

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A SHAJAHAN,
STATE ELECTION COMMISSIONER

Tuesday, the 25th day of February, 2025

O.P. No. 45 OF 2023

Petitioner

: Lalu Thomas
S/o. Thomas,
Kannettu Puthenpadiyil,
Puramattom P.O.,
Pathanamthitta (Dist.)

(Member, Division No.03,
Koipuram Block Panchayat)

(By Adv. Mridul John Mathew)

Respondent

: Saji @ Unni Placheri,
S/o Janardhanan,
Placherimannil,
Velliyara P.O, Ayroor,
Pathanamthitta (Dist.)

(Member, Division No.06,
Koipuram Block Panchayat)

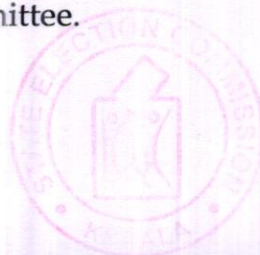
(By Adv. V.S. Sunil Kumar)



ORDER

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 Koipuram Block Panchayat and also for declaring him 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 and respondent are elected members of ward No.3 and 6 respectively of Koipuram Block Panchayat. Petitioner and respondent were contested and elected as candidates of Indian National Congress (hereinafter 'INC') in the election symbol " hand", in the General Election to the local authorities held in 2020. INC is a constituent of United Democratic Front (hereinafter 'UDF'). After the election all the elected members of INC, including the petitioner and respondent filed sworn declarations before the Secretary of Koipuram Block Panchayat showing their political allegiance as elected members of INC. Based on said declarations, the Secretary of the Koipuram Block Panchayat prepared a register showing the political affiliation of the elected members, wherein also it is stated that respondent is an elected member belonging to INC. Respondent is presently the Vice President of the Koipuram Block Panchayat.
3. There are 13 wards in Koipuram Block Panchayat. Out of which INC got 6 seats, Kerala Congress (J), another constituent of UDF got 1 seat. Communist Party of India (Marxist) (hereinafter 'CPI (M)') a constituent of Left Democratic Front got 6 seats. Thus, UDF got 7 seats and secured majority in the Block Panchayat committee.

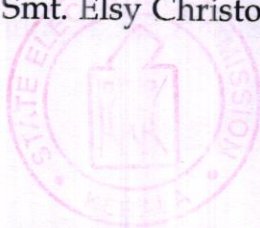


4. While so, Smt. Sosamma Joseph, the then President of Koipuram Block Panchayat resigned from the post, which paved the way for fresh election to the post of President. Commission notified election to the said causal vacancy and Retuning Officer in turn issued notice of election meeting to be held on 26.05.2023. Prior to the election INC convened a parliamentary party meeting of its elected members on 20.05.2023 for discussing about its candidate in the election. Even though notice were served to all elected members of INC, respondent did not attend the meeting. In the meeting it was decided to field Smt. Elsy Christopher as INC candidate for the post of President.
5. Accordingly, the District Congress Committee (hereinafter 'DCC') President issued written directions (whip) to all the elected members of INC, including the respondent to vote in favour for Smt. Elsy Christopher for the post of President. The whip was sent by registered post on both residential and official addresses of the respondent on 22.05.2023. However, knowing its contents, respondent refused to accept both the whip in spite of intimation given by the postal authorities. However, on 22.05.2023, whip was served to the respondent, at the behest of DCC President by affixture at the residence of the respondent, in the presence of witnesses. In addition to it, whip was sent to the respondent through WhatsApp and e-mail messages by DCC President on 25.05.2023. Both messages were delivered to the respondent. Copy of the whip was also communicated to the Secretary of Koipuram Block Panchayat. Respondent is having sufficient knowledge about the whip prior to the election.
6. However, in the President election held on 26.05.2023, contrary to the decision and direction of INC, respondent voted in favour of Smt. K K Valsala, the candidate fielded by LDF for the post of President and thereby the candidate fielded by INC Smt. Elsy Christopher was defeated in the election.



Respondent colluded with the opposite coalition LDF and in gross defiance of the whip issued by the INC, voted in favour of the candidate fielded by LDF. By the said conduct respondent voluntarily abandoned his membership of the INC, which fielded him as a candidate in the General Election. Thereby respondent has committed defection and liable to be disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act.

7. The respondent's case in brief is that;- Respondent in his objection admitted the fact that he was contested and elected as a candidate of INC from ward No. 6 of the Koipuram Block Panchayat in the General Election to local authorities held in 2020. Respondent has also admitted the party position of Koipuram Block Panchayat after the General Election 2020 as stated in para 4 of the original petition. He has also admitted the fact that election to the post of President consequent on the resignation of Smt. Sosamma Joseph was scheduled on 26.05.2023. However, he denied the fact that a parliamentary party meeting was held on 20.05.2023 with due notice to him. The respondent has also no knowledge about the alleged decision in the parliamentary party meeting to field 'L.C Christopher' as the candidate of INC for the post of President. It is pertinent to note that all along the objection, respondent used the name of INC candidate as 'L.C Christopher' instead of her correct name 'Elsy Christopher' for the reason best known to him.
8. Respondent further submitted that in earlier on 20.06.2021, the then DCC President Sri. Babu George had issued a communication to the respondent informing him that he is expelled from the primary membership of the INC. Subsequent to his expulsion from the INC there had been no further intimations from the INC to participate in any of its meetings or programmes. There had been no direction either oral or in writing from the present DCC President to vote in favour of Smt. Elsy Christopher. It is false and incorrect



to state that the whip was sent by registered post on both residential and official addresses of the respondent. Respondent was never served with any intimation from the postal authorities relating to the alleged registered posts. No whip was affixed at the residence of the respondent by John Mathew in the presence of witnesses as alleged. The alleged whip is a fabricated document. The respondent did not see or had any occasion to watch or read the WhatsApp or e-mail messages allegedly sent by DCC President. The respondent was expelled from the INC and therefore the DCC President has no authority to issue whip to the respondent. Since the respondent did not voluntarily abandon his membership of the INC, he is not liable for any disqualification under the Kerala Local Authorities (Prohibition of Defection) Act.

9. The evidence in this case consists of oral testimonies of PW1 to PW4, RW1 to RW7 and Exts. A1 to A7 and B1 to B6.

10. Both sides were heard.

11. The following points arise for consideration, namely;-

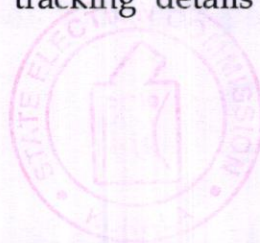
- i. Whether the respondent has disobeyed the decision and direction of the INC political party in the election to the post of President held on 26.05.2023 as alleged?
- ii. Whether the respondent has voluntarily given up his membership of the INC political party as alleged?
- iii. Whether the respondent has committed defection as contemplated under section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act?

12. 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



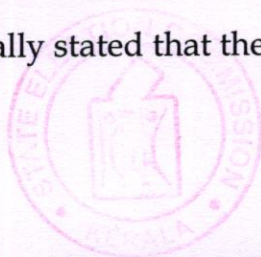
and to avoid repetition. Petitioner is admittedly an elected member of Koipuram Block Panchayat and as such competent to file petition before the Commission under the provisions of section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. Respondent is admittedly an elected member of ward No. 6 of the Koipuram Block Panchayat, who was contested and elected as a candidate of INC during the General Election to local authorities held in 2020. There are 13 wards in Koipuram Block Panchayat. Admittedly, out of which UDF got 7 seats and LDF got 6 seats. Thus, UDF got majority of seats in the Koipuram Block Panchayat. Respondent admitted the fact that while so, Smt. Sosamma Joseph the then elected President of Koipuram Block Panchayat resigned from the post, which paved the way of fresh election to the post of President on 26.05.2023.

13. According to the petitioner, prior to the election INC convened a parliamentary party meeting of its elected members at DCC office on 20.05.2023 to discuss about the candidate to be fielded by INC in the President election. In the meeting all the elected members of the INC in the panchayat, except the respondent were attended. It was decided in the meeting to field Smt. Elsy Christopher as the candidate of the UDF in the President election. As per the decision, whip was issued by the DCC President to all elected members of the Koipuram Block Panchayat belonging to INC to vote in favour of Smt. Elsy Christopher in the election. All elected members except respondent accepted the whip. Therefore the whip was issued to the respondent through registered post with acknowledgment due to the official and residential addresses of the respondent. However, it was returned with the postal endorsement addressee "refused". Ext.A1 contains the postal receipts in proof of despatch of the whip to the official and residential addresses and the returned postal article sent to official address. Ext. A2 is the tracking details of postal article sent to



residential address of the respondent. It was corroborated by the DCC President, who was examined as PW4.

14. It has come out in evidence of PW4 that he has also entrusted PW2, John Mathew, who is the Aranmula Block Vice President of INC for effecting the service of whip to the respondent through affixture at the residence of respondent. Accordingly PW2 affixed the whip at the residence of respondent in the presence of PW3 and one Anish Varikkamala. Ext.A3 is the copy of the whip affixed. PW4 further stated that whip was also served to the respondent through WhatsApp messages. Ext.A4 is the delivery report of WhatsApp message.
15. However, in the objection respondent vehemently denied the allegation that DCC President has intimated the stand of the political party to him. Respondent denied the allegation that whip were sent by registered post on the residential and official addresses of the respondent. He was not served with any intimation from the postal authorities relating to Ext.A1 registered post. Respondent stoutly denied the fact that PW2 and PW3 visited his residence on 22.05.2023 for serving the whip through affixture. No whip was affixed at the residence of the respondent by PW2. The respondent did not see or had any occasion to watch or read WhatsApp or email allegedly sent by DCC President. Ext.A4 and Ext.A5 are fabricated documents.
16. Further, in para 9 of the objection respondent has taken a case that Ext.A1 and A2 are fabricated documents. However, when the Postmaster of Pullad Post office was examined as RW5 or when Postal Superintendent of Thiruvalla Postal Division was examined as RW7, respondent put nothing in this regard to them. RW5 deposed before the Commission that the Ext.A1 registered postal article was received in the Block Office on 23.05.2023 between 12.45 pm to 1 pm. RW7 categorically stated that the Ext.A1 postal article was served to



the Block Office on 23.05.2023 at 12.50 pm. RW7 corroborated the contents of Ext.B6 issued by her under Right to Information Act regarding the time of delivery of postal article to Block Panchayat office and the details of postwomen who delivered the postal article.

17. Respondent has also examined RW3, Head Clerk of Koipuram Block Panchayat, who issued Ext.B3 under the Right to Information Act. RW3 supported the contents of Ext.B3 that the respondent, who was in charge of President on 23.05.2023 was on official tour from 9.20 am to 6.20 pm on that day as per the entries of log book maintained in the Panchayat office. Respondent has also examined RW6, a daily waged Driver of Koipuram Block Panchayat, who deposed before the Commission that respondent was not in the office on 23.03.2023. Respondent examined all these witnesses to rebut the correctness of postal endorsement" refused" in the Ext.A1, since he was not available in the panchayat office on 23.05.2023 during the service of Ext. A1 by the Postwomen.
18. From the Ext.B6 issued by RW7, it seems that Postwomen Smt. Akshara Kamal, Dak Sevak Delivery, Beat 2 has served the Ext.A1 postal Article to the Block Panchayat Office on 23.05.2023 and made the endowment addressee "refused". However, it is pertinent to note that respondent has not cared to examine the Postwomen, who made the endorsement " refused " in Ext.A1 to substantiate his case. The postwoman is certainly a material witness who could provide essential information in this regard. Therefore adverse inference can be drawn for no-examination of Postwomen.
19. Further, the Postal Superintendent who was examined as RW7 deposed before the Commission that



"കോയിപ്രം ബ്ലോക്ക് പഞ്ചായത്ത് ഏരിയയിൽ പോസ്റ്റൽ ഉരുപ്പടികൾ വിതരണം ചെയ്യുന്നത് ഒരേ പോസ്റ്റമാനാണ്. പോസ്റ്റൽ ഉരുപ്പടികൾ യഥാസമയം വിതരണം ചെയ്യാൻ കഴിഞ്ഞില്ലെങ്കിൽ അധികസമയം എടുത്ത് വിതരണം ചെയ്യാറുണ്ട്. Registered Articles addressee -ക്ക് തന്നെയാണ് കൈമാറേണ്ടത്. അഡ്രസ്സീ സ്വീകരിച്ചില്ലായെങ്കിൽ Refused to receive എന്ന് രേഖപ്പെടുത്തി പോസ്റ്റമാൻ പോസ്റ്റ് ഓഫീസിൽ തിരിച്ചെൽപ്പിക്കും. അന്നുതന്നെ Sender- ക്ക് തിരിച്ചയയ്ക്കും. Addressee-യെ കണ്ടില്ലെങ്കിൽ പോസ്റ്റമാൻ അഡ്രസ്സീയുടെ മേൽവിലാസമുള്ള വീട്ടിലോ ഓഫീസിലോ intimation കൊടുക്കും ഇന്റീമേഷൻ ലഭിച്ചിട്ടും പോസ്റ്റൽ ആർട്ടിക്കിൾ 7 ദിവസത്തിനുള്ളിൽ വാങ്ങാൻ എത്തിയില്ല എങ്കിൽ Sender-ക്ക് തിരിച്ചയയ്ക്കും, തിരിച്ചയക്കുമ്പോൾ Unclaimed Return to Sender എന്ന് രേഖപ്പെടുത്തിയാണ് അയക്കുന്നത് Registered Articles Addressee-ക്കോ Addressee authorize ചെയ്യുന്ന ആൾക്കോ ആണ് കൊടുക്കുന്നത്. Ext. A 1 Addressee intimation നൽകിയിട്ടും കൈപ്പറ്റാത്തത് കാരണമാണ് രേഖപ്പെടുത്തലുകൾ വരുത്തി Sender-ക്ക് തിരിച്ചയച്ചത്. പോസ്റ്റമാൻ Registered പോസ്റ്റമായി ചെല്ലുമ്പോൾ Addressee സ്വീകരിക്കാൻ വിസമ്മതിക്കുന്ന സമയത്താണ് Refused എന്ന് എഴുതി തിരിച്ചയക്കുന്നത്"

20. It is evident from Ext.A1 postal receipts that the registered articles were despatched to the official and residential addresses of the respondent on 22.05.2023. It is also evident from the endorsement on the postal article that it was returned to the sender since addressee "refused" to accept the postal article. Respondent has no case that the addresses shown in the Ext.A1 is incorrect or he is not residing in the said addresses. Respondent has failed to rebut the correctness of postal endorsement in Ext.A1 despite examining RW3, RW5 to RW7.

21. In *Praveena Ravikumar V State Election Commission* (2023 (6) KLT 845) the Hon'ble High Court has examined the legal effect of returning the postal article either as addressee " unclaimed" or "refused" and held that,-

"If the notice sent to the correct address is returned either as unclaimed or as addressee left, the failure to serve the notice can only be attributed to the addressee and not to the sender" (Para 21)



"Refusal of notice and notice returned as unclaimed, both tantamount to service of notice, if it was intimated within time especially in the context of the Act. Otherwise, every wily recipient would be able to defeat the process of law by allowing the postal article to be returned as unclaimed. In *Harcharan Singh V Smt. Shivani and Others* (1981) 2 SCC 535) and in *Jagadish Singh V Nattu Singh* (1992) 1 SCC 647) the Supreme Court had observed that a notice refused to be accepted can be presumed to have been served on him. In the said decisions, the Supreme Court observed that when a notice is sent to the correct address, the obligation of the sender ends with that, and if he does not claim the notice, it shall be deemed that there was valid service of notice. Viewed in the above perspective, it is evident that the respondents were served with the whip" (Para 22).

22. In the present case, it has come out that all other elected members belonging to INC in the Koipuram Block Panchayat, except respondent have accepted the whip when it was served directly. From the evidence on record, it seems that DCC President has taken all means possible to serve the whip to the respondent. From the ratio of above judgments and evidence on record it can be inferred that respondent was aware of the decision and direction of the INC political party in the election to the post of President held on 26.05.2023.
23. In para 8 of the original petition, petitioner has taken a plea that intimation regarding the whip and the copies of the whip issued to the INC members were given to the Secretary of the Koipuram Block panchayat and the same was acknowledged by him. In order to substantiate his case petitioner has produced the Ext.A6 copy of the whip duly acknowledged by the Secretary with his seals and signature. Even though respondent has no case in the objection filed by him that copy of the direction in writing (whip) was not served to the Secretary of the Block Panchayat as mandated under section 3(2)

