

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

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

**Wednesday, the 26<sup>th</sup> day of February 2014**

**O.P.Nos.07/2013, 08/2013, 09/2013,10/2013,  
11/2013 & 12/2013**

**O.P.07/2013**

Petitioner : Lissa Nizam,  
W/o Nizam, FIRDOUSE,  
K.K.Konam.P.O, Pallickal Village,  
Thiruvananthapuram District,  
PIN 695 604.  
Member, Ward No.05,  
Pallickal Grama Panchayat.

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

Respondent : Pallickal Naseer @ S.Naseer,  
Member, Ward No.10,  
Pallickal Grama Panchayat,  
Thiruvananthapuram District.  
PIN-695 604.

**(By Adv.V.S. Bhasurendran Nair)**

**O.P.08/2013**

Petitioner : Lissa Nizam,  
W/o Nizam, FIRDOUSE,  
K.K.Konam.P.O, Pallickal Village,  
Thiruvananthapuram District,  
PIN 695 604.  
Member, Ward No.05,  
Pallickal Grama Panchayat.

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

Respondent : Remya.V.S.,  
Member, Ward No.11,  
Pallickal Grama Panchayat,  
Thiruvananthapuram District.  
PIN-695 604.

**(By Adv.V.S. Bhasurendran Nair)**

**O.P.09/2013**

Petitioner : Lissa Nizam,  
W/o Nizam, FIRDOUSE,  
K.K.Konam.P.O, Pallickal Village,  
Thiruvananthapuram District,  
PIN 695 604.  
Member, Ward No.05,  
Pallickal Grama Panchayat.

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

Respondent : Remani Amma.S,  
Member, Ward No.01,  
Pallickal Grama Panchayat,  
Thiruvananthapuram District.  
PIN-695 604.

**(By Adv.V.S. Bhasurendran Nair)**

**O.P.10/2013**

Petitioner : Lissa Nizam,  
W/o Nizam, FIRDOUSE,  
K.K.Konam.P.O, Pallickal Village,  
Thiruvananthapuram District,  
PIN 695 604.  
Member, Ward No.05,  
Pallickal Grama Panchayat.

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

Respondent : Manikantan Pallickal,  
Member, Ward No.08,  
Pallickal Grama Panchayat,  
Thiruvananthapuram District,  
PIN-695 604.  
**(By Adv.V.S. Bhasurendran Nair)**

**O.P.11/2013**

Petitioner : Lissa Nizam,  
W/o Nizam, FIRDOUSE,  
K.K.Konam.P.O, Pallickal Village,  
Thiruvananthapuram District,  
PIN 695 604.  
Member, Ward No.05,  
Pallickal Grama Panchayat.

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

Respondent : Deepthi.V.D,  
Member, Ward No.09,  
Pallickal Grama Panchayat,  
Thiruvananthapuram District.  
PIN-695 604.

**(By Adv.V.S. Bhasurendran Nair)**

**O.P.12/2013**

Petitioner : Lissa Nizam,  
W/o Nizam, FIRDOUSE,  
K.K.Konam.P.O, Pallickal Village,  
Thiruvananthapuram District,  
PIN 695 604.  
Member, Ward No.05,  
Pallickal Grama Panchayat.

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

Respondent : Ambika Kumari,  
Member, Ward No.07,  
Pallickal Grama Panchayat,  
Thiruvananthapuram District.  
PIN-695 604.

**(By Adv.V.S. Bhasurendran Nair)**

These petitions having come up for hearing on the 12<sup>th</sup> day of February 2014, in the presence of Advocates **M.Hashim Babu & Sajitha.S** for the petitioner and Advocate **V.S.Bhasurendran Nair** for the respondents and having stood over for consideration to this day, the Commission passed the following.

**COMMON ORDER**

These are Petitions filed under Section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondents have become subject to disqualification for being members of the Pallickal Grama Panhayat. Since common questions of law and facts arise for consideration in all

these cases, they have been taken up together as per order on I.A No. 87/2013 and O.P.No. 07/2013 has been treated as the main 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 Pallickal Grama Panchayat. They contested as candidates of Indian National Congress in the General Election held in October 2010 and were elected as members. Out of the 13 wards, the Congress secured 8 seats, CPI(M) secured 4 seats and the BJP found victory in one seat. After election, the petitioner was elected as the President and the respondent in O.P.No.07/2013 was elected as the Vice President. On account of the dedicated work of the petitioner as President, Pallickal Grama Panchayat was awarded the 'Nirmal Puraskar' for Health and Sanitation by the Union Government. An issue developed among the members in respect of a quarry permit. The petitioner objected the issuance of quarry permit within the Panchayat on account of serious environmental issues. The respondents insisted the issuance of permit and the matter was considered by the leadership of the Congress party and they also instructed against issuing quarry permit. Thus the respondents became hostile to the petitioner and as a sequel to their plan, they colluded with the LDF and BJP members and moved a no confidence motion against the petitioner. The District Congress Committee was against the above proposal. The respondents did not consult the District

Congress Committee before moving the no confidence motion. The DCC President and Sri.Varkala Kahar, MLA had discussions with the respondents and specific instructions were given to them not to proceed with the motion. The District Congress President issued direction to all the Congress members to vote against the no confidence motion and that direction was affixed in front of the houses of the respondents and copy was given to the Secretary also. The respondents, in gross defiance of the direction issued by the Congress party, voted in favour of the said motion and out seated the petitioner from the post of President. Thus the respondents have voluntarily given up their membership from the Congress party which fielded them as candidates in the General Election. The Congress party functions on the strength of its shared belief and the acts of the respondents have caused crack in that shared belief among the public and tarnished its political image. Since the respondents have voluntarily given up their membership from the party, they are disqualified to continue as members of Pallickal Grama Panchayat. Hence these petitions.

3. The respondents filed objections raising common contentions which are briefly, the following:- The petitions are not maintainable either in law or on facts. It is true that the petitioner and respondents were elected as members belonging to Congress party. The petitioner, from the very beginning was showing an in different attitude towards the other Congress members and she was

ruling the Panchayat arbitrarily and without co-operating with the other members. Since the petitioner was indulging in anti party activities, she was asked to resign from the post of President and allow another member to occupy the President ship of the Panchayat. But the petitioner was not amenable for the same. The petitioner was also seriously indulging in various corruption activities. The above act and conduct of the petitioner has seriously tarnished the image of Congress party and this was communicated to the higher leadership. In the above context a no confidence motion was moved against the petitioner and except the petitioner and Sri.Asbar all others voted against the petitioner and the motion was carried. There was no whip issued to any members of Congress party with respect to the stand to be taken on the no confidence motion. The allegation regarding quarry permit are absolutely false. The person who sought the quarry permit obtained stay order from the Hon'ble High Court and the petitioner had unilaterally decided to challenge the order of the Hon'ble High Court to which other members objected. The DCC President has never issued any direction to the respondents. The allegation that whip was served by affixture is totally false. Since there was no direction by the Congress party, the members of Congress party decided to vote in accordance with their consciousness. The respondents have not given up their membership from the party and the petitions deserve only dismissal.

4. The evidence consists of the oral depositions of PWs1 to 3, RWs 1 and 2 and Exts.P1 to P13, R1series and X1 to X6.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondents have voluntarily given up their membership from the Congress party by voting in favour of the no confidence motion moved against the President disobeying the direction or decision of Congress party?
- (iii) Whether the respondents have become subject to disqualification for being members of Pallickal Grama Panchayat?
- (iv) Reliefs and costs?

7. **POINT No.(i)**: These are petitions filed under Section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act', for declaring that the respondents have become subject to disqualification for being members of Pallickal Grama Panchayat. According to the common petitioner, the respondents by disobeying the direction and decision of the DCC President supported the no confidence motion against the petitioner who was functioning as President of the Panchayat. It is also alleged that the respondents removed the petitioner from the post of President by aligning with CPI(M) and BJP members

and thus the respondents have voluntarily given up their membership from the party.

8. The respondents would contend that the petitioner was acting against the interest of the Congress party and the Congress leadership also was for removing her from the post of President and thus the no confidence motion was moved against her.

9. 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 of such political party, or if such member, contrary to any direction of the said political party, or by a person authorized by it in this behalf vote in favour of a no confidence motion, he shall be disqualified for being a member of that local authority. As per **Section 4(1)** of the Act when such a question arises it is to be decided by this Commission. **Section 4(1)** of the Act reads as follows,-

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

10. From the facts and materials on record it is found that a question arises as to whether the respondents have become disqualified as provided by Section 3(1)(a) of the Act. So the petitions filed under Section 4(1) of the Act for a decision on the above question is found to be maintainable. 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 of arising the cause of action. These petitions are seen to have been filed within the period prescribed under the above Rule. Apart from an evasive contention that the petitions are not maintainable, no specific grounds are stated as to why the petitions are not maintainable. From the above discussion, I hold that a question arises as to whether the respondents have become disqualified to continue as members of the Pallickal Grama Panchayat and so these petitions filed under Section 4(1) of the Act are found to be maintainable. The point is answered accordingly.

11. **POINT Nos. (ii to iv):** Certain facts are not in dispute. The petitioner and respondents contested the election to Pallickal Grama Panchayat held in October 2010 as candidates of Indian National Congress and were elected as members. Ext.P2 series which are copies of declarations submitted by the members showing the political affiliations and Ext.P1, copy of the register maintained by the Panchayat regarding political affiliation of members also prove

the same. The total strength of Panchayat is 13. The Indian National Congress alone secured 8 seats, CPI(M) found victory in 4 seats and 1 BJP member also was elected. Since Indian National Congress secured majority, as decided by the party and parliamentary party, the petitioner was elected as the President and the respondent in O.P.No.7/2013 was elected as Vice President for the full term. Ext.P3 and P4 lend credence in this regard. While so, these respondents moved a no confidence motion against the President and it was tabled for discussion on 10.04.2013. The petitioner did not attend the meeting on the no confidence motion. Ext.P6 is the copy of the notice on the no confidence motion moved by these respondents. Ext.P7 is the copy of the minutes of the meeting on the no confidence motion. Out of the 12 members attended in the meeting, except Sri.Asbar all other members voted in favour of the no confidence motion and it was passed.

12. According to the petitioner the respondents moved the no confidence motion without any consent or concurrence from the District Congress Committee President and they voted in favour of the said motion by disobeying the direction and decision of the DCC President. The petitioner has been examined as PW1. He has deposed that out of the 13 wards in Pallickal Grama Panchayat, Congress alone secured 8 seats and Ext.P2 series are the copies of declarations submitted by the members showing their political affiliation and

Ext.P1 is the record maintained by the Panchayat based on such declarations. PW1 has also deposed that CPI(M) had secured 4 seats and the BJP found victory in one seat. According to PW1, as per the decision of the Congress party, she was elected as the President and the respondent in O.P.No.07/2013 was elected as Vice President and Exts.P3 and P4 show that they had taken charge as President and Vice President after taking oath. PW1 has further deposed that while she was functioning as President, this Panchayat obtained the 'Nirmal Puraskar' and she received the award from the President of India. According to her an issue developed among members regarding the licence granted to a quarry and after discussion in the Panchayat, the quarry licence was decided to be cancelled and thereupon these respondents vehemently supported the issue of licence and raised hue and cry in the Panchayat meeting and Ext.P5 is the copy of the minutes of the Panchayat committee held on 11.03.2013. According to PW1 it was thereafter that these respondents moved a no confidence motion against her and Ext.P6 is the copy of the notice on the no confidence motion and it was tabled for discussion on 26.03.2013. Then the DCC President convened a meeting of all the Congress members and directed that the petitioner should continue as President and it was also decided to defeat the no confidence motion proposed to be convened on 10.04.2013. It is also deposed by PW1 that the DCC President had issued whip to the respondents in this behalf and Ext.P8 is stated to be the

copy of the whip given to the Secretary of the Panchayat and Ext.P9 is the copy of the receipt showing that the copy of the whip was received by the Secretary. PW1 has also deposed that the respondents voted in favour of the no confidence motion along with CPI(M) and BJP members by defying the direction issued by the DCC President and thus it was passed and the petitioner was removed from the post of the President. Ext.P7 is the copy of the minutes of that meeting and Ext.P10 is the record issued by the Block Panchayat Secretary in this regard. According to PW1, in the subsequent election to the post of President, the respondent in O.P.No.12/2013 was elected as President with the support of the BJP member and as the respondents had moved and supported the no confidence motion against the President belonging to their own party, against the decision and direction of the Congress party, they have voluntarily given up their membership from the party. In cross-examination it was suggested to PW1 that there was an issue regarding the licence granted to a quarry and PW1 has answered that the respondent in O.P.No.07/2013 and others wanted to grant sanction to the quarry and as there were several complaints against granting licence, the petitioner was against granting the licence. PW1 has further deposed in cross-examination that the DCC President convened a meeting of the members on 07.04.2013 and in that meeting the respondents wanted the petitioner to vacate the post of President and her answer is that though the respondents had made

such a demand, the DCC President decided that the petitioner should continue as President and directed the respondent to defeat the no confidence motion and also issued whip in this regard. It was again suggested to PW1 that no whip was served to the respondents and her answer is that the same were served to them.

13. The Block President of Indian National Congress has been examined as PW2. He has deposed that after moving the no confidence motion against the President, discussions were held in Block and District levels and the decision of the District Congress Committee was to defeat the said motion and that decision was taken on 07.04.2012 and direction of the DCC President was entrusted to him for serving to these respondents and accordingly he along with witnesses went to the houses of the respondents and as they refused to receive the same, the directions were affixed in front of their houses and Exts.X1 to X6 are stated to be the records regarding such affixture. PW2 has further deposed that in spite of the direction given by the DCC President, the respondents supported the no confidence motion and ousted the President belonging to their own party and thereafter the respondents were expelled from the party and the DCC Secretary gave letters to them in this behalf and the copies of such letters and the postal receipts evidencing sending of the same are marked as Ext.P11 and P12 series. He has also deposed that in the subsequent election to the post of President, the Congress party did not set up any official candidate and the respondent in

O.P.No.12/2013 became the President with the support of the BJP member. Though PW2 has been cross-examined at length, nothing has been brought out to discredit his evidence.

14. PW3 is the DCC President and he has deposed that the petitioner was elected as the President and the respondent in O.P.No.07/2013 was elected as Vice President as per the decision of the Congress party for a period of 5 years. PW3 has further deposed that a no confidence motion was moved against the President and thereafter he discussed the matter with the Congress members and he issued direction to the Congress members to abstain from the meeting on the no confidence motion and Ext.X1 series are stated to be the direction so issued by him to the respondents. PW3 further deposed that PW2 is the Block Congress Committee President and the name of PW2 is available on Ext.X1 series, which are seen to be the directions affixed in front of the houses of these respondents. According to PW3 the DCC Vice President Adv. K. Sudarsanan and General Secretary Sri.N.Sudarsanan were authorized to serve the whip issued by him and they may have given the said directions to the office bearers below them. PW3 has further deposed that his impression is that the respondents were aware of his direction. He has categorically stated that his direction was to defeat the no confidence motion. He has identified Ext.P11 series as the letters given to the respondents by the DCC General Secretary stating that they have been expelled

from the party. He has also deposed that since the respondents had defied the party directive, they have voluntarily given up their membership from the party and that they were expelled as per Ext.P11. In cross-examination he has stated that he had issued Ext.X1 whip on the report that majority of the members were against the no confidence motion. To the suggestive question as to whether he had authorized the DCC Secretary to expel the respondents from the party, his answer is that further action used to be taken against party members who are defying the direction of the party and that DCC Secretary also used to issue such letters. In re-examination he has stated that he had issued the direction to clarify the stand of the Congress party.

15. The respondent in O.P.No.07/2013 has been examined as RW1. His chief examination is by way of an affidavit and he has reiterated the contention raised in his objection. It is stated by RW1 that the DCC President had never issued any direction or whip to the respondents and that the respondents were not informed about the stand of the Congress party regarding the no confidence motion and that no directions were affixed in front of their houses by PW2 and as there was no direction issued by the political party, the respondents decided to vote in accordance with their consciousness and that they have not voluntarily given up their membership from the party. In cross-examination RW1 has admitted that the respondents did not get any written consent from the District

Congress Committee for moving and supporting the no confidence motion and in spite of their repeated request, the DCC President or the Block President did not give any written reply. RW1 would categorically state that the no confidence motion was moved without the consent and concurrence of the Congress party. According to RW1 the motion was moved with the consent of the Mandalam Committee members. RW1 has then categorically admitted that the respondents did not obtain any written consent from the DCC President or Block Congress Committee for moving or supporting the no confidence motion. RW1 has further admitted that he does not know whether the DCC President had demanded the resignation from PW1. According to him discussions were held in this behalf and no reply was given to the respondents. RW1 has also deposed that such a discussion was held after the no confidence motion was moved against the President. It is further admitted by RW1 that the respondents were not aware of the stand of the Block Congress Committee or the District Congress Committee in respect of the no confidence motion. RW1 has also deposed that for the first one and a half years, the petitioner was co-operating and cordially working with RW1. From the evidence of RW1 it is clear that RW1 and others took a stand against the petitioner only on account of the issue relating to the quarry licence in which the petitioner took a definite stand against granting the licence. RW1 has stated in cross-examination that the address shown in Ext.X1 series are of the

respondents. RW1 has also admitted the receipt of Ext.P11 letters and that in the letters it is stated that the respondents were expelled for defying the direction issued by the DCC President. To the suggestive question as to whether any consent was obtained for electing the respondent in O.P.No.12/2013 as President, his answer is that as they have been expelled from the party, there was no need for getting the consent from the District Congress Committee. He has also admitted that receiving support from BJP is against the policy of the Congress party.

16. A witness for respondent has been examined as RW2 on Commission. He has stated that he was authorized to serve the whip issued by the DCC President and according to him the DCC President had issued such a direction on the basis of a report that majority of the parliamentary party members were against such a motion and since he came to know that 6 out of 8 members were against the petitioner, he did not serve the whip to the respondents and that the said whips were handed over to the Block Congress Committee President on 10.04.2013 as requested by him. In his cross-examination a document was shown and asked whether it contained his signature in that document and at first he admitted that it contains his signature and then added that the signature appearing in that document was similar to his signature and that document was proposed to be marked as Ext.P13 by the Commissioner. Subsequently the said

document has been marked as Ext.P13 on the ground that RW2 had identified the signature in the same. Ext.P13 is seen to be the decision taken in the meeting convened in the DCC office on 07.04.2013 and in this document the signatures of the respondents in O.P.Nos.7/2013, 08/2013, 09/2013, 11/2013 and 12/2013 are found to be available. The signatures of the petitioner and another member Asbar also are available. The decision of this meeting as recorded in Ext.P13 is to defeat the no confidence motion. The version of PW3 that he issued whip on a report that majority of the Congress members were against the no confidence motion cannot be believed at all. He has categorically stated that the direction was issued after a meeting and discussion with all the Congress members in the Panchayat. At the relevant point of time he was very sure that the no confidence motion was moved by all these respondents and his definite stand was to defeat that motion. It has also come out in evidence that consequent to passing of this no confidence motion, the respondents were expelled from the party and RW1 also admits the same and states that no whip was served to them in the subsequent election to the post of President as they were already expelled. But now PW3 is seen to be now soft-peddling in this matter with some oblique motive.

17. On an evaluation of the entire evidence and materials on record as discussed above, the following facts emerge. The petitioner was elected as the

President of the Pallickal Grama Panchayat as decided by the Congress party and the Congress members for a term of 5 years. There was full co-operation for her work as President for a period of 1½ years. An issue developed regarding a quarry licence among the members of Congress party and the petitioner took the stand that the quarry licence was illegally obtained and wanted to challenge the stay order obtained by the licensee from the Hon'ble High Court. This Panchayat was awarded the 'Nirmal Puraskar' from the President of India on account of the earnest and sincere effort of the President and others and it is thereafter that the issue regarding the quarry licence cropped up. It is no secret that tainted members of local bodies are now harvesting in the field of quarry, sand and abkari business and such members will even turn against their own party leaders to achieve their object. The respondents moved the no confidence motion against the President without the consent or concurrence of the District Congress Committee or its President. The Block President also was not in favour of any such a move. Admittedly the respondents moved the no confidence motion against the President without seeking the consent or concurrence from their political party. The fact that the respondents had moved the no confidence motion against the President belonging to their own party assumes importance. After moving the no confidence motion, discussions were held by the members belonging to the Congress party with the DCC President. The DCC President

directed the respondents that they should abstain from the meeting on the no confidence motion. It is clear that the respondents were fully aware of the decision and direction of the DCC President before the motion was taken up for discussion. The Block President has categorically stated that he had affixed the directions issued by the DCC President in front of the houses of the respondents. For passing the no confidence motion, the respondents wanted the support of the LDF or BJP members and without their support the motion could not have been carried. As the motion was moved in such political equations, the inevitable inference is that a deal was struck by the respondents with the members of LDF and BJP in the Panchayat to get the motion passed. Accordingly the respondents, by defying the decision and direction of their political party had voted in favour of the no confidence motion along with the LDF and BJP members and ousted the President belonging to their own party. It is in the above set of facts, the questions involved in these cases are to be examined.

18. According to the petitioner the respondents by their above conduct have voluntarily given up their membership from the Congress party and thus become subject to disqualification for being members of Pallickal Grama Panchayat. Section 3 of the Act deals with disqualification on the ground of defection and Section 3(1)(a) is in respect of a member belonging to a political

party which is relevant in these cases. **Section 3(1)(a) of the Act** reads as follows,-

**“3. Disqualification on ground of Defection,-**

*1)Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act.*

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

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

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

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

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

19. The object sought to be achieved by the Act is to prohibit defection among members of the Local Authorities and to provide disqualification for the defecting members. What is ultimately sought to be prevented is the evil of the political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. It is settled law that if an elected member or a group of members of a political party takes a different stand from that of the political party as such and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. The **Kerala Local Authorities (Prohibition of Defection) Act**, derived its source from the **10<sup>th</sup> schedule to the Constitution of India**. While considering the Constitutional validity of the 10<sup>th</sup> schedule, the Apex Court in **Kihoto Hollohan Vs.Zachillhu (1992) Supp.2 SCC 651**) has held as follows,-

*“Any freedom of its members to vote as they please independently of the political party’s declared policies will not*

*only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance nay, indeed, its very survival.”* Referring to the object behind the provision dealing with disqualification on the ground of defection in the 10<sup>th</sup> Schedule, the Apex Court has further held as follows:-

*“the provision is to curb the evil of political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The only remedy would be to disqualify the member.”*

20. The main contention of the respondents is that since there was no direction by the political party and no direction or whip has been issued to them to defeat the no confidence motion, they decided to vote in accordance with their consciousness and thus they voted in favour of the said motion. By saying ‘in accordance with their consciousness’ referred to above they meant in accordance with their conscience. Whether in the absence of a whip or direction from the party, a member can cast conscience vote deserves consideration. This position has been settled in **Varghese Vs. Kerala State Election Commission (2009 (3) KLT1)** and at **Paras 8 and 9** it has been held as follows,-

*“There is no party as ‘parliamentary party’, that expression only denotes the wing of the elected members of the political party. Therefore, if a member or a group of the elected members of the political party takes a different stand from that of the political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. One has to be loyal to his political party. The situation would be different if the political party, itself, taking note of such strange realities, permits the elected members to cast conscience vote. In such situations the whip itself is for decision by the individual concerned according to his conscience. The Oxford dictionary defines conscience to mean “the part of your mind that tells you whether your actions are right or wrong”,. In the absence of a specific whip for conscience vote, an elected member, under law, is entitled and liable to cast only a conscious vote, being aware of the consequences of his decision, in terms of*

*Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 on disqualification on the ground of defection on account of voluntarily giving up membership in the political party. Conscience vote is hence a matter of express whip in the absence of which an elected member is bound by the policies of his political party and he can cast only a conscious vote. That is nothing but an expected expression of his obligation to the political party and responsiveness to the people, by doing things carefully and correctly and if not the conduct would amount to betrayal of the political conscience which is impermissible under law.”*

21. The fact that the respondents were moving a no confidence motion against the President belonging to their own party cannot be overlooked. If the political party wants to remove the President of the Panchayat belonging to that party, the DCC President can simply direct such President to resign from that post. Of course if the President does not resign in spite of such a direction, then the other party members can bring a no confidence motion as decided or directed by the party. Even though the majority of the Congress members have moved the no confidence motion against the President, admittedly it was against the decision and direction of their party. More over they did not even seek the consent or

concurrence from the party in this regard. In **Shiny Augustin Vs. Kerala State Election Commission (2009 (4) KHC 527)** it has been held that *even if no whip is issued, if a member was instrumental in moving, voting and carrying the no confidence motion against another party member, Commission cannot be found fault with, if it concluded that the member had voluntarily given up membership of the political party to which he belonged.*

The above position has been further clarified in **Dharmamani Vs. Parassala Block Panchayat (2009(3) KLT 29)**. In the above decision it has been held at **Paras 16 and 17** as follows,-

*“In the instant case, it is not in dispute that the petitioners were elected to the Parassala Block Panchayat as official candidates of the Indian National Congress. The Indian national Congress is admittedly a political party registered under Section 29A of the Representation of the People Act, 1951. It is also not in dispute that they had actively participated in the no confidence motions moved by the opposition against the President and Vice President, of the Parassala Block Panchayat, who were also official candidates of the Indian National Congress. The petitioners*

*are admittedly signatories to the no confidence motions and the motions were carried with their support. Though their contention that no whip was issued was accepted by the Commission, the Commission disqualified them on the ground that they have voluntarily given up their membership of the Indian National Congress. Though the learned counsel for the petitioners contend that the finding of the Commission that the petitioners had acted contrary to the directions issued by PW2, the President of the Thiruvananthapuram District Committee of the Indian National Congress cannot be sustained, I am of the opinion that on the admitted facts of this case, it is not necessary to go into the correctness of the said finding.*

*17. Under the Act, a member can be disqualified if he has voluntarily given up the membership of the political party to which he belongs or acts in defiance of a whip/direction issued by the political party. Disqualification for voluntarily giving up the membership of one's party, is not dependant on the violation of the whip. The intention of the Act is that the member who has violated the whip or has abandoned the*

*membership of the political party to which he belongs shall be disqualified. It is not necessary to hold that the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. The grounds for disqualification are distinct and are not interlinked. Therefore even if this Court were to hold that the petitioner before the Commission has not proved that PW2 had issued and served on the writ petitioners a direction regarding the voting on the no confidence motions that were tabled on 14.05.2008, the Commission was justified in holding that the petitioners have voluntarily abandoned their membership in the Indian National Congress.”*

The Division Bench of the **Hon’ble High Court in Writ Appeal No.795/2009** has confirmed the judgment in **Dharma Mani’s** case and held at **Para 8** as follows,-

*“The appellants, who were elected from the Indian National Congress party were parties to elect the President and Vice President of the Panchayat. Whatever may be their differences with the President and the Vice President, they*

*could not have joined hands with the opposite LDF party, to move no confidence motion against their own party men, and vote against their own men. Further, the fact that these appellants proposed and seconded the new President and Vice President belonging to the opposite group, clearly indicates that, they were aligning themselves with the LDF and were not loyal to their party on the symbol of which they were elected. In our view, this conduct of the appellants, joining hands with the opposite party, clearly establishes that they had voluntarily given up their membership in the party”.*

22. The fact that it is not necessary to prove that a member has disobeyed the direction issued by the competent person to attract the vice of disqualification and the conduct of such member is the relevant factor is clarified in the decision in **Muhammed Kunhi.B. Vs. K.Abdulla (2010 (4) KLT 736) At Para 24** of the above decision it has been held as follows,-

*“ 24. The conduct of the members being important, going by the decision of the Apex Court in Ravi S.Naik’s case, the conduct of the petitioners herein in signing the no confidence motion along with the members of the BJP, voting in favour of the no confidence motion against the 1<sup>st</sup> respondent, a member of the very same political party and the then Vice President who belonged to the UDF and voting against the candidates of the*

*UDF in the subsequent election and the conduct of the petitioner in WP (C) No.28051/2010 in contesting and getting elected as President against the nominee of the UDF, will squarely attract the vice of disqualification and are sufficient to imply that they have voluntarily given up membership of the political party which set them up as candidates in the election.”*

23. The above decisions are squarely applicable to the facts of this case. It is with the support of the LDF and BJP members that the no confidence motion moved by these respondents was carried. In the subsequent election to the post of President, the respondent in O.P.No.12/2013 became the President with the support of BJP member. It has come out in evidence that the Congress members joining with BJP members or LDF members is against the policy of the party. The respondents in the present case have aligned with members belonging to LDF and BJP in getting the no confidence motion carried. On a careful consideration of all these facts and circumstances it is clearly found that the respondents have voluntarily given up their membership from the party. So the respondents are found to have become subject to disqualification for being members of Pallickal Grama Panchayat. The points are answered accordingly.

In the result, the petitions are allowed and the respondents are declared as disqualified for being members of the Pallickal 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 26<sup>th</sup> day of February 2014

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

### APPENDIX

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

- PW1 : Smt.Lissa Nizam, Member, Pallickal Grama Panchayat
- PW2 : Sri.M.R.Jayakrishnan, Vijayavilasam, Madavoor,  
Pallickal P.O., Thiruvananthapuram
- PW3 : Sri.K.Mohankumar, President, DCC  
Thiruvananthapuram

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

- RW1 : Sri.Pallickal Nazeer, Thazhavila Veedu,  
Pallickal P.O., Thiruvananthapuram
- RW2 : Sri.K.Sudarsanan, Sudarsana, Maidanam, Varkala P.O.,  
Thiruvananthapuram

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

- P1 : True copy of Party Affiliation Register of members, Pallickal Grama Panchayat
- P2 : True Copy of Declaration in Form No.2 submitted by Smt.S.Remani Amma
- P2(a) : True Copy of Declaration in Form No.2 submitted by Smt.Baby Sudha
- P2 (b) : True Copy of Declaration in Form No.2 submitted by Smt.Sreedevi.P
- P2 (c) : True Copy of Declaration in Form No.2 submitted by Sri.Alummootil Asbar
- P2(d) : True Copy of Declaration in Form No.2 submitted by Smt.Liza Nizam
- P2(e) : True Copy of Declaration in Form No.2 submitted by Sri.D.Viswanathan Pillai
- P2(f) : True Copy of Declaration in Form No.2 submitted by Smt.Ambika Kumari.R
- P2(g) : True Copy of Declaration in Form No.2 submitted by Sri.Manikantan Pallickal
- P2(h) : True Copy of Declaration in Form No.2 submitted by Smt.Deepthi V.D
- P2(i) : True Copy of Declaration in Form No.2 submitted by Sri.Pallickal Nazeer
- P2(j) : True Copy of Declaration in Form No.2 submitted by Smt.Remya.V.S
- P2(k) : True Copy of Declaration in Form No.2 submitted by Sri.S.Ajayakumar

- P2(1) : True Copy of Declaration in Form No.2 submitted by Sri.M.Madhavankutty
- P3 : True Copy of oath in Form No.2 submitted by Smt.Liza Nizam
- P4 : True Copy of oath in Form No.2 submitted by Sri.Nazeer.S.(Pallickal Nazeer)
- P5 : True Copy of the minutes of the meeting of Pallickal Grama panchayat held on 11.03.2013
- P6 : True Copy of the voting to no confidence motion against Smt.Liza Nizam, President, Pallickal Grama Panchayat
- P7 : True Copy of the minutes of the meeting of no confidence motion against Smt.Liza Nizam held on 10.04.2013
- P8 : True copy of the whip issued by the President DCC, Thiruvananthapuram, dated 09.04.2013
- P9 : Front Office Receipt No.4799 dated 09.04.2013 of the Pallickal Grama Panchayat
- P10 : True copy of the notice dated 10.04.2013 published by the Secretary, Block Panchayat, Kilimanoor
- P11 : Letter dated 10.04.2013 of Sri.Vattappara Chandran General Secretary, DCC, Thiruvananthapuram
- P12 : Receipt of registered letter dated 13.04.2013 addressed to Sri. Manikantan Pallickal.
- P12(a) : Receipt of registered letter dated 13.04.2013 addressed to Smt. Ambika Kumari

- P12(b) : Receipt of registered letter dated 13.04.2013 addressed to Sri.Pallickal Nazeer
- P12(c) : Receipt of registered letter dated 13.04.2013 addressed to Smt.Remani Amma
- P12(d) : Receipt of registered letter dated 13.04.2013 addressed to Smt.Deepthi
- P12(e) : Receipt of registered letter dated 13.04.2013 addressed to Smt.Remya
- P13 : Copy of the minutes of meeting held on 07.04.2013, DCC, Thiruvananthapuram

**Documents produced on the side of the Respondent**

- R1 : Letter No.A-5716/13 dated 22.07.2013 of the Secretary, Pallickal Grama Panchayat
- R1(a) : Copy of the whip dated 09.04.2013 issued by the President DCC, Thiruvananthapuram
- R1(b) : Copy of the receipt No.4804 dated 10.04.2013 of Pallickal Grama Panchayat

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

- X1 : Copy of the whip dated 9.04.2013 issued by the President DCC, Thiruvananthapuram addressed to Sri.Pallickal Nazeer
- X2 : Copy of the whip dated 9.04.2013 issued by the President DCC, Thiruvananthapuram addressed to Smt.Remya V.S
- X3 : Copy of the whip dated 9.04.2013 issued by the President DCC, Thiruvananthapuram addressed to Smt.Remani Amma

- X4 : Copy of the whip dated 9.04.2013 issued by the President DCC, Thiruvananthapuram addressed to Sri.Manikantan Pallickal
- X5 : Copy of the whip dated 9.04.2013 issued by the President DCC, Thiruvananthapuram addressed to Smt.Deepthi.V.D
- X6 : Copy of the whip dated 9.04.2013 issued by the President DCC, Thiruvananthapuram addressed to Smt.Ambika Kumari

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

//True Copy//