

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

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

**Tuesday, the 3<sup>rd</sup> day of February 2015**

**O.P.No.05/2013**

Petitioner : K.P.Retnakumar,  
S/o Parameswaran Pillai,  
Kizhakkathil Veedu, Kadinamkulam,  
Puthukurichi P.O.,  
Member, Ward No.2,  
Kadinamkulam Grama Panchayat,  
Thiruvananthapuram District.

**(By Advs.A.Santhoshkumar & Vinod.K.)**

Respondent : M.S.Justin,  
Residing at Thaivilakam, Puthenthoppu.P.O.,  
Member, Ward No.15,  
Kadinamkulam Grama Panchayat,  
Thiruvananthapuram District.

**(By Advs.Cherunniyoor P.Sasidharan Nair &  
Kallambalm S.Sreekumar)**

This petition having come up for hearing on the 27<sup>th</sup> day of December 2014,  
in the presence of Advocates **A.Santhoshkumar & Vinod.K** for the petitioner and  
Advocates **Cherunniyoor P.Sasidharan Nair & Kallambalam S.Sreekumar** for

the respondent and having stood over for consideration to this day, the Commission passed the following.

### **ORDER**

This is a petition filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent has become subject to disqualification for being a member of Kadinamkulam Grama Panchayat.

2. The short facts are as follows:- The petitioner and the respondent are elected members of ward No.2 and 15 respectively of Kadinamkulam Grama Panchayat and both of them were elected as members belonging to Congress party. Out of the total 23 wards, Indian National Congress won in 11 wards and Muslim League found victory in two wards and one ward was won by PDP. Eight members belonging to CPI(M) and one member belonging to CPI also found victory. As the UDF secured clear majority, Smt. Telma John belonging to Congress party was elected as President and the petitioner belonging to Congress party was elected as Vice President. Certain Congress members along with others moved a no confidence motion against the President and that motion was carried. Four petitions were filed before this Commission against the persons belonging to Congress Party as O.P.Nos.101/2012 to 104/2012. After passing the said no confidence motion against the President, the respondent along with seven other members moved a no confidence motion against the petitioner and when it was tabled for discussion, the

petitioner resigned from the post of Vice President. The election to the post of Vice President was scheduled to be held on 14.11.2012. The District Congress Committee President who is the authorized person to recommend symbol to the candidate has given written instruction by way of whip dated 12.11.2012 to all the Congress members to vote in favour of the petitioner who was decided as the official candidate for the post of Vice President. The respondent and others received the whip directly and the whip of the respondent was sent by post and it was also affixed in front of the house of the respondent in the presence of witnesses on 12.11.2012. The respondent in gross defiance of the direction issued by the political party not only disobeyed the whip but also colluded with the LDF members and stood as Vice President candidate against the petitioner and with the support of LDF members he was elected as Vice President. The name of the respondent was proposed and seconded by the member belonging to LDF and on accepting such nomination, he contested and voted against the official candidate of Congress party and thus he has voluntarily given up his membership from the party. Thus the respondent has committed defection and thereby he has become subject to disqualification for being a member of Kadinamkulam Grama Panchayat. Hence the petition.

3. The respondent filed objection contenting in brief, as follows:- The petition is not maintainable either in law or on facts. The petitioner is not

competent to file the petition. It is true that the respondent is a member belonging to Congress party. The candidates of Muslim League and PDP contested in the election independently and not under UDF coalition. Some Congress members of the Panchayat complained regarding the corruption and malpractices of the President and Vice President and even though the party directed them to resign from the respective posts they disobeyed such directions and so as per the instruction from the party, no-confidence motions were moved against the President and Vice President and the motion moved against the President was carried and the Vice president thereafter resigned from that post. The allegation that the DCC President had issued whip to the respondent regarding the Vice President election is totally false. The party has never decided to elect the petitioner again as Vice President of the Panchayat. The decision of the party was to elect the respondent as Vice President. The allegation that the whip was affixed in front of the house of the respondent is totally false. The respondent has never colluded with members belonging to LDF and the allegation that the respondent was nominated and seconded by members of rival coalition is false. In the election held on 14.11.2012 the respondent was the UDF nominated candidate and one Surendran was the LDF candidate. Even though the petitioner resigned from the post as per the instruction of the party he again contested the election and as all the three candidates secured equal votes and the LDF nominated candidate was eliminated by draw of lots the members voted in

favour of the respondent. The allegation that the respondent was elected as Vice President with the support of political rivals is false. The further allegation that the respondent has voluntarily given up his membership from the party also is false. The respondent has not committed any defection and he has not violated any direction issued by the DCC President. So the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PW1 and RW1 and Exts.P1 to P5 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 has disobeyed the direction or decision of the Congress party in the election to the post of Vice President held on 14.11.2012 as alleged?
- (iii) Whether the respondent has become subject to disqualification for being a member of Kadinamkulam Grama Panchayat?
- (iv) Reliefs and costs?

7. **POINT No.(i)**: The petition is 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 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. According to the petitioner the respondent by disobeying the direction issued by the DCC President who is competent to recommend symbol to the candidate of the party has contested and voted against the petitioner who was the official candidate of Congress party in the election to the post of Vice President held on 14.11.2012 and he colluded with the members belonging to LDF and defeated the petitioner and thereby he has voluntarily given up his membership from the party. So the allegation is that the respondent has become subject to disqualification as provided by Section 3(1)(a) of the Act. As per **Section 3(1)(a)** of the Act, if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, he shall be disqualified for being a member of that local authority. In the light of the rival claims it is found that a question arises as to whether the respondent has committed defection as provided by **Section 3(1)(a)** of the Act. The petitioner is none other than a member belonging to Congress party in the Panchayat in which the respondent also is a member. So he is competent to file a petition as provided by Section 4(1) of the Act and also **Rule 4A(1) of the Local Authorities (Disqualification of Defected Members) Rules**. Since the petition has been filed by a competent person within the time prescribed under Rule 4A(1) of the above Rules and as a question arises as to whether the respondent has become subject to disqualification, I find that the petition is maintainable. The point is answered accordingly.

**8. POINT Nos.(ii) to (iv).** Certain facts are not in dispute. The petitioner and respondent were elected as members belonging to Congress party. After the General Election the petitioner was elected as the Vice President and one Telma John was elected as the President. A no confidence motion was moved by certain members of the Congress party and others against the President and Vice President and the motion against the President was carried. Four original petitions were already filed as O.P.Nos.101/2012 to 104/2012 against the Congress members who joined and voted in favour of the no confidence motion moved against the President. Subsequently when the no confidence motion against the Vice President was tabled for discussion, the petitioner resigned from that post and a fresh election to that post was scheduled on 14.11.2012. In the said election petitioner and respondent contested and ultimately the respondent was elected.

9. The petitioner would allege that he was the official candidate for the post of Vice President as decided by the Congress party and that the name of the respondent was nominated and seconded by the members belonging to LDF and the respondent accepted that nomination and contested against the petitioner by disobeying the direction issued by the DCC President and with the support of LDF members he was elected as Vice President and thereby he has voluntarily given up his membership from the party.

10. The petitioner has been examined as PW1. His chief examination is by way of an affidavit and he has stated in terms of the allegations contained in the original petition. Ext.P1 is stated to be the copy of the whip issued by the DCC President which was said to have been affixed in front of the house of the respondent regarding the election to the post of Vice President. The said record was marked only subject to proof. Ext.P2 series are the photographs regarding such affixture which also were marked only subject to proof and Ext.P3 is stated to be the minutes of the parliamentary party meeting convened by the DCC President on 17.10.2012. Ext.P4 is the minutes of the election to the post of Vice President and Ext.P5 is the CD regarding Ext.P2 photographs. PW1 has deposed that he was decided as the official candidate to the post of Vice President and the DCC President had issued direction to all the Congress members to vote for him and the respondent by disobeying that direction contested and voted along with the LDF members and thus he was elected with the support of the LDF members. In cross-examination the respondent has stated that he had voluntarily resigned from the post of Vice President and it was not as directed by the party. It was suggested to PW1 that the respondent contested the election as per the decision of the Congress party which PW1 denied and PW1 states that the party again directed him to contest in the election to the post of Vice President. PW1 has admitted that in the said election, at first, three candidates had contested and he was the official candidate and the



respondent was the rebel candidate and another was CPI(M) candidate and in the first round election, all the three candidates secured equal votes and the candidate of LDF was eliminated by draw of lots and thereafter the petitioner and respondent were the contesting candidates. It was suggested to PW1 that Ext.P1 is a fabricated record and that the DCC President had never issued such a whip which PW1 denied.

11. The respondent has been examined as RW1. He has deposed in terms of his contentions and stated that he was the candidate decided by the Congress party and that he has never colluded with the LDF members and also that no whip issued by the DCC President was received by him nor affixed in front of his house. It was suggested to RW1 that the DCC President has convened a meeting of the Parliamentary party on 14.11.2012 and RW1 which RW1 denied. According to him no such meeting was held. He has also doubted the correctness of the signature the DCC President contained in Ext.P3. It was further suggested to RW1 that in the parliamentary party meeting held on 17.10.2012, the petitioner was decided as the candidate for the post of Vice President which RW1 denied and has stated that no such meeting was held on that date.

12. The evidence on the side of the petitioner consists of only the oral deposition of PW1 and Exts.P1 to P5. Ext.P1 is stated to be the copy of the whip the original of which was said to have affixed in front of the house of the respondent. This was marked only subject to proof for the reason that the person who is said to

have affixed the whip or the attestors were not examined. The DCC President who is said to have issued this whip also has not been examined in this case. DCC President alone is the competent person to say whether such a direction was issued or not. Neither the DCC President nor the persons who is said to have affixed the original of Ext.P1 or the witnesses who are said to have attested the said affixture have been examined in this case. In Para 9 of the petition it is stated that the whip was sent by post. The manner of service of a whip is contained in Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and it reads as follows,-

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

13. Even though the petitioner has stated that the whip was sent by post no record is forthcoming to support the same. Admittedly the whip was not served directly. The only manner in which the direction was said to have been served is by

way of the disputed affixture. Since neither the DCC President nor the persons who are said to have affixed the whip are examined, it can only be held that the petitioner has failed to prove that the whip was served to the respondent. Ext.P2 series are stated to be the photographs taken at the time of affixture. As already pointed out as none of the persons who are said to have affixed the whip are examined, Exts.P2 series and P5 cannot have any evidentially value. Ext.P3 is stated to be the copy of the minutes of the parliamentary party meeting held on 17.10.2012. It is true that in this minutes it is seen decided that the petitioner will be the candidate for the post of Vice President. But the respondent has not attended that meeting and there is no evidence to show that he was given any notice regarding such a meeting. Apart from the petitioner nobody has been examined to prove that such a meeting was convened or such a decision was taken in the presence of the DCC President. Ext.P4 is the copy of the minutes of the Vice President election and Ext.X1 is its original.

14. On a careful analysis of the entire facts and materials on record I find that the petitioner has completely failed in proving that the DCC President had issued any direction to the respondent to vote in favour of the petitioner in the election to the post of Vice President held on 14.11.2012. The veracity and correctness of Exts.P1, P3 and P5 are under serious doubts and the petitioner has failed to adduce any evidence to dispel the thick cloud of suspicion surrounding these records. It is significant to note that in the election to the post of Vice President, at first three

candidates had contested, ie., the petitioner, the respondent and a candidate from LDF and all of them secured equal votes and thereafter the candidate from LDF was eliminated in the draw of lots and thus the remaining contestants happened to be the petitioner and respondent. So in the above context it cannot be held that the respondent had colluded with the members of the LDF in contesting the election to the post of Vice President. The fact that the petitioner had resigned from the post of Vice President which necessitated the fresh election also cannot be over looked. For entering a finding that the respondent has voluntarily given up his membership from the party, it should be proved that he had become disloyal to the political party in which he belongs by disobeying the direction or decision of the party in respect of the election to the post of Vice President or that his conduct was such as to constitute defection as provided by Section 3(1)(a) of the Act. In the case on hand the petitioner has completely failed in proving that the respondent has become disloyal to the party or that he has disobeyed the direction issued by the DCC President in respect of the election to the post of Vice President. There is total lack of evidence for entering a finding regarding the alleged defection against the respondent. Therefore I find that the petitioner has failed in proving that the respondent has committed defection as provided by Section 3(1)(a) of the Act 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 3<sup>rd</sup> day of February 2015

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

**APPENDIX**

**Witnesses examined on the side of the petitioner**

PW1 : Sri.K.P.Retnakumar, Kizhakkathil Veedu,  
Kadinamkulam P.O.

**Witnesses examined on the side of the respondent**

RW1 : Sri. M.S.Justin, Thaivilakam

**Documents produced on the side of the petitioner**

P1 : Copy of the whip dated 12.11.2012 issued by  
President, Thiruvananthapuram District Congress  
Committee to Sri.M.S.Justin (Subject to proof)

P2 : Photographs (Subject to proof)

P2(a) : Photographs (Subject to proof)

P3 : Copy of the minutes of the meeting of  
parliamentary party held on 17.10.2012 of  
Kadinamkulam Grama Panchayat

P4 : Copy of the minutes of the meeting held  
14.11.2012 of Kadinamkulam Grama Panchayat

P5 : CD

**Documents produced on the side of the witnesses**

X1 : Minutes of the meeting dated 14.11.2012 to elect  
the Vice President of Kadinamkulam Grama  
Panchayat

Sd/-  
**K.SASIDHARAN NAIR,**  
**STATE ELECTION COMMISSIONER.**

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