

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

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

Saturday, the 18th day of October 2014

O.P.Nos.92/2013AND 93/2013

O.P.No.92/2013

Petitioner : K.V.Khalid,
S/o Muhammed,
Keezhattuveetil House, Arikkadu P.O.,
Thalakadathur,
Malappuram District.
Member, Ward No.11,
Thanalur Grama Panchayat

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

Respondent : Pulluni Fathima,
W/o Sainudheen, Pulluni House,
East Meenadathur, Meenadathur P.O.,
Thanalur (Via), Malappuram District.
PIN: 676 307.
Member, Ward No.13,
Thanalur Grama Panchayat,

(By Adv. Abdul Shukkur Arakkal)

O.P.No.93/2013

Petitioner : K.V.Khalid,
S/o Muhammed,
Keezhattuveetil House, Arikkadu P.O.,
Thalakadathur, Malappuram District.
Member, Ward No.11,
Thanalur Grama Panchayat
(By Advs. M.Hashim Babu & Sajitha.S)

Respondent : Maliyekkal Sujatha,
W/o Devarajan, Maliyekkal House,
K.Puram P.O, Thanalur (Via),
Malappuram District.
PIN: 676 307.
Member, Ward No.19,
Thanalur Grama Panchayat,

(By Adv. Abdul Shukkur Arakkal)

These petitions having come up for hearing on the 7th day of October 2014, in the presence of Advs. **M.Hashim Babu & Sajitha.S** for the petitioner and Adv. **Abdul Shukkur Arakkal** 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 Thanalur 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.92/2013 is treated as the main case;

2. The allegations raised in O.P.No.92/2013 are in short, as follows:- The petitioner is the elected member from ward No.11 of Thanalur Grama Panchayat and he contested the election as a candidate of Indian Union Muslim League.

The respondent is elected as a member from ward No.19 and she contested the election as a candidate supported Indian National League under UDF coalition. Later Indian National League merged with Indian Union Muslim League and thus the respondent became a member of Indian Union Muslim League. Out of the 23 wards, UDF had won in 13 wards and LDF won in 10 wards. CPM independent also had won in one ward. The Indian National Congress found victory in 3 wards, Muslim League in 8 wards, Indian National League in one ward and UDF independent in one ward. The CPI(M) found victory in 9 wards and CPM independent won in one ward. Since the UDF coalition obtained majority Mrs.V.P.Sulaikha belonging to Muslim League was elected as President and Sri.O.P. Ibrahim belonging to Indian National Congress was elected as Vice President. No confidence motions were moved by the LDF members against the President and Vice President and they were tabled for discussion on 07.10.2013. Sri.Anil was elected as the whip in the meeting of the UDF parliamentary party and that decision was communicated to the Secretary of the Panchayat. All the UDF members except the respondent were present in the above meeting. It was decided to vote against the no confidence motion and the whip was issued to the members present in the meeting and on the next day the whip was given to the respondent directly which she accepted. The respondent was having sufficient notice regarding the decision of the UDF on the no confidence motion. On

07.10.2013 there was serious protest from public and so the meeting had to be adjourned to 17.10.2013. On 07.10.2013 itself the respondent signed a letter along with LDF members and gave it to the Secretary stating that she is supporting the no confidence motion. On 17.10.2013 the respondent in gross defiance of the direction issued by the UDF purposefully voted in favour of the motions against the President and Vice President of her own coalition and with the help of LDF members they were ousted. The respondent was fully aware of the decision of the party and stand taken by UDF in respect of voting on the no confidence motion. The respondent by signing the letter on 07.10.2013 and voting on 17.10.2013 supporting the no confidence motion has become disqualified for being a member of this Panchayat. The previous and subsequent conduct of the respondent will clearly show that she has voluntarily given up her membership from Indian National League and from UDF coalition and now she is in the rival camp. Since Indian National League has merged with Indian Union Muslim League, the respondent has to obey the whip of Indian Union Muslim League and the UDF. The respondent has voluntarily withdrawn her affiliation from UDF and she is now moving against the interest of UDF and thereby she has committed defection. 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 averment that Indian National League (INL) has merged with Indian Union Muslim League is absolutely false. The further allegation that the respondent has become a member of Indian Union Muslim League on account of merger also is false. The no confidence motions moved against the President and Vice President could not be taken up for discussion on 07.10.2013. Then the respondent signed a letter along with LDF members stating that she is supporting the no confidence motions. The respondent contested in the Panchayat as a candidate Indian National League and at that time in Malappuram District Indian National League was going along with UDF. The allegation that Indian National League has merged with Indian Union Muslim League is absolutely false. The further allegation that on account of that merger the respondent became a member of Indian Union Muslim League also is totally false. The State President of Indian National League, during the time of Panchayat election, was Sri.S.A. PuthiyaValappil, General Secretary was Sri.P.M.A.Salam and District President was Sri.K.P.Ismail and the District Secretary was Sri. A.P.Abdul Vahab. Due to anti party activities Shri.PMA Salam was expelled from party and he with a group of persons in the Indian National League joined the Indian Union Muslim League. Thereafter Sri.P.M.A Salam was replaced by Sri.A.P. Abdul Vahab and the Indian National League is

still keeping its independent status and still remaining as a political party. In the Assembly Election Indian National League had political understanding with LDF and the State President Sri.S.A.Puthiya Valappil had contested from Koothuparamba constituency with the support of LDF as that seat was allotted to Indian National League by LDF. The District President K.P.Ismail of Indian National League also contested with the support of LDF in Vengara constituency. This respondent is still remaining as a member of Indian National League and the Indian National League has not merged with Indian Union Muslim League either in the State level or District level. Only a faction of the Indian National League has joined with Indian Union Muslim League. The Indian National League is keeping its independent identity and it is not forming part of UDF. Since the respondent is a member of Indian National League the whip issued by the Indian National League was to vote in favour of the no confidence motions against the President and Vice President and the respondent acted accordingly. There is no question of defiance of any whip or any act so as to constitute defection. The election of whip by the UDF or the direction issued by such whip is not binding on the respondent. The Indian Union Muslim League also issued a whip which is not binding on the respondent and the respondent had acted in terms of the whip issued by her political party. The respondent has not committed any defection and the petition deserves only dismissal.

4. The allegations raised by the common petitioner in O.P.No.93/2013 are in short as follows,- The petitioner is a member belonging to Indian Union Muslim League and the respondent was elected from ward No.19 as an independent member supported by UDF. Out of the 23 wards, the UDF consisting of Indian National Congress, Muslim League, Indian National League and UDF independent secured 13 seats and the CPI(M) secured 9 seats and one seat is won by CPI (M) independent. Since the UDF coalition obtained majority Smt.V.P.Sulaikha from Muslim League was elected as President and O.P. Ibrahim, Indian National Congress was elected as Vice President. The LDF members moved a no confidence motion against the President and Vice President on 24.09.2013 and it was tabled for discussion on 07.10.2013. The UDF parliamentary party meeting was convened on 28.09.2013 and Sri.Anil was elected as the whip of the UDF coalition and the same was communicated to the Secretary. All the UDF members except Pullani Fathima were present in that meeting and it was decided to vote against the no confidence motion and whip was issued to all the members present in the meeting. The respondent was present in the meeting and the whip was issued to her which she accepted. So the respondent was having sufficient notice regarding the decision of the front in respect of the no confidence motion. On 07.10.2013 the no confidence motion

could not be taken up for discussion and it was postponed to 17.10.2013. On 07.10.2013 the respondent signed a letter along with LDF members and given to the Secretary stating that she is supporting the no confidence motions. The respondent in gross defiance of the direction issued by the UDF purposefully voted in favour of the no confidence motion moved against the President and Vice President along with the LDF members. The previous and subsequent conduct of the respondents would clearly indicate that she has defected from UDF coalition and now she is in the rival camp. The respondent supported the LDF by disobeying the political stand of the UDF. The respondent has withdrawn her association with UDF which supported her to win in the General Election. Thus she has voluntarily withdrawn her affiliation with UDF and now she is moving with LDF and thereby she has committed defection. Therefore the respondent is disqualified to continue as a member of Thanalur Grama Panchayat. Hence this petition.

5. The respondent filed objection contending in brief as follows,- The petition is not maintainable either in law or on facts. There is no cause of action as against this respondent. The respondent had contested the election not as a candidate supported by UDF. She contested the election as an independent candidate without the support of any political parties or coalition and she is still remaining as an independent member. After election the respondent was co-

operating with UDF not as a member or as part of UDF coalition. She was taking independent stand on issues for the better interest of the Panchayat. It is true that a no confidence motion was moved against the President and Vice President and thus respondent was issued with a whip by Sri.Anil to vote against the no confidence motion in the meeting proposed to be held on 07.10.2013. The election of Sri.Anil as a whip of the UDF was not intimated to the respondent or to the Secretary of the Panchayat. So the whip issued by Sri.Anil has no legal force. A whip or direction issued for one meeting will not be valid for any subsequent meeting and for each and every meeting independent whip is to be issued. In the case of the respondent she is an independent member without affiliation to any party or coalition. So she has every right to exercise her free will. No whip was issued to the respondent to vote against the no confidence motion in the meeting held on 17.10.2013. The allegation that the respondent has withdrawn from the UDF coalition is not correct as she was elected as an independent member. There is no cause of action for this petition and it deserves only dismissal.

6. The evidence consists of the oral depositions of PWs1 and 2, RWs1 and 2 and Exts.P1 to P11 series.

7. Both sides were heard

8. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondent in O.P.92/2013 is a member belonging to Indian National League?
- (iii) Whether Indian National League had merged with Indian Union Muslim League and thus the respondent has become a member of Indian Union Muslim League?
- (iv) Whether any whip was given to the respondent in O.P.No.92/2013 by any competent person to vote against the no confidence motions moved against the President and Vice President?
- (v) Whether the respondent in O.P.No.92/2013 has become subject to disqualification for being a member of Thanalur Grama Panchayat??
- (vi) Whether the respondent in O.P.93/2013 contested the election as an independent candidate without any affiliation to any coalition?
- (vii) Whether the respondent in O.P.No.93/2013 had contested the election as an independent candidate with the support of UDF as alleged?
- (viii) Whether the respondent in O.P.NO.93/2013 has become subject to disqualification for being a member of Thanalur Grama Panchayat?
- (ix) Reliefs and costs?

9. **POINT No.(i)**: These are petitions filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, (hereinafter referred to as the Act). 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. These petitions are filed by a member of the same local authority of which the respondents also are members. According to the petitioner the respondent in O.P.No.92/2013 was elected as a member belonging to Indian National League which subsequently merged with Indian Union Muslim League and she was elected with the support of UDF and thereafter the said respondent moved no confidence motions against the President and Vice President of the Panchayat belonging to UDF and she also voted in favour of the said no confidence motions by defying the direction issued by the UDF whip and thereby committed defection. The respondent in O.P.92/2013 would contend that the whip said to have been elected by the UDF is not competent to issue whip to the respondent and that she still belongs to Indian National League and only the Indian National League is competent to issue direction to her and as the Indian National League is now co-operating with the LDF coalition she had moved and voted in favour of the no confidence motion as directed by her party and so she has not committed any defection. In O.P.No.93/2013 the petitioner would allege that the respondent was elected as an independent member supported by UDF and she by defying the direction issued

by the whip of the UDF voted in favour of the no confidence motions moved against the President and Vice President belonging to UDF and thereby committed defection. The contention of this respondent is that she contested the election as a complete independent candidate and that she was not supported by UDF and so the UDF whip was not competent to issue any direction to the respondent and as such she has not committed defection.

10. Section 3(1) (a) of the Act states that 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, votes or abstains from voting in an election to the post of President, Vice President etc., contrary to any direction issued by the political party or by a person or authority authorized by it in this behalf, he shall be disqualified for being a member of that local authority. So, as regards O.P.No.92/2013 is concerned, a question arises as to whether the respondent is to be treated as a member belonging to Indian Union Muslim League and also as to whether the respondent was bound to obey the direction issued by the UDF whip. Section 3(1)(b) of the Act states that if an independent member belonging to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, votes or abstains from voting in an election to the post of President, Vice President etc., contrary to any direction in writing issued by a person or authority authorized by the coalition in this behalf, he shall be

disqualified for being a member of that local authority. So in O.P.No.92/2013 a question arises as to whether the respondent contested the election as an independent candidate supported by UDF coalition and whether she was bound by the direction of the UDF whip. Since a question arises as to whether the respondents have committed defection or not as proved by Section 3(1)(a) and 3(1)(b) respectively read with Section 4(1) of the Act and as these petitions are filed by a competent person within the time limit prescribed under Rule 4A (2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, I hold that the petitions are maintainable. The point is answered accordingly.

11. POINT Nos.(ii) to (v): Since common questions of facts and law arise for consideration in all these points, they are being discussed together for brevity and convenience. Admittedly the respondent in O.P.No.93/2013 contested the election from ward No.19 as a candidate belonging to Indian National League. Ext.P1 is the declaration submitted by the respondent as provided by Section 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and in this record it is stated that she contested the election as a candidate of Indian National League. Ext.P3 is the copy of the register maintained by the Secretary of the Panchayat as provided by Rule 3(2) of the above Rules showing the political affiliation of the respondent and in this record also the respondent is stated to be an elected member belonging to Indian

National League. The petitioner as PW1 has deposed that this respondent had contested the election as an independent candidate with the support of Indian National League. Another member of this Panchayat has been examined as PW2. He also has deposed that this respondent has contested the election as a candidate of Indian National League. He has further deposed that Indian National League is a registered political party. The respondent as RW1 has deposed that she had contested the election as a candidate of Indian National League. She has further deposed that as she is a member belonging to Indian National League, she is bound to obey the direction and decision of her political party alone.

12. According to the petitioner though the respondent was elected as a member belonging to Indian National League, the said political party has merged with Indian Union Muslim League and so the members of Indian National League are to be treated as members belonging to Indian Union Muslim League. Admittedly Indian National League is continuing as a registered political party. To the suggestive question put to PW1 that since Indian National League is a registered political party it is having its own policies and programmes PW1 would answer that Indian National League was under UDF coalition. PW1 has further stated that Sri.S.A.Puthiyavalappil and Sri.A.P.Abdul Vahab may be the present President and Secretary of Indian National League respectively. PW1 has further admitted that Indian National League is now having an understanding

with LDF. He has reiterated that in the State of Kerala Indian National League is co-operating mostly with LDF. It is also admitted by PW1 that in the 2011 assembly election, the President of Indian National League Sri.S.A.Puthiyavalappil had contested as a candidate with the support of LDF in Kuthuparamba Constituency and that in Vengara constituency the District President of Indian Nation League Sri.K.P.Ismail was the LDF candidate. It is further admitted by PW1 that this respondent is a member of the Indian National League of which Sri.S.A.Puthiyavalappil is the President and Sri.A.P.Abdul Vahab is the Secretary. PW1 does not know whether the respondent had obeyed the direction issued by the Indian National League in the election to the post of President and Vice President. The respondent as RW1 has categorically stated that she had received the direction from her party to favour the no confidence motions moved against the President and Vice President. She has further deposed that such a whip was given to her by the Indian National League Malappuram District President. She has also deposed that she is bound to obey the direction issued by Indian National league and that she is not bound to obey the direction of any other political party or coalition.

13. From the above evidence it is clearly found that the respondent had contested the election as a candidate of Indian National League. Of course at the time of the General Election to local bodies Indian National League was a

constituent of UDF coalition. In Exts.P1 and P3 it is stated that Indian National League is a constituent of a UDF coalition. However in the election to the assembly constituency held in 2011 the Indian National League was a constituent of LDF and thereafter Indian National League continued to be a co-operating with LDF. The Indian National League being a political party is fully competent to take it own decision and the members are bound by the decision of that political party.

14. The definite case of the petitioner is that the respondent having been elected as a member belonging to Indian National League under UDF coalition and the Indian National League having being merged with Indian Union Muslim League, she is bound by the direction of the UDF whip and the whip issued by Indian Union Muslim League. Ext.P4 is stated to be the direction issued by PW2 who was elected as the UDF whip to the respondent. The respondent is found to have accepted the whip on 12.10.2013 as seen from Ext.P8. Admittedly this respondent is a signatory to the notice of intention to move the no confidence motions against the President and Vice President and she also supported the no confidence motions as seen from Ext.P7.

15. In the above context whether the conduct of the respondent in having defied the direction issued by the UDF whip in the voting on the no confidence motions moved against the President and Vice President would constitute

defection deserves consideration. It is proved beyond doubt that the respondent is belonging to a registered political party. So Section 3(1)(a) of the Act assumes relevance and it 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.”

16. As per this Section, a member belonging to a political party incurs disqualification under two distinct grounds. The first ground is when such member gives up membership from such political party and the second ground is when such member votes or abstains from voting in an election to President, Vice President etc or on a no confidence motions by defying the direction issued by the political party or by a person or authority authorized by such political party in this behalf. In the case on hand the direction was issued by the UDF whip. Admittedly the said UDF whip who has been examined as PW2 is not belonging to Indian National League. He would state that he had issued the whip in his capacity as the parliamentary party whip of UDF. He is stated to have been elected as parliamentary party whip as per Ext.P1(a) decision. In this context clause (iva) of Section 2 **as amended by Act 6 of 2013 which came into force on 17.01.12**, assumes importance 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”

17. So, as per the above clause a direction to a member belonging to a political party or to a member having the support of a political party can be given only by the person authorized by the political party from time to time to recommend the symbol of the said political party to the candidates of such party. In the light of the above provision it is clearly found that PW2 was not having any competency to give direction to the respondent in O.P.No.92/2013 and only the person who is competent to recommend symbol of Indian national League to its party candidates was competent to issue direction to the respondent. The petitioner does not have a case that the respondent had defied the direction issued by the Indian National League or a person authorized by Indian National League to recommend symbol to its candidates while contesting in an election to a local body. On the other hand the respondent would state that she was given direction by her party to vote in favour of the no confidence motions moved against the President and Vice President and she has only obeyed that direction. I do not find any reason to disbelieve the version of the respondent in this behalf. On a careful appreciation of all facts and materials on record it is clearly found that the respondent being a member of Indian National League was bound by the

direction and decision of that party alone and she was not bound to obey the direction issued by the parliamentary party whip of UDF in respect of voting on the no confidence motions moved against the President and Vice President. The parliamentary party whip of a coalition can issue direction only in respect of a member who was elected with the support of a coalition and not to a member belonging to a political party. Therefore I find that the petitioner has completely failed in proving that the respondent in O.P.No.92.2013 has either voluntarily abandoned her membership from the Indian National League or defied the direction issued by that party in respect of the voting on the no confidence motions moved against the President and Vice President. Therefore O.P.No.92.2013 is only to be dismissed. The points are answered accordingly.

18. **POINT Nos.(vi to (ix):** In O.P.No.93/2014 the petitioner would allege that the respondent had contested as an independent candidate with the support of UDF coalition and that she had given declaration stating that she was an independent candidate supported by UDF and while so no confidence motions were moved against the President and Vice President on 24.09.2013 and it was tabled for discussion on 07.10.2013 and that the UDF parliamentary party meeting elected PW2 as the whip of the coalition and though he gave written direction to this respondent to vote against the no confidence motions, the respondent by defying such direction voted in favour of the said motion which

was taken up for discussion on 17.10.2013 and thus she has become subject to disqualification. The main contention of the respondent is that she contested the election as a complete independent candidate without any support of any political party or coalition and that she continued as an independent member without affiliation to any coalition and so she was not bound to abide by the decision or direction of the UDF.

19. The petitioner as PW1 has deposed that this respondent had given a declaration stating that she is an independent candidate having the support of UDF coalition and copy of that declaration is marked as Ext.P2. Ext.P3 (a) is the copy of the register maintained by the Secretary as provided by Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and in this record also it is stated that the respondent was elected as an independent member with the support of UDF coalition. PW1 has further deposed that there was no other candidate for UDF in ward No.19 where this respondent had contested. PW1 has further deposed that this respondent was participating in all the UDF parliamentary party meetings and in the meeting held on 28.09.2013, PW2 was elected as the UDF whip and in that meeting also this respondent was present. PW1 has also stated that this respondent was present in the various UDF parliamentary party meetings held from 09.05.2010 to 02.07.2013 and the minutes of the above meetings are marked as Exts.P11(o) to P11(aj). PW1 has

categorically stated that in all these meetings this respondent was present and she had affixed her signatures as token of her participation in such minutes. In cross-examination it was suggested that these records are fabricated and that she had not affixed her signatures in any of these records.

20. PW2 who also is a member of this Panchayat has deposed that he was elected as the UDF parliamentary party whip as per the decision on 26.09.2013 and the minutes of that meeting is marked as Ext.P10(a). PW2 has further deposed that this respondent had participated in that meeting. It was suggested to PW2 in cross-examination that this respondent had contested the election as an independent candidate without the support of any coalition which PW2 denied.

21. This respondent is examined as RW2. She has asserted that she had contested the election as an independent candidate without the support of UDF and that she had never attended the meetings of the UDF parliamentary party meetings and according to her the UDF parliamentary party whip does not have any right or competency to issue whip to her. In cross-examination RW2 has stated that her opposite candidates were belonging to BJP and CPI (M) and that the UDF was not having any other candidate in her ward. She has further deposed that other political parties in the UDF also supported her. She has denied the signature in Ext.P1 declaration and in her anxiety to deny her signatures in all these records, she has even denied her signature appearing on her

vakkalath. She further denied the signature appearing against her name in Ext.P10 (a) and P11 series.

22. In Ext.P1 declaration this respondent is found to have affirmed that she had contested the election as an independent candidate with the support of UDF coalition. It is also stated that Indian National Congress, Indian Union Muslim League and Indian National League are the constituents of her coalition which is the UDF. Ext. P3 (a) was prepared by the Secretary based on Ext.P1 and in this record also it is stated that the respondent is an independent member belonging to UDF coalition. Ext.P1 declaration is given as per Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and so it is an official record showing the political affiliation of the respondent. Rule 3(2) of the above Rule 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 elected 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;*
- (b) an independent who contested election as a candidate of a coalition or as a candidate with the support of the coalition, 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 coalition or as a member with the support of that coalition; as the case may be;”*

23. In Ext.P2 the respondent is found to have categorically declared that she contested the election as an independent candidate with the support of UDF coalition. She has also stated in Ext.P2 the names of the political parties in the

UDF coalition which are Indian National Congress, Indian Union Muslim League and Indian National League. So from Ext.P2 it is clearly found that the respondent had contested the election as an independent candidate with the support of UDF coalition. Even though the respondent has denied the signature appearing in Ext.P2 that denial is without bonafides and this is evident on account of the denial of her signature appearing in her vakalath. In cross examination the respondent as RW1 has stated that she did not file a declaration as provided by Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. Since Ext.P2 is filed immediately after taking charge as a member as provided by Rule 3(2) of the Rules, I find that the facts contained in this records are substantially true. Ext.P3(a) is the copy of the register maintained by the Panchayat based on the declaration submitted by the members under Rule 3(2) of the Rules. In Ext.P3(a) also it is stated that the respondent is an independent member belonging to UDF coalition. In cross-examination the respondent has admitted that candidates belonging to BJP and CPI(M) had contested against her. She has further admitted at Page 3 of her deposition that there was no other candidate except her from UDF in this ward. So this version of the respondent itself would vindicate that she was an independent candidate supported by UDF in the election in her ward. After the election even without counting the respondent the UDF coalition secured clear majority to rule the

Panchayat. However the respondent was elected as a Chairperson of a Standing Committee which also would show that she became part of the UDF coalition in the administration of this Panchayat. Ext.P11 is the minutes book of the UDF parliamentary party meetings of this Panchayat for the period from 9.11.2010 onwards. Exts.P11(series) would show that the respondent was continuously participating in all the UDF parliamentary party meetings till 02.07.2013 which is the last minutes contained in this book. Her presence and participation in all such UDF parliamentary party meetings also would further prove that she was part of the UDF coalition in this Panchayat. On a careful consideration of the entire facts and materials on record it is found that the respondent had contested the election as an independent candidate with the support of UDF coalition and thus she became part of the UDF coalition.

24. The petitioner would allege that the LDF members submitted no confidence motions against the President and Vice President on 24.09.2013 and it was tabled for discussion on 07.10.2013 and the UDF parliamentary party meeting was convened on 28.09.2013 and PW2 was elected as the UDF parliamentary party whip and as per the decision of the UDF parliamentary party he issued direction to all members belonging to UDF including this respondent to vote against the no confidence motions and by disobeying that whip, the respondent by colluding with the LDF members voted in favour of the no

confidence motions which was considered on 17.10.2013 and thus the then President and Vice President were removed. The respondent in her objection at Para 8 has stated that in respect of the no confidence motions moved against the President and Vice President. She was issued whip by Sri.Anil (PW2) to vote against the said motions in the meeting proposed to be held on 07.10.2013 and it was issued by stating that the respondent should vote against the no confidence motions on 07.10.2013 to see that the motions are not passed. From the above averments it is clear that Sri.Anil the UDF parliamentary party whip had given direction to the respondent to vote against the no confidence motions moved against the President and Vice President.

25. The UDF parliamentary party whip has been examined as PW2. He was elected as UDF parliamentary party whip in its meeting convened on 26.09.2013 and Ext.P10(a) is stated to be the minutes of that meetings. It is further stated by him that the respondent also had participated in this meeting. He would further depose that the decision in the meeting was to oppose the no confidence motions moved against the President and Vice President and that he was authorized by the UDF parliamentary party to issue whip to all members of UDF coalition and accordingly he had issued direction to the respondent which she accepted. Ext.P4 is the direction issued by PW2 in his capacity as the whip of the UDF parliamentary party of Thanalur Grama Panchayat and the respondent

is found to have accepted this whip. In Ext. P5 the direction to the respondent was to vote against the no confidence motions moved against the President and Vice President. He has also deposed that the directions were sent by post also and Ext.P8(a) is the postal acknowledgment showing the acceptance of the whip sent by post to the respondent. He would also depose that the respondent had disobeyed his direction and voted in favour of the no confidence motions in liaison with the LDF members.

26. The respondent though has denied her signatures in Ext.P10 and P11 series, her denial is found to be without bonafides. It is significant to point out that in the objection the respondent has admitted that she had received the whip issued by PW2 whereas in her oral testimony as RW2 she has denied even her signature appearing on Ext.P5. Since it is clearly admitted by the respondent in her objection that she was given direction by PW2 to vote against the no confidence motions the denial of her signatures in her deposition is only a futile exercise. From Ext.P10(a) it is found that PW2 was elected as the UDF parliamentary party whip and in this meeting also the respondent was present and she is a party to this decision. Therefore on a careful appreciation of all facts and materials on record it is found that PW2 was elected as the UDF parliamentary party whip and that he had given direction to the respondent to vote against the no confidence motions moved against the President and Vice President and she

,by disobeying the said direction and by aligning with LDF members, had voted in favour of the no confidence motions and thereby the President and Vice President belonging to UDF were removed from such posts.

27. Whether the conduct of the respondent in having supported the no confidence motions by disobeying the decision of the UDF parliamentary party and the direction of the parliamentary party whip would constitute defection deserves consideration. Section 3 of the Act deals with disqualification on the ground of defection and Section 3(1)(b) is in respect of an independent member belonging to a coalition and it reads as follows,-

“3. Disqualification on ground of defection,- (1)

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

(b) if an independent member belong to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority

authorized by the coalition in its behalf in the manner prescribed, votes or abstains from voting, -

(i) in a meeting of a Municipality, in an election of its President, Vice President, a member of Standing Committee or the Chairman of the 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 a 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.”

28. The object sought to be achieved by the Kerala Local Authorities (Prohibition of Defection) Act, is to provide disqualification for the defecting members. What is ultimately sought to be prevented is the evil of the political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. It is settled law that if an elected member belonging to a coalition takes a different stand from that of coalition and acts against the decision and direction of such coalition, such members commits defection as provided by Section 3(1)(b) of the Act.

In *Jancy Chandy Vs. Jose Puthenkala (2006 (4) KLT 116)* the Division Bench of the Hon'ble High Court has held as follows:-

“Politics without principle is one of the seven capital sins to be deprecated, according to the Father of our Nation, Mahatma Gandhi. Political defection is one of the grave vices in that group. In the statement of objects and reasons for the Fifty – second Amendment to the Constitution introducing Tenth Schedule in order to prevent frequent political defects, it is stated as follows:- “The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it”.

29. I have already found that the respondent was an independent member belonging to UDF coalition. As per Section 3(1)(b) of the Act, a direction in writing in respect of an independent member belonging to any coalition is to be issued by a person or authority authorized by the coalition in its behalf in the manner prescribed. In this context it is relevant to refer sub clause (ii) of Rule

4(1) of the Kerala Local Authorities (Disqualification of Defected Members)

Rules and it reads as follows,-

“4. The manner in which a Political Party or coalition may give direction to its members,- (1) if a political party or coalition gives any direction in respect of the casting of vote in an election or in a voting as has been mentioned in clause (a) or clause (b) of Section 3, it shall be in writing and such a direction shall be given,-

(ii) in the case of a member who belongs to a coalition or considered to be included in it; 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.”

In the present case PW2 was elected as the UDF parliamentary party whip as per the decision of the UDF parliamentary party unanimously. As already pointed out, the respondent also had participated in that meeting. Admittedly the respondent received the direction issued by PW2 to vote against the no confidence motions. So there is no doubt that PW2 was competent to issue whip

to the respondent and that the respondent was bound to act on the basis of such a whip.

30. The learned counsel for the respondent would argue that as per sub section (2) of Section 3 of the Act, a direction in writing issued for the purpose of clauses (a) and (b) of sub Section (1) shall be given to the Secretary of the concerned Local Self Government Institution and as the copy of such direction was not given to the Panchayat, the said direction does not have any legal sanctity. Even though the petitioner has categorically stated that copy of direction was given to the Secretary of the Panchayat, no record is forthcoming in proof of the same. In this context it is relevant note that as per Section 3(1)(b) of the Act, a member belonging to any coalition would incur disqualification if such member either withdraws from the said coalition or joins any political party or any other coalition, or if such a member violates the direction issued by a person or authority authorized by the coalition in its behalf in respect of voting in a meeting of the Panchayat in an election to his President, Vice President, Standing Committee Chairman or members or in a voting on a no confidence motion against any one of them except a member of a Standing Committee. So it is clear that if an independent member belonging to any coalition is withdrawing such coalition by his or her conduct, then the disqualification under Section 3(1)(b) of the Act is attracted. It is settled law that the conduct of a member in having voted

against the direction of the whip of any political party or coalition would be sufficient to prove that such member has given up his membership from the party or withdrawn from the coalition as a case may be. This position has been clarified in the decision and Mohandas **K.P. V. State Election Commission (2009 (4) KLT 957) at Paras 11 and 12** of the above decision it is held as follows,-

“11. Now, the Legislature having used two sets of words – voluntarily giving up membership & withdrawing from coalition; it needs to be considered whether the Legislature intended two different sets of situations. One functional tool to appreciate in the statutory provisions under interpretation and construction, is to adopt an approach to understand whether the provisions were intended to result in different situations or consequences. The object sought to be achieved by the PD Act, as already noticed, is to prohibit defection among members of local authorities and to provide disqualification of the defecting members. The prohibition and the liability for violating the prohibition are the same for all the members of the

local authorities. They do not get classified on any ground referable to the question whether they are members of a political party or whether they along with a political party are members of a coalition or whether they are independents forming part of a coalition. The acts sought to be prevented are the same, as was noticed in Varghese's case (supra) and are governed by the principles quoted therein from Kohoto Hollohan V.Zachillhu. What is ultimately sought to be prevented is the evil of political defection motivated by lure of office or other similar considerations, which endanger the foundations of our democracy. The principles laid down by the Apex Court in Kohoto Hollohan (supra), with reference to the Xth Schedule of the Constitution of India apply in toto to the provisions of the PD Act, which makes the principles applicable to a larger arena without confining its operations only to political parties. It apply to coalitions also.

12. *Therefore, the principles laid down by this Court in the different precedents referred to above on*

the concept of appreciation of evidence regarding the question whether a member of a local authority belonging to a political party has voluntarily given up his membership of such political party, apply with the same vigour to cases where the allegation of defection is made against an independent, who has allegedly withdrawn from a coalition to which he belonged by virtue of Section 2(ii) of the PD Act and the Explanation thereto.”

31. The respondent as RW2 has admitted in her evidence that she is now co-operating with LDF coalition. In the light of the settled position of law it is clearly found that the conduct of the respondent in having voted in favour of the no confidence motions moved against the President and Vice President by disobeying the direction issued by the UDF parliamentary party whip and by aligning with LDF members would be sufficient to show that she has withdrawn from the UDF coalition and thereby incurred disqualification as Provided by Section 3(1)(b) of the Act.

32. The learned counsel for the respondent would argue that the direction issued by PW2 was to vote against the no confidence motions in the meeting

convened on 07.10.2013, and as the no confidence motions were discussed only on 17.10.2013. the said direction could not have any legal force and so it cannot be considered that the respondent had acted against the direction of PW2 in respect of voting on the no confidence motions on 17.10.2013. The no confidence motions were moved on 24.09.2013 and the authorized officer tabled those motions for discussion on 07.10.2013. But due to some unruly occurrence on 07.10.2013, the no confidence motions could not be discussed on that day and it was discussed only on 17.10.2013. Since the motions could not be discussed on 07.10.2013 and it was taken up only on 17.10.2013 due to situations beyond the control of the Authorized Officer, it cannot be said that the UDF members were not bound by the direction issued by PW2 in respect of voting on the motions on 17.10.2013. Simply because the motions could not be taken up on 07.10.2013, it cannot be said that the directions given by the UDF parliamentary party whip would become infructuous. The fact that the same motions were discussed on 17.10.2013 cannot be discarded. It is further significant to note that since the motions were no taken up on 07.10.2013, the respondent and others had written to the authorized officer that she is supporting the no confidence motions moved against the President and Vice President as seen from Ext.P6. Ext.P6 is found to be given on 07.10.2013 itself. Moreover the direction by registered post was given to the respondent by PW2 in respect of the voting on the no confidence

motions on 17.10.2013 as seen from Ext.P8(a). The argument of the learned counsel for the respondent that the direction given by PW2 to vote against the no confidence motions would be relevant only in respect of voting on 07.10.2013 is found to be totally untenable. The authorized officer could not take up the motions for discussion on 07.10.2013 due to reasons beyond his control and as he had taken up the same motions of discussion on 17.10.2013, the directions issued by the political party as well as the parliamentary party whip of UDF would be binding on the members of such party or coalition.

33. From the discussion held above it is found that the respondent in O.P.No.93/2013 who had contested the election as an independent candidate with the support of UDF coalition and she was part of the UDF coalition and thereafter, on the no confidence motions moved against the President and Vice President by the LDF members, she voted in favour of the said motions against the direction of her parliamentary party whip by aligning with LDF members and thereby the President and Vice President belonging to UDF coalition were removed and the above conduct of the respondent would clearly attract defection by withdrawing from her coalition and thereby she has incurred disqualification as provided by Section 3(1)(b) of the Act. The points are answered accordingly.

In the result, O.P.No.92/2013 is dismissed and O.P.No.93/2013 is allowed and the respondent in O.P.No.93/2013 is declared as disqualified for being a

member of Thanalur Grama Panchayat as provided by Section 3(1)(b) of the Kerala Local Authorities (Prohibition of Defection) Act and she is also declared as disqualified for contesting as candidate in an election to any local authority 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 18th day of October 2014

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri. K.V.Khalid, Keezhattuveetil House,
Arikkadu P.O.,Thalakkadathur P.O.
- PW2 : Sri.Anil, Thalapally House, K.Puram P.O.,
Malappuram District.

Witnesses examined on the side of the respondent

- RW1 : Smt.Pulluni Fathima, Pulluni House,
Malappuram District (O.P.No.92/2013)
- RW2 : Smt.Maliyekkal Sujatha, Maliyekkal House,
Malappuram District (O.P.93/2013)

Documents produced on the side of the petitioner

- P1 : True copy of the declaration in Form No.2 filed by
Smt.Pulluni Fathima

- P2 : True copy of the declaration in Form No.2 filed by Smt.Maliyekkal Sujatha
- P3 : True copy of the Page No.13 of the register showing the political affiliation of the members of Thanalur Grama Panchayat
- P3(a) : True copy of the Page No.19 of the register showing the political affiliation of the members of Thanalur Grama Panchayat
- P4 : Letter dated 28.09.2013 of Sri.Anil.T, Member, Ward No.2, Thanalur Grama Panchayat addressed to Smt.Pulluni Fathima (subject to proof)
- P5 : Letter dated 28.09.2013 of Sri.Anil.T, Member, Ward No.2 Thanalur Grama Panchayat addressed to Smt.Maliyekkal Sujatha
- P6 : Copy of the notice to no confidence motion against the President and Vice President signed by 12 members (subject to proof)
- P7 : Letter No.B.2524/2013 dated 04.11.2013 of the Secretary, Block Panchayat, Thanur (Subject to Proof)
- P8 : Acknowledgment card addressed to Smt.Pulluni Fathima
- P8(a) : Acknowledgment card addressed to Smt.Sujatha Maliyekkal
- P9 : Letter No.408/2013/SOT dated 06.02.2014 of the Returning Officer, Thanalur Grama Panchayat
- P10 : Minutes Book of the UDF parliamentary party, Thanalur Grama Panchayat

- P10(a) : Minutes of the meeting of the UDF Parliamentary Party Thanalur Grama Panchayat held on 26.09.2013
- P11 : Minutes Book of the UDF Steering Committee Meeting of Thanalur Grama Panchayat
- P11(a) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 24.11.2010
- P11(b) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 08.12.2010
- P11(c) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 18.12.2010
- P11(d) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 27.02.2011
- P11(e) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 16.03.2011
- P11(f) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 28.09.2011
- P11(g) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 17.12.2011
- P11(h) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 28.08.2012

- P11(i) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 25.06.2012
- P11(j) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 27.08.2012
- P11(k) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 20.09.2012
- P11(l) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 12.10.2012
- P11(m) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 28.03.2013
- P11(n) : Signature of Smt.Fathima in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 06.04.2013
- P11(o) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 09.11.2010
- P11(p) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 24.11.2010
- P11(q) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 08.12.2010
- P11(r) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 13.02.2011

- P11(s) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 27.02.2011
- P11(t) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 16.03.2011
- P11(u) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 19.04.2011
- P11(v) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 27.05.2011
- P11(w) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 05.06.2011
- P11(x) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 26.06.2011
- P11(y) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 21.08.2011
- P11(z) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 28.09.2011
- P11(aa) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 15.10.2011
- P11(ab) : Signature of Smt.Sujatha Maliyakkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 21.01.2012

- P11(ac) : Signature of Smt.Sujatha Maliyekkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 17.02.2012
- P11(ad) : Signature of Smt.Sujatha Maliyekkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 22.02.2012
- P11(ae) : Signature of Smt.Sujatha Maliyekkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 09.03.2012
- P11(af) : Signature of Smt.Sujatha Maliyekkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 16.03.2012
- P11(ag) : Signature of Smt.Sujatha Maliyekkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 28.08.2012
- P11(ah) : Signature of Smt.Sujatha Maliyekkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 27.08.2012
- P11(ai) : Signature of Smt.Sujatha Maliyekkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 21.09.2012
- P11(aj) : Signature of Smt.Sujatha Maliyekkal in the minutes of the meeting of UDF Steering Committee, Thanalur Grama Panchayat held on 02.07.2013

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