

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

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

Tuesday, the 20th day of May 2014

O.P.No.71/2013

Petitioner : Anila Babu,
W/o Babu K.Abraham,
Karimpukalayil, Parippu P.O.,
Kottayam District,
PIN: 686 014.
Member, Ward No.17,
Aymanam Grama Panchayat

(By Advs.Hashim Babu & Sajitha.S)

Respondent : T.K.Rajimon @ Rejimon Kuttappan,
S/o Kuttappan, Thoppil Veedu,
Aymanam P.O., Kottayam District,
Pin: 686 015.
Member, Ward No.13,
Aymanam Grama Panchayat,
(By Adv .G.Biju)

This petition having come up for hearing on the 30th day of April 2014,
in the presence of Advocates **Hashim Babu & Sajitha.S** for the petitioner and
Advocate **G.Biju** for the respondent and having stood over for consideration to
this day, the Commission passed the following.

ORDER

Petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent has become subject to disqualification for being a member of Aymanam Grama Panhayat.

2. The short facts are, as follows:- The petitioner contested the election in ward No.17 of Aymanam Grama Panchayat as official candidate of Kerala Congress (M) and was elected as a member. The respondent contested the election in ward No.13 of this Panchayat as a candidate supported by Kerala Congress (M) under the UDF coalition and was elected as a member. Aymanam Grama Panchayat consists of 20 wards out of which UDF secured 13 seats with Congress party winning 8 seats, Kerala Congress (M) 3 seats, Kerala Congress (M) independent 1 seat and UDF independent 1 seat. The CPI(M) under LDF coalition secured 6 seats and complete independent also found victory. After the election it was decided by the UDF that the post of President shall be shared between the members of Congress party and the post of Vice President shall be shared between Kerala Congress (M) and Congress party, the first term of four years being allotted to Kerala Congress (M) and the remaining one year by the Congress party. The four years period set apart to Kerala Congress (M) was decided to be shared between the respondent for 2½ years and remaining 1½

years to another member of Kerala Congress (M). Based on the said decision, the respondent became the Vice President on 08.11.2010 and his term expired on 08.05.2013. The respondent did not resign after the expiry of his term in spite of repeated instructions from Kerala Congress (M) party and his parliamentary party. Thereupon a meeting of the parliamentary party and political party of Kerala Congress (M) was convened on 18.07.2013 in which the respondent has expressed his willingness to resign on the next day itself. However the respondent refused to resign in spite of the direction given by the Niyojakamandalam President Kerala Congress (M). Then the District President of Kerala Congress (M) issued a direction to the respondent to resign from the post of Vice President and that also was not complied with. In the above background, Kerala Congress (M) instructed its members to move a no confidence motion against the respondent. The parliamentary party of Kerala Congress (M) also decided to move such a motion and thus a no confidence motion signed by three members of Kerala Congress (M) and other three members was given to the authorized Officer on 26.07.2013 and it was tabled for discussion on 12.08.2013. The District President of Kerala Congress (M) gave direction to all the members of Kerala Congress (M) to support the motion and the respondent was well aware of the decision of the political party in respect of the no confidence motion. The whip of the District President of Kerala Congress

(M) was sent to the respondent by registered post and he purposefully delayed its acceptance and so the Mandalam President of Kerala Congress (M) served the whip of the District President to the respondent by affixture. The respondent, in gross defiance of the direction issued by the parliamentary party and political party purposefully abstained from the meeting on the no confidence motion held on 12.08.2013 and thus the motion was defeated due to the willful act of the respondent. The six congress members and all the CPI(M) members abstained from the meeting on the no confidence motion along with the respondent and as such there was no quorum for the meeting the decision of the respondent was taken in collusion with the CPI(M) members and he is now continuing as Vice President with their support. The respondent has become disloyal to the party in which he belonged and he sacrificed the interest of his party for his personal gains and thus he has given up his membership from the party and became disqualified for being a member of this Panchayat. Hence this petition.

3. The respondent has filed objection contending in brief, as follows,-
The petition is not maintainable either in law or on facts. The respondent contested the election as an independent candidate with an independent symbol 'Jeep'. He was not either set up or supported by Kerala Congress (M) and there was no agreement between him and Kerala Congress (M) while contesting as candidate or thereafter. There was no agreement regarding sharing of the post of

Vice President as alleged and the respondent was elected as Vice President with the support of UDF members for the full term of five years and he is still continuing as Vice President. After the election the respondent was supported by the UDF members to become the Vice President and on the basis of the same his position was reported in the register as Kerala Congress (M) supported independent member. The respondent had never participated in any of the political party meetings of Kerala Congress (M) and he is not a political party member. The allegation that the District President of the Kerala Congress (M) gave directions to the respondent to resign from the post of Vice President is totally false. No such direction was given to him. No meeting was convened on 18.07.2013 and the respondent had never attended any such meeting. The respondent was not aware of the no confidence motion tabled for discussion on 26.07.2013. The District President of Kerala Congress (M) has not given any direction to the respondent for supporting the motion. No whip was served to him as alleged. The Mandalam President of Kerala Congress (M) also did not serve any whip to the respondent. The District President or Mandalam President of Kerala Congress(M) does not have any authority or power to give any such whip to the respondent. The respondent could not attend the meeting held on 12.08.2013 because he was laid up due to fever. The allegation that the respondent abstained from that meeting purposefully is totally false. The

respondent has no connection with the members of CPI(M) or the LDF. The respondent has not committed any defection as alleged and he has never withdrawn his affiliation with UDF nor joined the LDF. Being an independent candidate elected as Vice President with the support of UDF members, he has got some affinity towards UDF and that does not mean that he is a political party member. There is no cause of action for the petition and it is only to be dismissed.

4. The evidence consists of the oral depositions of PWs1 to 3, RWs 1 to 3 and Exts.P1 to P10, X1 and X2.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent contested the election as an independent candidate with the support of Kerala Congress (M) as alleged?
- (iii) Whether the respondent was elected as a member belonging to Kerala Congress (M) party?
- (iv) Whether the respondent has become subject to disqualification for being a member of Aymanam Grama Panchayat as alleged
- (v) Reliefs and costs?

7. **POINT No.(i)**: The petition is filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. According to the petitioner the respondent contested the election in ward No. 13 of Aymanam Grama Panchayat as an independent candidate with the support of Kerala Congress (M) and thus he was elected as member and after his election he was elected as Vice President for 2 ½ years as per an agreement made by the Kerala Congress (M) party and in spite of the directions given by the party, he did not resign from that post on the expiry of his term and so a no confidence motion was moved against him by the Kerala Congress (M) party members and direction was given to him by the party to vote in favour of the said motion and he purposefully abstained from attending that meeting and thus became disloyal to the party and thus still continuing as Vice President against the interest and decision of the party and so he has voluntarily given up his membership from the party. The main contention of the respondent is that he contested the election as an independent candidate and after his election he became Vice President for the full term of five years with the support of UDF members and the Kerala Congress (M) has no authority to direct him to resign from that post and that he has not committed any defection. As per Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, hereinafter referred to the 'Act,' 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 the State Election Commission for decision. The petition has been filed by a member of the same local authority in which the respondent is a member. From the rival claims it is found that a question arises as to whether the respondent has become subject to disqualification on account of the alleged defection and so this Commission has to take a decision. As per Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, a petition under Section 4 of the Act is to be filed within 15 days from the date on which the concerned member is deemed to have become subject to disqualification and as per its proviso a petition filed beyond such period can be entertained on sufficient grounds. The present petition has been filed within 15 days from the date on which the no confidence motion against the respondent was tabled for discussion, which is alleged as the cause of action. From the above facts it is clear that this petition is maintainable. The point is answered accordingly.

8. Point Nos.(ii) and (iii): According to the petitioner the respondent contested the election as an independent candidate supported by Kerala Congress (M) and thus the respondent is a member belonging to Kerala Congress (M) party and so he is bound by the decisions and directions of this party. The respondent would contend that he contested the election as a complete independent candidate

and he was not having the support of Kerala Congress (M) and so he is not bound by the decisions and directions of Kerala Congress (M). The petitioner has been examined as PW1. She has deposed that the respondent had contested the election in ward No.13 as an independent candidate supported by Kerala Congress (M) and that this ward was allotted to Kerala Congress (M) by UDF and after election the respondent has filed declaration stating that he is belonging to Kerala Congress (M) party. Ext.P1 is the declaration submitted by the respondent on 01.11.2010 and in this declaration, he has categorically stated that he contested the election as an independent candidate having the support of Kerala Congress (M) which is a constituent of UDF and all the other 12 members belonging to UDF also are shown by him in this record. Ext.P3 is the copy of the register maintained by the Panchayat under Rule 3(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, showing the political affiliations of members. Admittedly this record is prepared by the Secretary of the Panchayat on the basis of the details contained in the declaration submitted by each member. In Ext.P3 the respondent is stated as an independent member having the support of Kerala Congress (M) under UDF coalition. PW1 has further deposed that the respondent executed an agreement with the Kerala Congress (M) confirming his political relationship with Kerala Congress (M) and it is marked as Ext.P2. In Ext.P2 which is in a ₹100/- stamp paper it is stated that

the respondent had contested in the seat earmarked for Kerala Congress (M) with Kerala Congress (M) support and that he will abide by the bylaws of the party and the direction of the Kerala Congress (M) District President. In cross-examination PW1 has reiterated that the respondent had contested the election as an independent candidate with the support of Kerala Congress (M) and that ward No.13 was earmarked for Kerala Congress (M) under the UDF coalition agreement.

9. The Kottayam District President of Kerala Congress (M) who is also the UDF District Chairman has been examined as PW3. He has deposed that the respondent had contested in the seat allotted to Kerala Congress (M) as an independent candidate with the support of Kerala Congress (M) and he was allowed to contest from this ward with the support of Kerala Congress (M) and that the respondent had given a declaration that he will abide by the bylaws and directions of the Kerala Congress (M) party and it is marked as Ext.P9. In Ext.P9 the respondent is found to have admitted that he was elected as a member with the support of Kerala Congress (M) and that he will abide by the bylaws and directions of this party. According to PW3 such declarations are used to be obtained from all the members belonging to Kerala Congress (M). Even though PW3 has been cross-examined at length, nothing has been brought out to discredit his testimony.

10. The Aymanam Mandalam President of Kerala Congress (M) has been examined as PW2. He also deposed that the respondent was elected as a member with the support of Kerala Congress (M) and that ward No.13 was earmarked for Kerala Congress (M) as per the consensus of UDF coalition and the respondent was allowed to contest as an independent candidate taking into consideration circumstances existing in the said ward.

11. The respondent has been examined as RW1. He has deposed that he contested the election in ward No.13 as a complete independent on an independent symbol 'Jeep' and that after election there was a consensus to elect him as Vice President and accordingly he was elected as Vice President with the support of all UDF members. RW1 has denied the signature contained in Ext.P2 and according to him no such agreement was executed by him. In cross examination he has stated that his rival candidate was from CPI(M). He has also admitted that Congress party was having committee in this ward and in earlier elections UDF had contested in this ward. RW1 has also admitted that in Ext.P1 he has written that he was elected with the support of Kerala Congress (M) under UDF coalition. He has further stated that after taking oath as a member, a consensus was arrived at among the Congress and Kerala Congress (M) members whereby the post of Vice President was allotted to Kerala Congress (M) and as no male member was elected from Kerala Congress (M) party, they decided to

elect the respondent as Vice President and thereupon he had filled up Ext.P1 stating that he is a member having the support of Kerala Congress (M). He has further deposed that the facts contained in Ext.P1 are correct. He has also entered the names of all the other 12 members belonging to UDF in Ext.P1. He has further admitted that in the subsequent assembly election he had worked for Kerala Congress (M) and that he had participated in several meetings of Kerala Congress (M) after becoming a member. He has also admitted that in the minutes of the meetings of Kerala Congress (M) marked as Exts.X1series and X2 series, he had affixed his signatures in token of his attendance in such meetings.

12. RW2 is a member belonging to Congress party in this Panchayat and he is also the Welfare Standing Committee Chairman. He has deposed that the respondent was not a candidate having support of any political parties and that the Congress party and UDF had given support to him in that election. He has further deposed that the Congress party was not having any candidate in ward No.13. In cross-examination RW2 has stated that as the respondent was a winning candidate, UDF did not set up their own candidate in that ward. RW2 has further deposed that in his declaration marked as Ext.P10, he has mentioned the name of this respondent as a member belonging to UDF coalition. RW2 has further stated that even without this respondent, UDF was having support of 12

members. RW3 who is stated to be the Ettumanoor Niyojakamandalam Secretary of Kerala Congress (M) has deposed that the UDF was not having a candidate in ward No.13 and that the UDF had supported this respondent in that ward. He has further stated in chief examination itself that the respondent was considered for the post of Vice President on account of the reason that no male member from Kerala Congress (M) was elected. He has admitted that the respondent had participated in the meetings of Kerala Congress (M). In cross-examination RW3 has admitted that Kerala Congress (M) had participated in the meetings of the Mandalam Committee of Kerala Congress (M). He has also admitted in cross-examination that the respondent had contested in the ward allotted to Kerala Congress (M).

13. From the above evidence it is clearly found that the respondent had contested in the ward allotted to Kerala Congress (M) party as the consensus of the UDF coalition and that he was having the support of Kerala Congress (M) under UDF coalition. The fact that out of the total 20 members the UDF secured 13 seats including this respondent and the respondent was elected as Vice President also. If the respondent was only complete independent member, there was no need to elect him as Vice President which was set apart to Kerala Congress (M) as per UDF agreement. Moreover Exts.P1 to P3 and P9 would substantially prove that the respondent was elected as a member with the support

of Kerala Congress (M). The respondent contested against a CPI(M) candidate and admittedly there was no candidate for UDF other than the respondent in that ward. It has come out in evidence that UDF was having influence in that ward and only by taking into consideration the circumstances of that ward, the respondent was set up as an independent candidate with the support of Kerala Congress (M) under UDF coalition. Even the signature in Ext.P2 is denied by the respondent, it is clear that this was signed by him immediately after his election as a member. In Ext.P9 he confirms that he is a member elected with the support of Kerala Congress (M) and that he will abide by the bylaws and decisions of that party. Ext.P1 is the declaration submitted by the respondent as provided by sub Rule 2 (a) of Rule 3 of the Kerala Local Authorities (Disqualification of Defected Members) Rules. The Sub Rule 2(a) of Rule 3 reads as follows,-

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

- (2) *if a member elected to a local authority is,-*
- (a) *a person who contested election as a candidate of a Political Party or as a candidate having the support of political party shall file a declaration to that effect before the Officer authorized under sub-rule (1) and accordingly that member shall be treated as a member of that political party or as a member with the support of that political party, as the case may be;”*

14. In Ext.P1 the respondent has categorically stated that he had contested as a candidate with the support of Kerala Congress (M). It is significant to note that even as per RWs2 and 3, this respondent was having the support of UDF and RW3 has admitted that the respondent had contested in the ward earmarked for Kerala Congress (M) party. The evidence of PWs1 to 3 would clearly spell out that the respondent was allowed to contest as an independent candidate in the ward earmarked to Kerala Congress (M) with their support and Kerala Congress (M) is admittedly a constituent of UDF. There was no other candidate belonging to UDF in this ward. The fact that this respondent was elected by the UDF as the Vice President also cannot be over ruled. From Exts.X1 series and X2 series it is seen that the respondent had participated in the party committee meetings of Kerala Congress (M) and this also would support the case of the petitioner that the respondent was belonging to Kerala Congress (M). On a careful analysis of

the entire facts and materials on record, it is clearly found that the respondent had contested the election in ward No.13 as an independent candidate with the support of Kerala Congress (M) party under UDF coalition. The points are answered accordingly.

15. **Point Nos.(iv) and (v)**: I have already found that the respondent had contested the election as an independent candidate with the support of Kerala Congress (M) party in ward No.13 allotted to that party. Therefore the respondent has to be treated as a member belonging to Kerala Congress (M) party and he is bound by the bylaws and directions of that party. According to the petitioner the respondent was elected as Vice President for a term of 2 ½ and the next 1 ½ years was to be given to another nominee of Kerala Congress (M) and the last one year was agreed to be given to Congress party and in spite of repeated demands from Kerala Congress (M), the respondent did not resign from the post of Vice President and so a no confidence motion was moved against him by other members of Kerala Congress (M) along with certain others and the respondent was directed to vote in favour of the no confidence motion and the respondent by defying the decisions and directions of the party, abstained from attending the said meeting and thus he has voluntarily abandoned his membership from the party. The petitioner is found to have given a consistent version in line with the allegations contained in the petition. The petitioner has deposed that

after the term of 2½ years, the respondent did not resign and on 18.07.2013, a meeting of Kerala Congress (M) members was convened by the Ex.M.L.A.Sri.Thomas Chazhikkadan and the respondent also attended in that meeting and it was decided that the respondent should resign which he agreed and accordingly the Kerala Congress (M) Niyojakamandalam Committee President gave a letter to the respondent and the District President also directed the respondent to resign and in spite of all these the respondent refused to resign from the post of Vice President and thereupon a no confidence motion was moved by the other three members of Kerala Congress (M) along with three Congress members and an independent. Ext.P4 is the notice on the no confidence motion and it was tabled for discussion on 12.08.2013. PW1 has further deposed that the District President of Kerala Congress (M) issued direction to all the members of Kerala Congress (M) to vote in favour of the no confidence motion and the respondent refused to accept the same and so it was sent by registered post and Ext.P6 and P6(a) are the postal receipt and postal acknowledgement card of the same. Ext.P7 series are the copies of the whip and the receipt of the Secretary, issued in token of receiving the same. PW1 has further deposed that the respondent did not attend to participate in the no confidence motion and as only six members attended that meeting, the motion could not be taken up for discussion for want of quorum.

16. PW3 the Kottayam District President of Kerala Congress (M) has deposed that the respondent was elected as Vice President for a term of 2 ½ years and the next 1 ½ years was to be given to the petitioner and the last one years was set apart for Indian National Congress and the respondent did not resign on expiry of his terms and so PW3 requested him to resign which he did not oblige and on 18.07.2013 a meeting convened in his presence by Sri.Thomas Chazhikkadan and the respondent though agreed to resign did not keep his word and so a no confidence motion moved by the other Kerala Congress (M) members and PW3 issued direction to the respondent to vote in favour of the no confidence motion which the respondent defied and thus the respondent has disobeyed the decision and direction of the Kerala Congress (M) party. PW3 has also deposed that the whip was sent by speed post and the postal receipt and acknowledgment card are Exts.P6 and P6(a). It was suggested to PW3 that the direction issued by him was received by the respondent only on 20.08.2013 and that PW3 has stated that the Mandalam President had already given the whip to the respondent.

17. PW2 the Aymanam Mandalam President of Kerala Congress (M) has deposed that Ext.P5 is the whip given by the District President and it was sent by speed post on 07.08.2013 and more over PW2 and two others went to the house of respondent and affixed the whip on the front door of the house of the

respondent. It was suggested to PW2 in cross-examination that no whip was affixed in front of the house of the respondent which PW2 denied.

18. The respondent as RW1 has deposed that the District President of Kerala Congress (M) had no authority to issue whip to him and that the whip was received by him only on 20.08.2013. In cross-examination he states that he does not know whether his tenure as Vice President was fixed as 2 ½ years. He has admitted that the no confidence motion was moved by the three Kerala Congress (M) members.

19. From the evidence on record it is found that the respondent was elected as Vice President for a term of 2 ½ years and the District President of Kerala Congress (M) had demanded his resignation after such term which he declined and in this context a no confidence motion was moved against him by the other Kerala Congress (M) members along with three Congress members and an independent. It is also seen that PW3 had issued direction to the respondent to vote in favour of the no confidence motion and in spite of this direction, the respondent abstained from attending the meeting on the no confidence motion and thus defied the direction of the District President of the party.

20. The main contention of the respondent is that he was elected as a complete independent member and that the District President of Kerala Congress (M) had no authority to issue any direction to him to resign from the post of Vice

President or any direction to vote in favour of the no confidence motion. I have already found that the respondent, having been elected as a member with the support of Kerala Congress (M) was bound by the decision and direction of that party. The District President of Kerala Congress (M) is the person competent to take decision and issue direction to the members of a local authority belonging to Kerala Congress (M) in his District. Ext.P4 is the notice signed by the three members of Kerala Congress (M) along with four others and Ext.P5 is the direction issued by PW3 to the petitioner directing her to vote in favour of the no confidence motion. Admittedly direction was sent to the respondent by speed post evidenced by Ext.P6 series. Ext.P6 is the receipt and from this record it is found that the direction to the respondent was sent by speed post on 07.08.2013 at 1.15 pm. Of course as per Ext.P6(a) the said direction was received by the respondent only on 20.08.2013. But the fact that it was sent on 07.08.2013 would clearly indicate that the respondent, after fully knowing the contents in the postal article had delayed its acceptance and finally received it only on 20.08.2013. The no confidence motion was tabled for discussion on 12.08.2013. It is hard to believe that the article sent by speed post on 07.08.2013 had reached the respondent only on 20.08.2013. This article was sent from Kottayam to a person residing in the same District. From the materials on record the only inference that can be gathered is that the respondent was fully aware of the entire

facts regarding the no confidence motion moved against him. Admittedly it was signed by three members of Kerala Congress (M). Since his own party colleagues had moved the no confidence motion, it cannot be doubted that he was aware of the decision and direction of his party in relation to the said motion. For the post of President also, term was fixed among three members of the Congress party. The respondent being as an independent member supported by Kerala Congress (M) was bound by the decision and direction of the Kerala Congress (M) party. PW3 has categorically deposed that he had repeatedly instructed the respondent to resign from the post of Vice President.

21. Whether the conduct of the respondent in having disobeyed the direction and decision of his party to resign from the post of Vice President and his conduct of having disobeyed the direction of the party President to participate and voted in favour of the no confidence motion would constitute defection deserves consideration. Section 3 of the Kerala Local Authorities (Prohibition of Defection) 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 this case. **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.”

22. 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 foundation 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. It is settled law that 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 **10th schedule to the Constitution of India**. While considering the Constitutional validity of the 10th 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 10th 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.”

23. In the case on hand, the no confidence motion was moved by the three members of Kerala Congress (M) party of which the respondent also was a member. The Kerala Congress (M) members were compelled to move such a motion only on account of the reason that the respondent had refused to resign from the post of Vice President in spite of the repeated demands made by the party leaders. According to PW3, the Kottayam District President of Kerala Congress (M) he had repeatedly directed the respondent to resign from the post of Vice President and that the respondent did not oblige such demands and that was the reason for moving a no confidence motion against him by the members belonging to his own party. The respondent who contested won the election as an independent candidate with the support of Kerala Congress (M) and elected as Vice President with the support of UDF members was bound by the decision and direction of Kerala Congress (M) party. **Clause (iva) of Section 2** of the Kerala

Local Authorities (Prohibition of Defection Act is relevant in this context and it reads as follows,-

“direction in writing” means a direction in writing, signed with date, issued to a member belonging to, or having the support of, a political party, by the person authorized by the political party from time to time to recommend the symbol of the said political party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting.”

24. PW3 is the person competent to recommend symbol to the party candidates and as such he is the person competent to issue direction to those members. The respondent had contested the election with the support of Kerala Congress (M) and so he is bound to obey the direction of PW3 regarding voting on the no confidence motion. The fact that Kerala Congress (M) had directed the respondent to resign from the post of Vice President before moving the no confidence motion cannot be doubted. In **Faisal Vs. K.Abdulla Kunhi (2008(3) KLT 534)** it is held that if an inference can be drawn that the member has voluntarily given up his membership of his political party he is liable to be disqualified. In the above case also, the party directed the member who belonged to IUML to resign from the post of President and he refused to toe the party line

and abstained from attending the meeting on the no confidence motion moved against him and he survived that motion with the help of other parties and continued as President. In the above set of facts, the **Hon'ble High Court** has held at **Paras 11 and 12** as follows,-

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

12. *In my view, the law laid down in the aforesaid judgment applies in full force to the facts of this case also. In the judgment in WA 2351/2005, a Division Bench of this Court upheld the judgment of the learned judge that by accepting the nomination by members of the rival coalition, the appellant therein had voluntarily 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. From the facts noticed by the 2nd respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation.”*

25. The above decision is squarely applicable to the facts of this case. The respondent was fully aware of the decision and direction of the Kerala Congress (M) and he refused to resign from the post of Vice President by mustering support from the LDF members and certain other UDF members. In the meeting convened for discussing the no confidence motion moved against the respondent, all the LDF members and some of the UDF members including the respondent remained absent. This would indicate that he was colluding with even the LDF members to survive the no confidence motion. PW3 had sent the direction to the respondent to vote in favour of the no confidence motion on 07.08.2013 well in advance of the date on which the motion was tabled for discussion. The delayed receipt of that postal article was definitely deliberate. Even otherwise since the motion was moved by the three Kerala Congress (M) members and the respondent was fully aware of the same, it can only be held that the respondent was definitely aware of the decision of his party which he disobeyed.

26. The definite case of the petitioner is that the respondent by his above conduct has voluntarily given up his membership from Kerala Congress (M) party. For attracting the above provision it is not necessary that the member should have violated the direction issued by the party.

This position has been clarified in **Dharmamani Vs. Parassala Block Panchayat (2009(3) KLT 29)** it has been held at **Para 17** it is held as follows,-

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.”

27. It is settled law that the conduct of a member is the important fact which determines whether he has given up his membership from the party. In the case on hand, the conduct of the respondent in having refused to obey the direction of his party which was to resign from the post of Vice President, and subsequently his defiance of the direction given by the party to vote in favour of the no confidence motion would definitely constitute defection by voluntarily giving up his membership from the party. Hence I find that the respondent has committed disloyalty to the party disobeying the decision and direction of his party and so he has become subject to disqualification as provided by Section 3(1) (a) of the Act for being a member of Aymanam Grama Panchayat. The points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being a member of Aymanam Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and he is also declared as disqualified for contesting as candidate in an election to any local authorities for a period of 6 years from this date as provided by Section 4(3) of the Act.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 20th day of May 2014

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Smt.Anila Babu, Member, Aymanom Grama Panchayat
- PW2 : Sri.M.A.Abraham, Kerala Congress (M), Mandalam
President, Mulakkal Chira , Olassa P.O
- PW3 : Sri. E.J.Augusty, District President, Kerala Congress (M),
Kottayam

Witnesses examined on the side of the respondent

- RW1 : Sri.T.K.Rejimon @ Rejimon Kuttappan, Thoppil Veedu,
Aymanam P.O. Kottayam
- RW2 : Sri. Velayudhan Nair, Thozhutharathu Veedu, Aymanam
P.O., Kottayam
- RW3 : Sri.Joseph, Menonkariyil

Documents produced on the side of the petitioner

- P1 : Declaration in Form No.2 submitted by Sri.Rejimon
Kuttappan, Member, Aymanam Grama Panchayat
- P2 : Agreement of Sri. Rejimon Kuttappan
- P3 : Copy of the Register showing the party affiliation of
members of Aymanam Grama Panchayat

- P4 : Copy of the notice to no confidence motion against Sri.Rejimon Kuttappan, Vice President, Aymanam Grama Panchayat
- P5 : Direction issued by the President, Kerala Congress (M) District Committee, addressed to Smt.Anila Babu, Aymanam Grama Panchayat
- P6 : Receipt of registered letter addressed to Sri.Rejimon Kuttappan
- P6(a) : Acknowledgement card signed by Sri. Rejimon Kuttappan
- P7 : Front office receipt No.3272 dated 07.08.2013 of Aymanam Grama Panchayat
- P7(a) : Copy of the whip addressed to the Secretary Aymanam Grama Panchayat issued by the Mandalam President, Kerala Congress (M), Aymanam
- P7(b) : Copy of the whip addressed to Smt.Anila Babu, Karimpumkalayil, Parippu.P.O., Kottayam, issued by the President, Kerala Congress (M), Kottayam District
- P7(c) : Copy of the whip addressed to Sri.Rejimon Kuttappan issued by the President, Kerala Congress (M) Kottayam District
- P8 : Copy of the proceedings of the meeting to discuss no confidence motion against Sri.Rejimon Kuttappan
- P9 : Agreement in white paper submitted by Sri.Rejimon Kuttappan to the President, Kerala Congress (M) Kottayam District
- P10 : Declaration in form No.2 submitted by Sri.Velayudhan Nair

Document produced on the side of the witness

- X1 : Minutes book of the Kerala Congress (M) Aymanam Mandalam Committee
- X1(a) : Minutes of the meeting of Kerala Congress (M) Aymanam Mandalam Committee held on 10.03.2011
- X1(b) : Minutes of the meeting of Kerala Congress (M) Aymanam Mandalam Committee Held on 23.01.2012
- X2 : Minutes book of the meeting of Kerala Congress (M) Aymanam Mandalam Committee
- X2(a) : Minutes of the meeting of Kerala Congress (M) Aymanam Mandalam Committee held on 15.12.2010
- X2(b) : Minutes of the meeting of Kerala Congress (M) Aymanam Mandalam Committee held on 29.12.2010
- X2(c) : Minutes of the meeting of Kerala Congress (M) Aymanam Mandalam Committee held on 07.12.2010

Sd/-

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

//True Copy//