

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

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

Wednesday, the 30th day of July 2014

O.P.No.48/2013

Petitioner : E.K.Farooq,
S/o Muhammed Kutty Master,
Kettiyattu Kizhakkethyil Veedu,
Pappus, Paramel, Puthukode Road,
Azhinjilam P.O., Malappuram District
Member, Ward No. 17
Vazhayur Grama Panchayat

(By Adv.T.Kunhali)

Respondent : P.K.M.Hibadhulla Master,
Member, Ward No.10,
Vazhayoor Grama Panchayat,
Malappuram District.

(By Advs .B.Vasudevan Nair)

This petition having come up for hearing on the 3rd day of **June 2014**, in the presence of Advocate **T.Kunhali** for the petitioner and Advocates **B.Vasudevan Nair** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

Petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act read with Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules for declaring that the respondent has become subject to disqualification for being a member of Vazhayur Grama Panhayat.

2. The short facts are as follows:- The petitioner and respondent are members of Vazhayoor Grama Panchayat as elected from ward Nos.17 and 10 respectively of this Panchayat. After the General Election the respondent was elected as President of the Panchayat. Out of the 17 wards of this Panchayat the UDF, consisting of Indian National Congress, Kerala State Muslim League, Socialist Janata (Democratic) and Communist Party of India had set up candidates and fought the election as a coalition against the LDF coalition and 9 members belonging to UDF and 8 members belonging to LDF were elected. The respondent contested the election as an independent candidate supported by Kerala State Muslim League and was elected as members. After the election K Narayanan from Socialist Janata (Democratic) was elected as the whip of the UDF. The respondent belonging to Kerala State Muslim League was elected as the President for a term of 2 ½ years as per the decision among the political

parties in the UDF and the remaining 2½ years was decided to be allotted to a member belonging to Indian National Congress. Accordingly the post of Vice President also was agreed to be shared between Indian National Congress and Muslim League and the first two years was allotted to Congress party and remaining three years was agreed to be given to a member belonging to Muslim League. Accordingly Smt.Girija belonging to Congress party who was elected as Vice President, resigned from that post after two years and Smt.K.B.Sabeera belonging to Muslim League was elected as Vice President. But the respondent who was elected as President for the first 2 ½ years refused to resign from that post and the repeated demands made by the Muslim League and UDF leaders were declined by the respondent and thereupon it was decided to move a no confidence motion against the respondent. Accordingly all the other 8 members of the UDF moved a no confidence motion and it was tabled for discussion on 11.04.2013. The Malappuram District Secretary of Muslim League issued direction to the respondent to vote in favour of the no confidence motion and after accepting such direction and knowing about the decision of the political party, the respondent along with the LDF members abstained from attending the meeting convened for discussing the no confidence motion. The respondent had disobeyed the direction issued by the Malappuram District Secretary of his party to resign from the post of President and also violated his direction to participate

and voted in favour of the no confidence motion. The UDF whip also gave direction to the respondent to vote in favour of the motion. The respondent had aligned with the LDF members for defeating the no confidence motion and thereby he has voluntarily given up his membership from the party and thus he became disqualified to continue as a member of Vazhayur Grama Panchayat as provided by the provisions of the Kerala Local Authorities (Prohibition of Defection) Act. Hence this petition.

3. The respondent filed objection contending in brief, as follows,- The petition is not maintainable either in law or on facts. The respondent had contested the election as an independent candidate without any support from any political parties and was elected as a member. After his election as a member, he had the support of UDF and out of the 17 seats UDF secured 9 seats and thus UDF secured majority and the respondent was elected as President. There was no agreement to share the post of President between Indian Union Muslim League and Indian National Congress. There was also no agreement to share the post of Vice President between political parties as alleged. The no confidence motion moved against this respondent is vitiated by malafides as it was tabled for discussion by violating of Section 157 (3) of the Kerala Panchayat Raj Act. The motion was moved on 20.08.2013. But the authorized officer has convened the meeting for considering the motion only on 11.07.2013 which was beyond the

period of 15 days after receiving notice on the motion. So this procedure was taken by violating Section 157(4) of the Kerala Panchayat Raj Act. The allegations regarding sharing of the post of President and Vice President between Indian National Congress and Muslim League are false. Since the meeting on the no confidence motion was convened by violating of Section 157 of the Kerala Panchayat Raj Act, there was no obligation on the part of the respondent to participate in that meeting. Therefore the petition is only to be dismissed with costs.

4. The evidence consists of the oral depositions of PWs1 to 5, RWs1 and 2 and Exts.P1 to P21, R1 to R5 and X1.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent contested as a candidate in ward No.10 of Vazhayur Grama Panchayat as an independent candidate supported by Kerala State Muslim League?
- (iii) Whether the respondent could be treated as a member belonging to Muslim League and whether he was bound to obey the direction given by the District Secretary of Muslim League as alleged?
- (iv) Whether the respondent has become subject to disqualification for being a member of Vazhayur Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act?

(v) Reliefs and costs?

7. **POINT No.(i)**: The petition is filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act', read with Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules. According to the petitioner the respondent refused to resign from the post of President of the Panchayat in spite of the repeated directions given by the District Secretary of his party and he also disobeyed the direction of the District Secretary to vote infavour of the no confidence motion moved against him and thereby the respondent has become disloyal to the party and thus he has voluntarily given up his membership from the party. The respondent would deny the above allegations and state that he contested the election as a complete independent candidate and so he was not bound to obey the decision and direction of any political party and it is also contended that the no confidence motion moved against him was illegal and it was convened by violating Section 157(3) of the Kerala Panchayat Raj Act.

8. Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act states that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of the Act, a member of that local authority or the political party concerned or a person authorized by it in this behalf can file a petition before the State Election Commission for decision.

As per Section 3(1)(a) of the Act, if a member of a local authority belonging to any political party voluntarily gives up his membership from such political party, he shall be disqualified for being a member of that local authority. In the light of the rival claims and contentions it is found that a question arises as to whether the respondent has become subject to disqualification as provided by Section 3(1)(a) of the Act. The petition is filed by a member of the same Panchayat of which the respondent also is a member. As per Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules, a petition can be filed by a member of the local authority before the State Election Commission for decision and as per Section 4A(2) of the Rules such a petition is to be filed within 15 days reckoned from the date on which the concerned member is deemed to have incurred disqualification. The present petition has been filed within 15 days from the date on which the no confidence motion against the respondent was tabled for discussion and the cause of action according to the petitioner arose on that date. So the petition is filed within the period prescribed under Rule 4A(2) of the Rules. Definitely a question arises as to whether the respondent has become subject to disqualification as provided by Section 3(1)(a) of the Act and the petition has been filed by a competent person within the time limit. Therefore I find that the petition is maintainable. The point is answered accordingly.

9. **POINT No.(ii):** The petitioner would allege that the respondent contested the election in ward No.10 of Vazhayur Grama Panchayat as an independent candidate supported by Kerala State Muslim League and so he is bound by the decision and direction of the Muslim League party. The definite contention of the respondent is that he contested the election as an independent candidate without the support of any political party and only after the election he had extended his support to UDF and thereby he was elected as President of the Panchayat. The petitioner has been examined as PW1. He has categorically deposed that the respondent had contested as an independent candidate with the support of Kerala State Muslim League under UDF coalition and that after election he was elected as President for a term of 2 ½ years as per the decision of his party and the UDF. The petitioner has produced copy of the declaration submitted by the respondent before the Panchayat as provided by Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and also the copy of the register maintained by the Panchayat showing the political affiliations of the members as provided by the above Rule and the above records are marked as Exts.P2 and P4 respectively. In Ext.P2 the respondent has stated that he contested the election as an independent candidate with the support of Kerala State Muslim League under UDF coalition and he has also mentioned the other eight members elected from the UDF as persons belonging to his coalition.

In Ext.P4 also it is stated that the respondent is an independent member having the support of Kerala State Muslim League under UDF coalition. PW1 has further deposed that even though the respondent had contested the election as an independent candidate with the support of Muslim League, he was in fact a member of Muslim League and also a leader of its Youth League before and after election. PW1 has also deposed that the respondent had himself written all the facts contained in Ext.P2 in his own handwriting and at that time the respondent was having official position in Muslim League. According to PW1 the respondent was set up as an independent candidate by the Muslim League only by considering the winning chances of that ward. PW2 who is a member of the same Panchayat elected as a member from Socialist Janata (Democratic) under UDF coalition has stated that the respondent had contested the election as an independent candidate with the support of Muslim League and after election he was participating in all the UDF parliamentary party meetings. Exts.P7 and P8 are the minutes regarding the UDF parliamentary party meetings and it is seen that in the meeting held on 09.08.2010, the respondent had participated as a member belonging to Muslim League. PW3 the President of the Vazhayur Grama Panchayat committee has deposed that the respondent was functioning as the Secretary of the Mandalam Youth League and when he became the President he had resigned from that post and that the respondent became a member of the

Panchayat with the support of Muslim League. The malappuram District Secretary of Muslim League as PW4 has stated that the respondent is a member of Muslim League and that he had contested the election as an independent candidate of Muslim League and as decided by the party he was elected as the Panchayat President for a period of 2 ½ years. Nothing has been brought out to discredit his testimony.

10. The respondent has deposed that he was an independent candidate while contesting in the election and after election he extended support to the UDF and the copy of the nomination paper has been marked as Ext.R1. Ext.R2 is stated to be a public notice regarding his election. In Ext.R1 he is shown as an independent candidate. Ext.R2 is only a public notice which can be created at any time and even the name of the printing press has not been mentioned in this record. So Ext.R2 has no evidentiary value. The respondent as RW1 has admitted in cross-examination that he has been in active politics for the last 5 or 6 years and that he was a member of Muslim Youth League. He has further admitted that his statement in the objection that out of the 17 seats UDF secured 9 seats is true. He has also admitted the statement in his objection that “thereby UDF has got majority and this counter petitioner was elected as President is true”. He has also admitted in cross-examination that he was a party to the discussion between the Congress party and Muslim League. He has further

deposed that in the General Election his opposite candidates were belonging to CPI(M) and BJP. He has also admitted that he had given declaration before the Panchayat after his election as a member.

11. On an evaluation of the evidence in this regard, it is clearly found that the respondent was supported by the Muslim League in his election in ward No.10 of this Panchayat. Except him no UDF candidate was contesting in this ward. Immediately after election he gave a declaration evidenced by Ext.P2 that he contested the election as an independent candidate with the support of Kerala State Muslim League. In his objection itself he has categorically stated that out of the 17 seats UDF secured 9 seats and thereby UDF has got majority and the counter petitioner was elected as the President of the Panchayat. He was in fact very much involved in the political activities of Muslim League as well as in the Youth League which is its Youth Organisation. Out of the 17 seats, the UDF secured 9 seats including the respondent. From the minutes of the UDF parliamentary party meetings evidenced by Exts.P7 and P8, it is clearly found that he was a member of the UDF parliamentary party representing Muslim League. The admission made by the respondent in his objection and evidence and also from the evidence of PWs 1 to 4 and Exts.P2, P4, P7 and P8 it is proved beyond any doubt that the respondent had contested the election as an

independent candidate with the support of Muslim League under UDF coalition. The point is answered accordingly.

12. POINT No.(iii): I have already found that the respondent has contested the election as an independent candidate with the support of Muslim League under UDF coalition. Admittedly the respondent was elected as President of the Panchayat. He was so decided by the Muslim League as well as the UDF coalition. Admittedly the respondent was given direction by PW4 the Malappuram District Secretary of Muslim League to vote in favour of the no confidence motion moved against him on the premises that he was a member belonging to Muslim League. Clause (iva) of Section 2 of the Act gives the authority to the District Secretary of Muslim League to issue direction to a member belonging to his party or a member considered to be include in it which means that a member who was elected with the support of such political party. Clause (iva) of Section 2 of the Act as amended by Act 6 of 2013 reads as follows,-

“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 favourably or unfavourably or to abstain from voting.”

13. In Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules also a direction to a member belonging to a political party or to a member considered to be include in it is to be issued by the person who is competent to recommend symbol for the said member while contesting as a candidate in the election to the local body. In this context Rules 3(1) and 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules also are relevant and it reads as follows,-

“3. To maintain register to record the party connections of members,- (1) The Officer authorized for the purpose by the State Election Commission shall record in the register in Form 1 appended to these rules, the details as to whether a member duly elected to a local authority is one who belongs to a political party or coalition or is having the support of any one of them or is an independent member not belonging to any political party or coalition

(2) If a member elected to a local authority is,-

(a) a person who contested election as a candidate of a political party or as a candidate having the support of political party

shall file a declaration to that effect before the Officer authorized under sub-rule (1) and accordingly that member shall be treated as a member of that political party or as a member with the support of that political party, as the case may be;

14. It is as per these Rules Exts.P2 declaration and Ext.P4 register were prepared and maintained. The correctness and veracity of Ext.P2 is not in doubt. The respondent himself had stated the details contained in Ext.P2 in his own handwriting. Rule 5(3) of the Rules states that for the purpose of disposing of a petition under sub rule(1) the State Election Commission may if it deemed necessary, examine the veracity of the declaration filed by the member concerned under sub rule (2) of Rule (3) or may also examine as to whether the member belongs to a political party or to a coalition or is an independent member not included in any political party or coalition and the decision that the Commission may take on the basis of such examination in the matter shall be final. In this case Ext.P2 is found to be written and submitted by the respondent himself and no challenge is raised against the veracity of this record. The respondent himself admits that he has submitted such a declaration before the Panchayat after his election as a member. So I find that the facts contained in Ext.P2 regarding the

political affiliations of the respondent are true. In this context the explanation to Section 2(ii) of the Act also assumes importance. The above explanation reads,

“A member who stood as a candidate in an election with the support of any one of the political parties or coalition shall be deemed to be a member included in that political party or coalition;”

In the light of this explanation there cannot be any doubt that an independent member who contested the election with the support of a political party is to be treated as a member belonging to that party. Further Clause (iva) of Section 2 of the Act has been introduced in this Act by way of Act 6 of 2013 with a view to remove any doubt in relation to the position of an independent member elected with the support of a political party. The above provision brings with in its told an independent member elected with the support of a political party. Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules also clarifies that the independent member elected with the support of a political party is bound to obey the direction issued by the person competent to recommend symbol to the candidates of that party.

15. In this context the amendment brought to the explanation of Section 3 of the Act also is very significant. The said explanation as amended by Act 6 of 2013 which came into force on 17.01.2012 reads as follows,- “Explanation,- For

the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was set up or given support as a candidate for the election.” In the existing explanation after the words set up ‘or given support’ has been added with the definite intention of bringing all the independent members who were elected with the support of a political party as deemed to be members of such political party. In the light of the amended explanation to Section 3 of the Act, which came into force on 17.01.2012, there cannot be any doubt that the respondent who was elected with the support of Muslim League is to be treated as a member belonging to Muslim League and he is also bound by the decisions and directions of the said party. The point is answered accordingly.

16. POINT Nos.(iv) & (v): The petitioner has stated that the respondent was decided for the post of President of the Panchayat for a period of 2 ½ years and thereafter the post was to be allotted to a member belonging to Congress party and in respect of the post of Vice President also it was decided by the Muslim League and UDF that the said post is to be allotted for a member belonging to Congress party for the first 2 years and then to a member belonging to Muslim League for the remaining three years. The petitioner as PW1 has

deposed that as per the above decision the Vice President belonging to Muslim League Smt.Girija had resigned in December 2012 and Smt.K.V.Sabeera belonging to Muslim League was elected as Vice President. Ext.P6 is the copy of the minutes of the election to the post of Vice President held on 10.01.2013. PW1 has further deposed that the respondent declined to resign from the post of President after his term of 2 ½ years and he refused the demands made by the Muslim League and UDF in this regard and when the demands were repeated the respondent started to co-operate with the rival coalition the LDF and in that context the Muslim League and the UDF decided to move a no confidence motion against the respondent. PW1 has further stated that as per the said decision all the other 8 members of UDF moved a no confidence motion against the respondent and it was tabled for discussion on 11.07.2013 and the District Secretary of Muslim League issued direction to the respondent to participate in the meeting and vote in favour of the no confidence motion. He has further deposed that the UDF whip K.Narayanan also had issued direction to the respondent to vote in favour of the no confidence motion and the copy of that direction was given to the Secretary. The decision taken by the UDF parliamentary party regarding the no confidence motion has been recorded in the minutes which is marked as Ext.P8 and Ext.P9 is the copy of the direction given by the UDF whip to the Secretary. Exts.P10 series are the copy of the whip,

postal receipts and the returned postal covers sent to the respondent by PW2, the UDF whip. Ext.P11 is the acknowledgment card regarding the service of whip by the Malappuram District Secretary to the respondent. Another whip issued by the District Secretary was returned as unclaimed which is marked as Ext.P12. It is also stated that since the directions issued by the UDF whip by post were returned as unclaimed, it was served by affixture evidenced by Ext.P13. Ext.P14 is the copy of the whip given to the Secretary of the Panchayat. The definite case of the petitioner is that in spite of accepting the direction issued by the District Secretary and knowing about the direction given by the UDF whip. The respondent had abstained from attending the meeting convened for discussing the no confidence motion and this was done by aligning with the rival coalition members and thus the respondent has voluntarily given up his membership from the party. Ext.P15 is the copy of the minutes of the meeting regarding the no confidence motion and it is seen that the motion could not be taken up for want of quorum. The fact that the respondent had accepted the direction issued by the District Secretary of Muslim League to participate and vote in favour of the no confidence motion which was tabled for discussion on 11.07.2013 is not in dispute.

17. The UDF whip has been examined as PW2. He has deposed that he was elected as UDF parliamentary party whip in a meeting in which the

respondent also was a member and the minutes of that meeting has been marked as Ext.P18. A copy of that decision electing PW2 as the UDF whip was communicated to the Secretary of the Panchayat and its copy is Ext.P9. He has further deposed that a decision was arrived at among the political parties under UDF coalition to share the post of President and Vice President and accordingly the respondent was elected as President for the first term of 2 ½ years and he was to vacate that post for a Congress member to get elected and as regards the Vice President, the member of the Congress party was elected as Vice President for the first term and he had already vacated that post and the member belonging to Muslim League has been elected as Vice President. PW2 would further depose that in spite of repeated demands made by the Muslim League Malappuram District Secretary and the UDF leaders, the respondent refused to resign from the post of President and so it was decided to move a no confidence motion against him and PW2 issued whip in his capacity as a parliamentary party whip directing the respondent to vote in favour of the no confidence motion. Ext.P13 is the direction issued by PW2 to the respondent directing him to vote in favour of the no confidence motion and this has been stated as affixed in the outer door of the house of the respondent in the presence of witnesses. PW2 has further deposed that he had sent the whip by registered post to the respondent in his house addressed as well as official addressed and such postal articles were returned as

refused and they are marked as Exts.P10 series. Even though PW2 has been cross-examined at length, nothing has been brought out to discredit his testimony in material particulars.

18. PW3 is the President of the Vazhayur Panchayat Muslim League committee and he has deposed that the whip issued by PW2 was affixed in front of the house of the respondent in his presence. He would further depose that the whip issued by the Muslim League Malappuram District Secretary was sent by post in the house address and official address of the respondent and one such whip was accepted by the respondent and the other was returned.

19. PW4 the Muslim League Malappuram District Secretary has reiterated about the decision to share the post of President and Vice President between Muslim League and Congress party and according to him after the 2 ½ years the respondent was elected as President. He has further deposed that his repeated demands to the respondent to resign from the post were declined and so a decision was taken by the party to move a no confidence motion against the respondent and thereupon he issued direction to the respondent to participate in the meeting convened to discuss the no confidence motion and to vote in favour of the no confidence motion. The copy of his direction given to the members of Muslim League including the respondent is marked as Ext.P14. He has further deposed that his whip was sent by post in the official address and house address

of the respondent and the whip sent in his house address was accepted by the respondent and Ext.P11 is the acknowledgment of the same and Ext.P12 series are the postal receipts and postal cover sent to the respondent in his official address which was returned as refused. PW4 has further deposed that he is the person authorized to recommend symbol to the candidates of Muslim League while contesting in the election in the local body. In cross-examination PW4 has reiterated that the no confidence motion was moved as per the decision of Muslim League and the UDF. He has also deposed that Ext.P14 was the whip issued in his capacity as the District Secretary of Muslim League. Ext.P15 is the copy of the minutes regarding the meeting on the no confidence motion and from this record it is seen that all the members belonging to UDF, except the respondent were present and as there was no quorum, the motion could not be discussed.

20. The respondent as RW1 has admitted the receipt of the whip issued by PW4. He has deposed that since the meeting for discussing the motion was convened in violation of Section 157(3) of the Kerala Panchayat Raj Act, he was not bound to attend the said meeting. He has also deposed that there was no agreement to share the post of President and Vice President between Muslim League and Indian National Congress and that he was elected for the full term of five years. In cross-examination he has stated that he does not know whether

there was any agreement between Muslim League and Congress Party regarding the election to the post of President and Vice President. He has also stated that he does not know whether there was an agreement between the above parties to share the post of President for 2 ½ years each. He has categorically admitted at page 11 of his deposition that he had accepted the whip sent by PW4 by registered post. He has also admitted that the Vice President belonging to Congress party had resigned after two years and thereafter a League member was elected as Vice President. He has also admitted that such a change may have happened on the basis of a consensus between the said political parties. In re-examination he has stated that the District Secretary had sent to postal articles to him and on receiving one such article he came to know that it was the whip of PW 4 and as he was a complete independent member he refused to receive the other postal articles.

21. RW2 the Block Secretary who convened the meeting for discussing the no confidence motion has been examined to support the contention of the respondent that the said meeting was convened in violation of Section 157(3) of the Kerala Panchayat Raj Act. Ext.R3 is the copy of the notice given by the eight members belonging to UDF on the no confidence motion and Ext.R4 is the notice given by the Block Secretary dated 24.06.2013 to one member Remanan Master and Ext.R5 is the notice given by the Block Secretary to another member on the

same date. According to the respondent the notice on the no confidence motion was received by the Authorized Officer on 20.06.2013 and the date 20.06.2013 mentioned in the notice has been altered as 24.06.2013 and similar manipulations are made in all the connected records. Ext.X1 distribution register is pressed into service to support the above contention.

22. As per Section 157(3) of the Kerala Panchayat Raj Act, the officer authorized to convene the meeting on the no confidence motion has to convene the same at the office of the Panchayat at a time appointed by him which shall not be later than 15 working days from the date on which the notice under sub Section 2 is delivered to him. The learned counsel for the respondent would argue that the notice on the no confidence motion was delivered to RW2 on 20.06.2013 and as he has convened the meeting only on 11.07.2013 there is violation of this provision and as such the no confidence motion cannot be taken into account at all. It appears that there are some corrections regarding the date shown in the notice issued by the authorized officer and also in Ext.X1 register. However the contention of the respondent that the meeting on the no confidence motion was convened beyond the period prescribed under Section 157(3) of the Kerala Panchayat Raj Act and as such it is illegal cannot now be entertained. The respondent has not challenged any of the proceedings of the authorized officer before any competent Court. From the records it is found that the meeting was

convened on 11.07.2013 and as there was no quorum the motion was not discussed. Ext.P15 is the copy of the minutes regarding the meeting on the no confidence motion. From Ext.P15, it is found that it was convened on 11.07.2013 at 11 am at the Vazhayur Grama Panchayat conference hall and eight members belonging to UDF had participated in that meeting. The strength of the Panchayat is 17 and only if one half of the members are present, the motion could be taken up for discussion. No doubt if the respondent had also attended, the motion could have been taken up for discussion. But the respondent did not attend this meeting and so the motion could not be discussed. As per Ext.P15 the proceedings regarding no confidence motion against the President came to an end for want of quorum. The respondent also does not dispute the same. Except certain corrections in the date, there is no evidence to prove that the notice on the confidence motion was delivered to RW2 on 20.06.2013. Even otherwise after having accepted the consequence of the meeting in respect of the no confidence motion, it is futile to contend that it was convened by violating the provisions of the Act. Such a contention is too technical and deserves no serious consideration.

23. The contention of the respondent is that as he is an independent member not belonging to any political party he is not bound by the decision and direction of the Muslim League or PW4. While discussing on point No.(iii) in this case, this contention has been found against. It is not in dispute that PW4 is

the competent person to recommend symbol to the candidates of his political party for contesting in the local body elections. As per clause (iva) of Section 2 of the Act, the direction to a member in respect of voting on a no confidence motion is to be issued by the person who is competent to recommend symbol to the candidates of such political party and so the direction issued by PW4 is surely binding on the respondent. I have also found that the respondent though was an independent member elected with the support of Muslim League is to be considered as a member belonging to that party. In the light of the admission of the respondent that he had received the whip issued by PW4 regarding his participation and voting on the no confidence motion moved against him, the only question left for consideration is whether the conduct of the respondent in having abstained from attending the meeting convened for discussing the no confidence motion would amount to voluntarily giving up his membership from the party as provided by Section 3(1) (a) of the Act.

24. As already pointed out, Section 3(1)(a) of the Act deals with a member belonging to a political party and it 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.”

25. 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 of such political party. The second limb is attracted when such

member votes or abstains from voting against the direction issued by the party or by the person authorized by it in this behalf in the manner prescribed in respect of voting or abstention as stated under clauses (i) and (ii) of this Section. It is settled law that the two limbs under Section 3(1)(a) are distinct and not interlinked. So if a member belonging to a political party has voluntarily given up his membership from the party by his conduct, he is liable to be disqualified. Of course for attracting the second limb the procedure contemplated by Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules are to be followed,- The petitioner has not invoked the second limb of Section 3(1)(a) of the Act and his definite case is that the respondent has voluntarily abandoned his membership from Muslim League by his conduct of defying the direction issued by its District Secretary to participate and vote in favour of the no confidence motion moved against him.

26. From the facts and materials on record it is clearly found that the respondent was elected to the post of President for a term of 2 ½ years and he had to step down after such term for giving way to a member belonging to Congress party to become the President. The respondent as RW1 has admitted that the Vice President had resigned from that post after the term allotted to her for enabling a member belonging to Muslim League to become Vice President. The evidence is in abundance showing that there was decision among the political

parties in the UDF especially between Congress party and Muslim League, to share the post of President and Vice President and the respondent was thus elected as President only for a term of 2 ½ years. The version of PW4 that he had repeatedly demanded the respondent to resign from the post of President to pave way for a member of the Congress party to become President has not been obeyed by the respondent and it was in that context that the party and UDF had decided to move the no confidence motion is only to be believed. So in the above circumstances the conduct of the respondent in having disobeyed the direction of the Malappuram District Secretary of Muslim League was nothing but disloyalty to his party. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership from such party.

27. The object sought to be achieved by the “Act” is to prohibit defection among members of the Local Authorities and 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 foundation of our democracy. The Kerala Local Authorities (Prohibition of Defection) Act derived its source from the 10th Schedule to the Constitution of India. Of course the provisions in this Act are more rigorous than the 10-th schedule. While considering the Constitutional validity of the 10th

Schedule, the Apex Court in **Kihoto Hollohan Vs.Zachillhu (1992 Supp. 2 SCC**

651) observed as follows:-

“A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party.....If a member while remaining a member of the political party which had set him up as a candidate at the election votes or abstains from voting contrary to any ‘direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, he incurs the disqualification.....A political party functions on the strength of shared beliefs of its own members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political party’s declared politics 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 survival....To vote against

the party is disloyalty. To join with others in abstention or voting with other side smacks of conspiracy.”

28. In the case on hand the political equations made it convenient to the respondent to shift his loyalty to the rival camp so as to continue as President. The total strength of the Panchayat is 17. The UDF including the respondent secured 9 seats and the LDF secured 8 seats. When PW4 repeatedly demanded the respondent to resign from the post, he colluded with the rival coalition members and refused to resign and the meeting convened for discussing the no confidence motion was frustrated by his abstention along with the members of the LDF. As held in the above decision the action of the respondent has substantially embarrassed the political image and popularity of the party which fielded him as a candidate in the election. The above decision clarifies that a member who votes or abstains from voting contrary to any direction issued by the political party would incur disqualification by voluntarily giving up membership. It is settled that the President of a Panchayat belonging to a political party if refuses to step down from that post by defying the direction of the party and disobeys the further direction of the District Secretary or President to vote in favour of a no confidence motion moved against him would amount to defection. In *Faisal P.A V.K.A.Abdulla Kunhi* (2008 (3) KLT 534) it has been held at Paras 11 and 12 as follows,-

“11.Thus it can be seen that it was taking note of the conduct of the petitioner spanning over a period of time that the Commission has inferred that the petitioner had voluntarily given up his membership in Muslim League, the political party to which he belonged. In Shajahan V.Chathannoor Grama Panchayat and Others, after referring to the Apex Court,s judgment in Ravi Sa.Naik V.Union of India and Others, a Division Bench of this Court held that a person may voluntarily give up his membership of a political party even though he has not tendered his resignation. It was also held that even in the absence of a formal resignation, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belong.

12. In my view, the law laid down in the aforesaid judgment applies in full force to the facts of this case also. In the Judgment in WA 2351/2005, a Division Bench of this Court upheld the judgment of the learned judge that by accepting the nomination by members of the rival coalition, the appellant therein had voluntarily given up membership of his political party, is not to be equated with ceasing to be a

member of his party by resignation. From the conduct of the petitioner if an inference can be drawn that he has voluntarily given up his membership of his political party, he is liable to be disqualified. From the facts noticed by the 2nd respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation.”

29. In a catena of decisions it has been consistently held that it is the conduct of a member in respect of an election to the post of President, Vice President, Standing Committee Chairman or its members or a no confidence motion which determines whether such member has become disloyal to the party and has incurred disqualification. In the case on hand the respondent has arrayed with the LDF members and at first refused to resign from the post of President in spite of the repeated demands made by his party and UDF in this regard and he then, after accepting the direction issued by the Muslim League Malappuram District Secretary, defied that direction and abstained from attending the meeting convened for discussing the no confidence motion along with the LDF members

and the above conduct of the respondent would definitely amount to voluntarily giving up membership from his party. Of course the petitioner has produced certain other records and evidence to show that his subsequent conduct also would reveal that he is in the LDF camp. However in the absence of any pleadings, his subsequent conduct does not arise for consideration. Suffice to say that his abstention from the meeting on the no confidence motion along with the LDF members by disobeying the decision and direction of his party would itself be sufficient to prove that the respondent has voluntarily given up his membership from the party and thus he incurred disqualification. The points are answered accordingly

In the result, the petition is allowed and the respondent is declared as disqualified for being a member of Vazhayur Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and he is also declared as disqualified for contesting as a candidate 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 30th day of July 2014

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

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri.E.K.Farooq, Pappu's, Paramel, Azhinjilam P.O.,
Malappuram District, Vazhayoor Grama Panchayat
- PW2 : Sri.Narayanan, Kodakallingal House Puthucode P.O.
(Via) Ramanattukara, Malappuram District.
- PW3 : Sri. Abdul Majeed, Mangadan Thodi Hosue,
Kakkovu, Vazhayur
- PW4 : Sri.Abdul Hameed, Pattikkad P.O., Malappuram District
- PW5 : Sri.Anus, Pottayil House, Valiyaparamb P.O

Witnesses examined on the side of the respondent

- RW1 : Sri. Hibathulla Master, Kollerithodi,
Vazhayoor Grama Panchayat
- RW2 : Sri. Abdul Majeed, Khadeeja Manzil,
Edappallikotta P.O. Chavara, Kollam

Documents produced on the side of the petitioner

- P1 : Copy of the Declaration in Form No.2 filed by Sri.Farooq
- P2 : Copy of the Declaration in Form No.2 filed by
Sri.P.K.M.Hibathullah Master
- P3 : Copy of the Declaration in Form No.2 filed by
Sri.Edakkanthodi Preman

- P4 : Copy of the register showing party affiliation of the members of Vazhayur Grama Panchayat
- P5 : Copy of the minutes of the meeting of Vazhayur Grama Panchayat held on 06.12.2010 to elect the President
- P6 : Copy of the minutes of the meeting of Vazhayur Grama Panchayat held on 06.12.2010 to elect the Vice President
- P7 : Minutes Book of UDF Vazhayur Panchayat Committee
- P7(a) : Minutes Book of UDF Vazhayur Panchayat Committee
- P8 : Minutes Book of UDF Parliamentary Party, Vazhayur Grama Panchayat
- P9 : Copy of the letter dated 03.12.2010 of the Chairman, UDF Vazhayur Panchayat Committee addressed to the Secretary Vazhayur Grama Panchayat
- P10 : Receipt of registered letter addressed to Sri.Hibathullah
- P10(a) : Envelop of the registered letter addressed to Sri.Hibathullah
- P11 : Acknowledgment card of speed post addressed to Sri.Hibathulla
- P11(a) : Receipt of speed post addressed to Sri.Hibathullah
- P12 : Returned speed post letter addressed to Sri.Hibathullah
- P12(a) : Acknowledgment card of speed post addressed to Sri.Hibathulla
- P13 : Copy of the whip addressed to Sri.Hibathullah Master issued by Sri.K.Narayanan
- P14 : Copy of the letter dated 28.06.2013 of General Secretary IUML, Malappuram District Committee

- P15 : Copy of the minutes of the meeting of Vazhayur Grama Panchayat to discuss no confidence motion against the President
- P16 : Letter No.B.1486/13 dated 05.09.2013 of the BDO, Kondotti and its enclosures
- P17 : Copy of the whip dated 12.08.2013 addressed to the Secretary, Vazhayur Grama Panchayat
- P17(a) : Copy of the whip addressed to Sri.Hibathullah Master, Vazhayur Grama Panchayat
- P17(b) : Copy of the whip addressed to the Secretary, Vazhayur Grama Panchayat
- P18 : Copy of the whip dated 11.08.2013 addressed to Sri.Hibathullah Master
- P18(a) : Acknowledged copy of the whip dated 11.08.2013 addressed to Sri.Hibathullah Master
- P19 : Malayala Manorama daily dated 12.06.2013
- P20 : Mathrubhoomi daily dated 12.06.2013
- P21 : Statement published by UDF in the General Election for Local Bodies held on 2010

Documents produced on the side of the Respondent:

- R1 : Copy of the list of candidates in Form No.6
- R2 : Statement published by Sri.Hibathullah Master in General Election 2010
- R3 : Letter No.B.1134/2013 dated 23.07.2013 of the BDO, Kondotti and enclosures

- R4 : Letter No.1134/13 dated 24.06.2013 of the Secretary Block Panchayat Office, Kondotti
- R5 : Letter dated B.1134/2013 dated 24.06.2013 of the Secretary Block Panchayat, Kondotti

Document produced on the side of the witness

- X1 : Copy of the Distribution Register, Block Panchayat, Kondotti

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