

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

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

Tuesday, the 5th day of August, 2025

O.P. No.46 of 2023

Petitioner : Sri. V. V. Rajesh,
S/o Velayudhan Nair,
TENRA 6, Near Police Training College,
Thycaud P.O.,
Thiruvananthapuram District

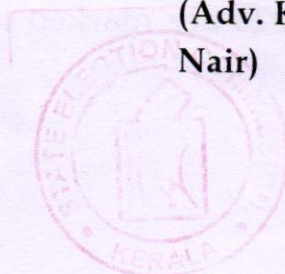
(District President, Bharathiya Janatha
Party Thiruvananthapuram)

(Adv. Rajmohan G. J.)

Respondent : Smt. Sudharma
W/o. Kumar,
Gokulam House,
House No. 20/636,
Punkulam, Vellayani P.O.
Thiruvananthapuram District

(Member, Ward No.19,
Kalliyoor Grama Panchayat)

**(Adv. Kulathoor S. V. Premakumaran
Nair)**



ORDER

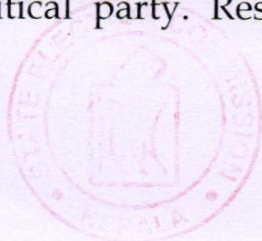
This is a petition filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that this respondent committed defection and hence disqualified to continue as member of Kalliyoor Grama Panchayat and also for declaring her as disqualified to contest as candidate 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 the Thiruvananthapuram District President of Bharatiya Janata Party (hereinafter "BJP"). Respondent is an elected member of ward No. 19 of Kalliyoor grama panchayat. Respondent was contested and elected as a candidate of BJP in the General Election to local authorities held in 2020. Petitioner in his capacity as District President of the BJP recommended the election symbol of BJP to the respondent for contesting election from ward No. 19 as BJP candidate. BJP got majority of members in the Kalliyoor grama panchayat after the election and persons belonging to BJP were elected as President and Vice President.
3. While so, the elected members belonging to Communist Party of India (Marxist) (hereinafter CPI (M)) in the grama panchayat moved no confidence motion against the President Sri. Chandu Krishna and Vice President Smt. Saritha V, both belonging to BJP. Upon such receipt of no confidence motion, the Nemom Block Panchayat Secretary, who is the Authorised Officer for convening the meeting of no confidence motion, issued notice to the elected members of the grama panchayat intimating the date and time of considering the no confidence motion against the President and Vice President as 27.06.2023 at 11 am and 2.30 pm respectively.
4. Thereupon the petitioner in his capacity as District President of the BJP issued direction in writing (hereinafter "whip") to the respondent by registered post directing her to attend the scheduled meeting on 27.06.2023 and to vote against the no confidence motion. The whip dated 15.06.2023 are marked as Ext.A2 and Ext.A2 (a). The postal receipts dated 20.06.2023 are marked as Ext.A3 and Ext.A3 (a). The



postal acknowledgment cards dated 21.06.2023 are marked as Ext A4 and Ext.A4 (a). It is further submitted by the petitioner that the whip was openly read out by the Authorised Officer in the meeting for the knowledge of elected members.

5. However, the respondent who was present in both the meetings for considering the no confidence motion held on 27.06.2023, voted in support of the no confidence motion against the President and Vice President, who belonging to her own political party. The said act of the respondent is contrary to the whip issued by her political party BJP. The minutes of the meetings of no confidence motion held on 27.06.2023 are marked as Ext A6 (b). The respondent supported the no confidence motion against the President and Vice President contrary to the direction issued by her political party. The respondent committed defection as provided under the second limb of section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.
6. It is further submitted that the no confidence motion against the President and Vice President had been carried with majority and the incumbents were removed from respective offices immediately. Thereupon elections to the said vacancies of President and Vice President were notified by the Commission and the Returning Officer in turn issued election notices to the elected members informing the scheduled election on 15.07.2023.
7. BJP again fielded Sri. K K Chandu Krishna and Smt. Saritha V for the post of President and Vice President respectively. The District President of the BJP once again issued whip to the respondent directing her to vote in favour BJP candidates. The whip was issued to respondent by registered post with acknowledgment due. The postal receipts dated 11.07.2023 are marked as Ext.A7. The copy of acknowledgment cards are marked as Ext.A8 and Ext.A8 (a). Petitioner further submitted that the whip was read out in the election meeting by the Returning Officer for the knowledge of the elected members. However, respondent voted against the candidates fielded by BJP for the post of President and Vice President and thereby violated the whip issued by her political party. Respondent committed defection as

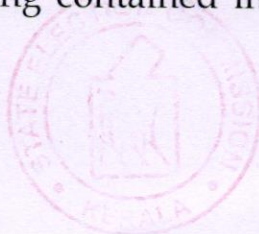


provided under the second limb of section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.

8. The respondent's case in brief is that; - Respondent admitted the fact that she was contested and elected as a candidate of BJP from ward No. 19 of Kalliyoor grama panchayat. Respondent has not disobeyed any directions issued by her political party. It is true that no confidence motion against President and Vice President of the panchayat came up for discussion on 27.06.2023 and carried with majority. Respondent was not informed of the stand of political party in the meeting. Respondent has not been served any direction by BJP. There was no meeting of the Parliamentary Party of the panchayat prior to the meeting to deliberate its stand. It was false and incorrect that respondent has been served the whip through registered post. It is true that respondent had participated in the meetings of no confidence motion against President and Vice President held on 27.06.2023 and Presidential and Vice Presidential elections held on 15.07.2023. It is untrue that the Presiding Officers had read out the whip issued by the Political Party at the commencement of the meetings. The signatures appear in Ext.A4, A4 (a), A8 and A8 (a) Acknowledgment Cards are not that of respondent. Respondent has not committed any defection and therefore the petition is only liable to be dismissed.
9. The evidence in this case consists of oral testimonies of PW1 to PW4, RW1, documents Ext.A1 to A8 and Ext.X1.
10. Both sides were heard.
11. The following points arise for consideration, namely; -
 - i. Whether respondent was served any whip by the political party prior to the no confidence motion held on 27.06.2023 and elections to the offices of President and Vice President held on 15.07.2023?
 - ii. Whether copy of the whip has been communicated to the Secretary of the panchayat as mandated in section 3(2) of the Kerala Local Authorities (Prohibition of Defection) Act?



- iii. Whether respondent has disobeyed the whip issued by her political party in the no confidence motion held on 27.06.2023 and in the elections to the offices of President and Vice President held on 15.07.2023?
 - iv. Whether respondent has committed defection as contemplated under section 3 (1) (a) (ii) of the Kerala Local Authorities (Prohibition of Defection) Act?
12. 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. In the present case cause of action is solely based on the ground of violation of whip issued by political party in connection the no confidence motion held on 15.07.2023 and elections to the offices of President and Vice President held on 15.07.2023 as provided under the second limb of section 3 (a) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. It is well settled that if the cause of action pleaded is on the ground of series of violation of party directives, all that have to be construed as a singular act to attract the provisions of the grounds of defection.
13. Petitioner herein is the Thiruvananthapuram District Secretary of the BJP. Admittedly, the petitioner had recommended the election symbol of the BJP "Lotus" to the respondent for contesting election from ward No. 19 of Kalliyoor grama panchayat as a candidate of BJP, during General Election held in 2020. Respondent contested and elected as BJP candidate. There is no dispute over the *locus standi* of the petitioner to file the petition against the respondent under the provisions of section 4 of the Act.
14. As discussed above, the case cause of action is solely based on the ground of violation of whip as provided under the second limb of section 3 (1) (a) of the Act. The relevant portion of section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 reads as follows; -
- "3. Disqualification of the 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, -

.....

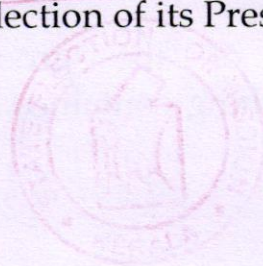
- (b) in a meeting of a Panchayat, in an election of its President, Vice President, a member of Standing Committee, or the Chairman of the Standing Committee; or in a voting of no confidence motion against any one of them except a member of a Standing Committee;

.....

he shall be disqualified for being a member of that local authority.

- (c) 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."

15. Section 3 (1) (a) of the Act consists of two limbs, providing two grounds of disqualification. One is that a member belonging to a political party voluntarily gives 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 of a panchayat, in an election of its President.....



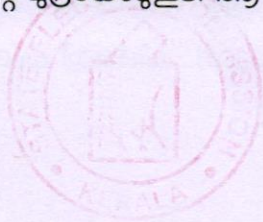
It is well settled that grounds for disqualification under the first and second limbs section 3(1) (a) are distinct and are not interlinked.

16. Respondent herein is undisputedly an elected member belongs to BJP. There is also no dispute over the authority of the petitioner as District President of the BJP to issue whip to the respondent. In the chief affidavit by respondent as RW1, she admitted that she had participated in the meeting of no confidence motion held on 27.06.2023 and elections held on 15.07.2023 and casted her vote. Fuhrer, in the cross examination as RW1, respondent admitted that she had attended the meeting to consider the no confidence motion against the President and Vice President held on 27.06.2023 and voted in favour of the no confidence motion. However, respondent has taken a consistent case that no whip was served to her by her political party informing the stand of the political party either in relation to no confidence motion or in the elections to the posts of President and Vice President held thereafter. Therefore, the crucial question is whether respondent was served whip by her political party as provided under rule 4 of the Kerala Local Authorities (Disqualification of Defected members) Rules.

Rule 4 of the Rules 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 direction shall be given, -

- i. ഒരു രാഷ്ട്രീയ കക്ഷിയിൽപ്പെട്ട അംഗത്തിന്റേയോ അതിലുൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗത്തിന്റേയോ കാര്യത്തിൽ പ്രസ്തുത അംഗത്തിന് തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ആ രാഷ്ട്രീയ കക്ഷിയുടേതായ ചിഹ്നം ശുപാർശ ചെയ്യുന്നതിന്, അതതു കാലങ്ങളിൽ, രാഷ്ട്രീയ കക്ഷി അധികാരപ്പെടുത്തിയിട്ടുള്ള ആൾ ആയിരിക്കേണ്ടതാണ്. എന്നാൽ, മേൽപ്പറഞ്ഞ നിർദ്ദേശം ആ രാഷ്ട്രീയ കക്ഷിയുടെ ലെറ്റർ ഹെഡിൽ 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."

17. Ext.A2 whip was issued by the petitioner in his capacity as District President of the BJP. The very same capacity petitioner had recommended the election symbol of the political party to the respondent for contesting election from ward No. 19 as a candidate of BJP. Therefore, petitioner is competent to issue whip to the respondent. Ext.A2 and Ext.A2 (a) whip dated 27.06.2023 would goes to show that whips are issued under the official letter head of the political party with its seal. It is evident from Ext.A3 and Ext.A3 (a) postal receipts dated 20.06.2023 that whip was despatched to the respondent by registered post with acknowledgment due. Ext.A4 and Ext.A4 (a) Acknowledgment cards dated 21.06.2023 would show that whips were served to the respondent through one Keerthi.
18. The consistent case of the respondent is that she was not served the whip. In the cross examination of respondent as RW1 she deposed that

"27.06.2023 ലെ യോഗം സംബന്ധിച്ച് ഭാരതീയ ജനത പാർട്ടി ജില്ലാ പ്രസിഡന്റിന്റെ വിപ് എനിക്ക് ലഭിച്ചിട്ടില്ല. ഞാൻ താമസിച്ചിരുന്ന വീട് അഡ്രസ് ഹൗസ് നമ്പർ 20/636, ഗോകുലം ഹൗസ് എന്നാണ്. Ext. A4 shown to me. എന്റെ മേൽവിലാസം ആണ് രേഖപ്പെടുത്തിയിരിക്കുന്നത്, കൈപ്പറ്റിയതായി ഒപ്പിട്ടിട്ടുള്ളത് ആരാണെന്നറിയില്ല. 21.06.2023 നാണു ഒപ്പിട്ടതായി കാണുന്നത്, ഞാൻ താമസിച്ചിരുന്ന വീട് അഡ്രസ് തന്നെയാണ് അത്. ഞാനും ഭർത്താവും മകനും ആയിരുന്നു അന്ന് ആ വീട്ടിൽ താമസിച്ചിരുന്നത്. മകൾ ആ സമയത്ത് അമ്പലപ്പുഴ ആയിരുന്നു. മകളുടെ പേര് കീർത്തി കെ. എസ്. എന്നാണ്. കീർത്തി എന്ന് ഒപ്പിട്ടിരിക്കുന്നതായാണ് Ext. A4 -ൽ

കാണുന്നത്, പക്ഷെ അതെന്റെ മകളുടെ ഒപ്പല്ല. അവൾ വിവാഹിതയായി അമ്പലപ്പുഴയിലാണ്."

19. In the above testimony respondent admitted that the postal article was despatched in the correct address of the respondent and she is having a daughter by name Keerthi.
20. In this connection, Section 3 (c) of the Indian Post Office Act, 1898 provides that

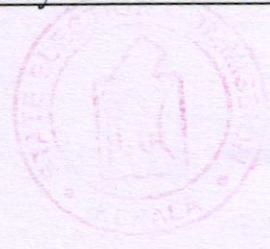
" (c) the delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent or other person considered to be authorised to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee."

In *Gujarat Electricity Board V. Atmaram Sungomal Poshani* (AIR (1989) SC 1433 (para 8), the Hon'ble Supreme Court held as under, -

"8. There is presumption of service of letter sent under registered cover. No doubt the presumption is rebuttable and it is open to the party concerned to place evidence before the Court to rebut the presumption by showing that the address mentioned on the cover was incorrect or that the postal authorities never tendered the registered letter to him. The burden to rebut the presumption lies on the party challenging the factum of service."

As discussed above, in the present case respondent admitted the correctness of her address mentioned in the post cover. However, respondent disputed the service of whip by postal authorities through Ext.A4 and Ext.A4 (a). Therefore, the burden of rebutting the presumption lies upon the addressee to demonstrate no receipt of the whip. Mere denial is insufficient to rebut the presumption. However, respondent has not examined the postman, who served the post cover containing the whip to the addressee and obtained the acknowledgment of receipts thereof. Therefore, ExtA3 and Ext.A4 documents are sufficient to prove that Ext.A2 whips have been served to the respondent prior to the no confidence motion against the President and Vice President held on 27.06.2023.



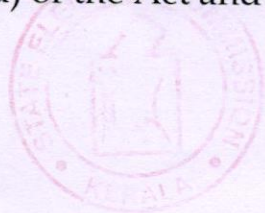
21. As discussed in pre-paras, in the chief affidavit filed by the respondent as RW1, she admitted that she had participated the meeting of the no confidence motion held on 27.06.2023 and voted in favour of the no confidence motion. It has come out in evidence through Ext.A6 Minutes that no confidence motion was carried with the support of respondent and the President and Vice President, who belonging to BJP political party were removed from the office. Petitioner has a further case that in the subsequent elections to the casual vacancies of President and Vice President held on 15.07.2023, BJP fielded same persons viz. K K Chandu Krishana and Saritha V for the respective posts. Prior to the said election also petitioner in his capacity as District President of the BJP issued whip to the respondent directing her to vote in favour said party candidates. The said whips were effected on 11.07.2023 through registered post with acknowledgment due. To prove the service of whip to the respondent, petitioner has produced the postal receipts dated 11.07.2023 as Ext.A7 and acknowledgment card as Ext.A8 and A8 (a). Petitioner has also examined the Returning Officer, who conducted the Presidential and Vice Presidential election, as PW2. PW2 testified before the Commission that BJP had issued whip to its elected members directing her to vote for Sri. K. K. Chandu Krishana and Smt. Saritha. V for elections to President and Vice President respectively. However, PW2 is not certain about the BJP member who violated the whip. It is pertinent to note that petitioner has not produced the copy of the whip issued to the respondent and thereby failed to prove that there was a valid whip in terms of rule 4 (1) (i) of the Kerala Local Authorities (Disqualification of Defected members) Rules prior to the election held on 15.07.2023. Petitioner has not produced the Minutes of the election meeting held on 15.07.2023.
22. Further, section 3 (2) of the Kerala Local Authorities (Prohibition of Defection) Act added by Amendment Act, 2013, which reads as follows, -
- "(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."
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Likewise rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules incorporated in the Rules through amendment to the Rules in 2005, which reads as follows, -

"(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."

On going through the above statutory provisions, it is imperative that copy of the whip should be served the Secretary of the panchayat concerned prior to the event. However, in the original petition there is no pleadings that copy of the whip have been served to the Secretary of the Kalliyoor grama panchayat either prior to the no confidence motion held on 27.06.2023 or elections held on 15.07.2023. In the chief affidavit filed by the petitioner as PW1, he attempted to cure the deficiency by stating that details of whip have been served to the Secretary of Kalliyoor grama panchayat through Ext.A5 letter dated 15.06.2023. But as a matter of fact, the service copy of whip to the Secretary of the panchayat has not been proved by any clinching evidence. Petitioner has neither examined the Secretary of the panchayat nor produced any receipt issued by the Secretary of the Kalliyoor grama panchayat in token of acceptance of copy of the whip. In the original petition the grounds for defection against the respondent is confined to the second limb of section 3 (1) (a) of the Act viz. violation of whip. Therefore, petitioner is burdened with strict proof regarding the service of copy of whip as mandated under the above statutory provisions.

23. Petitioner has examined Returning Officer of Kalliyoor grama panchayat and Authorised Officer of Kalliyoor grama panchayat as PW2 and P4 respectively to prove that whip have been openly read out prior to the meetings for the knowledge of the elected members, including the respondent. But strict proof regarding the service of whip is mandated under the section 3 (2) for a matter being filed under second limb of section 3 (1) (a) of the Act and therefore evidence of the

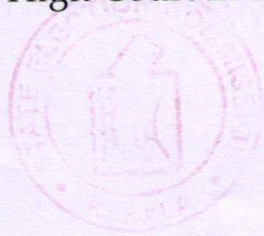


PW2 and PW4 has no bearing to the fact and circumstances of the present case.

24. PW3, the present Block Panchayat Secretary, Nemom Block Panchayat has produced the office copy of Ext.A6 Minutes of the meeting of no confidence motion held on 27.06.2023, which is marked as Ext.X1. It is evident from Ext.A6 Minutes of the meeting held on 27.06.2023 for considering the no confidence motion that respondent participated the meeting and voted in favour of the no confidence motion. During the cross examination as RW2, respondent admitted that she attended the meeting of no confidence motion and voted in favour of the no confidence motion. The act of the respondent is in explicit violation of direction issued by her political party.
25. However, as discussed above there is no pleadings in the original petition that copy of the whip had been served to the Secretary of the Kalliyoor grama panchayat as mandated under section 3 (2) of the Act and rule 4 (2) of the Rules framed thereunder. It is settled position that evidence cannot be adduced beyond the scope of pleadings. Petitioner has failed to prove the service of copy of the whip to the Secretary of Kalliyoor grama panchayat by examining the Secretary of the panchayat concerned or by any other clinching evidence.
26. In *George Elamplakkadu @ Vakkachan Powathil V A V Mathew @ Samkutty Vettupalam & Ors* (2020 (5) KHC 297) the Hon'ble High Court held that "Keeping in view 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 a copy of the direction in writing (whip) shall also be given to the Secretary, are mandatory in nature. The very object of the enactment will be defeated by construing the said provisions as directory." (para 37).

Therefore, the no compliance of the said provisions is fatal to the case of petitioner.

27. Considering the facts and circumstances of the case and the ratio laid down by the Hon'ble High Court in the judgment cited above, I am of



the considered view that petitioner has failed to prove that respondent has committed defection and therefore they are liable for disqualification under Kerala Local Authorities (Prohibition of Defection) Act.

In the result, the original petition is dismissed.

Pronounced before the Commission on the 5th day of August 2025

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

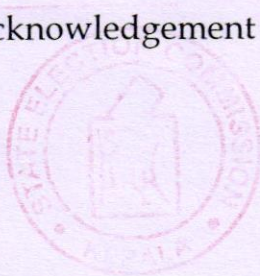
- PW1 - V. V. Rajesh
PW2 - Pramod K. S.
PW3 - P. R. Ajaykhosh
PW4 - Suresh Kumar K. R.

Witness examined on the side of the Respondent

- RW1 - V. Sudharma

Documents produced on the side of the Petitioner

- A1 - Copy of the minutes of the BJP District Committee meeting held 22.01.2020
- A2 - Copy of the whip dated, 15.06.2023 issued to Smt. V. Sudharma in connection with the no confidence motion against Vice President, issued by V. V. Rajesh District President, BJP, Thiruvananthapuram District.
- A2(a) - Copy of the whip dated, 15.06.2023 issued to Smt. V. Sudharma in connection with the no confidence motion meeting against President, issued by V. V. Rajesh District President, BJP, Thiruvananthapuram District.
- A3 - Postal Receipt
- A3(a) - Postal Receipt
- A4 - Postal acknowledgement cards addressed to Smt. V. Sudharma from BJP District committee office, Thiruvananthapuram.
- A4(a) - Postal acknowledgement cards addressed to Smt. V. Sudharma



from BJP District committee office, Thiruvananthapuram.

- A5 - Copy of the letter to Panchayath Secretary/Presiding Officer, Kalliyoor Grama Panchayath dated, 15.06.2023 regarding the issuance of whip by Adv. V. V. Rajesh District President, BJP Thiruvananthapuram.
- A6 - Copy of the letter dated, 05.07.2023 by Adv. V. V. Rajesh to Secretary, Nemom Block Panchayath.
- A6(a) - Letter No. B.P.1/352/2023 NMM dated, 07.07.2023 by Secretary, Nemom Block Panchayath to Adv. V. V. Rajesh BJP District President, Thiruvananthapuram.
- A6(b) - Copy of the minutes of the meeting held on 27.06.2023 at Kalliyoor Grama Panchayath Hall in connection with the no confidence motion against President.
- A7 - Postal Receipt
- A8 - Postal acknowledgement card addressed to Smt. V. Sudharma From BJP district committee office Thiruvananthapuram.
- A8(a) - Postal acknowledgement card addressed to Smt. V. Sudharma From BJP district committee office Thiruvananthapuram.

Documents produced on the side of the Witness

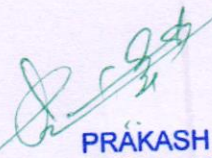
- X1 - Copy of the minutes of the meeting held on 27.06.2023 at Kalliyoor Grama Panchayath in connection with the no confidence motion against President.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

