

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

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

Tuesday, the 7th day of October, 2025

O.P. No.74-76 / 2023

O.P. No.74/ 2023

Petitioner

**: Smt. Bindhu Prakash,
D/o Divakaran Pillai,
Akhil Bhavan,
Cheppara P.O.,
Ummannoor
Kollam District**

**(Member, Ward No.17,
Ummannoor Grama Panchayat)**

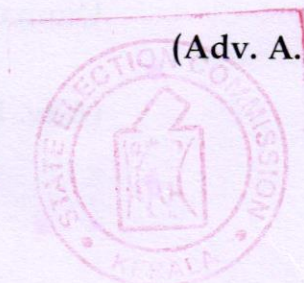
(Adv. Pallichal S. K. Pramod)

Respondent

**: Smt. Usha M,
Shreyas,
Vilangara,
Nellikunnam,
Kollam District - 691527**

**(Member, Ward No.20,
Ummannoor Grama Panchayat)**

(Adv. A. Santhosh Kumar)



O.P. No.75/ 2023

Petitioner

: Smt. Bindhu Prakash,
D/o Divakaran Pillai,
Akhil Bhavan,
Cheppara P.O.,
Ummannoor
Kollam District

(Member, Ward No.17,
Ummannoor Grama Panchayat)
(Adv. Pallichal S. K. Pramod)

Respondent

: Sri. Hari Kumar S,
Agastya Bhavan,
Thevanoor,
Thevanoor P. O,
Kollam District - 691533

(Member, Ward No.12,
Ummannoor Grama Panchayat)
(Adv. A. Santhosh Kumar)

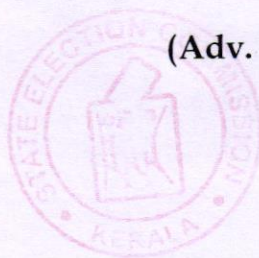
O.P. No.76/ 2023

Petitioner

: Smt. Bindhu Prakash,
D/o Divakaran Pillai,
Akhil Bhavan,
Cheppara P.O.,
Ummannoor
Kollam District

(Member, Ward No.17,
Ummannoor Grama Panchayat)

(Adv. Pallichal S. K. Pramod)



Respondent : Smt. Sindhu S,
Chaithram,
Ummannoor,
Kollam District - 691520

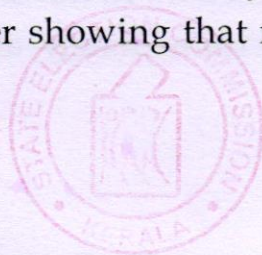
(Member, Ward No.15,
Ummannoor Grama Panchayat)

(Adv. Santhosh Kumar)

COMMON ORDER

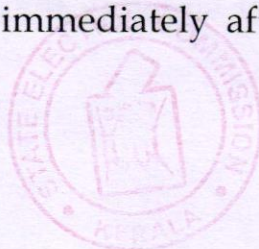
These original petitions are filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that respondents, who are the elected members of Ummannoor Grama Panchayat, have committed defection and hence disqualified to continue as members of Ummannoor Grama Panchayat and also for declaring them as disqualified to contest as a candidate in any election to the local authorities for a period of six years. Since common questions of law and facts arise in all these cases they are tried together, as OP 74/2023 as leading case.

2. The petitioner's case is that: - The petitioner is the elected member of ward 17 of Ummannoor Grama Panchayat. Respondents are elected members of Ummannoor Grama Panchayat representing ward 20, 12 and 15 respectively. Respondents were contested and elected as candidates of Bhartiya Janata Party (hereinafter BJP). Respondents won the election by defeating the candidates of rival political parties. After the election respondent submitted voluntary sworn declaration before the secretary of the panchayat that they are elected members of BJP, in NDA coalition. On the basis of said declaration Secretary of the panchayat has prepared a party affiliation register showing that respondent is elected members



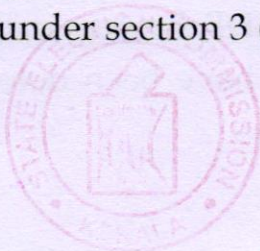
of BJP. After the General Election Left Democratic Front (hereinafter LDF) secured majority of seats in the Grama Panchayat and LDF members were elected as President and Vice President of the panchayat. Subsequently the President and Vice President resigned from the posts. The election to the said vacancies of President and Vice President scheduled on 26.07.2023 at 11 am and 2 pm respectively. BJP fielded of Smt. M Usha, respondent in OP No. 74/2023 and Sri. Thevannoor Harikumar respondent in OP No. 75/2023 as their Presidential and Vice Presidential candidates. The whip has been issued directly to the respondents by District President of the BJP and it was accepted by the respondents on 25.07.2023.

3. However, in the election to the posts of President and Vice President, respondents voted in favor of candidates fielded by UDF Smt. Sheeba Chellappan and Sri. S Sujathan, instead of their own candidates. The above acts of the respondents are in clear violation of the whip issued by their political party BJP. Respondents who are bound to obey the directions of the BJP have acted in defiance of the whip issued by the party in collusion with UDF. The conduct of the respondent is also amounts to voluntarily giving up membership of the party to which they declared their allegiance. The respondent is liable to be disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act.
4. The Respondent's case in brief is that; - Respondents are social and political workers belonged to BJP political party. It is true that respondents contested and elected as candidates of BJP in General Election held in 2020. It is also true that candidates fielded by rival political parties were also in fray in the respective wards. Ummannoor grama panchayat having a strength of 20 members. Out of which 9 members belongs to LDF, 8 members belongs to INC and 3 members belongs to BJP after the election. In the elections to the post of President and Vice President held immediately after General Election BJP was

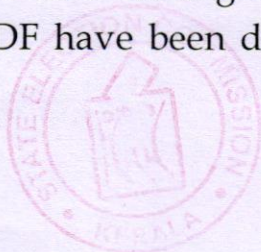


fielded its own candidates. But LDF secured both posts on the strength of its majority. However, the rule of LDF was not satisfactory. Meanwhile the incumbents President and Vice President resigned from the posts and fresh election was held on 26.07.2023.

5. The BJP political party has not taken any decision on the stand of the party on the Presidential and Vice Presidential election to be held on 26.07.2023. As a matter of fact, BJP political party is not having the required strength to contest election and secure the posts. Therefore, political party has taken an independent stand to support persons who are able to administer and govern the panchayat. In fact, no whip or direction was issued either by political party or NDA coalition on the election. Moreover, the mandatory service of copy of the whip to the Secretary of the panchayat never complied with by the party. Respondents never committed any acts of defection as alleged by the petitioner. Respondents by their conduct never voluntarily given up membership of the party. Therefore, the original petition may be dismissed.
6. The evidence in this case consists of oral testimonies of PW1 to PW4, RW1 to RW3 documents Ext.A1 to A6 and Ext.X1 to X8.
7. Both sides were heard.
8. The following points arise for consideration, namely; -
 - (i) Whether the respondents have disobeyed the decision and direction of the BJP political party in the election to the posts of President and Vice President held on 26.07.2023?
 - (ii) Whether the respondents have voluntarily given up membership of the BJP political party as alleged?
 - (iii) Whether respondents have committed defection as contemplated under section 3 (1) of the Act?

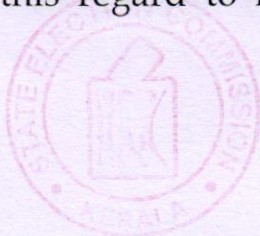


9. Point No. (i) to (iii); - As common questions of law and facts are arise for consideration in these points, they are considered together for convenience and to avoid repetition. Petitioner is an elected member of ward 17 of Ummannoor grama panchayat. Respondents in OP 74/2023 to 76/2023 are elected members of ward 20,12 and 15 respectively of the same grama panchayat. Therefore, petitioner is having *locus standi* to initiate proceedings against the respondents as per section 3 (1) of the Act. Admittedly, respondents were contested and elected as candidates of BJP in the General election held in 2020. The sworn declarations filed by the respondents under rule 3 (2) are marked as Ext.X1 series. The party affiliation registers maintained by the Secretary under rule 3 (1) is marked as Ext.X2. It has come out in evidence that altogether 20 wards in the Ummannoor grama panchayat. Out of which 9 members belonging to LDF, 8 members belonging to UDF and 3 members belonging to BJP. Thus, LDF got majority of seats in the panchayat.
10. While so, fresh election to the casual vacancies of President and Vice President was necessitated. The scheduled election to the posts is slated to be held on 26.07.2023 at 11 am and 2 pm respectively. The District President of the BJP, who was examined in this case as PW4 issued whip to the respondents directing them to vote for Smt. M Usha for the post of President and Sri. Thevannur Harikumar for the post of Vice President. It has come out in evidence that in the Presidential election held on 26.07.2023 Smt. Bindhu Prakash, Smt. Sheeba Chellappan and Smt. M Usha contested for the posts as LDF, UDF and BJP candidates respectively as evident from Ext.X7 minutes. In the Vice Presidential election held in the afternoon Sri. Sunil T Daniel and Sri. S. Sujathan were contested as candidates of LDF and UDF respectively as evident from Ext.X8 minutes. However, in both the elections respondents voted in favour of INC candidates Smt. Sheeba Chellappan and S. Sujathan in defiance of the whip issued by their political party. The grievance of the petitioner is that though LDF having majority in the panchayat, the candidates fielded by LDF have been defeated in both elections. UDF



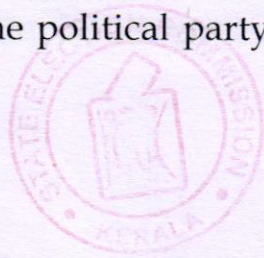
won both Presidential and Vice Presidential elections with the support of respondents

11. Respondents have *interalia* raised a contention that PW4 who allegedly issued whip to the respondents have not produced any documents that he is the Kollam District President of the BJP and as such PW4 has no competency to issue whips to the respondents. However, during the cross examination as PW4 he emphatically made clear that he was authorised by the District President of the BJP to recommend the symbol of the political party to respondents and said authorization was duly communicated to the Election Commission. Moreover, during the cross examination RW3 admitted that PW4 in his capacity as District President of the BJP recommended the symbol of BJP to the respondents. As per rule 4 (1) (i) of the Rules person authorised by the political party to recommend the symbol of the political party is competent to issue whip to its elected members. Further respondents have no case that Ext.X3 series to X6 series whips issued by PW4 is forged or fabricated documents. Therefore, PW4 is competent to issue whip to the respondents. Therefore, the contentions of the respondents in this regard are not tenable.
12. Petitioner examined the Kollam District President of the BJP as PW4, who deposed before the Commission that he had issued whip to the respondent directing them to vote for Smt. M. Usha and Sri. Thevannoor Harikumar for the Presidential and Vice Presidential election. The whips were served through one Renjith, who is the Kottarakkara Mandalam Secretary of the BJP. He served whip to the respondents and returned the original receipts to him. However, respondents were voted in favor of the candidate fielded by UDF in defiance of the whip. Petitioner has taken a case that prior to the election BJP political party had convened a meeting and taken a decision to field BJP candidates in the election. However, during the chief examination of PW4, petitioner did not put even a suggestion in this regard to him. In cross examination, PW4



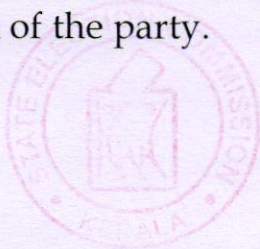
clarified the point that prior to the election, Core committee of BJP, Kottarakkara unit convened a meeting and decided to field candidates for Presidential and Vice Presidential election. PW4 further clarified that respondents are not members of the Core Committee. In the objection as well as Chief affidavits respondents have taken a case that BJP political party has not convened any meeting to discuss the stand of the party in the election to be held on 26.07.2023. PW4 District President of the BJP has no case that they convened a parliamentary party meeting of elected members of Ummannoor grama panchayat prior to the election. Therefore, there is substance in the case of the respondents that they were unaware of any decision allegedly taken by the party to field candidates in the election to be held on 26.07.2023.

13. In the objection and Chief affidavits as RW1 to RW3 respondents vehemently contended that no whip was served to them by BJP either directly or through registered post prior to the election. Petitioner neither examined the Kottarakkara Mandalam Secretary of BJP who allegedly served whip to the respondents nor explained the reasons thereof. Admittedly Ext.X3 series and X4 series photocopies are the only documents relied on by the petitioner as proof of service of whip. However, there is no endorsement by the respondent in Ext.X3 series and X4 series that they accepted the whip. As per section 3 (2) and rule 4 (2) of the Rules it is mandatory that while issuing a direction (whip), the person who gives it shall obtain a receipt from the member. Therefore, the alleged signature appears in the Ext.X3 series and X4 series photocopies alone are not sufficient to give credence to the petitioner's case that whips were duly served to the respondents.
14. In *Joseph KM V Babychan Mulangasseri and Others* (2015 (1) KHC 111 (DB), the Hon'ble High Court held that in order to draw an inference that elected members have voluntarily given up membership of the political party, there must be concrete proof that they have acted in defiance of any valid directions of the political party, which should be established



by positive, reliable and unequivocal evidence"

15. In *Chinnamma Varghese V State Election Commission of Kerala* (2009 (4) KHC 527) Division Bench of High Court held that " incurring of the disqualifications under any one of the contingencies depends upon the existence of a definite set of facts, which are required to specifically pleaded before they are sought to be proved to establish the allegation of disqualification under the Act."
16. Further, as per section 3(2) of the Act read with rule 4 (2) of the Rules, it is mandatory that copy of the whip should be given to the Secretary of the panchayat. However, there is no pleadings in petition that copy of the whip has been served to the Secretary of the panchayat. In the Chief affidavit filed petitioner as PW1 also there is no such statement. However, when the Secretary of the panchayat has examined as PW2, he produced the photocopy of the whips as Ext.X5 series and X 6 series. PW2 further deposed that copy of the whip has been given to the Secretary of the panchayat on 25.07.2023. However, going through Ext.X5 series and X 6 series, it seems an ineligible endorsement on it by PW2 that whip has been accepted by the Secretary of the panchayat on 26.07.2023 at 10.30 am. However, when the very same documents were produced by PW2 Secretary of the panchayat as Ext.X5 to X10 in O P No. 61/2023 to 63/2023 based on the same cause of action, it does not contain such endorsements. It is highly improbable and sufficient to impeach its genuineness. PW2 Secretary has no case that Ext.X5 series and X 6 series whips were published in the notice Board of the panchayat when it was received on 26.07.2023 at 10.30 am. PW2 has also no case that copy of whip were given to the respondents prior to election. Further, PW2 Secretary has clarified that copy of whips were not given to the Returning Officer. While examining PW3 Returning Officer petitioner has no case that copy of the whip were read out in the election meeting. Therefore, respondents are concerned there is no circumstances to get aware of the decision and direction of the party.



As discussed above there is no pleadings in the petition that copy of the whips has been communicated to the Secretary. It is well settled that one could be permitted to let in evidence only in tune with the pleadings.

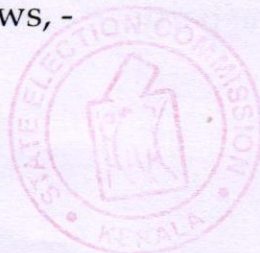
17. The Hon'ble Supreme Court of India in *Chinnasamy V K C Palanisamy* (AIR 2004 SC 341; (2003) JT 161 (SC) held that

"It is now well settled principle of law that evidence adduced beyond the pleadings would not be admissible nor any evidence can be permitted to be adduced which is at variance with the pleadings. The Court at a later stage of the trial as also the appellate Court having regard to the rule of pleadings would be entitled to reject the evidence wherefore there does not exist any pleadings.

Further, the Hon'ble Supreme Court of India in *Kalyan Singh Chouhan V C P Joshi* (AIR 2011 SC 1127; (2011) 2 SCC1) held that

"The Court cannot travel beyond the pleadings and the issue cannot be framed unless there are pleadings to raise the controversy on a particular fact or law. It is, therefore, not permissible for the Court to allow the party to lead evidence which is not in the line of the pleadings. Even if the evidence is led that is just to be ignored as the same cannot be taken into consideration." (para 24)

18. In view of the dictum laid down by the Hon'ble Supreme Court, the testimony of the PW2 panchayat Secretary that he was given Ext.X5 series and X 6 series copy of whips by District President of the panchayat in connection election cannot be admissible in evidence as there is no pleadings in this regard in the petition. As a necessary corollary, it can be concluded that there is no communication of whip to the Secretary of the panchayat as mandated under section 3(2) of the Kerala Local Authorities (Prohibition of Defection) Act in the present case.
19. In *Lizy Valsalan V Suja Salim* (2015 (3) KHC 968) (DB) the Hon'ble High Court observed as follows, -

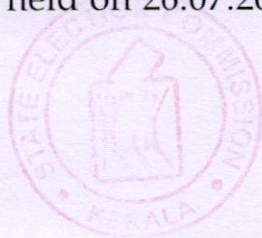


" The very purpose by which the rule making authority had imposed on a further stipulation to provide a copy of the direction to be given to the Secretary is to ensure existence of a valid direction by the political party to its members." (para 27)

20. Further, the Hon'ble High Court in *George Elamplakkadu V A V Mathew* (2020 (5) KHC 297) held that

" Serving of copy of the direction in writing (whip) to the Secretary of the local authority concerned is the only method by which a member of that local authority belonging to any other political party to come to know about the whip. In the enquiry conducted by the State Election Commission under sub-section(2) of section 4 of the Act, the petitioner has to establish the existence of a valid direction in writing (whip) by the political party to tis members, in terms of clause (i) of sub-rule (1) of Rule 4 and that, it was given to the members concerned and also the Secretary of the local authority, in the manner prescribed in sub-rule (2) of Rule 4.Keeping in view of the intendment of the enactment and context in which the word "shall" has been used in sub-section (2) of section 3 of the Act and sub-rule (2) of Rule 4 of the Rules, conclusion is irresistible that the said provisions, which require that copy of the direction in writing (whip) shall be given to the Secretary, are mandatory in nature."

21. The Hon'ble High Court in *Lissy Valsalan V Suja Salim and Another* (2015 (3) KHC 968) *Eruthavoor Chandran V Kerala State Election Commission and Others* (2018 (5) KHC 964 (DB) held that where a member of a political party is aware of the decision taken by the political party, but had failed to act in accordance with the political directive, it would amount to voluntarily abandoning the membership of the political party and he would be disqualified under section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act. However, in the present case petitioner has not even pleaded that respondents were aware of the decision and direction of the political party before the Presidential and Vice Presidential election held on 26.07.2023. Even in the Chief affidavit filed



by the petitioner as PW1, she has no case that respondents were aware of the decision and direction of the BJP political party prior to the election. It is already found that there is no service of whip to the respondent and secretary of the panchayat as mandated under section 3 (2) of the and Act and rule 4 (2) of the Rules framed thereunder.

22. Considering the facts and circumstances of the case and the ratio laid down by the Hon'ble High Court in the judgments cited above, I am of the considered view that petitioner has failed to prove that respondents have committed defection and therefore they are liable for disqualification under Kerala Local Authorities (Prohibition of Defection) Act.

In the result, the original petitions are dismissed.

Pronounced before the Commission on the 7th day of October.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

- PW1 - Smt. Bindhu Prakash
PW2 - Sri. Biju C. Nair
PW3 - Sri. Jamal Muhammed A.
PW4 - Sri. Gopakumar B. B.

Witness examined on the side of the Respondent

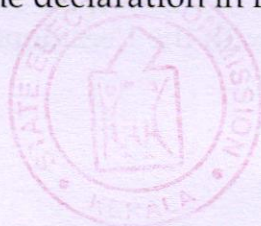
- RW1 - Smt. M. Usha
RW2 - Thevannoor Harikumar
RW3 - Sindhu S.

Documents produced on the side of the Petitioner

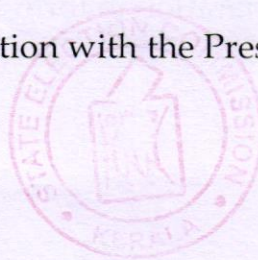
- A1 - Copy of the declaration in form No. 02 submitted by Smt. M. Usha
A2 - Copy of the declaration in form No. 02 submitted by Sri. Harikumar S.
A3 - Copy of the declaration in form No. 02 submitted by Smt. Sindhu S.
A4 - Copy of the register showing the party affiliation of the elected members of Ummannoor Grama Panchayat.
A5 - Copy of the minutes of the meeting held on 26.07.2023 at Ummannoor Grama Panchayat in connection with President election.
A6 - Copy of the minutes of the meeting held on 26.07.2020 at Ummannoor Grama Panchayat in connection with Vice President election.

Documents produced on the side of the Witness

- X1 - Copy of the declaration in form No. 02 submitted by Smt. M. Usha
X1(a) - Copy of the declaration in form No. 02 submitted by Sri. Harikumar S



- X1(b) - Copy of the declaration in form No. 02 submitted by Smt. Sindhu S.
- X2 - Copy of the register showing the party affiliation of the elected members of Ummannoor Grama Panchayat.
- X3 - Copy of the whip issued to Smt. M. Usha in connection with President election at Ummannoor Grama Panchayat.
- X3(a) - Copy of the whip dated, 25.07.2023 issued to Sri. Thevannoor Harikumar in connection with President election at Ummannoor Grama Panchayat.
- X3(b) - Copy of the whip dated, 25.07.2023 issued to Smt. Sindhu S. in connection with President election at Ummannoor Grama Panchayat.
- X4 - Copy of the whip dated, 25.07.2023 issued to Smt. M. Usha from Sri. B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam District.
- X4(a) - Copy of the whip dated, 25.07.2023 issued to Sri. Thevannoor Harikumar from Sri. B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam District.
- X4(b) - Copy of the whip dated, 25.07.2023 issued to Smt. Sindhu S. from Sri. B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam District.
- X5 - Copy of the whip issued to Smt. Usha in connection with the President election from B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam.
- X5(a) - Copy of the whip dated 25.07.2023 issued to Sri. Thevannoor Harikumar in connection with the President election from



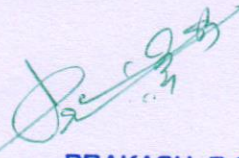
- B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam.
- X5(b) - Copy of the whip dated 25.07.2023 issued to Smt. Sindhu S. in connection with the President election from B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam.
- X6 - Copy of the whip dated, 25.07.2023 issued to Smt. M. Usha From B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam.
- X6(a) - Copy of the whip dated, 25.07.2023 issued to Sri. Thevannoor Harikumar from B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam.
- X6(b) - Copy of the whip dated, 25.07.2023 issued to Smt. Sindhu S. from B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam.
- X7 - Copy of the minutes of the meeting held on 26.07.2023 at Ummannoor Grama Panchayat in connection with the President election.
- X8 - Copy of the minutes of the meeting held on 26.07.2023 at Ummannoor Grama Panchayat in connection with the Vice President election.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


PRAKASH B.S
PEN No : 101452
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram

