

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

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

Friday, the 11th day of April 2014

O.P.Nos.75/2010, 76/2010, 77/2010 & 78/2010

O.P.75/2010

Petitioner : Shibu.K.K.,
Councillor, Ward No.34,
(Athazhamangalam Ward),
Neyyattinkara Municipality.
Thiruvananthapuram District.

**(By Advocates Cherunniyoor
P.Sasidharan Nair & Kallambalam
S.Sree kumar)**

Respondent : Velappan.V.,
Councillor, Ward No.13,
Perumpazhuthoor Ward),
Neyyattinkara Municipality,
Thiruvananthapuram District.

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

O.P.No.76/2010

Petitioner : Shibu.K.K.,
Councillor, Ward No.34,
(Athazhamangalam Ward)
Neyyattinkara Municipality.
Thiruvananthapuram District.

**(By Advocates Cherunniyoor
P.Sasidharan Nair & Kallambalam
S.Sree kumar)**

Respondent : S..P.Sajinlal.,
Councillor, Ward No.42,
(Brahmamcode Ward),
Neyyattinkara Municipality,
Thiruvananthapuram District.

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

O.P.No.77/2010

Petitioner : Shibu.K.K.,
Councillor, Ward No.34,
(Athazhamangalam Ward)
Neyyattinkara Municipality.
Thiruvananthapuram District.

**(By Advocates Cherunniyoor
P.Sasidharan Nair & Kallambalam
S.Sree kumar)**

Respondent : G.Somasekharan Nair,
Councillor, Ward No.05,
(Pallivilakom Ward),
Neyyattinkara Municipality,
Thiruvananthapuram District.

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

O.P.No.78/2010

Petitioner : Shibu.K.K.,
Councillor, Ward No.34,
Neyyattinkara Municipality.
Thiruvananthapuram District.

**(By Advocates Cherunniyoor
P.Sasidharan Nair & Kallambalam
S.Sree kumar)**

Respondent : G.Sukumari,
Councillor, Ward No.15,
(Plavila Ward),
Neyyattinkara Municipality,
Thiruvananthapuram District.

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

These petitions having come up for hearing on the **14th day of March 2014**, in the presence of Advocates **Cherunniyoor P.Sasidharan Nair & Kallambalam S.Sreekumar** for the petitioner and Advocates **Hashim Babu.M & Sajitha.S** 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 r/w Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have become subject to disqualification for being Councillors of the Neyyatinkara Municipality. The petitions are filed by a common petitioner. Since common questions of law and facts arise for consideration in all these cases, they have been taken up jointly as per order on I.A No.12/2011 and O.P.No. 75/2010 is treated as the leading case;

2. Common allegations are raised by the petitioner against the respondents in all these cases which are, in short, as follows:- The petitioner is a Councillor of Neyyattinkara Municipality as having been elected from ward No.34 in the General Election held in October 2010. The respondents contested the election held on 23.10.2010 in various wards of Neyyattinkara Municipality as independent candidates without support of any political parties and were elected as Councillors. Out of the 44 wards of Neyyattinkara Municipality, the major political coalitions viz., LDF and UDF secured 20 seats each and the remaining 4 seats were won by independent candidates which are these respondents. After the General Election the respondents voted in favour of the UDF nominees for the posts of Chairman and Deputy Chairperson. The respondents started working as active Congress party members in the Municipality and the petitioner applied before the Municipal Secretary to give details of the UDF parliamentary party meetings and thus the petitioner obtained the copy of the minutes of the said meeting held on 06.11.2010 at DCC Office, Thiruvananthapuram. The attested copy of the above record has been received by the petitioner on 04.12.2010. From this record it is found that the respondents have joined the Congress party and became part of UDF and also signed in the minutes along with the other UDF members on 06.11.2010 at the DCC Office, Thiruvananthapuram. After having been elected as complete independents

without any political support, the respondents have changed that status and joined the Congress party and the UDF and thus committed defection as provided by Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act. Hence these petitions.

3. These respondents have filed separate objections raising common contentions which are briefly, the following:- The petitions are not maintainable either in law or on facts. The petitions are filed without specific pleadings and only with the object of harassing the respondents. The petitions are hopelessly barred by limitation. The petitioner himself claims that these respondents have joined the Indian National Congress as early as from the formation of the Council and that they have voted and supported in favour of the candidates and UDF to the post of Chairman and Vice Chairman held on 08.11.2010. As per Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, a petition is to be filed within 15 days from date on which the member is deemed to have become subject to disqualification and a petition filed beyond such period can be entertained only on showing sufficient reasons. In these cases the voting to the post of Chairman and Vice Chairman was on 08.11.2010 and the petitions are filed only on 18.12.2010. So there is a delay of more than 20 days in filing these petitions. No applications are filed to condone the said delay and so the

petitions deserve only dismissal due to bar of limitation. In Para 10 of the petition it is stated that the petition is filed within the period of limitation as the petitioner got knowledge of the defection only on 04.12.2010. But the date of knowledge is not the date from which limitation starts and so the petitions are not maintainable on this score alone. It is true that the respondents were elected as independent councilors without support of any political parties. The respondents supported the UDF based on an understanding without joining in any political parties for the better interest of the public. The respondents entered into a written understanding with UDF regarding the sharing of power in the Municipality and it was done without joining any political party or front. The meeting held on 06.11.2010 was not any parliamentary party meeting and there is nothing in the minutes stating that the respondents have joined the Congress party or the UDF. The allegation that the respondents have joined the Congress party and the UDF is totally false. There is no cause of action for these petitions. The respondents are functioning as independent Councillors and they have not joined any political party or coalition. So these petitions are liable to be dismissed with compensatory cost of ₹3,000/-.

4. The evidence consists of the oral depositions of PWs1 to 5 and Exts.P1 to P16 for the petitioner and the oral evidence of RWs 1 to 4 for the respondents.

5. The evidence in this case was closed on 27.09.2013 and even after granting more than ten adjournments, the Counsel on both sides did not argue the cases and on 14.03.2013 the request of the Counsel on both sides seeking further time for hearing was rejected and the cases were taken up for disposal.

6. The following points arise for consideration;

- (i) Whether the petitions are not maintainable as barred by limitation?
- (ii) Whether the respondents being independent Councillors not belonging to any political party or coalition, joined any political party or coalition as alleged?
- (iii) Whether the respondents have become subject to disqualification as provided by Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act?
- (iv) Reliefs and costs?

7. **POINT No.(i)**: These petitions are filed by a common petitioner against four Councillors of Neyyattinkara Municipality alleging that they have participated in the parliamentary party meeting of the Congress party and UDF held on 06.11.2010 at DCC Office, Thiruvananthapuram and signed in the minutes along with the UDF members and they began to work as Congress party members in the Municipality and thus they have joined the Congress party and has become disqualified for being Councillors of Neyyattinkara Municipality. The petitioner would further allege that the respondents had voted in favour of the

UDF nominated candidates in the election to the post of Chairman held on 08.11.2010 and the petitioner applied before the Municipal Secretary for getting details of the parliamentary party meeting of Congress party and UDF and accordingly the minutes of the parliamentary party meeting held on 06.11.2010 was obtained on 04.12.2010 and these petitions have been filed within 15 days from the date of receipt of the said record. The respondents would contend that as per Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, for short the 'Rules' a petition under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act', has to be filed within 15 days from the date on which the member is deemed to have become disqualified and that as the petitioner states that the respondents have joined the Indian National Congress as early as on 06.11.2010, the petitions should have been filed within 15 days from such date and that these petitions as having been filed beyond 15 days from that date are barred by limitation.

8. The petitions are filed under Sections 4(1) of the Act alleging that the respondents have become subject to disqualification as provided by Section 3(1)(c) of the Act. **Section 4(1)** of the Act is relevant in this context and it 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 can file a petition before the State Election Commission for decision.”

No doubt in the light of the rival contentions, a question arises as to whether the respondents have become subject to disqualification under Section 3(1) (c) of the Act. As per Rule 4A(2) of the Rules, a petition for disqualification is to be filed within 15 days from the date on which the member is deemed to have become subject to disqualification and under its proviso, a petition filed beyond such date can be entertained on satisfying sufficient grounds.

9. These petitions are filed on 18.12.2010. Para 10 of the petition states that the petitions are filed within the period of limitation as the knowledge about the participation of the respondents in UDF parliamentary party meeting has come to the knowledge of the petitioner on 04.12.2010 which is the cause of action for the petition. According to the petitioner, the respondents had participated in the parliamentary party meeting of the Congress party and UDF held on 06.11.2010 at the DCC Office, Thiruvananthapuram and thus they have joined the Congress party and UDF. So the date on which the respondents are

deemed to have committed defection is on 06.11.2010. Of course according to the petitioner the copy of the minutes of the parliamentary party meeting was obtained by him from the Secretary of the Municipality only on 04.12.2010 and as such the limitation period is computed from that date. But Rule 4A(2) of the Rules clearly states that the period for computing the limitation starts on the date on which the member is deemed to have become subject to disqualification. In these cases, the date on which the respondents are deemed to have become subject to disqualification, even according to the petitioner, is 06.11.2010. These petitions are not filed within 15 days computing from the above date. As per Rule 4A(2) of the Rules the period of limitation cannot be computed from the date of knowledge. So even as per the allegations contained in the petition and from Ext.P8 record which is taken as the basis for filing these petitions, it is revealed that the cause of action for these cases arose on 06.11.2010 and therefore the petitions filed beyond 15 days from that date are found to be barred by limitation. Of course the petitioner could have got the delay of twenty-eight days condoned by filing separate applications for the same in these cases. Since these petitions are not filed within 15 days from the date on which the respondents are deemed to have become subject to disqualification as provided by sub-Rule 2 of Rule 4A of the Rules and as the petitions were not supported by applications for condoning delay as provided by the proviso to the above sub-

Rule, I find that the petitions are not maintainable being barred by limitation. The point is answered accordingly.

10. **POINT Nos. (ii) to (iv)**: Since common questions of law and facts arise for consideration in all these points, for brevity and convenience, they are taken up together. According to the petitioner, as the respondents who were elected as complete independent Councillors participated in the parliamentary party meeting of the Congress party and UDF held on 06.11.2010 at DCC Office, Thiruvananthapuram and began to work as active Congress party members in the Municipality, they have become subject to disqualification as provided by Section 3(1)(c) of the Act. The petitioner has been examined as PW1. The fact that the respondents were elected as complete independent Councillors is not in dispute. Exts.P1 to P7 and P11 to P14 are the records to prove the fact that the respondents are elected as independent Councillors without the support of any political party or coalition. PW1 has deposed that out of the 44 wards, the LDF and UDF secured 20 seats each and these respondents supported the candidates belonging to UDF for the posts of Chairman and Deputy Chairperson. He has further deposed that except the respondent in O.P.77/2010, the other respondents became Chairman of various standing committees with the support of UDF members. PW1 has further deposed that the respondents participated in the Congress parliamentary party meeting held on 06.11.2010 convened by DCC

President and affixed their signatures in the minutes of this meeting and the copy of that record is marked as Ext.P8. PW1 has also stated that all the decisions taken in that meeting were implemented and Ext.P9 is the copy of the minutes in respect of the election to the post of Chairman and Ext.P10 is the minutes of the election to the post of Vice Chairman. According to PW1 the respondents have thus joined the Congress party and they are now active members of Congress party and thus committed defection. In cross-examination PW1 has stated that Ext.P8 was received by him from the Secretary of the Municipality on 04.12.2011 and that the cases have been filed due to the reason that the respondents have joined the Congress party. PW1 in cross-examination would assert that it is on the basis of Ext.P8 that the respondents are understood to have joined the Congress party. PW1 would further depose that in the meeting convened by the DCC President, the Congress members and those who have joined in the Congress party were invited. PW1 has repeated that as the respondents have participated in that meeting they have joined the Congress party. It is also deposed by PW1 that he came to know that these respondents have taken membership of the Congress party. PW1 has admitted that the support of the independent members is necessary for getting the Rule of the Municipality. It is suggested to PW1 that the respondents are functioning as

independent Councillors and they are only supporting the UDF in the administration of the Municipality which PW1 denied.

11. PWs 2 to 6 have been examined on the side of the petitioner. PW2 is stated to be a voter of the ward from where the respondent in O.P.No.75/2010 was elected as a Councillor. PW2 has deposed that he had worked for the above respondent in his election and that after the election that respondent voted in favour of UDF candidates in the Municipality and in the Assembly Election these respondents were actively working for Sri.Thampanoor Ravi the candidate of Congress party. According to PW2 the respondent in O.P.No.75/2010 has been working along with Congress Party activists and UDF and that he had betrayed the electorate who voted him as an independent Councillor. In cross-examination PW2 has stated that he was not having any official position in the election in which the said respondent has contested and that he came to know from others and also from newspaper that these respondents have joined the Congress party and UDF. PW2 has also deposed that he does not know directly whether the respondent had joined any political party.

12. PW3 is stated to be a voter of the ward represented by the respondent in O.P.No.77/2010. He has deposed that this respondent is now working along with the Congress party.

13. PW4 is stated to be the resident of Plavila ward from which the respondent in O.P.No.78/2010 was elected. PW4 has deposed that after the General Election the respondent in O.P.No.78/2010 is now working along with the present office bearers of the Municipality and that the respondent is performing well in the ward.

14. PW5 is stated to be the resident of the ward from which the respondent in O.P.No.76/2010 has been elected. He has deposed that the respondent is now functioning as a Standing Committee Chairman with the support of the Congress party and UDF and that in the last Assembly Election, this respondent was actively working for the Congress candidate Sri.Thampanoor Ravi. In cross-examination this witness has admitted that he is an accused in several cases registered at Neyyattinkara Police Station. He has stated in cross-examination that he does not know whether the said respondent has joined the Congress party or not.

15. PW6 is the Chief Reporter of Desabhimani daily of Thiruvananthapuram Bureau and he has deposed that in the daily dated 24.05.2012 he has published a report stating that the house which belongs to the person who attacked the Bishop House is now being used as the UDF election committee office in the by-election of Neyyattinkara Assembly Constituency and Ext.P15(a) is that report contained in Ext.P15 paper. He has further deposed that

this house is belonging the respondent in O.P.No.76/2010. In cross-examination PW6 has stated that Desabhimani Newspaper is published by CPI(M) and that a candidate belonging to CPI(M) was contesting in that by-election. He has also deposed that the reports contained in the newspaper are in favour of the candidate of CPI(M). PW6 has also stated that he does not know whether the building mentioned in Ext.P15(a) report is owned by this respondent and he knows only that the respondent along with his family is residing in that house. To the suggestive question that from 2009 the brother of this respondent Shri.Shajilal is residing in this building, he pleads ignorance. It is from hearsay evidence that PW6 come to the conclusion that this house is belonging to the said respondent.

16. The respondent in these cases would contend that they are still continuing as an independent Councillors and that they have not joined any political party or coalition and that the meeting held on 06.11.2010 was only of the Councillors of the Neyyattinkara Municipality and for taking decision on sharing of power in the Municipality and that it was done without joining any political party or coalition. The respondents have been examined as RWs 1 to 4. RW1, the respondent in O.P.No.76/2010 has deposed that there was an understanding with UDF members to support the candidates of UDF and instead to give the posts of Chairman of three Standing Committees to the respondents

and this was done without joining any political party or coalition. He has further deposed that he came to know of the meeting of the Councillors being held at DCC Office and went there and an understanding was arrived at regarding sharing of power and the respondents had never agreed to join the Congress party nor joined the party at any time. RWs 2 to 4 also have given similar versions and they have stated that they are still functioning as independents Councillors and have not joined any political party or coalition.

17. The petitions are filed under Section 3(1) (c) of the Act which 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.*

.....
.....
.....

(c) if an independent member not belonging to any coalition joins any political party or coalition, he shall be disqualified for being a member of that local authority.

18. Admittedly the respondents were elected as independent Councillors not belonging to any political party or coalition. So the short question to be considered in these cases is whether the petitioner has succeeded in proving that the respondents have joined any political party or coalition as stated by him. The oral evidence of PWs 1 to 6 and Exts.P8 and P15(a) are relied on to prove that the respondents are now working with the Congress party and they have joined that party after having been elected as independent Councillors. Ext.P16 is only a paper published by the CPI(M) dated 16.05.2013. The cause of action in the present case arose on 06.11.2010 and so this paper which was published only in 2013 cannot be considered at all for deciding the facts in issue in these cases. Moreover no evidentially value can be attached to a report in a newspaper to enter a finding that the respondents have joined any political party or coalition. So Ext.P8 is the only other record on which the entire case is built upon by the petitioner. Ext.P8 is seen to be the minutes of a meeting of the Councillors of Neyyattinkara Municipality convened on 06.11.2010 at the DCC office and the DCC President had presided over that meeting. It is true that these respondents have participated in that meeting and affixed their signatures in the minutes of the same. The decisions taken in that meeting are, Sri.S.S.Jayakumar has been decided as the parliamentary party leader, Adv.L.S.Sheela, Smt.Pushpaleela and Adv.R.S.Ravisankar have been decided as Vice Chairman, Treasurer and whip

respectively in that meeting. Even assuming that the said meeting was the parliamentary party meeting of the Congress Party or UDF, the participation of these respondents in such a meeting alone cannot be considered as sufficient to come to a conclusion that they have joined any political party or coalition. The respondents have categorically stated that there was an understanding between them and the UDF Councillors to support the candidates of UDF for the post of Chairman and Deputy Chairperson and instead to give the three posts of the Chairman of the Standing Committees to these respondents and that the said decision was arrived at without joining any political party or coalition. It cannot be doubted that an independent Councillor can taken his own stand to support a party or coalition in an election to the office bearers of the Municipality and simply because he has supported such candidates belonging to a political party or coalition, it cannot be inferred that he has joined that political party or coalition. Section 3(1)(c) of the Act is attracted only when an independent Councillor has joined any political party or coalition. For this there should be acceptable evidence to prove that an independent Councillor has joined any political party or coalition. In Neyyattinkara Municipality, the UDF and LDF secured 20 seats each and without the support of the independent Councillors, no coalition can get power. It is in the above context that an understanding was made between the UDF and independent Councillors whereby the independent Councillors

supported the UDF Councillors for the election to the posts of Chairperson and Deputy Chairperson and in return they supported the independent Councillors to get three posts of Chairman of the Standing Committees. Ext.P8 cannot be accepted as a record to prove that the respondents have joined the Congress party or the UDF. It is all the more important to note that the definite case of the petitioner is that the respondents have joined the Congress party. The meeting convened on 06.11.2010 was not the parliamentary party meeting of the Congress Councillors. The Councillor belonging to Kerala Congress (M) also was present in that meeting. So Ext.P8 cannot be relied on to prove that the respondents have participated in the parliamentary party meeting of the Congress party. Even assuming that the respondents had participated in the Congress parliamentary party meeting, that will not constitute defection as provided by Section 3(1)(c) of the Act for the simple reason that Section 3(1) (c) of the Act states of joining in a political party. The participation of an independent member in parliamentary party meeting of a political party is not sufficient for attracting Section 3(1) (c) of the Act. The evidence tried to be let in through PWs 2 to 6 and Ext.P16 is regarding the subsequent events after filing these petitions and their evidence are cannot be considered at all for deciding the fact in issue in these cases. Moreover their evidence is mainly hearsay evidence which is inadmissible. On a careful analysis of the entire evidence I am of the view that

the petitioner has completely failed in proving that the respondents have joined the Congress party or UDF after having been elected as independent Councillors as alleged in these petitions. So the petitions deserve only dismissal. The points are answered accordingly.

In the result, the petitions are dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 11th day of April 2014

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

Witnesses examined on the side of the petitioner

- PW1 : Sri. K.K.Shibu, Puthuval Puthen Veedu,
Kavalakulam, Neyyattinkara P.O.
- PW2 : Sri.Preman, Ayaniyarathala Kizhakkum Puthen Veedu,
Perumpazhuthoor, Neyyattinkara.
- PW3 : Sri.Sujith S.V., S.V.Bhavan, Thozhukkal,
Neyyattinkara P.O.
- PW4 : Shri.Shaji, Sneha Cottage, Kuttiyanikkal, Plavila,
Neyyattinkara P.O.
- PW5 : Sri.Madana Mohan, Dinesh Bhavan, Aralummodu
P.O., Neyyattinkara
- PW6 : Sri.Reghunath, Senior Sub Editor, Desabhimani,
Thampanoor

Witnesses examined on the side of the respondent

- RW1 : S.P.Sajinlal, Councillor, Neyyattinkara Municipality
- RW2 : Sri.Velappan, Councillor, Neyyattinkara Municipality
- RW3 : Sri.Somasekharan Nair, Midhila, Vazhuthoor,
Koottappana, Neyyattinkara
- RW4 : Smt.G.Sukumari, Nandanam, Thattamvila,
Thouzhukkal, Neyyattinkara P.O.

Documents produced on the side of the petitioner

- P1 : True copy of the Nomination in Form No.2 submitted by
Sri.Velappan.V
- P1(a) : True copy of Form No.2 A submitted by Sri.Velappan.V
- P2 : True copy of the nomination in Form No.2 submitted by
Sri.Somasekharan Nair
- P2(a) : True copy of Form No.2 A submitted by
Sri.Somasekharan Nair
- P3 : True copy of the nomination in Form No.2 submitted by
Smt.G.Sukumari
- P3(a) : True copy of Form No.2A submitted by Smt.G.Sukumari
- P4 : Copy of the register showing party affiliation of the
Councillors of Neyyatinkara Municipality showing the
name of Sri.Velappan.V
- P5 : Copy of the register showing party affiliation of the
Councillors of Neyyatinkara Municipality showing the
name of Sri.S.P.Sajinlal
- P6 : Copy of the register showing party affiliation of the
Councillors of Neyyatinkara Municipality showing the
name of Sri.Somasekharan Nair

- P7 : Copy of the register showing party affiliation of the Councillors of Neyyatinkara Municipality showing the name of Smt.G.Sukumari
- P8 : Copy of the minutes of the meeting of the elected members of Neyyattinkara Municipality, held on 06.11.2010, at DCC Office
- P9 : Copy of the minutes of the meeting to elect the Chairman, Neyyattinkara Municipality.
- P10 : Copy of the minutes of the meeting to elect the Vice Chairman, Neyyattinkara Municipality.
- P11 : Copy of the declaration in Form No.2 filed by Sri.Velappan.V
- P12 : Copy of the declaration in Form No.2 filed by Adv.S.P.Sajin Lal
- P13 : Copy of the declaration in Form No.2 filed by Sri.G.Somasekharan Nair
- P14 : Copy of the declaration in Form No.2 filed by Smt.G.Sukumari
- P15 : Desabhimani daily dated 24.05.2012
- P16 : Keralakaumudi daily dated 16.05.2013

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