

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

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

Wednesday, the 20th day of August 2014

O.P.Nos.74/2013AND 75/2013

O.P.No.74/2013

Petitioner : B.Radhakrishnan,
Balakrishna Pillai,
Residing at Sopanam, Thazhamel,
Anchal P.O., Kollam District.
Member, Ward No.12 (Vattamon),
Anchal Grama Panchayat.

(By Adv. S.Sreebhadran)

Respondent : Badaruddin,
Member, Ward No.11, (Town),
Anchal Grama Panchayat,
Kollam District.

(By Adv. Fathahuddeen.M)

O.P.No.75/2013

Petitioner : B.Radhakrishnan,
Balakrishna Pillai,
Residing at Sopanam, Thazhamel,
Anchal P.O., Kollam District.
Member, Ward No.12 (Vattamon),
Anchal Grama Panchayat.

(By Adv. S.Sreebhadran)

Respondent : Girija Thampi,
Member, Ward No.14 (Thazhamel),
Anchal Grama Panchayat,
Kollam District.

(By Adv. G.Gopinathan Nair)

These petitions having come up for hearing on the 4th **day of July 2014**, in the presence of Adv. **S.Sreebhadran** for the petitioner and Adv. **Fathahudeen.M & G.Gopinathan 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 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have become subject to disqualification for being members of Anchal Grama Panchayat. Since common questions of law and facts arise for consideration in both these petitions, they have been taken up jointly and O.P.No.74/2013 is treated as the main case;

2. The allegations raised by the common petitioner in O.P.No.74/2013 are in short, as follows:- The petitioner and respondent are elected members of Anchal Grama Panchayat. The petitioner is a member belonging to Congress party and the respondent is a member belonging to Muslim League. The Indian National Congress, Muslim League and CMP are constituents of a coalition by name UDF and they fought the election under UDF banner. Out of the 19 wards, the UDF secured 10 wards the LDF had won in 8 wards and one seat was won by an independent. After the election Sri.Zakir Hussain, a member belonging to Congress party was elected as President and Smt.S.Sheerja, a member belonging

to Indian Union Muslim League was elected as Vice President. While so, the LDF members along with a CMP member and the independent member moved a no confidence motion against the President and it was tabled for discussion on 25.07.2013. Thereupon whips were issued by the District President of all the political parties constituting the UDF and copies of the same were given to the Secretary of the Panchayat also. The Kollam District Committee President of the Muslim League Shri.A.Yunus Kunju has given whip to the respondent and handed over the same to him in person on 04.08.2013 and its copy was communicated to the Panchayat Secretary also. But the respondent, by defying the whip made his vote invalid by putting tick mark and X mark simultaneously and has also not signed in the overleaf of the ballot paper and thus he took a stand in favour of the no confidence motion. In the voting, 10 members voted in favour of the no confidence motion which included the 8 votes of the LDF members, one vote of the independent member and one vote of CMP member and thus the no confidence motion was passed. The act of the respondent in deliberately making his vote invalid was in gross violation of the whip and he has purposefully acted against his own party and helped the opposition front to get the no confidence motion passed. Thus the respondent has cheated his own party and coalition and thereby he has committed defection. Hence this petition.

3. The respondent has filed objection contending in brief as follows,- The respondent had no role in moving the no confidence motion against the former President. No whip of the District President of Muslim League was communicated to the respondent before the motion was taken up for discussion on 07.08.2013 and no whip was read out in the meeting held on 07.08.2013. No whip was given to the respondent by the parliamentary party leader also. The respondent actively participated in the no confidence motion and opposed it vehemently. He has also marked his voted against the no confidence motion. However due to inadvertence he put a tick mark instead of X mark and when he realized his mistake, he put X mark also in the column meant for opposing the motion. He did not strike off the tick mark on the assumption that the vote will be declared as invalid if he did so. At this juncture the respondent got embarrassed and he forgot to sign on the reverse side of ballot paper and thereby his vote was declared as invalid. The respondent has not violated any directions of his political party or the front in which his political party forms a part. Even though no whip was issued to the respondent, he voted against the no confidence motion. But due to an inadvertent mistake, his vote happened to be declared as invalid. The conduct of the respondent immediately before the voting shows his bonafides to oppose the said motion. The no confidence motion was moved by LDF against the former Vice President Smt. S.Sheeja and that was one month

after the no confidence motion moved against the former President. The respondent had opposed the said no confidence motion and voted against the same and in the election to the member of the Standing Committee held on 03.10.2013 the respondent voted in favour of the UDF nominee. He had also cast his vote in favour of the UDF nominee in the election to the post of President held on 02.10.2013. So all the antecedent and the subsequent conduct of the respondent would reveal that he has not become disloyal to his political party or front and he has not committed any defection. There is no cause of action for the respondent and it is only to be dismissed.

4. The allegations raised by the common petitioner in O.P.No.75/2013 are in short as follows,- The petitioner is a member belonging to Congress party and the respondent was elected as a member belonging to Communist Marxist party (CMP). The Congress party, Muslim League and CMP constituted the UDF front and fought the election together. Out of the 19 seats, the UDF secured 10 seats and LDF secured 8 seats and one independent candidate also won in the election. As the UDF secured majority, Sri.A.Zakir Hussain belonging to Congress party was elected as President and Smt.S.Sheeba was elected as Vice President. While so, the LDF members along with the independent member and the CMP member moved a no confidence motion against the President and it was tabled for

discussion on 07.08.2013. The CMP District Secretary Shri.M.H.Sharier issued whip to the respondent to vote against the no confidence motion and its copy was given to the Secretary of the Panchayat. But by violating the whip issued by the District Secretary, the respondent voted in favour of the no confidence motion and thus 10 votes which included 8 votes of the LDF members one vote of the independent and one vote of the CMP member, the no confidence motion was passed. The act of the respondent was in gross violation of the whip and totally against all direction of the UDF coalition. The respondent has purposefully helped the opposition by defying the direction of his party and front. The respondent has cheated his own party and coalition and thus committed defection. Hence this petition.

5. The contentions raised by the respondent in her objection, as amended, are as follows,- The original petition is not maintainable either in law or on facts. It is true that the respondent is a member belonging to Communist Marxist Party. But she is not bound to obey the directions of the UDF. At the time of the election of President and Vice President in 2010, there was an understanding that after 2½ years Smt.S.Sheeja belonging to Congress party would resign from the post of Vice President and the remaining term will be allotted to this respondent. But on completion of the said period, the Congress refused to comply with the said condition. Moreover the President and Vice President had shown utter

disregard to the development of the ward of the respondent and there were also several allegations against them for corruption nepotism and improper utilization of funds. So the respondent and her party felt aggrieved and she supported the no confidence motion due to the breach of promise and the indifferent attitude on the part of the petitioner's party and not for any other reason. Though the District Secretary of the party had at first directed the respondent to oppose the no confidence motion, he later allowed her to vote according to her conscience on understanding the realities. The allegation that the district President of CMP had issued whip to the respondent is false. The action of the respondent in voting in favour of the no confidence motion had the full support of the local and District leaders of her party as it was in the best interest of the party. Sri.M.H.Shariar had no authority to issue any whip to this respondent as he had not been authorized by the CMP to recommend the symbol to this respondent or to issue any whip to her. Only the Communist Marxist party Kerala State Committee which is the registered political party or any person specifically authorized by the said party can issue whip to the respondent and there is no authorization to Sri.M.H.Shariar to issue whip to the respondent. More over the alleged whip sent by Shri.M.H.Shariar by registered post was received by the respondent only on 08.08.2013 which was the next day of voting on the no confidence motion. So there is no question of defying the whip issued by the District Secretary. The

respondent has not committed any defection and the petition deserves only dismissal.

6. Both these cases have been taken up jointly as per order on I.A.155/2013 and O.P.No.74/2013 is treated as the main case. The evidence consists of the oral depositions of PWs1 to 5, RWs1 and 2 and Exts.P1 to P19 and R1 to R3.

7. All the parties were heard

8. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondent in O.P.74/2013 has taken a stand in favour of the no confidence motion moved against the President as alleged?
- (iii) Whether the respondent in O.P.No.74/2013 has committed defection by defying the whip issued by the District President of Indian Union Muslim League in respect of voting on the no confidence motion?
- (iv) Whether the Shri.M.H.Shariar, the District Secretary of CMP is competent to issue whip to the respondent in O.P.75/2013 in respect of voting on the no confidence motion moved against the President?
- (v) Whether the respondent in O.P.75/2013 has defied the whip issued by the competent person in respect of voting on the no confidence motion and thus committed defection?
- (vi) Whether the respondents have become subject to disqualification for being members of Anchal Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local

Authorities (Prohibition of Defection) Act?

(v) Reliefs and costs?

9. **POINT No.(i)**: These are petitions filed under Section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, (hereinafter referred to as the Act,) by alleging that they have committed defection in having disobeyed the whip issued by the competent person in respect of voting on the no confidence motion moved against the then President of the panchayat. Section 4(1) of the act states that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this 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 present petition is filed by a member of the same local authority of which the respondents also are members. So the petitioner is competent to file the petition as provided by Section 4(1) of the Act. The respondent in O.P.No.74/2013 admittedly was elected as a member belonging to Indian Union Muslim League and the respondent in O.P.No.75/2013 was elected as a member belonging to CMP. So both of them are members of political parties. 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 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 on a no confidence motion against the President, Vice President or Standing Committee Chairman, he shall be disqualified for being a member of that local authority. It is the voting on the no confidence motion by violating the whip said to have been issued to the respondents by the person authorized by the political parties that the cause of action is stated to have been raised in these petitions. The above allegations are denied by the respondents. So a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Act. These petitions are filed within the time limit prescribed under Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. No serious contentions are raised challenging the maintainability of these petitions. Therefore I find that the petitions are maintainable. The point is answered accordingly.

10. POINT Nos.(ii) and (iii): According to the petitioner the respondent in O.P.No.74/2013 belonging to Indian Union Muslim League made his vote invalid in respect of voting on the no confidence motion and thus he favoured the said motion moved against the then President and acted in defiance of the whip issued by the District President of the party. The petitioner has been examined as PW1 and his chief examination is by way of a detailed affidavit reproducing all

the averments contained in his original petition. The fact that the respondent was elected as a member belonging to Indian Union Muslim League is not in dispute. Ext.P3 is the declaration submitted by the respondent under sub rule 2 of Rule (3) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, wherein he has asserted that he belongs to Muslim League and his coalition is the UDF. Ext.P5 is the copy of the register maintained under this Rule stating the political affiliations of the members of the Panchayat wherein also the respondent is shown as a member belonging to Muslim League under UDF. Out of the total number of 19 wards, the UDF secured 10 seats and the LDF secured 8 seats and remaining one seat was won by an independent. So admittedly the UDF secured majority and the Congress member Sri.Sakheer Hussain belonging to Congress party was elected as President. A no confidence motion was moved by the LDF members along with the independent member and a CMP member, who is the respondent in O.P.No.75/2013, against the President and it was tabled for discussion on 07.08.2013. Ext.P6 is the notice issued by the authorized officer stating the date and time of discussion on the said motion. PW1 has deposed that the Kollam District President of Muslim League had issued whip to the respondent on 04.08.2014 to vote against the no confidence motion which was coming up for discussion on 07.08.2013 and Ext.P10 is the copy of the said whip issued by the District President and given to the Secretary of the Panchayat. The

whip issued to the respondent was handed over to Indian Union Muslim League Punalur Niyojakamandalam President as per Ext.P11 authorization and the said Mandalam President has been examined as PW2. He has deposed that he had served the whip to the respondent directly and Ext.P10 is stated to be the copy of the whip given to the respondent. PW2 has deposed that such a whip may have been sent by registered post also. It was suggested to PW2 that in the original petition the District President himself is stated to have served the whip to which PW2 pleaded ignorance. PW2 has admitted that no acknowledgment was given by the respondent regarding receipt of the whip. It was again suggested to PW2 that no such whip was served to the respondent in person which he denied.

11. The District President of Indian Union Muslim League has been examined as PW5 on Commission. He has deposed that he had issued whip to the respondent and Ext.P10 is its copy. He has given Ext.P11 declaration stating that the whip was handed over to PW2 and served to the respondent through PW2. But Ext.P11 is found to be only an authorization signed by PW5 stating that the whip issued by him has been handed over to PW2 for serving it to the respondent. There is no assertion in Ext.P11 that the whip was served by PW2 to the respondent directly. In cross-examination PW5 has admitted that the respondent is still an active member of the Muslim League. He has further admitted that the whip issued by him was not served to the respondent by him in

person and that it was handed over to PW2 for service. He also does not know whether the whip was served by PW2 to the respondent. PW5 has admitted that the whip was not sent by registered post. He also does not know whether the respondent had voted against or in favour of the no confidence motion. He only states that the whip was issued on the basis of a request from PW2.

12. PW1 belongs to the Congress party and he is not competent to speak anything regarding the whip issued by Indian Union Muslim League to its member. PW1 also does not know regarding service of the whip to the respondent. The evidence of PWs 2 and 5 along with Exts.P10 and P11 are relied on to prove that the District President of Muslim League had issued whip to the respondent. The respondent has denied to have received any whip issued by PW5 in respect of voting on the no confidence motion. Even according to PW2 no acknowledgment was given by the respondent while receiving the whip by him. In this context Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules becomes relevant and it reads as follows,-

“While issuing a direction under sub-rule (1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by

affixing it shall be done in the presence of at least two witnesses.”

13. Admittedly the whip stated to have been issued by PW5 was not sent by registered post and it was not served by affixture. It is by way of serving directly that the whip was stated to have been given to this respondent. But as per the above Rule when the whip is given directly, the person who gives it should obtain a receipt from the member which PW2 has admittedly not obtained. The mere oral evidence given by PW2 that the whip issued by PW5 was served to the respondent in person, without any evidence of its receipt from the respondent, cannot be relied on to prove the service of whip. When the rule mandates that receipt should be obtained while serving the whip directly and there is failure to follow such procedure, it can only be held that there was no due service of the whip to the respondent. So it is clearly found that the petitioner has completely failed in proving that the direction said to have been issued by PW5 was duly served to the respondent. Therefore it has to be held that the whip said to have been issued by PW5 was not duly served to the respondent regarding the voting on the no confidence motion moved against the President.

14. The petition is filed against the respondent only on the ground that the respondent has violated the whip issued by the person authorized by the party in respect of voting on the no confidence motion. I have already found that the

petitioner has failed to prove that any direction was given by the party to the respondent regarding the voting on the no confidence motion and as such the petition deserves only dismissal. However whether the conduct of the respondent in having allegedly made his vote invalid regarding the no confidence motion would constitute defection also needs to be considered for completeness of all issues in this regard. As I have already pointed out, the vote of this respondent on the no confidence motion was declared as invalid. The no confidence motion was moved against the President of the Panchayat. Section 157 of the Kerala Panchayat Raj Act deals with motion of no confidence. Section 157(2) of the Kerala Panchayat Raj Act states that written notice in such form as may be prescribed of the intention to move any motion referred to in sub-section (1) signed by such number of elected members of the Panchayat concerned as shall constitute not less than one-third of the sanctioned strength of elected members of that Panchayat, together with a copy of the motion which is proposed to be moved shall be delivered in person by any of the elected members of the Panchayat signing the notice, to the officer as may be authorized by the State Election Commission in this behalf. In the case on hand the motion was moved by 8 LDF members and one independent member and one CMP member. This respondent did not sign in that motion. As per Section 157(9A) of the Kerala Panchayat Raj Act, Election shall be by means of open ballot and the member

who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper. Of course in the present case the respondent did not affix his signature on the reverse side of the ballot paper. The procedure for deciding the motion is as per Section 157(12) which reads as follows,-

“12. If the motion is carried with the support of the majority of the number of members of the Panchayat notified under sub-section (1) of Section 6, the President or the Vice President as the case may be, shall cease to hold office thereafter and their offices shall be deemed to be vacant forthwith, and the officer authorized under sub-section (2) shall report the vacancy in such offices to the Government and the State Election Commission and the fact shall be published in the notice board of the Panchayat, and on receipt of such a report the Government shall notify in the Gazette the cessation of office by the President or the Vice-President, as the case may be.”

15. As per Section 6(1) of the Kerala Panchayat Raj Act, the total number of seats in a Village Panchayat, a Block Panchayat and a District Panchayat to be filled by direct election shall be notified by the Government in accordance with the scale specified in sub-section (3) with reference to the population of the

territorial area of the Panchayat concerned. In this Panchayat the total number of seats notified is admittedly 19. Section 157(12) states of only votes casts in support of the motion and only if majority of the number of members of the Panchayat notified under sub section (1) of Section 6, President or Vice President as a case may be shall cease to hold office. It is trite that a voting on the no confidence motion is different from voting in an election to the post of President or Vice President. The voting in favour of a no confidence motion alone becomes significant for deciding the fate of that motion. If members are absent or if the votes of a member is declared as invalid, there will be no consequence in respect of passing the no confidence motion. A direction that the member should cast his vote against the no confidence motion would be substantially complied with if that member either abstains from voting on that no confidence motion or makes his vote invalid. Making a vote invalid is equal to abstention from voting or voting against the no confidence motion because only the votes cast in favour of the motion alone is reckoned for deciding whether the motion is carried or not. So the allegation of the petitioner that the respondent has made his vote invalid does not assume any significance and it cannot be considered as a conduct of favouring the no confidence motion. It can only be considered as a stand taken against the no confidence motion. From Ext.P15 it is found that this respondent was vehemently opposing the no confidence motion

and as he did not vote in favour of the no confidence motion, the only inference that can be arrived at is that he was taking a stand against the no confidence motion. Therefore I find that the conduct of the respondent was not disloyal to his party or the front in which his party is a partner and the allegation in this regard cannot stand to legal scrutiny.

16. It is also alleged that Indian Union Muslim League is a constituent of UDF and that the UDF parliamentary party whip had given direction to vote against the no confidence motion and that the respondent had defied the same. Ext.P12 is stated to be the copy of the direction issued by the UDF parliamentary party whip. As a matter of fact, in respect of a member belonging to a political party, that political party or the person authorized by that party alone can issue whip to its members and the coalition in which such political party is a constituent has no role in respect of a member belonging to that political party. In respect of members belonging to political party, Section 3(1)(a) of the Act applies. The parliamentary party whip of a coalition can issue direction only in respect of an independent member contesting the election with the support of a coalition. Such an independent member belonging to any coalition, if withdraws from such coalition or joins any political party or any other coalition or acts against the direction in writing issued by a person authorized by the coalition in this behalf, Section 3(1) (b) applies. In such a case Rule 4(1)(2) applies which

states that in the case of a member who belongs to a coalition or considered to be included in it, the direction is to be issued by the member whom the members of the said coalition and the members considered to be included in it in the local authority concerned elect for the purpose, on majority basis from among themselves. The respondent is not a member belonging to a coalition or a member considered to be included in it. Only his party is a constituent of such coalition. So regarding the respondent Section 3(1)(a) of the Act alone applies and his party or the person authorized by the party alone can give direction in this behalf and the direction issued by the parliamentary party whip of the coalition is totally invalid. Since this respondent did not vote in favour of the no confidence motion or has not done any act of disloyalty to his party, I find that he has not committed any defection. The points are answered accordingly.

17. Point Nos.(iv) & (v): The definite case of the petitioner in O.P.No.75/2013 is that the respondent, in gross violation of the whip issued by the District Secretary of CMP to vote against the no confidence motion had participated in the no confidence motion and voted in favour of the same and thus helped the opposition front to get the motion moved against the President passed and thereby committed defection. Admittedly the respondent was a signatory along with the LDF members and the independent member in the no confidence motion moved against the President of the Panchayat. She had also supported the

no confidence motion and with her support the motion was passed. The CMP has only one member in the Panchayat. She has admitted that CMP was a constituent of the UDF coalition in the General Election and after the election the respondent also had supported the UDF in electing the President, Vice President etc. In the objection of the respondent he would contend that after the General Election the post of Vice President was agreed to be shared between Congress party and this respondent for 2 ½ years each and the Vice President belonging to Congress party did not resign after her term to pave way for this respondent to become the President and the President and Vice President were ignoring the legitimate demands of the respondent regarding the development of her ward. The further contention of the respondent is that though the leaders of CMP had at first directed her to oppose the no confidence motion later when she explained the District Secretary of the breach of promise, he allowed her to vote according to her conscience. However the respondent has taken a contention that the whip issued by the District Secretary was received by her only on the next day of passing the no confidence motion. So whether the allegation of the petitioner that the whip issued by the District Secretary of CMP was served to the respondent deserves consideration.

18. The petitioner as PW1 has deposed that the whip sent by the Secretary of the CMP by registered post was served to her and by violating that whip, she

voted in favour of no confidence motion. A District Committee member of CMP as PW3 has stated that the District Secretary has sent whip to the respondent by registered post and another copy of the whip was given to him for service to the respondent and it was given to the respondent directly. The Kollam District Secretary has been examined on Commission as PW4. He has stated that the whip to the respondent was sent by registered post and Ext.P9 series are the postal receipt, postal acknowledgment card and copy of the whip. The respondent as RW2 has stated that the whip sent by registered post to her was received only on 08.08.2013 whereas the no confidence motion was taken up for discussion on 07.08.2013 and Ext.R4 is relied on to prove that the whip was received by her only on 08.08.2013. She would also depose that no other whip was received by her in person. Ext.P7 is the copy of the whip issued by PW4 to the respondent and given to the Secretary of the Panchayat. Ext.P8 is the declaration given by the District Secretary stating that whip has been given to the respondent to vote against the no confidence motion. From Ext.P9 series it is found that the whip was sent to the respondent by registered post on 01.08.2013 and it was received by her. It is further seen that the copy of such a whip was sent to the Secretary of the Panchayat by registered post on 01.08.2013 itself and the Secretary had received the same on the same date. At the same time the respondent has produced a document obtained from the post office stating that

the said postal article was delivered to her only on 08.08.2013. However it is further found from the postal cover attached to Ext.R2 that intimation was given to the respondent on 02.08.2013 itself. Even from Ext.R2 it is clear that intimation was given regarding the postal article containing the whip as early as on 02.08.2013 and thereafter the article was received by her only on 08.08.2013. This would clearly show that she was purposely delaying the receipt of the said article knowing that it contained the whip issued to her by the District Secretary. In the objection also it is clearly admitted by the respondent that at first direction was given by the District Secretary of CMP to vote against the no confidence motion and it is by way of a subsequent explanation by her to the Secretary that she was stated to have been allowed to vote in favour of the motion. In the light of the said admission it is futile to contend that whip was not received by her. She was fully aware of the whip issued by the District Secretary. Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Rules states the manner in which a whip is to be issued and in compliance of the same, the District Secretary had sent the whip by registered post with acknowledgment due well in advance of the date on which the no confidence motion was tabled for discussion. The purposeful delay caused in receiving the postal article cannot be taken into consideration to hold that whip was received only after the date on which the no confidence motion was taken up for discussion. Considering all

facts and also the admission of the respondent in her objection and in her evidence, it is clearly found that the whip was issued by the District Secretary of CMP to the respondent in respect of voting on the no confidence motion and she was fully aware of his direction in this regard.

19. The respondent has taken a definite contention that the District Secretary of CMP was not competent to recommend symbol to the candidates of the CMP contesting in the election to the local bodies and so he was not competent to issue whip to her. The further contention of the respondent is that the Communist Marxist Party Kerala State Committee or any person specifically authorized by the said State Committee for recommending symbol alone is competent to issue direction to the candidates of the CMP contesting in the election to local bodies. As a matter of fact this contention was raised in the objection as per order on I.A.No.48/2014 dated 29.03.2014. No further amendment has been made in the original petition. The original petition has been filed on the ground that the respondent along with the LDF members and an independent member moved a no confidence motion against the President and by violating the direction issued by the District Secretary of CMP she voted in favour of the said motion and thereby committed defection. So violation of the whip alone is the ground upon which the petition has been filed. The petitioner as PW1 has deposed in detailed regarding the issuance of the whip and the

violation of the said whip by the respondent in respect of voting on the no confidence motion. PWs 3 and 4 also have been examined to prove the above allegation. Of course I have already found that PW4 the District Secretary of CMP had issued direction to the respondent to vote against the no confidence motion and by violating the direction the respondent voted in favour of the same. The respondent as RW2 has admitted that the District Secretary of CMP had at first issued direction to her to vote against the no confidence motion and thereafter he had allowed to her take a stand favourable to the said motion and thus she had voted in favour of the motion. It was suggested to RW2 that PW4 the District Secretary of CMP is the competent person to issue whip to a member belonging to this party which she denied.

20. Section 3 of the Act deals with disqualification on ground of defection and the relevant portion of this Section reads as follows,-

“3.(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.”

So as per Section 3(1)(a) of the Act, if a member belonging to a political party votes or abstains from voting in respect of voting on a no confidence motion moved against the President in defiance of the whip issued by the political party or by a person or authority authorized by such political party in this behalf in the manner prescribed, he shall be disqualified for being a member of that local authority. As already pointed out, it was the District Secretary of CMP who had issued the direction to the respondent to vote against the no confidence motion. So whether the District Secretary of CMP is competent to

issue direction to a member of that party deserves consideration especially in the light of the specific contention raised by the respondent in her objection. Direction in writing as defined in clause (iva) of Section 2 by way of amendment brought as per Act 6 of 2013 is relevant in this context and it reads as follows,-

“(iva) 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 recommend the symbol of the said political party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting”

21. It is also significant point out that as per Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules also, a person competent to issue direction to a member belonging to his party is the person who is authorized by such party to recommend symbol to the candidates of that party while contesting in an election to a local body. There is no evidence in this case to prove that PW4 was authorized by the CMP to recommend symbol to the candidates of this party while contesting in election to local authorities. No record has been produced to prove that PW4 was authorized by the Communist

Marxist party to recommend symbol to its candidates. Of course the respondent has deposed that PW4 had recommend symbol to her for contesting in the election in this Panchayat. But such a version given by the respondent would not satisfy the requirement of proving that the Communist Marxist party had authorized PW4 or whoever be the District Secretary of CMP to recommend symbol to the candidates of this party. The clause (iva) of Section 2 of the Act mandates that a direction writing is the direction issued to a member by the person authorized by the political party from time to time to recommend the symbol of the said political party for its contesting candidates in a local body. It is based on such an authorization given by the party that the person authorized gets competency to issue direction writing. Even in the deposition of PW4, he would state that he had recommended symbol in his capacity of the CMP District Council Secretary. He has not deposed that he was authorized by his political party to recommend symbol to the candidates. Even though the contention in this behalf has been raised by the respondent after the examination of most of the witnesses, as the amendment relates back to the date of filing the objection, the petitioner was bound to counter such a statement by adducing proper evidence. The petitioner has not cared to produce the record regarding the authorization of the political party to PW4 to recommend symbol to the candidates of that party. Since this is a legal requirement, even without a contention in the objection, the

petitioner is bound to prove that the person who had given direction was the person authorized by the party to recommend symbol to the candidates of that party. However the petitioner has completely failed in proving that PW4 was authorized by the Communist Marxist party to recommend symbol to the candidates of this party in an election to the local bodies. A member belonging to a political party is bound to obey only a valid direction issued by the competent person as provided by Section 3(1)(a) of the Act and Rule 4(1) of the Rules, since a specific definition is given under clause (iva) of Section 2 of the Act regarding the meaning of the 'direction in writing', that has to be complied with in this case. However the petitioner is found to have completely failed in proving that PW4 was authorized to recommend symbol to the candidates of CMP contesting in an election to a local authority and so the direction issued by PW4 to the respondent is not proved to be valid.

22. Section 3(1)(a) of the Act consists of two limbs. The first limb is attracted when a member belonging to a political party voluntarily gives up his membership from such party. For attracting this limb it may be sufficient that the conduct of such a member in having defied the direction given by the Districts Secretary of that party in an election to the post of President, Vice President etc., or on a no confidence motion would be sufficient because that would amount to disloyalty to the party. The second limb is attracted when such member, contrary

any direction issued by the party or the person authorized by such party votes or abstains from voting in an election to the President, Vice President etc., or on voting on a no confidence motion. It is only the second limb which is taken up as a ground in this case. I have already found that the petitioner has failed to prove that PW4 was the person authorized by the party to recommend symbol to the candidates of this party. In Ext.R3 also it appears that there is no mention regarding the authorization given by the party to recommend symbol. In the absence of any clause in Ext.R3 or any record evidencing such authorization, it is to be presumed that no such person was authorized by the party to recommend symbol to the candidates and so the State committee Secretary or any person authorized by the State Committee alone is competent to recommend symbol. In the case on hand the direction issued is by PW4 the District Secretary of CMP I have already found that there is no evidence to prove that authorization was given to him by the party for recommending symbol to the candidates of that party. Therefore it cannot be held that PW4 is competent to issue direction to the respondent regarding voting on the no confidence motion. So it can only be found that the respondent has not voted contrary to any direction in writing given as provided by the Act and Rules. The points are answered accordingly.

23. **Point Nos. (vi & vii):** In the light of the above discussion, I hold that both these petitions deserves only dismissal. The points are answered accordingly.

In the result, O.P.Nos.74/2013 and 75/2013 are dismissed.

The parties shall bear their respective costs.

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

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

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri. B.Radhakrishnan, Sopanam, Thazhamel Anchal.
- PW2 : Sri.Erum Jalaludeen, Nizar Manzil, Erum,
Thadikkadu P.O.
- PW3 : Sri.Manikuttan.M, Karimbin Chalil Veedu,
Panayamcherry, Anchal P.O.
- PW4 : Sri.M.H.Shariar, Puthuveedu, Kadappakkada P.O.
- PW5 : Dr.A.Yunus Kunju, Shajahan Manzil, Vadakkevila,
Kollam

Witnesses examined on the side of the respondent

- RW1 : Sri.Badarudheen, Mangalathu Veedu, Anchal P.O.

RW2 : Smt.Girija Thampi, Member, Anchal Grama Panchayat

Documents produced on the side of the petitioner

- P1 : Certificate dated 20.08.2013 issued by the Secretary, Anchal Grama Panchayat
- P2 : Copy of the affidavit in Form No.2 filed by Sri.B.Radhakrishnan, Member
- P3 : Copy of the affidavit in Form No.2 filed by Sri.Anchal Badarudeen, Member
- P4 : Copy of the affidavit in Form No.2 filed by Sri.Smt.Girija Thampi, Member
- P5 : True copy of the register showing party affiliation of the members of Anchal Grama Panchayat.
- P6 : Letter No.D.1213/2013 dated 25.07.2013 of the BDO, Anchal
- P7 : Copy of the letter dated 31.07.2013 of the Secretary, CMP, Kollam District council
- P8 : Certificate dated 27.11.2013 of the Secretary, CMP District Council, Kollam
- P9 : Letter dated 31.07.2013 of the Secretary, CMP District Council, Kollam
- P9(a) : Receipt of registered letter
- P9(b) : Acknowledgment card
- P9 (c) : Acknowledgment card
- P10 : Copy of the letter dated 04.08.2013 of the President, Muslim League, Kollam District Committee
- P11 : Certificate issued by the President, IUML, Kollam District Committee

- P12 : Copy of the direction issued to Sri.Anchal Badarudeen by the whip, UDF, Parliamentary Party Anchal Grama Panchayat
- P13 : Copy of the direction issued to Smt.Girija Thampi by the whip, UDF, Parliamentary Party Anchal Grama Panchayat
- P14 : Letter No.D-1320/2013 dated 16.08.2013 of the Secretary, Anchal Block Panchayat and its enclosure
- P15 : Copy of the minutes of the meeting to the discussion of no confidence motion against the President, Anchal Grama Panchayat held on 07.08.2013
- P16 : Letter dated 27.08.2013 addressed to Smt.Girija Thampi of the Secretary, CMP District Council, Kollam
- P17 : Letter dated 21.08.2013 addressed to the Convenor, UDF Parliamentary Party, Anchal Grama Panchayat
- P18 : Copy of the minutes of the meeting to the discussion of no confidence motion against the Vice President, Anchal Grama panchayat held on 12.09.2013
- P19 : Copy of the minutes of the meeting of Anchal Grama Panchayat

Documents produced on the side of the respondents :

- R1 : Notification No.50/2011/PPS-11 dated 28.12.2011 of the Election Commission of India
- R2 : Enquiry particulars of registered letter
- R3 : Constitution of Communist Marxist Part (CMP)

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