

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

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

Tuesday, the 25th day of February, 2025

O.P. No. 52 of 2023

Petitioner

: Jyothi Satheesh Kumar
W/o. Satheesh Kumar
Kannimalai Lower Division,
Kannimalai, Estate, Munnar
Idukki District - 685612

(Member, Ward No. 07,
Munnar Grama Panchayat)

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

Respondent

: V. Balachandran
S/o. Varadan,
GH Staff Quarters.
M/s TATA Tea Limited, Munnar,
Idukki District - 685612

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

(By Adv. A. Santhosh Kumar.)



ORDER

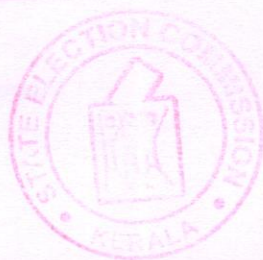
This is a petition filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that this respondent committed defection and hence disqualified to continue as member of Munnar Grama Panchayat and also for declaring him as disqualified to contest as candidate 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 Munnar Grama Panchayat representing ward No. 7 and 17 respectively. Respondent was contested and elected as an official candidate of Communist Party of India (Marxist) (hereinafter "CPI (M)) in the symbol "Hammer Sickle and Star", in the General Elections to local authorities held in 2020. It was the Idukki District Secretary of CPI (M) who recommended the official symbol of political party to the respondent for contesting the election. After the election, respondent filed sworn declaration before the Secretary of the Munnar Grama panchayat stating his political allegiance to CPI (M). On the basis of said declaration Secretary of the panchayat prepared a register, wherein it is stated that respondent is an elected member of CPI (M). Ext.A1 is the sworn declaration.
3. After the General Election, out of total 21 seats, the Indian National Congress (hereinafter "INC") secured 11 seats and Left Democratic Front (hereinafter "LDF") secured 10 seats. Thus INC secured majority in the Panchayat and accordingly Smt. Manimozhy and Sri. Marsh Peter, both belongs to INC were elected as President and Vice President respectively of Munnar Grama Panchayat. While so, no confidence motion was moved by LDF against the President and Vice President of the Panchayat. However,



Smt. Manimozhy resigned from the post of President prior to the meeting of no confidence motion. The no confidence motion against Vice President was carried and Sri. Marsh Peter was removed from the post.

4. In the subsequent election to the posts of President and Vice President held on 03.01.2022, Smt. Praveena Ravikumar and Sri. M Rajendran, both belong to INC were elected to the respective positions, with the support of LDF. However, subsequently Smt. Praveena Ravikumar resigned from the post of President.
5. Commission issued notification to fill the casual vacancy of President and Returning Officer, in turn issued election notice to the elected members of the panchayat, informing the date of election meeting scheduled on 14.07.2023. LDF took a decision to field Smt. Jyothi Satheeskumar, petitioner herein as its Presidential candidate. Accordingly, Idukki District Secretary of the CPI (M) issued specific directions by way of whip to both the elected members belonged to CPI (M), including respondent to vote in favour of Smt. Jyothi Satheeskumar in the election. When the whip was served directly to the respondent, he was reluctant to accept the whip. Hence the whip has been served through registered post with acknowledgment due on 12.07.2023. Ext.A2 is the original postal receipt. The copy of the whip and Tamil translation thereof are marked as Ext.A3 series.
6. The respondent, who was well aware of the contents of postal article avoided to claim it, even after intimation given by the postal authorities. Therefore the postal article was returned to the sender with the postal endorsement "addressee unclaimed". Ext.A4 is the returned postal article.



The whip was also served by political party to the respondent by affixture at his residence, in the presence of witnesses. Ext.A7 is the duplicate copy of the whip affixed. Ext.A5 series are the photographs evidencing affixture. The copy of whip was also communicated to the Secretary of panchayat as mandated under section 3 (2) of the Kerala Local Authorities (Prohibition of Defection) Act.

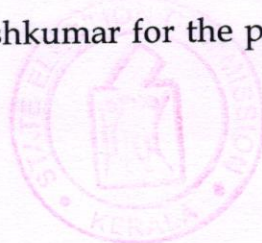
7. It is the case of petitioner that though the respondent has sufficient knowledge about the whip issued by his political party CPI (M), in the President election held on 14.07.2023 he voted in favour of Smt. Deepa Rajkumar, the candidate fielded by opposite INC for the post of President. However, both candidates secured equal number of votes and petitioner was elected by draw of lots.
8. It is further submitted by the petitioner that respondent colluded with opposite INC and in gross defiance of whip issued by his political party CPI (M) voted in favour of candidate fielded by INC and thereby the interests of CPI (M) and LDF are buried. The respondent by his conduct voluntarily abandoned his membership of CPI (M), which fielded him as a candidate in the General Election. Respondent has committed defection and liable to be disqualified under section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.
9. Respondent's case in brief is as follows;- Respondent is an elected member of Munnar Grama Panchayat representing ward No.17. The respondent is a person belonging to scheduled caste community, who contested from ward No.17, reserved for scheduled caste community. Subsequently, he was elected as a member of Finance Standing Committee of the Panchayat. It is



true that no confidence motion was moved by LDF for removing Smt. Manimozhy and Sri. Marsh Peter, both belongs to INC, from the posts of President and Vice President respectively. Consequently Smt. Manimozhy resigned from the post and Sri. Marsh Peter removed from the post of Vice President through no confidence motion.

10. In the subsequent election to the posts of President and Vice President Smt. Praveena Ravikumar and Sri. M Rajendran, both belong to INC were elected as President and Vice President respectively with the active support of LDF. Based on the said cause of action Sri. Marsh Peter filed OP No. 1/2022 and OP No. 2/2022 before the Hon'ble Commission on 07.01.2022 for disqualifying Smt. Praveena Ravikumar and Sri. M Rajendran as being elected members of the panchayat. During the pendency of original petitions against them, no confidence motion was moved for removing them from the posts, which was tabled for discussion on 22.02.2023. Respondent further alleged that in order to keep him away from the meeting of no confidence motion and to deny him the voting rights, the Secretary of the panchayat in collusion with LDF coalition created a letter of resignation purportedly executed by him and reported the so called vacancy of member to the Commission. However, Commission after a detailed enquiry found the alleged resignation as void and permitted the respondent to continue as elected member. Thereafter LDF was in animosity with respondent, which coerced them to file this petition.

11. Due to resignation of Smt. Praveena Ravikumar from the post of President, fresh election to the post was necessitated, which was scheduled to be held on 14.07.2023. There was no decision by the political party CPI (M) or LDF to field Smt. Jyothi Satheeskumar for the post. No communication either



verbal or documentary was given to the respondent regarding the said stand of political party or coalition. It is false and incorrect to state that Idukki District Secretary of the CPI (M) issued direction in writing to the respondent to vote in favour of Smt. Jyothi Satheeshkumar. There is no whip of any kind to the respondent as alleged. Respondent never voluntarily abandoned his membership of CPI (M) as alleged. He never floor crossed or supported the opposite faction. He was always and still loyal to his political party CPI (M). There is no violation of any direction issued by his political party. The LDF was in a hunt of a situation on any tactics to expel the respondent due to their hostility and abhorrence towards him. Respondent has never committed any act of defection as alleged. This petition may be dismissed with costs to the respondent.

12. The evidence in this case consists of oral testimonies of PW1 to PW6, RW1 and documents Exts A1 to A11 and X1 to X4.

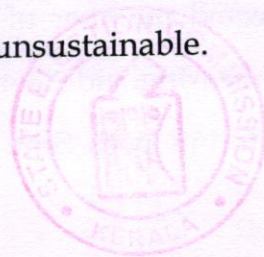
13. Both sides were heard.

14. The following points arise for consideration.

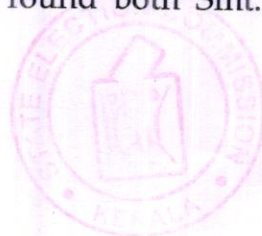
- (i) Whether respondent has disobeyed the decision and direction of the CPI (M) political party in the election to post of President held on 14.07.2023 as alleged?
- (ii) Whether respondent has voluntarily given up his membership of CPI (M) political party as alleged?
- (iii) Whether respondent has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



15. 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 and respondent are admittedly elected member of Munnar Grama Panchayat representing ward No. 7 and 17 respectively. Admittedly, petitioner belongs to CPI and respondent belongs to CPI (M), both constituents of LDF coalition. The said fact is also evident from Ext. A1 declaration and Ext X2 party affiliation register. This petition is filed by the petitioner seeking disqualification of the respondent as being a member under section 3 (1) (a) of the Act. As per section 4 of the Act, *inter alia* a member of local authority concerned is competent to file a petition before the Commission for disqualifying an member section 3 (1) (a) of the Act. No dispute with regard to the *locus standi* of the petitioner has been raised by the respondent in his objection. However, in the affidavit *in lieu of* chief examination filed, respondent has raised a contention that petitioner being an elected member of CPI has no *locus standi* to file a petition against the respondent, who belongs to CPI (M), another political party, as his political party has no complaints against him. The said contention has no bearing and unsustainable in the light of relevant provisions of section 4 of the Act. Moreover, it is well settled that in the absence of pleading, evidence, if any produced by parties cannot be considered. Moreover, it has come out in evidence of PW1 that the petition against the respondent was filed as per the decision taken in the LDF and documents pertaining to the case were made available by the District Secretary of the CPI (M). District Secretary confirmed it when examined as PW3. Therefore contention of the respondent in this regard is unsustainable.



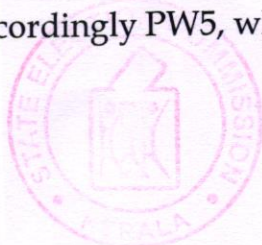
16. There is no dispute with regard to the political party position in the Munnar Grama Panchayat. Out of the total 21 seats, INC secure 11 seats and LDF secured 10 seats. Thus INC secured majority of seats in the Panchayat. Accordingly elected members of INC viz. Smt. Manimozhy and Sri. Marsh Peter were elected as President and Vice President respectively. While so, LDF members in the panchayat moved no confidence motion against the President and Vice President. Smt. Manimozhy resigned from the post prior to the meeting of no confidence motion. Later on, no confidence motion against Vice President was carried on 10.12.2021 and Sri. Marsh Peter was removed from the post.
17. In the casual vacancy of President and Vice President arose consequent to resignation or removal of Smt. Manimozhy and Sri. Marsh Peter respectively, fresh election to the posts of President and Vice President held on 03.01.2022. INC having majority in the panchayat fielded Smt. Deepa Raj kumar for the post of President. It has come out of the evidence of RW1 that LDF supported Smt. Praveena Ravikumar, an elected member of INC for the post of President. Another member of INC Sri. M Rajendran also voted in favour of Smt. Praveena Ravikumar. Hence Smt. Praveena Ravikumar has become the President of Munnar Grama Panchayat in the election held on 03.01.2022 with the support of LDF.
18. Thereupon Sri. Marsh Peter filed petition before the Commission under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act seeking the disqualification of Smt. Praveena Ravikumar and Sri. M Rajendran as being elected member of the panchayat. Commission after adducing evidence and hearing, vide Common order dated 12.10.2023 in OP 01/2022 and 02/2022 found both Smt. Praveena Ravikumar and Sri. M



Rajendran as disqualified under section 4 (3) of the Act. The WP(C)s filed against the common order dated 12.10.2023 was dismissed by the Hon'ble High Court confirming the decision of the Commission.

19. Before the outcome of OP 01/2022 and 02/2022, Smt. Praveena Ravikumar resigned from the post of President of the panchayat on 27.06.2023. In the casual vacancy of President arose consequent to resignation, Commission issued notification for fresh election. Accordingly, the Returning Officer issued election notice to all elected members of the panchayat informing the date of election scheduled to be held on 14.07.2023. LDF took a decision to field petitioner Smt. Jyothi Satheeshkumar as its candidate for the post of President. The Idukki District Secretary of CPI (M), who had recommended the symbol of CPI (M) to its candidates, issued whip dated 11.07.2023 to both the elected members belonging to CPI (M), including the respondent. The whip and Tamil translation thereof are marked as Ext.A3 series. It was directed in the whip to vote for Smt. Jyothi Satheeshkumar in the election to be held on 14.07.2023.

20. The whip was sent to the respondent through registered post with acknowledgement due. Petitioner has produced the original postal receipt dated 12.07.2023 in proof of despatch of whip in the residential address of the respondent. Postal receipt is marked as Ext.A2. However, the postal article containing the whip was returned unserved to the sender, with the postal endorsement " addressee unclaimed". Ext.A4 is the returned postal article. Meanwhile it was decided in the meeting of Mandalam Committee of LDF held on 11.07.2023 to serve whip to the respondent by affixture at the residence of the respondent. Minutes of the meeting held on 11.07.2023 is marked as Ext.A10. Accordingly PW5, who is the Munnar Area Secretary



of CPI (M) served the whip along with Tamil translation thereof, by affixture at the residence of the respondent, in the presence of witnesses PW4 and PW6. It seems from the duplicate copy of whip, which is marked as Ext.A7 that proper endorsement as to the affixture of whip is made by PW5, in the presence of PW4 and PW6. Ext.A5 series are the photographs taken at the time of affixture of whip. Copy of the whip was duly communicated to the Secretary of the Munnar Grama Panchayat as evident from Ext.A11.

21. In the election to the post of President held on 14.07.2023, Smt. Jyothi Satheeshkumar and Smt. Deepa Rajkumar were contested for the post as candidates of LDF and INC respectively. Respondent cast his vote in favour of Smt. Deepa Rajkumar, the candidate fielded by INC, as evident from Minutes of the election held on 14.07.2023, which is marked as Ext.A6. During the cross examination as RW1, respondent admitted the fact that he had voted in favour of Smt. Smt. Deepa Rajkumar, the candidate fielded by INC . The respondent has not acted according to the directives of his political party. Smt. Praveena Ravikumar and Sri. M Rajendran, both elected members belong to INC voted in favour of Smt. Jyothi Satheeshkumar, candidate fielded by LDF. Sri. P. Thangamudi, elected member of CPI voted in favour of Smt. Deepa Rajkumar. However, unfortunately the vote cast by Smt. Deepa Rajkumar become invalid. Therefore, both Smt. Deepa Rajkumar and Smt. Jyothi Satheeshkumar secured equal number of votes. Therefore, Returning officer decided between those candidates by lot. The Returning Officer mistakenly declared Smt. Deepa Rajkumar as elected. However, he subsequently on the same day rectified the defect by declaring Smt. Jyothi Satheeshkumar as elected. It is pertinent to note that Commission as per order dated 05.11.2024 in O P No. 53/2023 disqualified



Sri. P Thangamudi as elected member of the panchayat as per the provisions of section 4 (3) of the Kerala Local Authorities (Prohibition of Defection) Act based on his erring conduct during the election held on 14.07.2023.

22. Petitioner's case is that respondent acted in defiance of the whip issued by the Idukki District Secretary of the CPI (M) in the election held on 14.07.2023. By his conduct respondent has voluntarily abandoned his membership of CPI (M) political party by moving with the INC by floor crossing any by voting in support of the INC candidate in the election held on 14.07.2023.
23. The specific case of the respondent is that there was no decision by CPI (M) or LDF to field Smt. Jyothi Satheeshkumar as a candidate for the post of President. No communication either verbal or documentary was given to him regarding any direction to vote for Smt. Jyothi Satheeshkumar. There is no specific direction in this regard from Idukki District Secretary of CPI (M). However, petitioner has examined the Idukki District Secretary of the CPI (M) as PW3, who categorically deposed before the Commission that the decision to field Smt. Jyothi Satheeshkumar as LDF candidate was taken by CPI (M) and LDF after deliberating the views of LDF members in the panchayat. He further stated that he had issued whip in this regard to elected members of CPI (M), including the respondent. Respondent was reluctant to accept the whip when it was directly served and therefore the whip was served to him by registered post. However, it was returned unserved with the postal endorsement "addressee unclaimed". He identified the returned postal article, which is marked as Ext.A4. In addition to it, the whip was served to the respondent through PW5, who is the Munnar Area Secretary of CPI (M), by affixture at the residence of the respondent as evident from Ext.A7.

