

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

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

**Saturday, the 3rd<sup>th</sup> day of May 2014**

**O.P.Nos.51/2013, 52/2013 & 53/2013**

**O.P.51/2013**

Petitioner : Kunjappan Painkily,  
S/o Painkily, Mulamattakottil,  
Thirumaradi P.O.,  
Ernakulam District, PIN-686 662.  
Member, Ward No.9.,  
Thirumaradi Grama Panchayat.

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

Respondent : John Paily,  
S/o Paily, Kizhakumcheril,  
Mannathur P.O., Ernakulam District,  
Pin – 686667.  
Member, Ward No.4.,  
Thirumaradi Grama Panchayat

**(By Advocate Vinod Bhatt)**

**O.P.52/2013**

Petitioner : Kunjappan Painkily,  
S/o Painkily, Mulamattakottil,  
Thirumaradi P.O.,  
Ernakulam District, PIN-686 662.  
Member, Ward No.9.,  
Thirumaradi Grama Panchayat.

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

Respondent : Anitha Baby,  
W/o P.J.Baby, Padinjareveetil,  
Vettimoodu, Kakkur P.O.,  
Ernakulam District,  
Pin – 686662.  
Member, Ward No.1,  
Thirumaradi Grama Panchayat

**(By Advocate Kulathur S.V.Premakumaran Nair)**

**O.P.53/2013**

Petitioner : Kunjappan Painkily,  
S/o Painkily, Mulamattakottil,  
Thirumaradi P.O.,  
Ernakulam District, PIN-686 662.  
Member, Ward No.9.,  
Thirumaradi Grama Panchayat.

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

Respondent : Biju Kuriakose,  
S/o Kuriakose, Tharamadathil,  
Thirumaradi. P.O.,  
Ernakulam District,  
Pin – 686662.  
Member, Ward No.8,  
Thirumaradi Grama Panchayat

**(By Advocate Vinod Bhatt)**

These petitions having come up for hearing on the 29<sup>th</sup> day of March 2014, in the presence of Advocates **Hashim Babu.M & Sajitha.S** for the petitioner and Advocates **Vinod Bhatt & Kulathur S.V.Premakumarn Nair** for the respondents and having stood over for consideration to this day, the Commission passed the following;

## **COMMON ORDER**

These are Petitions are filed under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have become subject to disqualification for being members of Thirumaradi Grama Panchayat. Since the petitions are filed by a common petitioner and common questions of law and facts arise for consideration in all these cases, they have been taken up jointly as per order on I.A.No.128/2013 and O.P.No.51/2013 is treated as the leading case.

2. Common allegations are raised by the petitioner in all these cases which are in short as follows,- The petitioner and respondents are members of Thirumarady Grama Panchayat. They contested the election held in October 2010 as candidates of Indian National Congress and were elected as members. This Panchayat consists of 13 wards. The UDF secured majority by winning 8 wards of which 7 members belonging to Indian National Congress and one member belonging to Kerala Congress (Jacob) were elected. The LDF coalition secured 5 members of which CPI(M) won 4 seats and CPI found victory in one seat. The member belonging to Kerala Congress (Jacob) was elected as President as per the consensus arrived at among the District leadership of the UDF for the first 2½ years and the

remaining term was earmarked for the Indian National Congress. Smt.Beena James the President belonging to Kerala Congress (Jacob) resigned on 04.07.2013 to pave way for a Congress nominee to become the President. The election to the post of President was scheduled on 29.07.2013. The Congress parliamentary party meeting was convened by the DCC President at his residence on 26.07.2013 for deciding the candidate for the post of President and notices were given to all Congress members. But the respondents did not turn up for the meeting. Smt.Valsamma Bhaskaran was unanimously decided as the President candidate in that meeting and the DCC President instructed to share that post between Smt.Valsamma Bhaskaran and Smt.Anitha Baby, the respondent in No.O.P.No.52/2013 in equal terms in case Smt.Anitha Baby followed the instructions of the party. The DCC President issued whip to all members of the Congress party to vote in favour of Smt.Valsamma Bhaskaran and the same was communicated to the respondents by post, courier and affixture and in the election meeting held on 29.07.2013, the whip of Indian National Congress was read over. The name of Smt.Valsamma Bhaskaran, the official candidate of Congress party was proposed and supported by members belonging to Congress party. But the name of respondent in O.P.No.52/2013 was proposed by the respondent in O.P.No.53/2013 and

seconded by the respondent in O.P.No.51/2013 and she did not withdraw her candidature and contested against the official candidate. She contested against the official candidate by colluding with LDF members and also by ensuring their votes. Except the respondents all other members belonging to Congress party and UDF voted in favour of Smt.Valsamma Bhaskaran. But the respondents and all other LDF members voted in favour of the respondent in O.P.No.52/2013 and she secured 8 votes out of which 5 votes were of the members belonging to LDF and thus she was declared as elected. The respondents willfully disobeyed the direction of the Congress party and voted against the official candidate for the post of President by burying the interest of their political party and thus they had betrayed the party and electorate. By voting against the official candidate for the post of President and by getting elected with the support of rival front, the respondents have committed defection and this was done by the respondents in gross defiance of the direction issued by the Congress party. If the respondents had obeyed the instruction of the party, the decision of that political party would have been protected. By the action of the respondents in having become disloyal to the party by contesting and voting against the official candidate of the party and also getting elected with the support of LDF members, they have voluntarily abandoned their membership from the

party and thus they have become subject to disqualification for being members of the Panchayat. Hence these petitions.

3. The respondents have raised common contentions which are briefly, the following,- The petitions are not maintainable either in law or on facts. The petitions have been filed by raising false and frivolous allegations. Smt.Beena James resigned from the post of President as a result of public demand. It is true that the President election was scheduled on 29.07.2013. No parliamentary party meeting was convened on 26.07.2013 by the DCC President nor notice on the same was given to the respondents. The statement that Smt.Valsamma Bhaskaran was unanimously decided as President candidate is false. No whip was issued by the DCC President and no such whip was served by post or by affixture. Smt.Valsamma Bhaskaran was not nominated as the official candidate. When the election meeting began the respondent in O.P.No.53/2013 proposed the name of the respondent in O.P.No.52/2013 and it was seconded by the respondent in O.P.No.51/2013 and the Returning Officer recorded the same and informed that there was no provision from withdrawal. Thereafter, against all political purity, the name of Smt.Valsamma Bhaskaran was proposed and seconded by two other members and the election was conducted. In the election the respondent in O.P.No.52/2013 secured majority votes and she was declared

as elected. The allegation that Smt.Valsamma Bhaskaran was the official candidate of Congress party or UDF is totally false. The respondents have not disobeyed the whip and there was no whip at all. The respondents did not request the LDF members to vote in favour of the respondent in O.P. No.52/2013 and they have voluntarily voted in her favour. The name of the respondent in O.P.No.52/2013 was proposed and seconded by Congress party members and all of them are continuing as members of Congress party. They have never given up their membership from the party nor were expelled. They have not committed any defection and they have not abandoned their membership from the party nor joined any other political party. So the petitions deserve only dismissal.

4. The evidence consists of the oral depositions of PWs1 and 2, RWs 1 to 3 and Exts.P1 to P8.

5. All parties were heard.

6. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether Smt.Valsamma Bhaskaran was the official candidate of Indian National Congress for the election to the post of President held on 29.07.2013?
- (iii) Whether the respondents have become subject to disqualification for being members of Thirumarady Grama Panchayat as provided by Section 3(1)(a) of the Act?

(iv) Reliefs and costs?

7. **POINT No.(i)**: These are petitions filed under Section 4 read with Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection ) Act. According to the common petitioner, the respondent in O.P.No.52/2013 contested to the post of President in the election held on 29.07.2013 against the official candidate of Indian National Congress and all the respondents along with the LDF members voted in her favour and defeated the official candidate by disobeying the direction of the DCC President and thereby committed defection. The respondents would deny the above allegations and contend that Smt.Valsamma Bhaskaran was not the official candidate of Indian National Congress and that they have not committed any defection. So a question arises as to whether the respondents have become subject to disqualification. Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act' states that if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the act, a member of that local authority or the political party concerned or a person authorized by it in this behalf can file a petition before this Commission for decision. These petitions are filed by a member of the same local authority of which

the respondents are members. So the petitioner is competent to file the petition. As per Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, a petition under Section 4(1) of the Act is to be filed within 15 days from the date on which the member is deemed to have become subject to disqualification. These cases are filed by the petitioner within the period prescribed under the above Rule. The respondents have not raised any series contentions challenging the maintainability of these petitions. As the petitions are filed by competent person within the prescribed time limit and a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Act, I find that the petitions are maintainable. The point is answered accordingly.

8. **POINT Nos.(ii) to (iv)**: Certain facts are not in dispute. The petitioner and respondents contested the election in various wards of Thirumaradi Grama Panchayat as candidates of Indian National Congress and were elected as members. Ext.P1 series are the declarations submitted by the petitioner and respondents stating their political affiliations as provided by sub-rule-2 of Rule 3 of the Kerala Local Authorities (Disqualification of Defected Members) Rules and in these declarations all of them had stated that they were elected as members of Indian National

Congress. Ext.P2 is the copy of the register maintained by the Panchayat regarding the political affiliation of the members and in this document also the respondents are stated as members belonging to Indian National Congress. In Thirumaradi Grama Panchayat there are 13 wards. The UDF secured majority with 8 seats and out of them 7 members belonged to Indian National Congress and one, Kerala Congress (Jacob). The LDF secured 5 members out of which CPI (M) found victory in 4 seats and CPI in one seat. After election the member belonging to Kerala Congress (Jacob) was elected as President for the first 2 ½ years and she resigned from that post on 04.07.2013 to pave way for a member belonging to Indian National Congress to become the President. Then the election to the post of President was held on 29.07.2013. In that election, the respondent in O.P.No.52/2013 was nominated by the respondent in O.P.No.53/2013 and seconded by the respondent in O.P.No.51.2013 for the post of President and she contested against Smt.Valsamma Bhaskaran who also belongs to Congress party and the 5 LDF members and these respondents voted in favour of the respondent in O.P.No.52/2013 and thus by securing 8 votes she was declared elected as President.

9. According to the petitioner the respondent in O.P.No.52/2013 had contested the election to the post of President against Smt.Valsamma

Bhaskaran who was the official candidate of Congress party by violating the direction and decision of the Congress party and that the respondents had aligned with the LDF members and by acting against the decision and direction of the Congress party and joining hands with the LDF members, they have committed defection.

10. The petitioner has been examined as PW1. He has deposed in terms of the allegations contained in the petition. PW1 has deposed that on receiving notice stating that the election to the post of President was scheduled on 29.07.2013, the DCC President convened a meeting of the Congress parliamentary party members on 26.07.2013 at 11am in his house with notice to all Congress members and the respondents did not attend in that meeting and all the other four members were present and it was unanimously decided to elect Smt.Valsamma Bhaskaran as President for the next one and quarter years and the remaining term was agreed to be allotted to the respondent in O.P.No.52/2013. He has further deposed that the DCC President had issued direction to all the Congress members to vote in favour of Smt.Valsamma Bhaskaran in the said election to the post of President and such directions were received by the four members in that meeting, which are marked as Exts.P3 series. He has further deposed that the whips of the respondents were sent by registered post in their official address as well as

house addresses and also by courier and the DCC President had authorized the Mandalam President Sri.Saju Madakkala to sent the whips by post. Exts.P4 and P5 series are the returned postal whips sent to the respondents by registered post which were returned as unclaimed and Exts.P6 series are the whips sent to them by courier which also were returned. PW1 has also deposed that the copy of the whip was submitted before the Secretary of the Panchayat and Ext.P8 is the receipt received from the Panchayat regarding the receipt of the said copy. Ext.P9 is the copy of the minutes of the election meeting held on 29.07.2013. Even though PW1 has been cross-examined at length, nothing has been brought out to discredit his evidence. It has been suggested to PW1 that no whips were served to the respondents which he denied. It has been then suggested to PW1 that the respondent in O.P.No.52/2013 was nominated and seconded by the other respondents as per the decision of the Congress party which also PW1 denied.

11. The DCC President, Ernakulam has been examined as PW2. He has given a consistent version as that of PW1 regarding the facts in issue in these cases. According to him the President belonging to Kerala Congress (Jacob) resigned after her term of 2½ years for enabling a member belonging to Congress party to become the President and on knowing the date for the election of the President as 29.07.2013, he convened a meeting of the

Congress parliamentary party members on 26.07.2013 and in that meeting the respondents were absent and all the other four members were present and the Mandalam President also was present and in that meeting it was decided to elect Smt.Valsamma Bhaskaran as the President and he issued whips to all Congress members. He has further deposed that whips were sent to these respondents by registered post and courier and the same were returned as unclaimed, which he identified as Exts.P4, P5 and P6 series. He has further deposed that he had given copy of the whip to the Panchayat Secretary and received receipt which is Ext.P7. PW2 has also deposed that the respondents, by defying the direction issued by him, voted in favour of the respondent in O.P.No.52/2013 along with the LDF members and thus defeated the official candidate and thereby they have voluntarily given up their membership from the Congress party. He has further deposed that Smt.Anitha Baby the respondent in O.P.No.52/2013 had contested for the post of President without the consent of the Congress party and that the decision of the party was to elect Smt.Valsamma Bhaskaran as President. Despite the searching cross-examination, his deposition remains unchallenged. In cross-examination he has deposed that his whips have been sent by registered post by the Mandalam President and the Vice President of the Panchayat under his authorization. It was suggested to PW2 in cross-

examination that the whips were not served to them which he denied. According to PW2 since the respondents in O.P.Nos.53/2013 and 51/2013 had proposed and seconded the name of Smt.Anitha Baby and she contested against the official candidate Smt.Valsamma Bhaskaran and as all of them voted in favour of Smt.Anitha Baby along with LDF members they have given up their membership from the Congress party.

12. The respondents have been examined as RWs1 to 3. All of them had given a uniform version in these cases. The respondent in O.P.No.52/2013 as RW1 has deposed that in the election meeting on 29.07.2013 the respondent in O.P.No.53/2013 had nominated her name and the respondent in O.P.No.51/2013 had supported and thus the Returning Officer recorded her as a candidate and against the decision of the Congress party the name of Smt.Valsamma Bhaskaran was nominated and seconded by other Congress members and in such election the respondent was declared as elected. She has further deposed that the DCC President had not convened any meeting on 26.07.2013 and that no notice was received for such meeting on 22.07.2013 and that no decision was taken in any such meeting to elect Smt.Valsamma Bhaskaran as the President. She would further depose that no whip was issued by the DCC President to vote in favour of Smt.Valsamma Bhaskaran and so she has not defied any direction

of the Congress party. According to RW1 she did not seek the support of LDF members and that she had not given up her membership from the party. In cross-examination RW1 has admitted that the address appearing in Exts.P5,P6 and P7 is her correct address. She has also deposed that in Ext.P4(a) it is mentioned that intimation was given to her on 24.07.2013. She has also admitted that Sri.Saju Varghese Madakkala mentioned in the from address of the postal articles is the Congress Mandalam President. She has further admitted in cross examination that except the respondents all the members who voted in her favour are belonging to CPI(M) and CPI and that the other Congress members and Kerala Congress (Jacob) member had voted in favour of Smt.Valsamma Bhaskaran. RWs 2 and 3 also had deposed that they did not get any notice regarding the Congress parliamentary party meeting said to have been held on 26.07.2013 nor they had received any whip stated to have been issued by the DCC President and that they had not defied the direction or decision of the Congress party in the election to the post of President held on 29.07.2013. According to RWs 1 to 3 Smt.Anitha Baby, the respondent in O.P.No.52/2013 was the Congress candidate for the post of President. But no consent was obtained from the DCC President for RW1 to contest for the post of President. RWs 1 to 3 had

categorically deposed that the DCC President had not instructed them to elect the respondent in O.P.No.52/2013 as President.

12. On a careful appreciation of the entire evidence it is found that Smt.Valsamma Bhaskaran was decided by the Congress party as the candidate for the post of President and that the respondent in O.P.No.52/2013 had contested against her by defying the direction and decision of the DCC President. Exts.P3 series are the whips received by the petitioner and other three members of the Congress party from the DCC President. Exts.P4 series are the registered postal articles sent by the Vice President to these respondents and the respondent in O.P.No.53/2013 had refused this postal article as seen from its endorsement and the other two respondents did not receive the same in spite of getting intimation and so were returned as unclaimed. Exts. P4 series are seen to have been sent to these respondents in their house addresses which are admitted as correct by them in their evidence. Exts.P5 series are whips of the DCC President sent by the Congress Mandalam President to these respondents which also were returned as unclaimed. Intimations were received by them well in advance and they failed to receive the same. The respondents would admit that the sender of these articles is the Thirumaradi Mandalam Congress President and they have been sent in correct addresses. Exts.P6 series also, which are

found to have been sent by Thirumaradi Congress Mandalam President to these respondents by courier and they also have been returned as unclaimed. No reason has been stated by these respondents for not accepting the said postal articles. It is true that the from address in these articles is that of the Mandalam President or the Vice President. But PW2 the DCC President has categorically deposed that the said whips were sent by the Mandalam President and Vice President as authorized by him. The fact that the from address of these postal articles are that of the Mandalam President and Vice President and so mentioned in these addresses has been admitted by the respondents in their evidence. In the present set of facts it is clear that these articles were either refused or returned as unclaimed only for the reason that the respondents were fully aware that these contained the direction of the DCC President. The sendee of a postal article is bound to receive the same and once it has either been refused or returned as unclaimed it amounts to acceptance. The argument of the learned counsel for the respondents that the respondents were not having any obligation to receive these postal articles cannot stand to legal scrutiny. It is not in dispute that these articles contained the whip issued by the DCC President.

14. In the light of Exts.P4 to P6 series the only conclusion that can be arrived at is that these respondents, after fully knowing that these articles

contained the whip of the DCC President, had either refused or declined to receive the same and therefore it is to be held that the direction of the DCC President was duly served to them. In this context it is significant notice that in an election to the post of President the decision regarding the candidate is to be taken by the DCC President and it is his direction which is to be followed by the members of that party. As per clause **(iva) of Section 2 of the Kerala Local Authorities (Prohibition of Defection) Act as amended by the Act 6 of 2013 which came into force on 17.01.12**, a direction in writing' means a direction given to the member of a political party by the person who is competent to recommend the symbol for such person while contesting as candidate in the election. As regards the Congress party is concerned, the DCC President is the competent person to recommend symbol for the candidates contesting in local bodies election. So the DCC President is the person competent to issue direction and the members are bound by such direction. In this context Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules also is relevant. It states that the person competent to issue direction to a member belonging to a political party is the person competent to recommend symbol for such member while contesting as candidate in the election. Admittedly the respondents did not seek the consent or concurrence of the DCC President

for RW1 for contesting as a candidate for the post of President. The evidence would abundantly show that they had aligned with the LDF members in contesting against the official candidate of Congress party and thus RW1 was elected with the support of all the LDF members. The antecedent conduct of these respondents also would fully support that they had aligned with the LDF members for getting RW1 elected to the post of President by defeating the official candidate of Congress party. The deposition of PW2 would substantially prove that Smt.Valsamma Bhaskaran was decided as the candidate for the post of President and that he had issued direction to all the Congress members to elect her for that post. All the Congress members and also the Kerala Congress (Jacob) member except these respondents voted in favour of Smt.Valsamma Bhaskaran as per the decision of the UDF and Congress party. But as the respondents had colluded with the LDF and RW1 contested with their support, she secured 8 votes against the 5 votes secured by the official candidate of Congress party and were declared as elected.

14. Whether the above action of the respondent would constitute defection by voluntarily giving up their membership from the party would arise for consideration in this context. Section 3of the Act deals with

disqualification on the ground of defection and Section **3(1)(a) of the Act** is relating to members belonging to political parties 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.”*

16. 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 and the second limb is attracted when such a member violates the direction issued by the political party or by a person or authority authorized by it in this behalf in the manner prescribed votes or abstains from voting in an election to the President, Vice President etc. It is settled law that disqualification for voluntarily giving up their membership of the party is not dependent on violation of whip alone. **In Dharmamani Vs. Parassala Block Panchayat (2009 (3) KLT 29)** it has been held at **Para 17** as follows.-

*“Under the Act, a member can be disqualified if he has voluntarily given up the membership of the political party to*

*which he belongs or acts in defiance of a whip/direction issued by the political party. Disqualification for voluntarily giving up the membership of one's party, is not dependent on the violation of the whip. The intention of the Act is that the member who has violated the whip or has abandoned the membership of the political party to which he belongs shall be disqualified. It is not necessary to hold that the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. The grounds for disqualification are distinct and are not interlinked”*

In **Faisal Vs. Abdulla Kunhi (2008(3) KLT 534)** it has been held at Para 11 and 12 as follows,-

*“A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. 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 belongs. By accepting the nomination by members of the rival coalition, he had voluntarily*

*abandoned membership of his political party. Since the words 'voluntarily giving 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. 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 the Indian Union Muslim League, although he had not tendered his resignation."*

17. The fact that voting against the political party to which one belongs would attract disqualification for voluntarily giving up their membership from the party has been clarified in **Shajahan Vs. Chathannoor Grama Panchayat (2000(2) KLJ 451)** and at **Para 3** of the above decision it has been held as follows,-

*"A person may voluntarily give up his membership of a political party even though he has not tendered his*

*resignation from the membership of that party. It follows 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 belongs. In that case, it was held by the Supreme Court that from the fact that the member in question accompanied the leader of opposite party to the Governor and told that the member supported to form a Council of Ministers, show that he is voluntarily giving up his membership from the original party. Similarly, the words used in section 3(1)(a) of the Act 'voluntarily gives up his membership' has a wider meaning than resignation. In this case, it is admitted by the petitioner that after submission of his resignation he did not vote for the person who was supported by the 'A' party. The State Election Commissioner took a clear inference from the conduct that he has voluntarily gave up his membership in the party."*

18. From the settled position of law it is clear that it is the conduct of a member belonging to political party that is to be taken into account to ascertain whether he has committed defection. In **Nazeerkhan.S Vs.**

**Kerala State Election Commission (2009 (1) KHC 681)** the Division Bench of the Hon'ble High Court has held that contesting against the official candidate by disobeying the whip would amount to voluntarily giving up membership from the party. In **Para 18** it has been observed as follows,-

*“18.Thus, the fact that he contested the election as Vice President with the support of the LDF against a Congress candidate and won the election with the votes of LDF members and an independent member is not in dispute. However, this argument against him is attempted to be resisted by the petitioner on the basis that there was no valid whip restraining him from contesting the election. According to counsel, in the absence of a whip, any member is entitled to contest against any other member, be it from his own political party. Counsel further contends that political affiliation of the members is irrelevant in so far as Panchayats are concerned. I do not find any substance in this contention. If it were so, the Panchayat would not have maintained political affiliation register (Ext.X1) and obtained declarations (Ext.X2) from the members.”*

19. In the present case also the respondents by aligning with the LDF members had got RW1 elected by contesting against the official candidate of Congress party on defying the direction and decision of the Congress party. In para 24 of the above decision it has been held as follows,-

*“24. The question of disqualification is a matter to be decided with reference to his conduct on 17.07.2006 and therefore even if he obeyed the subsequent whips, it is immaterial. In so far as Ext.P5 whip is concerned as is evident from Ext.R2(a) produced by the 2<sup>nd</sup> respondent, it is obvious that he disobeyed that whip also. In so far as Ext.P7 is concerned, the ingenuity of the petitioner is evident from his conduct on that occasion also. In the meeting, even if he had not voted against the whip, still the no-confidence motion would have been carried by the majority. This conclusion is irresistible from the fact that the motion sponsored by the LDF was carried by 11 votes against 9. It was therefore that after contesting against the party’s official candidate in the election, petitioner had chosen to obey the subsequently given*

*Ext.P7 whip. Therefore Exts. P5 and P7 do not improve the case of the petitioner in any manner.”*

20. From the settled position of law as discussed above, there cannot be any doubt that RW1 had contested against the official candidate and with the support of the LDF members and by defying the direction and decision of the Congress Party, RW1 became the President.

20. The learned counsel for the respondents would argue that RW1 was nominated by the respondent in O.P.No.53/2013 and seconded by the respondent in O.P.No.51/2013 and the Returning Officer had recorded those facts and informed that RW1 has no choice but to contest and thus she had to contest the election and so the respondents cannot be found fault for getting elected with the support of the majority members. The above argument is totally untenable. It is true that RW1 was nominated and seconded by other respondents. But that does not mean that she has no other option but to contest. She could have very well withdrawn from the contest. **Rule 7 of the Kerala Panchayat Raj (Election of President and Vice President) Rules**, states that in the case of election of the President or Vice President, as the case may be, a member shall nominate another member of the Panchayat concerned as a candidate and yet another member shall support it, and in case the person nominated is not present, consent of the person so

nominated agreeing to be such a candidate shall also be produced. This would definitely mean that the member who has been nominated and seconded as a candidate can very well withdraw from contest and it is only with the consent of such a member that he is contesting. In the case on hand, Smt.Valsamma Bhaskaran also was nominated and seconded by other Congress members and these respondents were fully aware that she was the official candidate of the Congress party for the post of President. The sequence of events would clearly spell out that the respondent in O.P.No.52/2013 had contested against the official candidate after aligning with the LDF members for getting elected as President and for achieving this object, the respondents had purposely absented themselves from the Congress party meeting convened by the DCC President as well as declined to receive the direction issued by him to vote in favour of Smt.Valsamma Bhaskaran. The fact that a candidate has to accept the nomination for contesting as a candidate cannot be doubted or disputed. In this context it is relevant to refer to the decision in WA No.2351/2005 by the Division Bench of the Hon'ble High Court wherein it has been held as follows,-

*“However, the undisputed fact remains that the appellants candidature was proposed by a member of the rival coalition, namely, LDF and was also seconded by a*

*member of the rival coalition, namely, LDF. That would mean that the appellant himself could not muster support from his own party members to propose him and second him as a candidate of their party. On the other hand, he readily accepted the nomination by proposal and seconding by the members of the rival coalition. We are of opinion that the same would certainly amount in voluntarily abandonment of the membership of his political party, in so far as he could have very well refused the support offered by the rival coalition members. After having accepted their support and contested against a candidate who was a member of his political party, he cannot now turn round and claim that he has not voluntarily abandoned the membership of his own political party.”*

21. In these cases also, RW1 contested against the official candidate as nominated and seconded by other respondents and thus they have done by defying the direction of the DCC President and they aligned with the LDF members for getting RW1 elected as President. In the decision in Writ Appeal No.1774/2009 the Division Bench has held that acting in violation of the

instruction of the political party alone would be sufficient to hold that the member has voluntarily given up his membership from the party.

22. From the above facts and circumstances, it is clearly found that the respondents were fully aware of the decision and direction of the Congress party that the candidate for the post of President in the election scheduled on 29.07.2013 was Smt.Valsamma Bhaskaran and that they had aligned with the five LDF members and by defying the direction of the DCC President, the respondent in O.P.No.53/2013 had proposed and the respondent in O.P.No.51/2013 had seconded the name of the respondent in O.P.No.52/2013 as the candidate for the post of President and she contested against the official candidate of Congress party and with the support of all the LDF members she was elected as President. Thus the respondents had become disloyal to the Congress party. It is settled law that loyalty to the party is the norm, and to vote against the party is disloyalty and to join with others or voting with the other side smacks of conspiracy. The above action of the respondents would clearly attract defection by voluntarily giving up membership from the party. So they have become subject to disqualification for being members of this Panchayat as provided by the first limb of Section 3(1) (a) of the Act. The points are answered accordingly.

In the result, the petitions are allowed and the respondents are declared as disqualified for being members of the Thirumaradi Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and they are also declared as disqualified for contesting as candidates in an election to any local authorities for a period of 6 years from this date as provided by Section 4(3) of the Act.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 3<sup>rd</sup> day of May 2014

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

### **APPENDIX**

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

PW1 : Sri.Kunjappan Painkily, Member, Thirumaradi Grama Panchayat

PW2 : Sri.V.J.Poulose, President DCC, Ernakulam

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

RW1 : Smt.Anitha Baby, Padinjareveettil, Kakkoor.P.O

RW2 : Sri.Biju Kuriakose, Tharamadathil, Thirumaradi

RW3 : Sri.John Paily, Kizhakkumcheril, Mannathoor P.O

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

- P1 : Copy of the declaration in Form No.2 submitted by Smt.Anitha Baby
- P1(a) : Copy of the declaration in Form No.2 submitted by Sri.John Paily
- P1(b) : Copy of the declaration in Form No.2 submitted by Sri.Biju Kuriakose
- P1(c) : Copy of the declaration in Form No.2 submitted by Sri.Kunajappan Painkily
- P2 : Copy of the Register showing party affiliation of members of Thirumaradi Grama Panchayat
- P3 : Copy of the whip issued by the President DCC, Ernakulam dated 26.07.2013
- P4 : Returned registered letter addressed to Sri.Biju Kuriakose
- P4(a) : Returned registered letter addressed to Smt.Anitha Baby
- P4(b) : Returned registered letter addressed to Sri.John Paily
- P5 : Returned unclaimed registered letter addressed to Smt.Anitha Baby
- P5(a) : Returned unclaimed registered letter addressed to Sri.Biju Kuriakose
- P5(b) : Returned unclaimed registered letter addressed to Sri.John Paily
- P6 : Returned courier letter addressed to Sri.Biju Kuriakose
- P6(a) : Returned courier letter addressed to Sri.John Paily
- P6(b) : Returned courier letter addressed to Smt.Anitha Baby

- P7 : Front Office Receipt No.4441194 dated 27.07.2013 of  
Thirumaradi Grama Panchayat
- P8 : Copy of the minutes of the meeting to elect President,  
Thirumaradi Grama Panchayat held on 29.07.2013

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