, Ward No.20,
Aroor Grama Panchayat,
Alappuzha District.

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

This petition having come up for hearing on the 20th day of May 2014, in the presence of Advocate **Salin S. Rajan** for the petitioner and Advocate **Kulathur S.V.Premakumaran Nair** for the respondent and having stood over for consideration to this day, the Commission passed the following,-

ORDER

Petition filed under Section 3 (1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent has become subject to disqualification for being a member of Aroor Grama Panhayat.

2. The short facts are as follows:- The petitioner and respondent are members of Aroor Grama Panchayat. The respondent contested the election as an independent candidate without any political affiliations in the election held on 25.10.2010 and was elected as a member. After his election as member, he joined the Indian National Congress on 01.07.2013 and by accepting the whip issued by the Congress party, she voted in favour of the candidate sponsored by the Congress party to the post of President. The respondent by joining the Congress party has committed defection as provided by Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act. Hence this petition.

3. The contentions raised by the respondent are in short, as follows,- The petition is not maintainable and it is hopelessly barred by limitation. It is true that the respondent had contested in the General Election as an independent candidate with the symbol "Kite". During the election process itself, the Congress party accepted the respondent as their candidate and she contested the election as an independent candidate supported by Indian National Congress. After having

been elected as a member, she submitted declaration specifically stating that she was elected as an independent member with the support of Indian National Congress. In all the subsequent elections to the office bearers held in the Panchayat, Indian National Congress issued whip to the respondent and she obeyed all such whips. In the election to the post of President held on 08.11.2010, Congress party issued direction to the respondent to vote in favour of Sri.Chandra Babu and she complied with that direction and to the post of Vice President also she voted in favour of Smt.Nicy Lawrence as per the direction of the Congress party. Again on 05.06.2012 respondent voted in favour of Sri.H.Muneer who was the official candidate of Congress party to the post of President and this was done in obedience to the whip issued to her by the Congress party. Again Presidentship was changed and Sri.C.K.Puzhpan contested as party candidate and in obedience of the direction issued by the Congress party, she voted in favour of Sri.C.K.Pushpan. The petitioner was the opposite candidate of Sri.C.K.Pushpan and as he failed in the said election, he became desperate and filed this petition without bonafides. The allegation that the respondent joined the Congress party on 01.07.2013 is totally false. The respondent has not committed any defection and the petition deserves only dismissal with cost.

4. The evidence consists of the oral depositions of PWs1 and 2 and RWs1 to 3 and Exts.P1 to P4 and R1, R2, X1 and X2 series.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is barred by limitation?
- (ii) Whether the petition is not maintainable?
- (iii) Whether the respondent contested the election as an independent candidate without the support of any political parties in the election held on 25.10.2010 as alleged?
- (iv) Whether the respondent was elected as an independent member not belonging to any political party and joined the Congress party on 01.07.2013 as alleged?
- (v) Whether the respondent has become subject to disqualification for being a member of Aroor Grama Panchayat?
- (vi) Reliefs and costs?

7. **POINT No.(i) and (ii)**: The petition is filed alleging that the respondent, after having been elected as an independent member without any political affiliations, joined the Congress party on 01.07.2013 by accepting the whip issued by the party and voting in favour of the Congress candidate to the post of President and thereby she has committed defection. The contention of the respondent is that even though she submitted nomination as an independent candidate, during election process the Congress party accepted him as their

candidate and thus she contested as an independent candidate supported by Indian National Congress and she also submitted declaration stating that she is an independent member having the support of Indian National Congress and she also obeyed all the directions issued by the Congress party in the election to the various office bearers held in the Panchayat and that she has not committed any defection. The respondent would also contend that the petition is hopelessly barred by limitation. As per **Section 4** of the Kerala Local Authorities (Prohibition of Defection) Act, when a 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. Of course in the light of the rival claims, a question arises as to whether the respondent has committed defection. Section **3(1)(c)** of the Act states that if an independent member not belonging to any coalition joins any political party or coalition he shall be disqualified for being a member of that local authority. The petition is filed by a member of the same Panchayat in which the respondent also is a member. Since a question arises as to whether the respondent has committed defection and the petition is filed by a competent person, the petition can be considered as maintainable. However the respondent would also contend that the petition is hopelessly barred by limitation. As per

Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, a petition for disqualification filed as per the provisions of the Act is to be filed within fifteen days on the date on which the respondent is deemed to have become disqualified. So the cause of action arises from the date on which the member is deemed to have committed defection. The definite case of the respondent is that even in the declaration submitted by her as provided by Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, she has categorically stated that she is an independent member having the support of Indian National Congress. The respondent has given evidence as RW1 also. The declaration submitted by her is Ext.R1. From this declaration she has stated that she is an independent member supported by Indian National Congress. This is filed on the date of taking charge as member which was on 01.11.2010. The respondent also is a member of the same Panchayat. So she should have been aware of this declaration and the subsequent conduct of the respondent in the elections to various office bearers. The definite contention of the respondent is that she was obeying the direction of the Congress party in all such elections. The cause of action alleged is the election to the post of President held on 01.07.2013. It is seen that the respondent was always going along the Congress party from the date on which she was elected as a member and the petitioner also should have been very much aware of the same and so the

particular date 01.07.2013 cannot have any significance. As already pointed out, she submitted declaration on 01.11.2010 stating that she is an independent member having the support of Congress party and she had voted in favour of the candidates of Congress party and UDF in the elections to the post of President, Vice President etc. Therefore the cause of action if any should relate back to 01.11.2010. Therefore the petitioner cannot now say that the cause of action arose only on 01.07.2013, the date of the last election to the post of President. On a careful appreciation of all facts and materials on record, I find that the cause of action if any had arisen on 01.11.2010 or on the date on which the election to the post of President and Vice President held which was in November 2010 itself. As per Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, the petition should have been filed within 15 days from such date. Of course as per the proviso to Rule 4A(2) of the Rules, a petition filed beyond the period of 15 days prescribed under the above Rule can be entertained by the Commission on sufficient grounds. However in the case on hand no application was filed for condoning the delay in filing the petition and the petition has been filed by alleging that the cause of action arose on 01.07.2013. Since the respondent was functioning as a member of the Congress parliamentary party from the date on which he took charge and submitted declaration stating that he was elected as an independent with the support of Congress party, the

cause of action for a petition under Section 4 of the Act, arose on 01.11.2010 itself and as no application has been filed to condone the delay in filing the original petition, this petition itself is hopelessly barred by limitation. Therefore I find that the petition is not maintainable as it is barred by limitation. The points are answered accordingly.

8. POINT Nos.(iii) to (vi): According to the petitioner the respondent, after having been elected as an independent member without the support of any political party has joined the Congress party on 01.07.2013 and he accepted the whip issued by that party and voted in favour of the candidate in the election to the post of President held on 01.07.2013 and thereby he committed defection as provided by Section 3(1)(c) of Act. The contention of the respondent is that though he filed nomination as an independent candidate with symbol “Kite”, during election process itself, the Congress party accepted her as their candidate and supported her in getting elected as member and she also filed declaration stating that she is an independent member having the support of Congress party before the Panchayat and she has been functioning as a member supporting the Congress party till now and so she has not committed any defection.

9. The petitioner has been examined as PW1. He has deposed that the respondent has joined the Congress party on 01.07.2013 and by accepting the whip of the party and she voted in favour of Sri.C.K.Pushpan, the official

candidate of Congress party to the post of President and thereby she has become subject to disqualification as provided by Section 3(1)(c) of the Act. Ext.P1 is the nomination paper submitted by the respondent. It is stated in Ext.P1 that the respondent is an independent candidate. PW1 has further deposed that the official candidate of Congress party in ward No.20 from where the respondent was elected was Smt.Gracy Joseph and Ext.P2 is the copy of the recommendation letter given by the DCC President to the Returning Officer requesting to allot the official symbol of Congress party to Smt.Gracy Joseph. PW1 has further stated that the DCC President had given a whip to the respondent in the election to the post of President held on 01.07.2013 and copy of that whip was given to the Secretary of the Panchayat along with a covering letter which are marked as Exts.P3 and P3(a). It is also deposed by PW1 that in the election to the post of President held on 01.07.2013, the respondent accepted the whip given by the Indian National Congress party and that party had never given any whip to the respondent in the earlier elections to the office bearers of the Panchayat and the Secretary of the Panchayat has given Ext.P4 letter certifying the above fact. PW1 has also deposed that the respondent has complied with the direction issued by the DCC President in the election to the post of President held on 01.07.2013 and thus she has joined the Congress party and committed defection. In cross-examination it was suggested to PW1 that the respondent was elected as an

independent member with the support of Congress party and that she had given a declaration in this behalf to the Secretary of the Panchayat to which PW1 answered that he does not know of the same. It was also suggested to PW1 that in the first election to the post of President held on 08.11.2010, the respondent had voted in favour of Sri.Chandran Babu the official candidate of Congress party to which also PW1 answered that he does not know. It was further suggested to PW1 that in the election to the post of Vice President, the respondent voted in favour of the UDF candidate to which PW1 pleaded ignorance. However PW1 has admitted that the official candidates of UDF had won in the elections to the post of President and Vice President. The Secretary of the panchayat has been examined as PW2 and through him Exts.X1 series which are copies of the directions issued by the DCC President to the members are marked.

10. The respondent has been examined as RW1. She has deposed that she filed nomination to contest in ward No.20 as an independent candidate and during the election process the Congress party offered her support which she accepted and thus she has been elected with the support of Congress party and after her election she submitted declaration stating that she is an independent member having the support of Congress party and Ext.R1 is the copy of that declaration. RW1 has further deposed that in the election to the post of President and Vice President she accepted the whip issued by the Congress party and voted

in favour of the official candidate of UDF and in the subsequent election to the post of President held on 05.06.2012, she obeyed the direction of the Congress party and voted in favour of Sri.H.Muneer, the official candidate of Congress party and in the last election to the post of President held on 01.07.2013 also she obeyed the whip issued by the DCC President and voted in favour of Sri.C.K.Pushpan and in that election the petitioner contested against Sri.C.K.Pushpan and failed. RW1 has stated that she has never joined the Congress party as alleged. In cross-examination RW1 has asserted that the Congress party had supported her during the election in Ward No.20 as that party considered that she would be the winning candidate. It was suggested to RW1 in cross-examination that the respondent after having been elected as an complete independent candidate had stated in Ext.R1 that she is an independent member having the support of Congress party which RW1 denied. The respondent has produced the whip received by her in the election to the post of President held on 08.11.2010 and it is marked as Ext.R2.

11. The DCC President has been examined as RW3. He has deposed that in the General Election to the Panchayat the respondent was a candidate in ward No.20 and a Congress candidate also submitted nomination in that ward and during the election process it was noticed that the Congress candidate would fail and so the Congress party decided to withdraw that candidate and supported the

respondent who was the independent candidate and accordingly though in the ballot paper the official candidate of Congress party was shown as Smt.Gracy Joseph, the support of Congress party was to the respondent and thus the respondent was elected in that ward. RW3 has further deposed that after her election in ward No.20, she was taking a stand in favour of the Congress party and she also voted in favour of the Congress candidates election to the post of President and Vice President by obeying the directions issued by RW3 and such a direction is Ext.R2 and in the last election to the post of President, respondent voted in favour of Sri.C.K.Pushpan, the official candidate of Congress party as per Ext.P3 direction given by him. In cross-examination RW3 has stated that he does not know whether the copy of Ext.R2 was given to the Panchayat Secretary. The Secretary of the Panchayat who was already examined as PW2 was again examined on the side of the respondent as RW2 and through him Exts.X2 series which are the form-2 declaration submitted by the members are marked. RW2 has stated that the respondent has stated in Ext.X2 that she is an independent candidate having the support of Congress party.

12. On an analysis of the entire facts and materials on record it clearly found that the respondent after having been elected as a member submitted Ext.X2 declaration stating that she is an independent member having the support of Congress party. It is true that she submitted nomination as a complete

independent candidate and in her ward there was a Congress candidate also. But the respondent as well as the DCC President have stated that during the election process the Congress party supported her and thus she was elected with the support of Congress party and thereafter she was taking a stand in favour of Congress party and UDF and was obeying the direction issued by RW3 in all the elections to the office bears in the Panchayat. From the evidence it is found that the respondent was moving along with Congress party and UDF after her election as a member and in the light of Ext.X2 . It can only be inferred that she has been functioning as an independent member having the support of Congress party and obeying the directions issued by the Congress party in the election to the post of President, Vice President etc in this Panchayat. The respondent has further stated that she has not yet joined the Congress party and she is still continuing as an independent member having the support of Congress party.

13. Section 3(1)(c) of the Act states that if an independent member not belonging to any coalition, joins any political party or coalitions, he shall be disqualified for being a member of that local authority. As already pointed out, from the evidence the respondent cannot be considered as an independent member without support of any political party. She is found to be a member having the support of Congress party and thus belonging to UDF coalition. It is further found that the respondent was being given directions by RW2 in the

elections to the office bearers of the Panchayat and she was obeying such directions. As per clause (iva) of Section 2 of the Act as amended by Act 6 of 2013, '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 to recommend symbol to the candidates of the said political party for contesting in the election, for exercising the vote favorably or unfavorably or to abstain from voting. As per the above provision the person who is issuing direction is competent to issue direction not only to a member belonging to his party but also to an independent member having the support of his party and it is revealed that RW3 was issuing direction to the respondent in respect of the elections to the post of President and Vice President. As per the above clause, an independent member having the support of a political party need not join that party for the purpose of issuing such a direction. But such an independent member having the support of a political party will be considered as a member belonging to the parliamentary party group of that political party. Even assuming that a complete independent member, without compromising his independent stand is moving along with a parliamentary party group of a political party, as long as he does not join the political party, he cannot be considered as having committed defection as provided by Section 3(1)(c) of

the Act. For attracting this Section, there should be concrete evidence to prove that the independent member has joined any political party or coalition. In the case on hand the only evidence adduced to support the allegation regarding defection is the copy of the whip issued to the respondent which she complied. That will not be sufficient to prove that the respondent has joined the Congress party. Joining a political party and co-operating with parliamentary party of such a political party are distinct and different. The stigma contained in Section 3(1)(c) of the Act would be attracted only if an independent member joins any political party or coalition which will not take within its ambit joining a parliamentary party. In the present case there is clear evidence to show that the respondent was elected with the support of Congress party and she had at the earliest opportunity accepted the same and submitted Ext.X2 declarations stating that she is an independent member having the support of Congress party and she also had voted in favour of the Congress and UDF candidates to the elections to the post of President and Vice President etc., by accepting the directions of RW3 and therefore the allegation that the respondent has joined the Congress party by accepting whip issued by RW3 in the election to the post of President held on 01.07.2013 is absolutely untenable. On a totality of all facts and materials on record I find that the petitioner has completely failed to prove that the respondent has

joined the Congress party on 01.07.2013 as alleged in the petition and so the petition deserves only dismissal. The points are answered accordingly.

In the result, the petition is dismissed.

The parties shall bear their respective costs.

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

Sd/-

K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER
APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri.Biju, Member, Aroor Grama Panchayat
PW2 : Sri.S.Venugopal, Secretary, Aroor Grama Panchayat

Witnesses examined on the side of the respondent

- RW1 : Smt. Treesa Peter, Member, Aroor Grama Panchayat
RW2 : Sri.S.Venugopal, Secretary, Aroor Grama Panchayat
RW3 : Sri.A.A.Shukkur, Kunnumelil, Alappuzha

Documents produced on the side of the petitioner

- P1 : Copy of the nomination filed by Smt.Gracy Joseph
P2 : Copy of the letter dated 05.10.2010 of the President, DCC, Alappuzha addressed to the Returning Officer, Aroor Gama Panchayat
P3 : Copy of the letter dated 01.07.2013 of the President, Aroor Block Congress Committee addressed to the Secretary, Aroor Grama Panchayat.

P4 : Letter No.C4-457/2013 dated 29.07.2013 of the Secretary, Aoor Grama Panchayat addressed to Sri.M.P.Biju, ward member, Aroor

Documents produced on the side of the Respondent:

R1 : Copy of the declaration in form No.2 filed by Smt.Treesa Peter

R2 : Letter dated 07.11.2010 of the President, DCC Alappuzha addressed to Smt.Treesa Peter

Documents produced on the side of the witness:

X1 : Letter dated 09.01.2014 of the Secretary, Aroor Grama Panchayat

X1(a) : Copy of the letter dated 01.07.2013 of the President, DCC, Alappuzha addressed to the Secretary, Aroor Grama Panchayat

X1(b) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Smt.Rashida Mohammed

X1(c) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Smt.Jameela Siyad

X1(d) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Smt.Usha Kumari

X1(e) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Smt.T.R.Thilakamma

X1(f) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Sri.C.K.Pushpan

X1(g) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Sri.H.Muneer

- X1(h) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Smt.Mini Babu
- X1(i) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Smt.Sarasamma Balan
- X1(j) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Sri.M.V.Surendran
- X1(k) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Smt.Sheena Rafeeq
- X1(l) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Sri.S.K.Chandra Babu
- X1(i) : Copy of the letter dated 29.06.2013 of the President, DCC, Alappuzha addressed to Smt.Treesa Peter
- X2 : Copy of the declaration in Form No.2 filed by Smt.Treesa Peter
- X2(a) : Copy of the declaration in Form No.2 filed by Sri.S.K.Chandra Babu
- X2(b) : Copy of the declaration in Form No.2 filed by Smt.Mini Babu
- X2(c) : Copy of the declaration in Form No.2 filed by Sri.M.V.Surendran
- X2(d) : Copy of the declaration in Form No.2 filed by Sri.M.P.Biju
- X2(e) : Copy of the declaration in Form No.2 filed by Sri.A.A.Alex
- X2(f) : Copy of the declaration in Form No.2 filed by Sri.H.Muneer
- X2(g) : Copy of the declaration in Form No.2 filed by Smt.Sheeja Sivadas

- X2(h) : Copy of the declaration in Form No.2 filed by Smt.Usha Kumari
- X2(i) : Copy of the declaration in Form No.2 filed by Smt.Sheena Rafeeq
- X2(j) : Copy of the declaration in Form No.2 filed by Smt.Jameela Siyad
- X2(k) : Copy of the declaration in Form No.2 filed by Sri.K.A.Noushad
- X2(l) : Copy of the declaration in Form No.2 filed by Smt.Rashida Muhammed
- X2(m) : Copy of the declaration in Form No.2 filed by Sri.V.Pradeepan
- X2(n) : Copy of the declaration in Form No.2 filed by Smt.Ajitha Ramesan
- X2(o) : Copy of the declaration in Form No.2 filed by Sri.V.K.Goureesan
- X2(p) : Copy of the declaration in Form No.2 filed by Sri.E.V.Thilakan
- X2(q) : Copy of the declaration in Form No.2 filed by Sri.C.K.Pushpan
- X2(r) : Copy of the declaration in Form No.2 filed by Smt.Thilakamma T.R
- X2(s) : Copy of the declaration in Form No.2 filed by Smt.Nicy lawrance

Sd/-

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

//True Copy//