

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

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

**Tuesday, the 5<sup>th</sup> day of November, 2024**

**O.P. No. 53 of 2023**

**Petitioner**

**: K. Salim Kumar,  
District Secretary,  
Communist Party of India  
K.T Jacob Smarakam  
Pinavu P.O., Idukki**

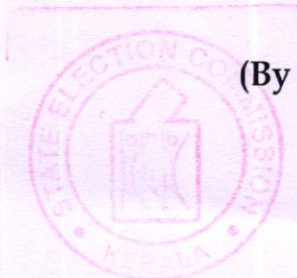
**(By Adv. Bobby K. Joseph)**

**Respondent**

**: Thangamudi P.  
S/o Ponnayah  
Tea Factory Quarters,  
Tea Factory, Periavara Estate,  
Munnar**

**(Member, Ward No.8,  
Munnar Grama Panchayat)**

**(By Adv. A. Santhosh Kumar)**





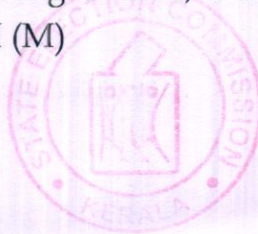
## ORDER

1. This is a petition filed under Section 3 and 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

The Petitioner's case in brief is as follows:

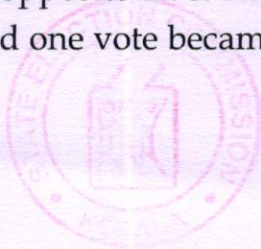
The Petitioner is the District Secretary of CPI, Idukki District and the Respondent is an elected member of Ward No: 8 of Munnar Grama Panchayat in general election, 2020. This petition is filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring the respondent, who is an elected member of ward No. 8 of Munnar Grama Panchayat, has committed defection and hence disqualified to continue as member of Munnar Grama Panchayat and also for declaring him as disqualified to contest as a candidate in any election to the local authorities for a period of six years.

2. The Petitioner's case in brief is as follows;- The petitioner is the Idukki District Secretary of the Communist Party of India ( CPI ). District Secretary is the person authorized by the political party to recommend the official symbol of the party "Ears of Corn and Sickle" to it's candidates. Respondent is the elected member of ward No. 8 of Munnar Grama Panchayat, who contested and elected as a candidate of CPI in the symbol "Ears of Corn and Sickle"
3. After the election, the respondent had given sworn declaration before the Secretary of the Munnar Grama panchayat stating his association with CPI political party as an elected member of CPI, which is part of LDF coalition. On the basis of the same, the Secretary of Munnar Grama Panchayat has prepared a Register showing the political association of the respondent as a member of CPI. On the basis of the same, the Secretary of Munnar Grama panchayat has prepared a Register showing the political affiliation of the respondent as an elected member of CPI, which is part of LDF coalition. Munnar Grama Panchayat is having a total strength of 21 elected members. Out of which, 11 members belong to INC, 8 members belong to CPI and 2 members belong to CPI (M)





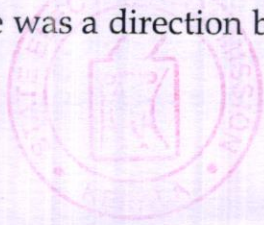
4. Meanwhile, casual vacancies in the office of President and Vice President arose in the Panchayat and Smt. Praveena Ravikumar and Sri. M Rajendran were elected as President and Vice President respectively of the panchayat in the election held on 03.01.2022. Thereafter Smt. Praveena Ravikumar resigned from the post of President on 27.06.2023.
5. Election to the said casual vacancy of President was scheduled to be held on 14.07.2023 at 11 am. LDF decided to field Smt. Jyothi Satishkumar, who is an elected member belonging to CPI, as a candidate for the post of President. Accordingly, the District Secretary of the CPI issued whip dated 09.07.2023 to all the elected members belonging to CPI, including the respondent. It was specifically directed in the whip to attend the meeting and cast his valid vote in favour of Smt. Jyothi Sathish Kumar, in the election to be held on 14.07.2023.
6. The whip was served directly to the respondent. But the respondent was reluctant to accept the whip. Therefore the whip was sent to the respondent by way of registered post with acknowledgment due. But it was returned unserved with the postal endorsement addressee "unclaimed". Since the whip was returned unclaimed, District Secretary of CPI authorized the Devikulam Mandalam Secretary of the CPI to serve the whip through affixation at the residence of the respondent. Accordingly the Devikulam Mandalam Secretary of the CPI served the whip to the respondent by affixture at the residence of the respondent in the presence of witnesses.
7. Further, the copy of the whip was communicated to the Secretary of the Munnar Grama panchayat as prescribed under rule 4 (2) the Kerala Local Authorities (Disqualification of Defected members) Rules, 2000. A copy of the whip was also given to the Returning Officer of Munnar Grama panchayat.
8. However, in the election to the office of President held on 14.07.2023, the respondent cast vote in favour of Smt. Deepa Rajkumar, the candidate fielded by the opposite INC. After the polling the LDF and INC got 10 votes each and one vote became invalid. Since Smt. Deepa





Rajkumar and Smt. Jyothi Satishkumar got equal number votes, the Returning Officer decided between them by lot. The Returning Officer mistakenly declared Smt. Deepa Rajkumar as elected. However, subsequently rectified the defect by declaring Jyothi Satishkumar as elected, as per the intervention of the State Election Commission.

9. Respondent disobeyed the whip issued by his political party CPI and voted in favour of Smt. Deepa Rajkumar, who was fielded by the INC. The respondent by his conduct voluntarily given up his membership from the CPI. The respondent is liable to be disqualified as a member of Munnar Grama panchayat and also liable to be disqualified to contest future elections for a period of 6 years.
10. Respondent's case in brief is as follows;- Petitioner is not competent to file this petition under the provisions of Kerala Local Authorities (Prohibition of Defection) Act. Respondent never contested election as an official candidate of CPI and the Idukki District Secretary of CPI has never issued any letter recommending the symbol of CPI to the respondent. Respondent was elected as per the mandate of people. The respondent never demanded for the official symbol of CPI, but considering his chance of winning the election, the political party rendered its support suo moto.
11. The respondent never given sworn declaration stating his affiliation towards CPI, before the Secretary of Munnar Grama panchayat. The respondent never accepted as a candidate of CPI and the respondent also never accepted that he belongs to CPI, but as a close aide-de-camp.
12. After General Election 2020, Smt. Manimozhy and Sri. Marsh Peter, both belong to INC, were elected as President and Vice President respectively of Munnar Grama Panchayat. Thereafter a no confidence motion was moved by LDF with the support of respondent to remove them from the office and it was carried. In the above casual vacancies of President and Vice President, Smt. Praveena Ravikumar and Sri. M Rajendran, both belong to INC were elected with the support of LDF. In the said election there was a direction by CPI political party to vote





in favour of said INC candidates. Viz. Smt. Praveena Ravikumar and Sri. M Rajendran.

13. Thereafter Smt. Praveena Ravikumar and Sri. M Rajendran have been disqualified by the State election Commission as per its order dated 12.10.2023. But beforehand Smt. Praveena Ravikumar was resigned from office of President. Sri. M Rajendran was removed from the post Vice President through no confidence motion. Due to the resignation of Smt Praveena Ravikumar a casual vacancy of President arose and fresh election to the said vacancy was scheduled to be held on 14.07.2023.
14. In the election held on 14.07.2023, LDF fielded Smt. Jyothi Satish kumar as a candidate for the post of President. INC fielded Smt. Deepa Rajkumar for the post of President. There is no direction or whip by District Secretary of the CPI to cast vote in favour of Smt.Jyothi Sathishkumar as alleged. In the last time respondent voted in favour of INC candidates viz. Praveena Ravikumar and M Rajendran for the post of President and Vice President. In the election held on 14.07.2023, there was no whip form the political party. Therefore respondent exercised conscience vote. The President was elected by draw of lot. There is no issuance of whip by registered post with acknowledgment due as mandated under the rules. There is also no affixture of whip at the residence of the respondent. The whip allegedly issued by the political party was never read over in the meeting to the hearing of the respondent. Content of the whip was never known to the respondent. There is no communication of whip to Secretary of Munnar Grama Panchayat.
15. The respondent never committed any acts of defection and therefore not liable to be disqualified under the Kerala Local Authorities (Prohibition of Defection) Act.
16. The evidence consists of oral testimonies of PW1 to PW5 and RW1 and documents Ext A1 to A10 and Ext. X1 to X3.



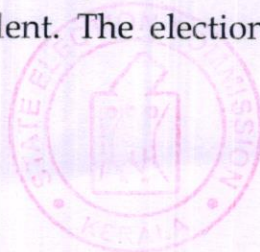


17. The following points arise for consideration

- a) Whether the respondent has disobeyed the decision and direction of CPI political party in the election to the office of President held on 14.07.2023 as alleged?
- b) Whether the respondent has voluntarily given up his membership from the CPI political party as alleged?
- c) Whether respondent has committed defection as contemplated under section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?

18. Point No. (1) to (3); - As common question of law and facts arise for consideration in these points, they are considered together for convenience and to avoid repetition. Petitioner in this case is the Idukki District Secretary of CPI. As per section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, if any question arise as to whether a member of a local authority has become subject to disqualification under the provisions of the Act, among others, the political party concerned may file a petition before the Commission for decision. Though in the objection, respondent had taken a case that he had contested the election from ward No. 8 not as a candidate of CPI, in the cross examination as RW1, he admitted that he was contested the election as a candidate of CPI. Respondent has also admitted that Ext.A1-sworn declaration was filed by him before the Secretary of the panchayat stating his political association with CPI. Ext.X3 is the certified copy of the party affiliation Register maintained in the panchayat office, which marked through PW2 Secretary of the panchayat. It is evident from Ext.A1 and X3 that respondent was contested and elected as a candidate of CPI. It is evident from the testimony of PW1 and Ext.A4 that petitioner Sri. K Salimkumar is the District Secretary of CPI. Therefore petitioner having *locus standi* to file the petition for determining the question of disqualification of the respondent under the provisions of Act.

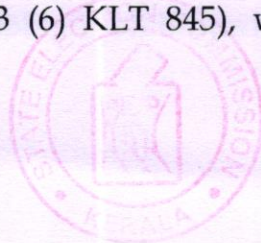
19. Admittedly, a casual vacancy in the office of President arose in the panchayat consequent to the resignation of Smt. Praveena Ravikumar, the then incumbent President. The election to the said vacancy of





President was scheduled to be held on 14.07.2023. The Returning Officer issued notice regarding the place, date and time of the election to all elected members, including the respondent.

20. CPI, after having discussions in the party, fielded Smt. Jyothi Sathishkumar, an elected member of ward No. 7, who belongs to CPI, as a candidate for the post of President. Accordingly Idukki District Secretary of the CPI issued whip to all elected members of the CPI, including the respondent, directing them to cast vote in favour of Smt. Jyothi Satishkumar in the election to be held on 14.07.2023. Copy of the whip dated 09.07.2023 and its translation in tamil language are marked as Ext A2. Ext. X1 and Ext. X1(a) are the original whip received by the Secretary of the panchayat, who was examined as PW2.
21. The respondent has a case that there is no service of whip to the respondent and contents of the whip was never known to the respondent. As regards of it, petitioner avers that whip was directly served to all elected members belonging to CPI, including the respondent. But when tendered it directly respondent was reluctant to accept the whip. Therefore the whip was served to the respondent through registered post with acknowledgment due, to his residential address. Ext.A3 is the postal receipt issued by the postal authorities in proof of registration of the article. Ext.A3 shows that the postal article addressed to the respondent was registered on 10.07.2023 at 13.48 hours. But the said postal article containing the whip was returned unserved to the sender with the endorsement addressee "unclaimed". The returned postal article is produced and marked as Ext. A4. It appears from Ext.A4 that before returning the postal article due intimation was given to the respondent to collect the same on 11.07.2023. During the cross examination of RW1, respondent admitted that the address shown in Ext.A2 whip is that of him. As a matter of fact Ext.A4 is given in the very same address shown in Ext. A2.
22. As regards of the service of whip to the respondent, petitioner relied on the judgment of Hon'ble High Court in *Praveena Ravikumar V State Election Commission* (2023 (6) KLT 845), wherein the Hon'ble High





Court held that "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 Kerala Local Authorities (Prohibition of Defection) Act. Otherwise, every wily recipient would be able to defeat the process of law by allowing the postal article to be returned as unclaimed". It appears that respondent was given intimation by the postal authorities on 11.07.2023. The date of election was on 14.07.2023. Therefore the dictum laid down in the said judgment is squarely applicable to the facts and circumstances of the case.

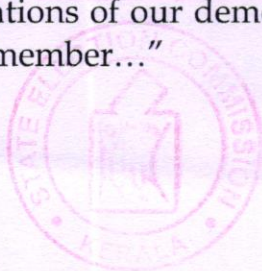
23. In addition to the service of whip through registered post, petitioner in his capacity as Idukki District Secretary of CPI, authorized Devikulam Mandalam Secretary of the CPI to serve the whip through affixture at the residence of the respondent. The authorization letter is marked as Ext. A5. Devikulam Mandalam Secretary who was examined as PW3, deposed that he served the whip to the respondent through affixture at the residence of the respondent in the presence of witnesses, who are examined as PW4 and PW5. The photographs taken at the time of affixture of whip are marked as Ext. A7 series. A per authorization, PW3 has also served copy of whip to Secretary of the panchayat and Returning Officer of the panchayat. The Secretary of the panchayat, who was examined as PW2 deposed before the Commission that the copy of the whip and tamil translation of the whip were duly received by him, which are marked as Ext.X1 and Ext.X1(a) respectively. The discrepancies pointed out by the Counsel for the respondent while cross examining the PW2 are not sufficient to discredit the testimony of the PW2.
24. Ext. A9 is the copy of minutes of election held on 14.07.2023. In the election, Smt. Jyothi Satishkumar, who belongs to CPI contested the election as candidate of CPI for the post of President. Her name was proposed by Sri. Ganesan, a CPI member and seconded by Smt. Reena S Muthukumar, a CPI (M) member. In the election INC fielded Smt. Deepa Rajkumar of ward No. 3 as their candidate. It is duly recorded in the Ext.A9 minutes that respondent cast his vote in favour of Smt. Deepa Rajkumar, the candidate fielded by INC. It shows that





respondent has not obeyed the whip issued by his political party and voted in favour of the candidate fielded by the opposite INC, in collusion with the INC.

25. The definite case of the respondent is that during the previous election, he had voted in favour of Smt. Praveena Ravikumar and Sri. M Rajendran, both INC members for the post of President and Vice President, as per the direction of CPI. In the election held on 14.07.2023, there was no direction from his political party. Therefore he followed the suit and voted in favour of the INC candidate. In view of clear proof of service of whip to the respondent, the above contention of the respondent would not hold good and only liable to be ignored. Moreover, from Ext. A9 Minutes, it is evident that at the beginning of the election to the post of President, the Returning Officer read out the contents of the whip issued by CPI, to the respondent.
26. Respondent has taken another contention that he was elected as per the mandate of people. He never demanded for the official symbol of CPI and considering his chance of winning the election, the political party rendered its support *suo moto*. In the election to the post of President held on 14.07.2023, there was no whip from the political party. Hence respondent exercised conscience vote in favour of the candidate fielded by opposite INC. In the present case, there is ample evidence to establish that respondent was contested and elected as a candidate of CPI. Therefore the above statements in the objection are quite inappropriate in the context of defection law.
27. The Hon'ble Supreme Court of India in the celebrated judgment in *Kihota Hollohan V Zachillhu* ( AIR 1993 SC 412) held that " any freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity, but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance-nay, indeed, it's very survival" Referring to the 10<sup>th</sup> Schedule to the Constitution of India, it was further observed that " the provision is to curb the evil of political defection motivated by lure of office or other similar considerations, which endanger the foundations of our democracy. The only remedy would be to disqualify the member..."





28. In *Eruthavoor Chandran and Another V. Kerala State Election Commission and Others* (2018 (5) KHC (DB), the Hon'ble High Court 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 Kerala Local Authorities (Prohibition of Defection) Act."
29. Further in *Rama Bhaskaran V Kerala State Election Commission* ( 2018 (2) KHC 126) the Hon'ble High Court held that " conduct of member of a political party, in acting against the interest of coalition, of which his political party is an integral component, would tantamount to his voluntarily giving up of membership of his political party."
30. 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 and direction of CPI, but failed to act in accordance with the political directive and acted hand in glove with INC members. 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.

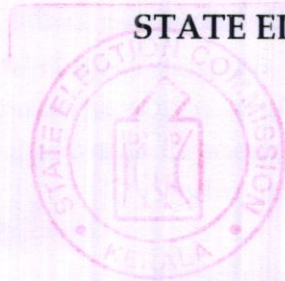
In the result OP is allowed and the respondent is declared as disqualified for being member Munnar Grama Panchayat as provided under section 3 (1) of the Kerala Local Authorities ( Prohibition of Defection) Act, 1999. The respondent is further declared as disqualified from contesting as a candidate in 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 5<sup>th</sup> day of November, 2024.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER





## APPENDIX

### Witness examined on the side of the Petitioner

- PW1 : Sri. K. Salim Kumar  
 PW2 : Sri. K. Sahajan K.N.  
 PW3 : Adv. Chandrapal T  
 PW4 : Sri. Sunil Kumar S  
 PW5 : Sri. V.P. Sivakumar

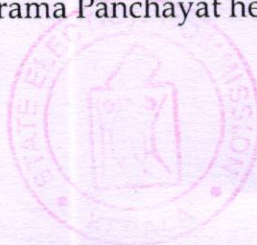
### Witness examined on the side of the Respondent

- RW1 : Sri. P. Thangamudi

### Documents produced on the side of the Petitioner

- A1 : Copy of the declaration in form No.2 in respect of Sri. P. Thangamudi, collected under RTI  
 A2 : Copy of the whip dated 09.07.2023 issued by District secretary, CPI to Sri. Thangamudi  
 A3 : Postal receipt  
 A4 : Returned Postal article addressed to Sri. Thangamudi, Ward No.8, Panchayat Member  
 A5 : Whip dated 10.07.2023 issued to Sri. Chandrapal T, Mandalam Secretary, CPI, Devikulam Munnar.  
 A6 : Whip dated 10.07.2023 issued to Sri. Thangamudi by District Secretary, CPI - Affixed copy  
 A7 : Photographs  
 A7(a) : Photographs  
 A7(b) : Photographs  
 A8 : Copy of the Whip served to the Secretary, Munnar Grama Panchayat with the endorsement by Secretary  
 A9 : Copy of the minutes of the meeting in connection with the election of President at Munnar Grama Panchayat held on 14.07.2023

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





A10 : Copy of the letter submitted under RTI by Adv. Chandrapal to the Returning Officer and Taluk Statistical Officer (PIO) Devikulam, Munnar

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

Nil

**Documents produced by Witnesses**

- X1 : Whip dated 09.07.2023 issued to Sri. Thangamudi, Member Ward No.8 Munnar Grama Panchayat by Secretary, CPI, Idukki District Committee
- X1(a) : Whip dated 09.07.2023 in Tamil language issued to Sri. Thangamudi
- X2 : Copy of the declaration in form No. 2 in respect of Sri. P. Thangamudi, Munnar Grama Panchayat.
- X3 : Copy of the register showing the party affiliation of the members of Munnar Grama Panchayat.

Sd/-  
A. SHAJAHAN  
STATE ELECTION COMMISSIONER

//True Copy//

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

