

BEFORE THE KERALA STATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM

PRESENT: SHRI. A SHAJAHAN,  
STATE ELECTION COMMISSIONER

Tuesday, the 22<sup>nd</sup> day of October, 2024

O.P. No. 08 OF 2022

Petitioner

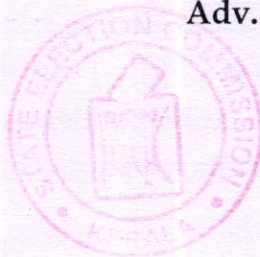
: Declark Sebastian  
S/o Sebastian  
Chakkamkunnel House  
Padamughom P.O  
Idukki  
(Member, Ward No. 15 Vathikudy Grama  
Panchayat)

(By Adv. A.Santhosh Kumar &  
Adv. K.Vinod)

Respondent

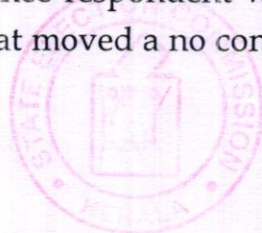
: Sindhu Jose  
W/o Jibi Thomas  
Koonamparayil  
Daivammade  
Konnakkamali P.O  
Idukki  
(Member, Ward No.07,  
Vathikudy Grama Panchayat)

(By Adv.B.Vasudevan Nair &  
Adv. Praveen C.P)

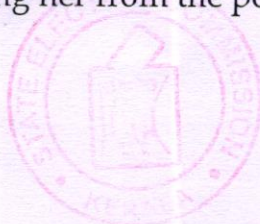


ORDER

1. This is a petition filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that this respondent committed defection and hence disqualified to continue as member of Vathikudy Grama Panchayat and also for declaring her as disqualified to contest as candidate in any election to the local authorities for a period of six years.
2. The petitioner's case in brief is as follows; - Petitioner is an elected member of ward No. 15 of the Vathikudy Grama Panchayat, belongs to Indian National Congress. Respondent has contested and elected as a member of Vathikudy Grama Panchayat as an official candidate of Kerala Congress (PJ Joseph Group) (hereinafter "K C (PJJG)") in the General Election to the Local Self Government institutions held in the year 2020. After the election respondent has given sworn declaration before the Secretary of the Vathikudy Grama Panchayat showing her political association with political party K C (PJJG). On the basis of the said declaration Secretary prepared a register showing *interalia* that respondent is an elected member of K C (PJJG). Both INC and K C (PJJG) are constituents of UDF coalition.
3. Vathikudy Grama Panchayat is having a total strength of 18 members. Out of which 7 members belong to INC, 3 members including the respondent belong to K C (PJJG) and thus UDF coalition got 10 members. LDF coalition has 7 members and one member was elected as pure independent candidate. Thus UDF got majority of seats and as per understanding in UDF, the Presidentship of the Panchayat was allotted to the respondent as a member of K C (PJJG) and as such respondent was elected as the President of Vathikudy Grama Panchayat with the support of UDF members.
4. It is alleged that during the tenure of respondent as President there is wide spread allegations against her and her activities was in link and liaison with opposite LDF. For aforesaid reasons and as per understanding in the UDF, the Idukki District President of K C (PJJG) directed the respondent to resign from the post of President. Since respondent was reluctant to resign, the UDF members of the Panchayat moved a no confidence motion against the



- respondent for removing her from the post of President. The meeting of no confidence motion was scheduled to be held on 24.03.2022.
5. The District President of the K C (PJJG) has decided to support the no confidence motion and thereby respondent and other elected members of K C (PJJG) were given written instructions by way of whip on 18.03.2022 to attend the meeting of no confidence motion scheduled to be held on 24.03.2022 and to vote in favour of the no-confidence motion.
  6. When the whip was served directly to the respondent she was reluctant to accept it. Hence the whip was served by way of speed post to the residential address of the respondent. The respondent accepted and acknowledged the said postal article on 22.03.2022. In addition to it, the whip was affixed at the office as well as the residence of the respondent in the presence of witnesses. Copy of the whip was communicated to the Secretary of Vathikudy Grama Panchayat on 23.03.2022, who accepted it and issued acknowledgment of receipt.
  7. However, respondent had not participated the meeting of no confidence motion against President held on 24.03.2022, in violation of whip issued by her political party. Because of her abstinence in the meeting of no confidence motion, the no confidence motion was defeated. The respondent abstained from the meeting along with the opposite LDF members to defeat the no confidence motion.
  8. Respondent was fully aware of the content of the whip and the intention of her political party. But she intentionally defied the whip in collusion with opposite LDF members in the Panchayat. She has voluntarily abandoned or given up her membership in K C (PJJG). Respondent is now in LDF camp. Respondent by her conduct committed defection and hence liable to be disqualified under Kerala Local Authorities (Prohibition of Defection) Act.
  9. The respondent's case in brief is that;- Respondent was never allied with opposite LDF as alleged. There is also no allegations against the respondent as President of the Panchayat. There was no understanding in the UDF to direct her to resign from the post of President. There was no direction from K C (PJJG) to the respondent to resign from the post of President. The allegation that since respondent was reluctant to resign from the post of President, the UDF members moved no confidence motion against the respondent for removing her from the post is also incorrect.

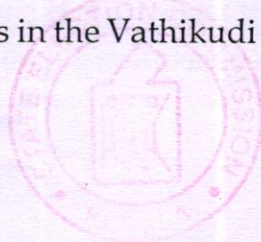


10. It is admitted that respondent had received the direction in writing ( whip) issued by Prof. M J Jacob, President K C (PJJG) directing her to participate in the no confidence motion and to vote in support of the no confidence motion. However, the District President of K C (PJJG) is not an authority competent to issue such a whip to the respondent.
11. The no confidence motion was scheduled for consideration on 24.03.2022 at Panchayat Office. But the respondent fell seriously ill on 23.03.2023 and she was unable to travel to the Panchayat office on 24.03.2022 due to heavy fever and illness. In fact, she had been suffering from fatigue and fever for the last one week prior to 23.03.2022. On 23.03.2022 her health condition deteriorated, which prompted the relatives to take her to Government Medical College Hospital, Idukki, where she was diagnosed as affected with Enteric fever (Typhoid Fever). She was admitted at the Medical College Hospital on 23.03.2022 as an inpatient and was discharged on 25.03.2022 with a direction to take rest. It was in such circumstances that the respondent could not participate in the meeting of no confidence motion held on 24.03.2022. Her absence was neither willful nor in violation of direction issued by per political party. Respondent never abandoned her membership of K C (PJJG) as alleged.
12. The evidence in this case consists of the oral depositions of PW1 to PW6 and RW1 & RW2 and Ext A1 to A11, B1 & B2 and Ext.X1 to X5.
13. Both sides were heard
14. The following points arise for consideration
- (i) Whether the respondent has disobeyed the decision and direction of the K C (PJJG) in the meeting to consider no confidence motion against the President held on 24.03.2022 as alleged?
  - (ii) Whether there was sufficient reason for her abstinence from the meeting of no confidence motion as alleged?
  - (iii) Whether the respondent has voluntarily given up her membership from the K C (PJJG) as alleged?
  - (iv) Whether the respondent has committed defection as contemplated under section 3 of Kerala Local Authorities (Prohibition of Defection) Act.
15. Point No. (i) to (iv);- As common questions of law and facts are arise for consideration in these points, they are considered together for convenience



and to avoid repetition. There is no dispute that petitioner is an elected member of Vathikudi Grama Panchayat belongs to INC and as such the petitioner is having *locus standi* to file the Petition. There is also no dispute that respondent contested election and got elected as a candidate of K C (PJJG), which is a constituent of UDF. There also no dispute that respondent was elected to the office of President with the support of UDF.

16. The sworn declaration filed by the respondent immediately after the General Election is marked as Ext.A1. Ext.A1 goes to show that respondent contested the election as a candidate of K C (PJJG), in the symbol " Chenda", which is a part of UDF coalition. Ext.A2 is the copy of Register showing the party affiliation of members of Vathikudi Grama Panchayat. Ext.A2 goes to show that the respondent is a member belonging to K C (PJJG).
17. Ext.A3 is the whip issued by the Idukki District President of K C (PJJG) to the respondent. It was directed in the whip to participate in the meeting of no confidence motion moved against President on 24.03.2022 and to vote in favour of no confidence motion. The President of the Panchayat is none other than the respondent. Hence respondent was directed to vote in favour of no confidence motion moved against her. It was sent through registered post as evident from Ext.A4 postal receipt. Ext.A5 is the postal tracking report in proof of delivery of the said postal article to the respondent on 22.03.2022. Respondent admitted the receipt of whip issued by Idukki District President of K C (PJJG).
18. While in the witness box as PW6, Prof. M J Jacob deposed that he had issued the Ext.A3 whip to the respondent in his capacity as District President of K C (PJJG). The whip was also served to the respondent through affixture at the office of the respondent and the residence of the respondent through his authorised representative PW2 to PW4. Ext.A7 and Ext A9 are the office copy of the whip affixed. Photographs were taken at the time of affixture of whip, which are marked as Ext.A6 and Ext.A8. Copy of the whip was also communicated to the Secretary of Vathikudy Grama Panchayat, the said fact was proved through PW5.
19. The no confidence motion against the President of Vathikudi Grama Panchayat was considered in the meeting of elected members held on 24.03.2022 at 11 am. The Ext.A11 minutes of the meeting goes to show that all the UDF members in the Vathikudi Grama Panchayat, except respondent



were present in the meeting and they voted in favour of the no confidence motion for removing the respondent from the office of President. The respondent abstained from the meeting and thereby acted against the direction of her political party, K C (PJJG). Vathikudy Grama Panchayat is having a total strength of 18 members, hence a majority of 10 members are required for carrying the no confidence motion as per section 157 of the Kerala Panchayat Raj Act. The no confidence motion was defeated by a single vote due the abstinence of the respondent from the meeting. The LDF members in the Panchayat committee also abstained from the meeting to ensure the continuance of the respondent in power.

20. In the cross examination of the petitioner as PW1, he deposed before the Commission that

"(Q.) കേരള കോൺഗ്രസ് ജില്ലാ പ്രസിഡണ്ട് എതിർകക്ഷിയോട് രാജിവയ്ക്കാൻ ആവശ്യപ്പെട്ടു എന്ന വിവരം താങ്കൾക്ക് എവിടെ നിന്നാണ് കിട്ടിയത്

(Ans.) യുഡിഎഫിന്റെ കൂട്ടായ തീരുമാനം ആയിരുന്നു. കേരള കോൺഗ്രസ് (പിജെ ജോസഫ്) പാർട്ടി, ഗ്രാമപഞ്ചായത്ത് പ്രസിഡന്റ് സ്ഥാനം എതിർകക്ഷി രാജിവയ്ക്കണം എന്ന് എടുത്ത തീരുമാനത്തെ എനിക്ക് നേരിട്ട് അറിവുള്ളതാണ്. കേരള കോൺഗ്രസ് ജില്ലാ പ്രസിഡണ്ട് ആണ് തീരുമാനമെടുത്തത്. അദ്ദേഹമാണ് ചിഹ്നം അനുവദിക്കാൻ കത്ത് നൽകിയത്. അദ്ദേഹം ഞങ്ങളോട് ഈ കാര്യം പറഞ്ഞു. ഇതിനായി യുഡിഎഫ് യോഗം നടത്തിയിട്ടുണ്ട്. കേരള കോൺഗ്രസിന്റെ ജില്ലാ പ്രസിഡണ്ട് ശ്രീ. ജേക്കബിനോട് ഞങ്ങൾ ആവശ്യപ്പെട്ടതിന് പ്രകാരമാണ് അവിശ്വാസ പ്രമേയം കൊണ്ടുവരാനുള്ള തീരുമാനമെടുത്തത്

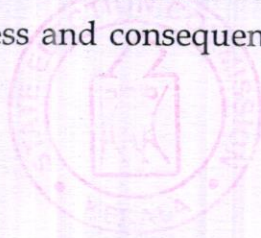
PW1 further stated that the decision to move no confidence motion against the respondent was taken in the meeting of UDF Vathikudy Grama Panchayat Committee, it consists of all elected members of the Vathikudy Grama Panchayat.

21. From the above testimony of the PW1, it is clear that UDF has already taken a decision to expel the respondent from the office of President and accordingly respondent was directed to resign from the office of President. On her refusal to do so, UDF moved no confidence motion against her. Since respondent being an elected member of K C (PJJG), the District President of K C (PJJG) issued whip to her to vote in favour of the no confidence motion.

22. While giving evidence before the Commission as RW1, the respondent deposed that

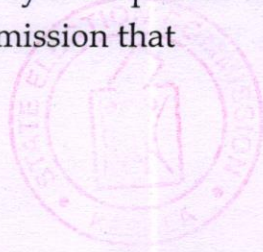
"Ext.A3 ലഭിച്ച 18.03.2022 മുതൽ, 24.03.2022-നു നടക്കുന്ന അവിശ്വാസ പ്രമേയത്തിന് മേലുള്ള വോട്ടെടുപ്പിൽ അനുകൂലമായി വോട്ട് ചെയ്യണമെന്ന് കാര്യം എനിക്ക് വ്യക്തമായി അറിയാമായിരുന്നു"

23. The respondent attributed her abstinence from the meeting of no confidence motion owing to her illness and consequent hospitalization. According to



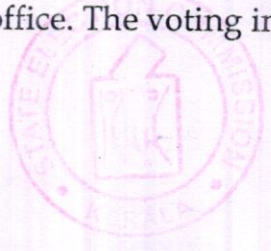
respondent she was fell seriously ill on 23.03.2022 and unable to travel to Panchayat office on 24.03.2022 to attend the meeting. She was admitted to the Medical College Hospital, Idukki on 23.03.2022 as an inpatient, where she was diagnosed as affected with Enteric Fever (Typhoid Fever) and was discharged on 25.03.2022.

24. In the para 12 of the objection respondent has taken a case that the reason for her inability to attend the meeting of no confidence motion was already informed to party leadership after her return from the hospital. However respondent has not produced any evidence to substantiate her claim. Further, when the Idukki District President of K C (PJJG) was examined as PW6, respondent has not put any questions in this regard to him. Respondent has also no case that her absence had been informed to the Authorized Officer or Secretary of the Panchayat or Vice President.
25. Ext A7 and Ext A8 whip were served to the respondent by affixture at the office of the respondent and residence of the respondent through PW3, who is the elected member of ward No. 18 of the Vathikudi Grama Panchayat. PW3 stated that PW1 and PW2 were also present at the time of affixture of whip at the residence of respondent and they signed the office copy of Ext. A7 and Ext.A9 as witness. PW1, PW2 and PW3 categorically deposed before the Commission that when they came to the residence of the respondent she was there in the residence. But she went back without accepting the whip and hence they affixed the whip at the residence of the respondent.
26. PW1 and PW3 are elected members of the Vathikudi Grama Panchayat, belong to INC and K C (PJJG) respectively. They came to the residence of the respondent on 23.03.2022, that is on the previous day of the meeting of no confidence motion. However respondent has no case that her inability to attend the meeting was informed to her colleagues viz, PW1 and PW3 at that time or subsequently.
27. The definite case of the respondent is that she was diagnosed as affected with Enteric Fever (Typhoid Fever) and admitted at the Medical College Hospital on 23.03.2022 as an inpatient and discharged on 25.03.2022. In order to prove the case of respondent she examined the Doctor, who issued Ext.B1-Discharge Summary in respect of the treatment of respondent. RW2 deposed before the Commission that



(Q.) Ext. B1 ഡിസ്ട്രിക്ട് സമ്മറി പ്രകാരം 23, 24, 25 തീയതികളിൽ ക്ലിനിക്കിൽ നോട്ടീന്റെയും ഇൻവെസ്റ്റിഗേഷന്റെയും അടിസ്ഥാനത്തിൽ പേഷ്യന്റ് കോൺഷ്യസ് ആയിരുന്നു, മുഖ്മെന്റിന് തടസ്സമില്ല എന്നും പറയുന്നു. (Ans.) ആ ദിവസങ്ങളിൽ പേഷ്യന്റിന് ബോധം ഉണ്ടായിരുന്നു 23-ന് പനിയുമായി വന്നു. ഇന്ത്യൻ ചെയ്തിട്ടുണ്ടാകണം. അതിന്റെ അടിസ്ഥാനത്തിൽ ആവാം ഡിസ്ട്രിക്ട് ചെയ്തത്. (Q) ടൈഫോയിഡ് ബാധിച്ച ഒരു പേഷ്യന്റിനെ മെഡിക്കൽ കോളേജിൽ അഡ്മിറ്റ് ചെയ്തിട്ട് പൂർണ്ണമായി അസുഖം മാറി ഡിസ്ട്രിക്ട് ചെയ്യുന്നതിന് എത്ര ദിവസം എടുക്കും? (Ans.) ടൈഫോയിഡ് ആയി കൺഫോം ചെയ്ത കേസിന് മിനിമം ഒരാഴ്ച എടുക്കും. (Q.) ടൈഫോയിഡ് സസ്പെക്ട് ചെയ്യുന്ന ഒരു പേഷ്യന്റിന് ടെസ്റ്റ് റിസൾട്ട് നെഗറ്റീവ് ആയാലും ഡിസ്ട്രിക്ട് ചെയ്യുന്നതിന് എത്ര സമയം എടുക്കും? (Ans.) ഞാനാണ് ടീറ്റ് ചെയ്യുന്നത് എങ്കിൽ റെക്കററൻസ് ഒഴിവാക്കുന്നതിന് ടൈഫോയിഡ് ലക്ഷണങ്ങൾ ഒന്നും ഇല്ല എന്ന് ഉറപ്പാക്കി ഡിസ്ട്രിക്ട് ചെയ്യാൻ ഒരാഴ്ചയെങ്കിലും എടുക്കും.

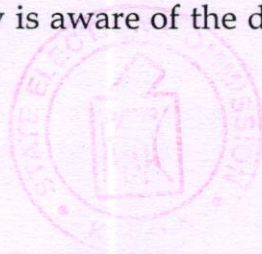
28. Therefore it is clear that respondent was conscious during the period of hospitalization and she was not diagnosed of having affected Typhoid as alleged by the respondent. Respondent was admitted to the hospital on 23.03.2022 and discharged on 25.03.2022. The meeting of the no confidence motion was held in the intervening day viz. 24.03.2022. Ongoing through the evidence on record there is every reason to believe that respondent was able to attend in the meeting of no confidence motion held on 24.03.2022, but deliberately stayed away from the meeting to protect her position as President. The alleged hospitalization was a deliberate attempt to escape from the probable proceedings under the defection law and hence unbelievable.
29. Further, in the cross examination of the respondent as RW1 on 02.11.2023 she categorically stated that she is holding the office of President of Vathikudy Grama Panchayat even now. Admittedly after General Election the respondent was elected as President with the support of her political party K C (PJJG) and UDF. On 24.03.2022 UDF moved no confidence motion against her and all the UDF members except respondent supported the no confidence motion. Hence she lost the support of her political party and coalition. But survived the no confidence motion with the support of opposite LDF. They abstained the meeting along with respondent to ensure the continuance of respondent. Thereafter respondent has been holding the office of President with the support and confidence of opposite LDF members.
30. In this background it is pertinent to note that it because of the disinclination of the respondent to resign from the office of President, UDF was constrained to move no confidence motion against the respondent for removing her from the office. The voting in favour of no confidence motion





by 9 out of 10 UDF members is definitely an indication that she lost majority in Panchayat committee on 24.03.2022 itself. As an obedient and loyal party worker she has to resign from the office President then and there. But respondent rather resign from the post, continued in power with the support of opposite LDF members and thereby UDF coalition which enjoyed the majority in the Panchayat committee was kept away from the governance of the Panchayat.

31. Further, during the trial respondent has taken a contention that K C (PJJG) was not a registered political party during the time of General Election to the local authorities in the year 2020 and therefore the District President of the K C (PJJG) has no authority to issue whip to the respondent. But the said contention lost its significance after the judgment of Hon'ble High Court in *Deepak V Kerala State Election Commission* (2023 (7) KHC 141). In the said judgment Hon'ble High Court held that K C (PJJG) ought to be treated as a political party for the purpose of elections held to the local authorities in the year 2020. Therefore the said contention of the respondent deserves no further consideration.
32. The evidence on record are sufficient to prove that after being elected as a member of Panchayat as a candidate of K C (PJJG) , a constituent of UDF, respondent has defeated the no confidence motion moved by the UDF, with the connivance and support of LDF and now holding the office of President with the connivance and support of LDF. There is definitely a shifting of political loyalty of respondent to opposite LDF coalition. Respondent by her conduct voluntarily given up her membership in the K C (PJJG) thereby incurring disqualification under section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection ) Act.
33. The Hon'ble High Court in *Rama Bhaskaran V Kerala State Election Commission and Others* (2018 (2) KHC 126) reiterated the position that a person, who is a member of a political party, which in turn is part of coalition, who acts against the interest of the coalition, or who has won the election with the support of members of rival coalition would be seen acting against the interest of his own political party, which has allied itself with a coalition.
34. Further in *Eruthavoor Chandran and Another V Kerala State Election Commission* (2018 (5) 964) (DB) the Hon'ble High Court held that where a member of a political party is aware of the decisions taken by the political



party, but failed to act in accordance with the political directive, it would amount to voluntarily abandoning of the membership of the political party and he would be disqualified under section 3 (1) of the Act.

35. It is settled law that if a member or group of elected members of a political party takes a different stand from that of political party in which they are members, it is nothing but disloyalty. There is evidence on the record that respondent is aware of the decision taken by K C (PJJG) , but failed to act in accordance with the political directive and acted hand in glove with LDF members to defeat the no confidence motion moved by UDF. It would definitely attract the defection as provided under section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act and respondent is liable to be disqualified.
36. In the result OP is allowed and the respondent is declared as disqualified for being member Vathikudy Grama Panchayat as provided under section 3 (1) of the Kerala Local Authorities ( Prohibition of Defection) Act, 1999. 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 under section 4 (3) of the Act.

Pronounced before the Commission on the 22<sup>nd</sup> day of October, 2024.

Sd/-

A. SHAJAHAN  
STATE ELECTION COMMISSIONER



**APPENDIX****Witness examined on the side of the Petitioner**

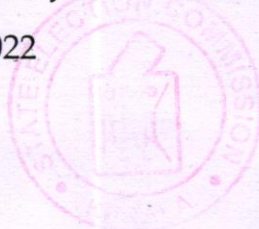
- PW1 : Shri. Declark Sebastian  
PW2 : Shri. Vinod Joseph  
PW3 : Shri. Pradeep George  
PW4 : Shri. Aby Immanuel  
PW5 : Shri. Sunil Sebastian  
PW6 : Shri. M.J. Jacob

**Witness examined on the side of the Respondent**

- RW1 : Smt. Sindhu Jose  
RW2 : Shri. Deepesh. V.V

**Documents produced on the side of the Petitioner**

- A1 : Copy of the declaration in form No.2 in respect of Smt. Sindhu Jose  
A2 : Copy of the register showing the party affiliation of the elected members of Vathikudy Grama Panchayat  
A3 : Copy of the whip dated 18.03.2022 issued by Prof.M.J.Jacob, Kerala Congress District Committee, Idukki to Smt. Sindhu Jose  
A4 : Postal Receipt  
A5 : Postal Track consignment  
A6 : Photograph  
A7 : Copy of the whip issued to Smt.Sindhu Jose dated, 18.03.2022, by President, Kerala Congress District Committee, Idukki  
A8 : Photograph  
A9 : Copy of the whip dated 18.03.2022 showing the affixture details at the residence of Smt. Sindhu Jose on 23.03.2022  
A10 : Receipt dated 23.03.2022



A11 : Copy of the minutes of the meeting in connection with the no-confidence motion against the President held on 24.03.2022

**Documents produced on the side of the Respondent**

- B1 : Discharge summary in respect of Smt.Sindhu Jose from Government Medical College Hospital, Idukki
- B2 : Idukki Government Medical College Hospital Laboratory requisition and report in respect of Smt. Sindhu Jose

**Documents produced by Witnesses**

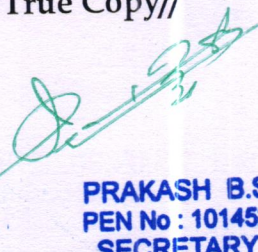
- X1 : Copy of the relevant page of the Oath Register
- X2 : Copy of the relevant page of the register showing the party affiliation of Smt. Sindhu Jose
- X3 : Copy of the whip dated 18.03.2022 issued to Smt.Sindhu Jose dated, 18.03.2022 by President, Kerala Congress District Committee, Idukki
- X4 : Copy of the minutes of the meeting held on 24.03.2022 at Vathikkudy Grama Panchayat
- X5 : Copy of declaration in Form-2 submitted by Smt. Sindhu Jose

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//

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

