

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

**PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER**

Thursday, the 22nd day of February, 2024

O.P. No. 01 of 2023

Petitioner

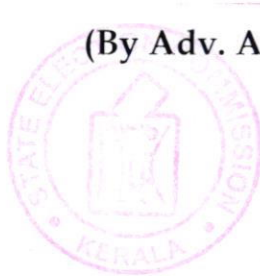
: Madhusoodanan Nair B.
S/o. Balakrishnan Pillai,
"Devendu",
Karumkulam, Pulluvila P.O.,
Thiruvananthapuram.
(Member, Ward No.2
Karumkulam Grama Panchayat)

(By Adv. Karakulam P.J. Manoj)

Respondent

: Soloman S.,
S/o. Siluvadasan,
KJM 13/111B, Pulluvila P.O.
Thiruvananthapuram
(Member, Ward No.18
Karumkulam Grama Panchayat)

(By Adv. A. Santhosh Kumar & Vinod)



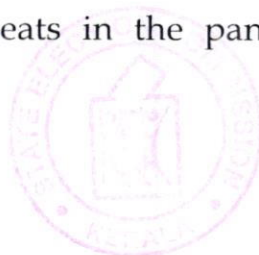
ORDER

This is a petition filed under Section 3 (1) (a) read with section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that respondent has committed defection and hence disqualified to continue as member of Karumkulam Grama Panchayat and also for declaring that respondent as disqualified to contest as a candidate in any elections to the local self government institutions for a period of 6 years.

2. The averments in the petition, are in short as follows:-

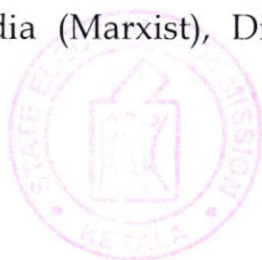
The Petitioner is the elected member representing Ward No.2 of Karumkulam Grama Panchayat. The Respondent is the elected member of Ward No.18 in General Election held to Local Authorities during November 2020. The Petitioner and the Respondent are contested in the election as the official candidates of Communist Party of India (Marxist) LDF coalition in its symbol Hammer Sickle Star. After the election the Petitioner and Respondent had given sworn declaration before the Secretary of Karumkulam Grama Panchayat showing their political allegiance as an elected member of CPI (M), a constituent of LDF coalition. On the basis of the same, Secretary of Karumkulam Grama Panchayat had prepared a register showing the political affiliation of the members wherein also it is stated that the Respondent is a member of Communist Party of India (Marxist).

3. There are 18 wards in the Karumkulam Grama Panchayat. 9 Seats won by LDF, 7 seats won by UDF and 2 seats won by independent candidate. Thus LDF got majority of seats in the panchayat and secured the



governance of the panchayat. However on 14.12.2022 a non confidence motion was successfully carried against the President Smt. Smt. Chinju and Vice President, who is the petitioner herein and they were removed from respective posts. Hence election to the vacant posts of President and Vice President of the Karumkulam Grama Panchayat necessitated. Returning Officer notified date of election to the post of President as 05.01.2023 11.00 am and date of election to the post of Vice President as 2 pm on the same day. As decided by the LDF Karumkulam Grama Panchayat parliamentary party meeting held on 01.01.2023, Communist Party of India (Marxist) issued whip to all elected members of Communist Party of India (Marxist) in the panchayat. The Whip dated 02.01.2023 was issued by the District Secretary of CPI (M) directing the respondent to vote in favour of petitioner as Vice President and Smt. Chinju as the President of the Karumkulam Grama Panchayat. They were the previous incumbents to the posts. But respondent kept away from the parliamentary party meetings held on 01.01.2023 and he refused to accept the whip by knowing its content. Hence the whip was affixed at his residence in the presence of the witnesses. The Respondent is having sufficient knowledge about the direction of Communist Party of India (Marxist). The copy of whip issued also communicated to Secretary of Karumkulam Grama Panchayat on 03.01.2023 and Secretary acknowledged its receipt.

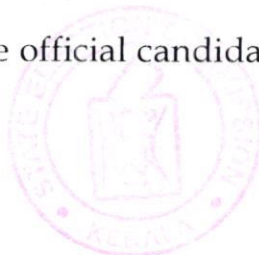
4. In the election on 05.01.2023 the Respondent colluded with rival political parties and intentionally defied the whip issued by the Secretary, Communist Party of India (Marxist), District Committee and voted



against the petitioner and President candidate Smt. Chinju. The Respondent purposefully voted against the CPI (M) candidates and thereby cheated the party by committing defection. In both president election as well as vice president election held on 05.01.2023 the candidate put up by LDF were defeated by a single vote cast by the respondent. It is a clear case of defection and is liable for disqualification under Kerala Local Authorities (Prohibition of Defection) Act 1999. On 05.01.2023, the date on which the respondent voted against the President and Vice President election meeting and violated the whips issued by the political party and thereby expressly declared the voluntarily giving up of the membership. The Petitioner is the elected member representing Ward No.2 of Karumkulam Grama Panchayat and is competent to file this petition.

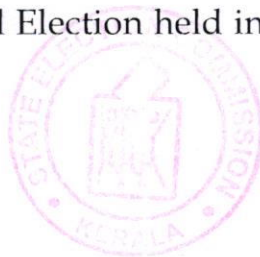
5. The contentions raised by the respondent in his objection in short are as follows:-

The Respondent is elected from Ward No.18 of Karumkulam Grama Panchayat in the General Election to the Local Body held during 2020 and he has sworn as the member on 21.12.2020. One Mr. B. Madhu has contested and elected as Member, Ward No.2 of the said Grama Panchayat and has given sworn declaration to the said effect. In the documents produced by the petitioner, the Member representing Ward No.2 is Madhusoodhanan B. Hence the identity of the petitioner is disputed and the averment that the said Madhusoodanan Nair has contested in the election as the official candidate of Communist Party of



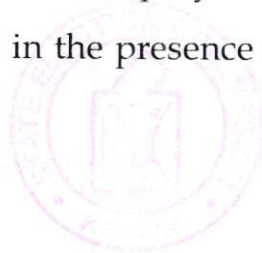
India (Marxist) is to be proved by him. Respondent denied that LDF Karumkulam Grama Panchayat Parliamentary party meeting was held on 05.01.2023. There is no such Parliamentary party in existence in the said Grama Panchayat at any time before or after 2020 election. There is no whip of any kind was issued to the respondent as alleged. No whip or direction either from the political party or from the coalition as provided under the law never been issued to the respondent herein. There is no affixture of whip as alleged. Respondent never committed any defection as alleged. He is never disqualified or liable to be disqualified. The Respondent is never served with any direction by way of whip by any political party and there is no willful disobedience of any statutory direction of the political party as alleged. There is no cause of action for filing the present petition.

4. The evidence consists of the oral deposition of PW1 to PW6 and RW1 and Exhibit A1 to A8 and X1 to X8.
5. Both the sides were heard.
6. The following points arise for consideration:
 - i) to declare the respondent has ceased to be a member of Karumkulam Grama Panchayat
 - ii) to declare that the respondent is disqualified to contest any election to the local bodies for a period of six years.
7. PW1, the petitioner stated that he and the Respondent are elected from Ward No.2 and Ward No.18 respectively, of Karumkulam Grama Panchayat in the General Election held in 2020. Both of them are official



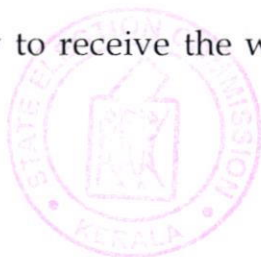
candidates of CPI(M) in LDF coalition and contested the election with the official symbol of CPI (M) "symbol Hammer Sickle Star". CPI(M) District Secretary is the authorized person to issue the official symbol to the CPI(M) candidates to contest election. After the election all the members gave sworn declaration of their political party affiliation to the Grama Panchayat Secretary and accordingly he has prepared register showing the party affiliation wherein it is stated that respondent is member of CPI(M), the copy of the register is produced and marked as Exhibit-A1. There are 18 wards in Karumkulam Grama Panchayat. Out of which 9 seats won by LDF, 7 seats by UDF and 2 seats by Independents.

8. Seat of President and Vice President became vacant due to the no-confidence motion moved by members of rival political party. Thereafter fresh election of the President and Vice President was scheduled to be held on 05.01.2023. LDF Karumkulam Grama Panchayat Parliamentary party meeting held on 01.01.2023 presided over by the petitioner decided to elect the petitioner as Vice President and Smt. Chinju as President of the Panchayat. Copy of the decision of Parliamentary Party meeting is produced and marked as Exhibit-A2. It is evident from Ext A2 that all elected members belonging to CPI (M), except respondent were present in the meeting. As per the decision of the meeting, CPI(M) District Secretary issued whips on 02.01.2023 directing the Respondent to vote in favour of the petitioner as Vice President and for Smt. Chinju as President. The whip issued to the respondent is marked as Exhibit A3 and A4. Since the Respondent refused to accept the whip by knowing its content the whip was affixed at his residence in the presence of witnesses. Copy of



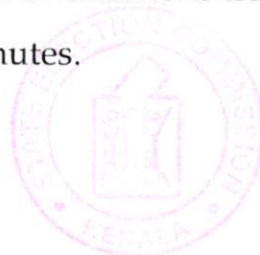
the same is produced and marked as Exhibit-A5. Two photographs in proof for service of whip through affixture on the residence of the respondent is marked as Exhibit-A6 series. Secretary of Karumkulam Grama Panchayat has also communicated about the whip issued by the Secretary, CPI(M) District Committee on 03.01.2023 by serving a copy of whip to him under rule 4 (2). The copy is acknowledged by him is produced and marked as Exhibit-A7. Certified copy of the minutes of the election meeting held on 05.01.2023 to the post of president and vice president are marked as Exhibit-A8. Ext A8 go to show that the Respondent colluded with rival political parties and intentionally defied the whip issued by the District Secretary of CPI(M).

9. Petitioner further states that in Karumkulam Grama Panchayat LDF coalition have 9 members comprising CPI(M) 8 and Janata Dal one which elected the Petitioner as the Parliamentary Party leader which met at least 10 times at different venues having minutes of the meetings. He was elected as parliamentary party leader by all the LDF members including the Respondent which is minuted in the minutes book. Exhibit-A2 is the photo copy of the minutes of Parliamentary party meeting. In the said meeting the Petitioner presided over and decided to field him as Vice President candidate and Smt Chinju as President candidate. Based on the decision the CPI(M) District Secretary has issued the Exhibit-A3 and A4 whip. District Secretary authorized the Petitioner, Local Committee Secretary and a member of Area committee to serve the Exhibit-A3 and A4 whip to the members. Since the Petitioner was convinced that the Respondent not ready to receive the whip it is affixed at his residence.



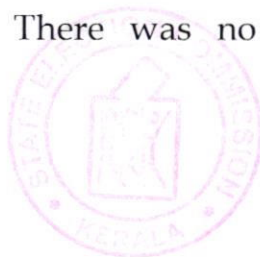
The whip was not sent by registered post due to paucity of time between the date of whip and date of election. Petitioner is also part of the team who affixed the whip at the residence of the respondent along with Kennedy, Anil Kumar, Stephen and two others where they affixed the whip and taken Exhibit-A6 photographs. Petitioner is well aware of the residence of the respondent. Photos were taken by PW5 Anoop in his mobile phone. He denied the suggestion that the photos were not genuine and not taken in front of the residence of the Respondent. He affirmed the signature with green ink in the Exhibit-A7 is that of the Grama Panchayat Secretary who signed in front of the Petitioner when it was given to the Secretary. The content of the Exhibit-A7 is read over in the meeting by the Returning Officer or by the Grama Panchayat Secretary, but it is not recorded in the meeting minutes. The Petitioner was expelled from the Vice Presidentship through a no confidence motion and he again contested for the post on the basis of the Parliamentary party decision and he denied that he has animosity against the Respondent.

10. PW2, the Returning Officer deposed that the election for the post of President of Karumkulam Grama Panchayat was held on 05.01.2023, 11:00 am. and that of Vice President at 02:00 pm. on the same day. He produced the minutes book of the meetings and marked as Exhibit-X1. Ballots used for President election is marked as Exhibit-X2 and ballots used for Vice President election is marked as Exhibit-X3. In the cross examination he stated that receipt of directions issued by political parties would not be recorded in the minutes.



11.PW3, Secretary of Karumkulam Grama Panahcyat has produced the party affiliation register of Panchayat members and marked as Exhibit-X4. He also produced the certified copy of the whip dated 02.01.2023 issued by the District Secretary of CPI (M) under rule 4 (2) which is marked as Exhibit-X5. He stated that the whip was given to the Returning Officer in the election meeting and read over the whip in the meeting. He has signed the Exhibit-X5 record handed over by a Panchayat official which was returned to the front office with noting 'received' and affixing signature. It has no date and official seal.

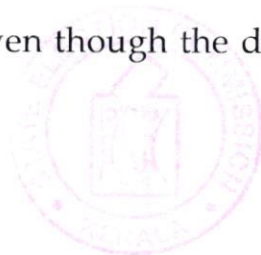
12. PW4, is the Secretary of Karumkulam Local Committee of CPI(M) deposed that Mr. Madhusoodanan from Ward No,2 and Mr. Soloman from Ward No.18 of Karumkulam Grama Panchayat contested and elected as CPI(M) candidates in the last General Election. LDF has 9 members in the panchayat. In the election held on 05.01.2023 whips were issued to all members to vote in favour of Chinchu as President and Madhusoodanan as Vice President. All members of LDF except Soloman received the whip directly and the whip for Soloman was affixed at his residence. He said that the Parliamentary party meetings are being held and the minutes of the meetings held recorded and kept with him. He identified the Exhibit-A2 as the extract of the minutes book. He deposed that Soloman defied the whip and voted against LDF in election. In the cross examination he said that he is also part of Parliamentary party as the party nominee even though he is not an elected member. He confirmed that he has not signed in the Exhibit-A3, A4 and A5, but he has seen the documents. There was no meeting held by the District



Committee Secretary prior to the issue of Exhibit-A3 to A5. Party District Secretary handed over the whip on 02.01.2021 to serve the members, but there is no authorisation letter. He has given acknowledgement of receipt to the District Committee office. He handed over the whips to seven members on 03.01.2023 and obtained receipt from them; but date and time not noted in the receipt. Soloman was not received the whip. Soloman was not in his house at the time of affixture. Since the house was locked the affixture was made at wall of the residence.

13. He further states that Madhusoodanan Nair, the petitioner herein is also known as Madhusoodanan. Person known in both names are one and the same person, who was fielded for the post of Vice President. When he was confronted with the Ext A6 photographs he said the notice issued by the President of the Panchayat affixed on the unplastered wall of Soloman's house. It is clarified that background of the photograph is not a tyre, but the unplastered wall of Solomon's house. He identified Exhibit-A7 is the computer printout acknowledging the receipt of copy of whip issued from the front office of the Panchayat. He denied the allegation that Exhibit-A2 to A7 are fabricated for the purpose of the case.

14. PW5, an employee of Karumkulam Service Co-Operative Bank, deposed that the photographs marked as Exhibit-A6(a) and Exhibit-A6(b) were taken in his mobile as directed by the Local Committee Secretary. He stated that he knew Soloman and his house and the photograph is that of affixture of the whip on the wall of Soloman's house. In the cross examination he stated that even though the date and time can't seen in



the photos he has taken the photos on 03.01.2023, 10:50 am. Since the photos taken with zoom facility the notices affixed on the wall can be read from the photos.

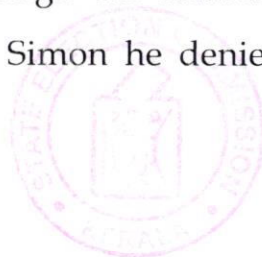
15.RW1, the Respondent deposed that the elected member from Ward No.18 of Karumkulam Panchayat is one B. Madhu and not Madhusoodanan Nair and Petitioner Madhusoodanan Nair has no locus standi to file the petition. There is no Parliamentary party in Karumkulam Panchayat prior to 2020 or now and there is no signature of the Respondent in the Parliamentary party meeting on 01.01.2023 as claimed by the petitioner and the records so claimed are bogus and fabricated. He has not received any whip as claimed. There was no affixture of whip at his residence. The so called whip to the Secretary of the Grama Panchayat is not read over in the meeting. He claimed that he continues as a loyal party worker and the petition is filed only to score the personal vendetta. In the cross examination he stated that he has elected from Ward No.18 of Karumkulam Grama Panchayat as a candidate of CPI(M) with symbol.

16.Respondent further states that he knows the Petitioner Madhu, Member of Ward No.2. The respondent stays at House No.13/IIIB of Kanjiramkulam Grama Panchayat, but the communications not sent to this address from the panchayat. He said that he voted for UDF in the election held on 05.01.2023 for the posts of President and Vice President. He further explained that he voted in favour of UDF in the President/Vice President election in protest against the candidature of M. Chinchu, B. Madhu as President/Vice President even after he has complained against



them in the party on the grounds of corruption and even after voted out through a no confidence motion.

17. Respondent denied the statement that the letters sent from the Panchayat since 14.12.2022 in the residential address as mentioned above. He also denied that the letters from the Panchayat being affixed at the House No.13/IIIB since 14.12.2022 as he was not attending the Panchayat office. He denied the affixture of the CPI (M) whip at the same address by the persons authorised. He identified all the persons in the photos Exhibit-A6(b), but he disowned the house in the photograph. He said that he is CPI(M) party member and held post of Director Board Member of Fishermen Co-Operative and office bearer of fishermen union under the aegis of the party. He answered affirmatively that he voted in favour of UDF in the President/Vice President election in protest against the candidature of M. Chinchu, B. Madhu as President/Vice President even after he has complained against them in the party on the grounds of corruption and even after voted out through a no confidence motion. He said that he has not given any written complaint against their corrupt practices, but raised the issue in the party meetings. When he was told that he justifies his action in voting against Chinchu, and Madhu even though there was no allegations of corruption against them he reiterates that he voted against them since they are corrupt. He voted against LDF on 14.12.2022, when a no confidence motion was moved against them since he has not received any whip. When he was asked whether he was influenced by the UDF through the husband of the present Grama panchayat president Freeda Simon he denied that he was influenced

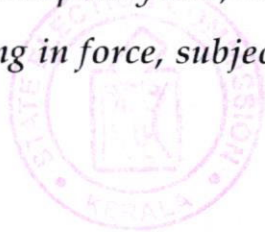


by anybody. He denied any notice affixed on 21.12.2022 by the Panchayat giving intimation regarding urgent committee only. He stated that no instance of affixture in the past 33 months and the notices were served through his wife who is working as Data Entry Operator in the panchayat or through his mother in law. He said he still continue as a party worker and holding position in the Fishermen Director Board Member and Fishermen Union officer bearer.

18. Points (i) & (ii) - The petitioner has alleged that the respondent has committed defection by disobeying the whip issued by the political party to vote for official candidates for the post of President and Vice President held on 05.01.2023 and thereby he has voluntarily given up the membership of the political party. The respondent on the other hand disputed the existence of the whip and its service in terms of statutory provisions. Before dealing with the rival contentions, it will be fruitful to refer to the statutory provisions dealing with defection and the procedure established for the service of whip.

19. Section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act 1999 reads as follows:-

“ 3. Disqualification on ground of Defection.- (1) Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act,-



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

(i) in a meeting of a 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 a voting on a no-confidence motion against any one of them except a member of a Standing Committee;

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(2) The direction in writing issued for the purpose of clauses (a) and (b) of Sub-section (1) shall be given to the members concerned in the manner as may be Prescribed and copy of such direction in writing shall be given to the Secretary of the Local Self Government Institution concerned.

(3) Where any dispute arises regarding the direction issued under this section between the political party or coalition concerned and the member authorised in this behalf as prescribed under sub-section (2), the direction in writing issued in this regard by the person authorised by the political party from time to time to recommend the symbol of the political party concerned for contesting in election shall be deemed to be valid.]

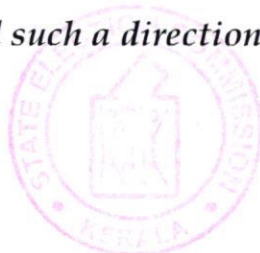


Explanation.- For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was [set up or given report] as a candidate for the election”.

20. S.3 (1) (a) of the Act consist of two limbs, providing two grounds of disqualification. One is that a member belonging to a political party voluntarily gives up his membership of such political party. The other is that a member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting in a meeting for election of its President etc or in a voting on a No-confidence motion.

21. As regards the second limb of Section 3(1) (a) of the Act, it provides for issuance of a direction by the political party or an authority authorised by it in that behalf. In exercise of the powers conferred under S.7 (1) of the Act, Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000, have been published wherein, the manner in which a political party or coalition may give directions to its members is provided for in R.4 which 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,-

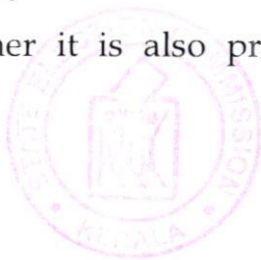


(i) ഒരു രാഷ്ട്രീയ കക്ഷിയിൽപ്പെട്ട അംഗത്തിന്റെയോ അതിലുൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗത്തിന്റെയോ കാര്യത്തിൽ പ്രസ്തുത അംഗത്തിന് തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ആ രാഷ്ട്രീയകക്ഷിയുടേതായ ചിഹ്നം ഉപാർശ ചെയ്യുന്നതിന്, അതുകാലങ്ങളിൽ, രാഷ്ട്രീയകക്ഷി അധികാരപ്പെടുത്തിയിട്ടുള്ള ആൾ ആയിരിക്കേണ്ടതാണ് എന്നാൽ മേൽപ്പറഞ്ഞ നിർദ്ദേശം ആ രാഷ്ട്രീയകക്ഷിയുടെ ലെറ്റർഹെഡിൽ തീയതി വച്ച് ഒപ്പിട്ട് അതിന്റെ മുദ്രയോടുകൂടി ആയിരിക്കേണ്ടതാണ്

(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 elected for the purpose, on majority basis from among themselves.*

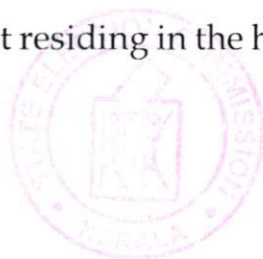
(2) While issuing a direction under sub-rule (1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixing it shall be done in the presence of at least two witnesses. Copy of the direction in writing shall also be given to the Secretary."

22. Rule 4(1) (i) specifically provides that the direction in writing (whip) given to a member by the person authorized shall be in their letter head with dated signature and seal of the political party concerned. R4 (2) provides that while issuing a direction under sub rule (1) directly, the person who give 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 affixture it shall be done in presence of at least two witnesses. Further it is also provided that a copy of the



'directions in writing' to the Secretary of the local authority so as to ensure the existence of a valid direction by the political party to its members in terms of clause (i) of sub rule (1) of Rule 4.

23. However the respondent herein had raised dispute with regard to the existence of whip and the service of the whip by way of affixing at the residence. Rule 4 Kerala Local Authorities (Disqualification of Defected Members) Rules provides the manner in which a political party or coalition may give 'direction in writing'/whip to its members. Rule 4 specifically provides that 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 affixture, it shall be done in the presence of at least two witnesses. Moreover the rule mandates to furnish a copy of whip to the Secretary Grama Panchayat. Evidently, Ext.A3 is the copy of the whip issued by the District Secretary of CPI(M) in tune with the provisions under Clause 2 (iv a) of Section 2 of the Act. It is to be noted that the competency of District Secretary to issue 'direction in writing'/whip by virtue of his position is not at all disputed by the respondent. The whip was communicated to the Secretary of the Grama Panchayat by Exhibit A7. However, there is no mention about the whip in the minutes of the meeting held for the election as deposed by the Returning Officer, PW2. PW1 claimed that the whips were served to the respondent by affixing in the presence of witnesses and apart from the assertions such witnesses were examined as PW4 and PW5. RW1 has deposed that he was not residing in the house and it was locked as he was



away from home. PW1 has admitted that there was no service of whip by registered post as mandated by Rule due to paucity of time.

24. As regards of the first limb of the Section 3(1)(a) ie., whether the respondent has voluntarily given up membership of the political party there has to be sufficient evidence to indicate that the respondent, who is admittedly an elected member of LDF, has voted in favour of the candidate fielded by the rival party contrary to the directions issued by the political party and that is by colluding or conniving with the members of rival UDF. In the cross examination the respondent replied in the following:

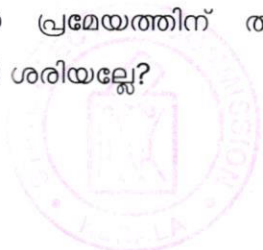
(Q)CPI(M) -ൽ വിവിധ സ്ഥാനങ്ങൾ വഹിച്ച താങ്കൾ എന്തുകൊണ്ടാണ് പ്രസിഡന്റ്/വൈസ് പ്രസിഡന്റ് തെരഞ്ഞെടുപ്പിൽ CPM -ന് എതിരായി UDF -ന് വോട്ട് ചെയ്തത് ?

(Ans) പ്രസിഡന്റ്/വൈസ് പ്രസിഡന്റ് സ്ഥാനാർത്ഥികളായ ശ്രീമതി.ചിഞ്ചു.എം, ബി.മധു എന്നിവർ നടത്തിയ അഴിമതിക്കെതിരായി പാർട്ടിയിൽ പരാതിപ്പെട്ടിട്ടും അവിശ്വാസപ്രമേയത്തിനു ശേഷവും അവരെത്തന്നെ പ്രസിഡന്റ്/വൈസ് പ്രസിഡന്റ് സ്ഥാനാർത്ഥികളാക്കിയതിൽ പ്രതിഷേധിച്ചാണ് ഞാൻ UDF-ന് വോട്ട് ചെയ്തത്. ഇവരുടെ അഴിമതികളെക്കുറിച്ച് ഞാൻ ആർക്കും പരാതി എഴുതി നൽകിയിട്ടില്ല. പാർട്ടി യോഗങ്ങളിൽ പറഞ്ഞിട്ടുണ്ട്.

(Q) ചിഞ്ചു, മധു എന്നിവർക്കെതിരെ യാതൊരു അഴിമതി ആരോപണവും ഉണ്ടായിട്ടില്ല എന്നും വോട്ട് മാറ്റി ചെയ്തതിന് ന്യായീകരണമായിട്ടാണ് അവർക്കെതിരെ കുറ്റമാരോപിക്കുന്നത് എന്നു പറയുന്നു?

(Ans)നേരത്തേ തന്നെ അവർ അഴിമതിക്കാരായതു കൊണ്ടാണ് ഞാൻ തെരഞ്ഞെടുപ്പിൽ അവർക്കെതിരെ വോട്ട് ചെയ്തത്. ഞാൻ നാളിതുവരെ രേഖാമൂലം ഇവർക്കെതിരെ ഒരിടത്തും പരാതി നൽകിയിട്ടില്ല.

(Q) 14.11.2022-ലെ അവിശ്വാസ പ്രമേയത്തിന് താങ്കൾ വോട്ട് ചെയ്തത് LDF-ന് എതിരായിട്ടാണെന്ന് പറഞ്ഞാൽ ശരിയല്ലേ?



(Ans) അന്നും എനിക്ക് വിപ്ലവം ഒന്നും ലഭിച്ചിട്ടില്ല.

(Q) നിലവിലെ പ്രസിഡന്റ് ഫ്രീഡാ സൈമണിന്റെ ഭർത്താവും പഞ്ചായത്തംഗവുമായ സൈമൺ താങ്കളെ സ്വാധീനിച്ചാണ് UDF-ന് അനുകൂലമായി വോട്ട് ചെയ്യാൻ പ്രേരിപ്പിച്ചത് എന്ന് പറയുന്നു.

(Ans) അങ്ങനെയൊന്നും എന്നെ സ്വാധീനിച്ചിട്ടില്ല.

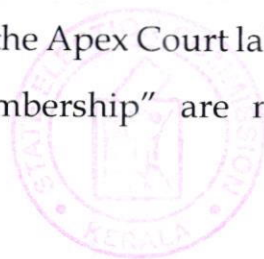
25.LDF secured majority in the Karumkulam Grama panchayat. Indisputably the respondent herein, who was elected to the Karumkulam Grama Panchayat as an official candidate of CPI(M) and having continued so in the Panchayat, voted for the UDF candidate in the election for the posts of President and Vice President held on 05.01.2023. He joined hands with rival UDF members by voting in favour of no confidence motion moved against the petitioner and Smt. Chinju on 14.12.2022 and removing them from the respective posts. He again joined hand with UDF members for securing the defeat of candidates fielded by his own political party. District Secretary of CPI (M) issued whip to him to vote in favour of the candidates fielded by party for the post of president and vice president and whip was made known to him by all possible means. It was served to him through affixture. Copy of the whip was served to the panchayat secretary. According to Panchayat Secretary, who was examined as PW3, the whip was read over to the elected members prior to the commencement of meeting. It is evident from the testimony of RW1 that he took a conscious and deliberate decision to defeat the candidates fielded by his party. In furtherance of it he kept away from the parliamentary party meeting held on 01.01.2023 and not received the whip issued by District Secretary of CPI (M). The said act of the



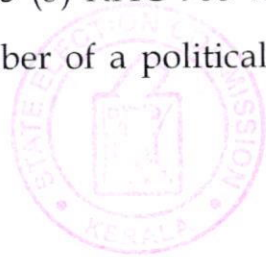
respondent attracted the first limb of Section 3(1)(a). Respondent has no case that petitioner herein is not a member of Krumkulam Grama Panchayat and as such no serious dispute with regard to the locus standi of the petitioner. Respondent has also no case that he is not aware of the decision of the his political party to field petitioner and Smt. Chinju as party candidates for the posts of president and vice president.

26. Admittedly there is no such mandate from the political party and then defeating the candidate, whom the competent authority of the party described and recognized as official candidate of the party, by voting for the opposition can only be an act of disloyalty. Needless to say, that an action of disloyalty of such nature would amount to voluntarily giving up membership of the particular political party. Therefore the respondent had incurred the disqualification of voluntarily giving up membership in the political party. In the deposition, the respondent clearly admitted that he has voted against the official candidates of CPI (M) with full knowledge about the process. Moreover he has admitted with self conviction that he has voted against the candidates fielded by his party for president and vice president posts but voted for the rival party candidates and there is no remorse in the action of his part.

27. If a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, he shall be disqualified for being a member of that local authority. In *Ravi S. Naik v. Union of India*, AIR 1994 3C 1558, the Apex Court laid down that the words "voluntarily given up his membership" are not synonymous with



“resignation” and have a wider connotation. It was noticed that a person might voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs. In *G. Viswanathan v. Speaker, T.N. Legislative Assembly*, 1996 (2) SCC 353, the Apex Court further pointed out that the act of voluntarily giving up the membership of the political party may be either express or implied, however, that the courts would insist on evidence which is positive, reliable and unequivocal. The Division Bench of High Court in *Shajahan's case*, 2000 (2) KLJ 451, interpreting the provision that arises for consideration in this case, took the view that the conduct of the person can be looked into to draw a clear inference as to whether he has voluntarily given up his membership in the party. In *Faisal v. Abdulla Kunhi*, 2008 (3) KLT 534 a learned Single Judge of this Court has taken the view that the expression "voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by express resignation; it is to be inferred from the conduct of the member. It was also held therein that the relevant date for deciding the question of disqualification is the date on which the member voluntarily gives up the membership Further, in *Lissy Valsslan V Suja Salim and Another* reported in 2015 (3) KHC 968 where again the Division Bench held that where a member of a political party is aware of the decision



taken by the political party, but failed to act in accordance with the political directive, he would be disqualified under section 3 (1) of the Act.

28. Consequently, it can very well be concluded that the respondent is quite aware of the decision, but took a different stand from that of his political party; and acted against the policies of the political party in which he was a member. It is nothing but disloyalty. Further, it was found that the moment one becomes disloyal by his conduct to the political party the inevitable inference is that he has voluntarily given up his membership in the political party.

29. For the aforementioned reasons the O.P. is allowed, and the respondent is declared as disqualified for being member of Karumkulam Grama Panchayat as provided by section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent is further declared as disqualified from contesting as a candidate in an election to any local authorities for a period of 6 years from this date as provided by the section 4(3) of the Act.

Pronounced before the Commission on the 22nd day of February, 2024.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

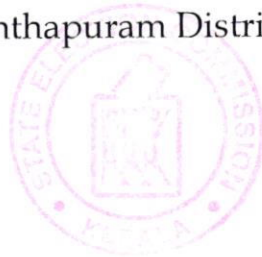
- PW1 : Sri. Madhusoodanan Nair
PW2 : Sri. Anjalo A.
PW3 : Smt. Mini J.
PW4 : Sri. G. Anil Kumar
PW5 : Sri. Anoop K.
PW6 : Smt. Thara S.

Witness examined on the side of the Respondent

- RW1 : Sri. Soloman

Documents produced on the side of the Petitioner

- A1 : Copy of the Register showing the party affiliation of the members of Karumkulam Grama Panchayat
A2 : Copy of the minutes of the meeting of Karumkulam Grama Panchayat LDF Parliamentary party held on 01.01.2023
A3 : Whip dated 02.01.2023 issued by Secretary, CPI(M), Thiruvananthapura District Committee
A4 : Whip dated 02.01.2023 issued by Secretary, CPI(M), Thiruvananthapuram District Committee



A5 : Copy of the whip dated 02.01.2023 issued to S. Soloman by Sri Anavoor Nagappan, Secretary, CPI(M), Thiruvananthapuram District Committee

A6 Seriaes

(a and b) : Photographs

A7 : Copy of the letter dated 02.01.2023 issued to Secretary, Karumkulam Grama Panchayt by Sri. Anavoor Nagappan, Secretary, CPI(M), Thiruvananthapuram District Committee, regarding the issuance of whip

A8 : Copy of the minutes of the meeting held on 05.01.2023 in connection with election of President and Vice President at Karumkulam Grama Panchayat

Documents produced on the side of the Respondent

X1 : Minutes Book of Karumkulam Grama Panchayat.

X2 : Sealed cover containing the used ballots (18 nos.) in President election at Karumkulam Grama Panchayat on 05.01.2023

X3 : Sealed cover containing the used ballots (18 nos.) in Vice President election at Karumkulam Grama Panchayat on 05.01.2023

X4 : Copy of the Register showing the party affiliation of the members of Karumkulam Grama Panchayat



- X5 : Copy of the letter dated 02.01.2023 to Secretary, Karumkulam Grama Panchayat by Sri. Anavoor Nagappan, regarding the issuance of whip
- X6 : Acknowledgement Receipt dated 09.01.2023
- X7 : Copy of the Office Order Register dated 29.10.2021
- X8 : Copy of the Report submitted by Smt. Thara S., Office Attendant to President/Secretary, Karumkulam Grama Panchayat

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//

B. SURENDRAN PILLAI
Pen No : 101664
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram

