

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

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

Thursday, the 23rd day of October, 2025

O.P.No.15-16/2024

O.P.No.15/2024

Petitioner

: R. Ajayakumar
S/o Raveendran Nair,
Vaishnavam, Kunnikkodu P.O.
Vilakkudy, Pathanapuram
Kollam, Pin-691508

(Member, Ward No.18,
Vilakkudy Grama Panchayat)

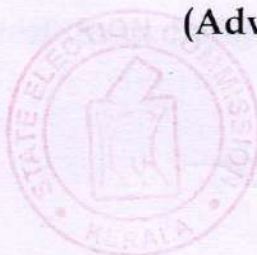
(Adv.V.R.Soji)

Respondent

: K. R. Sreekala
W/o Girishlal
Koppara Thazhethil,
Vilakkudy P.O.
Pathanapuram, Kollam
Pin-691508

(Member, Ward No.03,
Vilakkudy Grama Panchayat)

(Adv. Pallichal S. K. Pramod)



O.P.No.16/2024

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Vilakkudy, Pathanapuram
Kollam, Pin-691508

(Member, Ward No.18,
Vilakkudy Grama Panchayat)

(Adv.V.R.Soji)

Respondent : Rajeena Thomas
W/o late Thomas
Cheriyapura Veedu
Elampal.P.O, Pathanapuram
Kollam. Pin-691508

(Member, Ward No.14,
Vilakkudy Grama Panchayat)

(Adv. Pallichal S. K. Pramod)

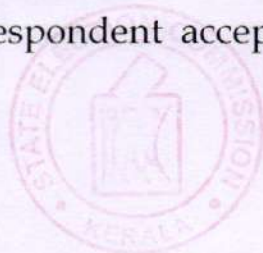
COMMON ORDER

These original petitions are filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that respondents herein committed defection and hence disqualified to continue as elected members of Vilakkudy Grama Panchayat and also for declaring them as disqualified to contest as candidate in any election to



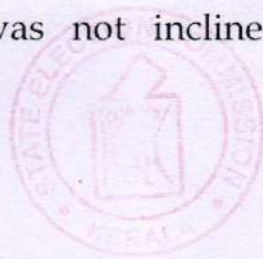
the local authorities for a period of six years. Since common questions of law and facts arise in both the cases, they are tried together, as OP No. 15/2024 as leading case.

2. The petitioner's case in brief is as follows; - Petitioner and respondents are elected members of Vilakkudy Grama Panchayat representing ward 18,3 and 14 respectively. They were contested and elected as candidates of Indian National Congress (hereinafter INC) in the election to the local authorities held in 2020. The District President of the INC has recommended the symbol of INC to the respondent for contesting from the respective wards. After the election respondents filed sworn declarations before the Secretary of the panchayat stating their political allegiance to the INC. On the basis of the same Secretary of the panchayat prepared a Party Affiliation Register, wherein also it is stated that respondents are elected members of the INC.
3. There are 20 members in the Vilakkudy grama panchayat. Out of which 10 members belonging to INC, 9 members belonging to LDF and 1 member belonging to BJP. Thus, INC got majority of seats in the panchayat. After the General Election, Smt. Adabiya Nazarudeen and Shahul Kunnikode, both belongs to INC were elected as President and Vice President respectively of the panchayat. However, subsequently on 01.01.2024 they resigned from the posts as per understanding in the INC.
4. Fresh election to the posts of President and Vice President scheduled to be held on 25.01.2024. Prior to the election District President of the INC convened a meeting of the Parliamentary Party of the INC on 19.01.2024 at 11 am to discuss about the ensuing election. All the elected members of the INC in the panchayat, except respondents were present in the meeting. It was decided in the meeting to field Smt. Asha Biju, the petitioner herein and Sri. R Ajayakumar as INC candidates for the posts of President and Vice President respectively. Accordingly, District President of the INC issued whip to all elected members belonging to INC and served the whip through Block President of the INC Sri. TM Biju. All the elected members of the INC except the respondent accepted the whip when it served



directly. Therefore, the whip was sent to the respondents through registered post on 19.01.2024. However, the registered article containing the whip was returned unserved to the sender with the postal endorsement "addressee refused". In addition to the above, whip was served to the respondents by affixture at the residence of the respondents in the presence of the witnesses. Though District President of INC has served whip to the respondents by Courier, it was wilfully refused by the respondents.

5. In the election to the post of Vice President held on 25.01.2024 at 2.30 pm, all the elected members except, the Smt. Rajeena Thomas, the respondent in OP 16/2024 were present. The direction issued by the District President of the INC was read over in the meeting. Therefore, respondents have sufficient knowledge about the decision and direction of the political party. Petitioner Sri. R Ajayakumar stood as the candidate of INC as decided. LDF fielded Karikkathil K Thankappan Pillai, who belongs to Kerala Congress (B) one of the constituents of LDF as their candidate. In the subsequent polling elected member of INC Smt. K R Sreekala voted for Karikkathil K Thankappan Pillai, the candidate fielded by LDF instead of petitioner. Respondent Smt. Rajeena Thomas abstained from voting. Thus, Karikkathil K Thankappan Pillai got 10 votes in the Vice Presidential election as against 8 votes secured by petitioner. Respondents acted in defiance of the whip issued by their political party and thereby voluntarily given up membership of INC, in whose banner they were elected as members. Respondents committed defection and therefore liable to be disqualified under the provisions the Kerala Local Authorities (Prohibition of Defection) Act.
6. The respondents' case in brief is that; -Respondents were originally active members of Kerala Congress (M). During the General Election 2020, respondent Smt. K R Sreekala claimed ward 3 Kulappuram and respondent Smt. Rajeena Thomas claimed ward 14 Cheeyodu, where they were elected members during 2010-2015 as candidate of Kerala Congress (M). However, LDF was not inclined to accept the demands of



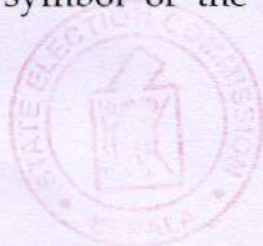
respondents. Then respondents decided to contest election from the respective wards as independents. The UDF leaders approached respondents and assured support to the respondents on the condition that they will provide election symbol. Though respondents were very particular in contesting election as independents, INC without the knowledge and consent of the respondents managed to provide the election symbol of the INC party to them. Respondents are not elected members belonging to INC. The alleged recommendations of election symbol of INC by the District President is not known to the respondents.

7. It is true that the total strength of Vilakkudy Grama Panchayat is 20. However, the party position stated in the petition is not correct. INC secured only 8 seats and respondents are independent elected members and not belonged to INC political party as alleged. The respondents were not aware of the alleged parliamentary party meeting held on 19.01.2024. Respondents are not legally or morally bound to attend such a meeting. The alleged whip issued by the District President of the INC, which executed through Sri. T M Biju is not at all binding to the respondents. Copy of such whips can only be served through parliamentary Secretary of the INC. However, no person was elected as Parliamentary party Secretary of the party. Therefore, T M Biju is not competent to serve the whips. Admittedly Sri. T M Biju issued an article and respondents have at the liberty to refuse the article. No copy of the whip was served to the Secretary of the panchayat in the manner prescribed under the statutory provisions.
8. The respondents are not elected members belonging to INC and as such the issuance of whip, its service through affixture etc are not binding on the respondents. The respondents have not committed any act of defection in the elections held on 25.01.2024. Respondents are not members of INC and therefore no question of voluntarily giving up membership arise. Respondents were elected members of the Kerala Congress (M) before the General Election 2020 and even thereafter has no political affiliation with INC. There are no wilful latches on the part of respondents in exercising



vote in favour of Sri. R Ajayakumar in the Vice Presidential election. There is no collusion with LDF as alleged. The petition is devoid of merit and hence liable to be dismissed.

9. The evidence in this case consists of oral testimonies of PW1 to PW5, RW1 to RW3 and documents Ext.A1 to A23.
10. Both sides were heard.
11. The following points arise for consideration, namely; -
 - I. Whether respondents were contested and elected as candidates of INC in the General Election to local authorities held in 2020.
 - II. Whether respondents were aware of the decision of INC to field Sri. R Ajayakumar as the Vice Presidential candidate of the INC in the election held on 25.01.2024?
 - III. Whether respondents have disobeyed the decision and direction of the INC in the Vice Presidential election?
 - IV. Whether respondents have voluntarily given up membership of INC political party as alleged?
 - V. Whether respondents have committed defection as contemplated under section 3(1) (a) of the Act?
12. Point No. (i) to (v); - As common questions of law and facts are arise for consideration on these points, they are considered together for convenience and to avoid repetition. Admittedly, petitioner and respondents are elected members of the Vilakkudy Grama Panchayat representing ward 18,3 and 14 respectively. There is no dispute regarding the *locus standi* of the petitioner to file the petition under section 3(1) (a) of the Act. However, respondent specifically denied the allegation that they were contested and elected as candidates of INC in the General Election to local authorities held in 2020. However, during the General Election 2020, LDF was reluctant to concede the demands of the respondents to contest from these wards again. Therefore, respondents were decided to contest the election as independents. Then the INC approached the respondents and assured support to the respondents on a condition that they will provide the symbol of the political party to them. Though



respondents were very particular in contesting the election as independents, INC without the knowledge and consent of the respondents managed to recommend the symbol of the political party to respondents. The alleged recommendation of the party symbol of INC is not known to the respondents. Respondents are not elected members belonging to INC.

13. However, during the examination as District President of INC as PW4, he stated that respondents were contested as candidate of INC in the General Election held in 2020. Petitioner produced the certified copy of the extract of the nomination obtained under Right to Information Act as Ext.A21. It is specifically stated in Ext.A21 that respondents contested and elected as candidate of INC in the election symbol 'hand'. Respondents have also failed to adduce any material that they were contested as independents. Further, respondents in their objection admitted the fact that INC had recommended the symbol of the political party to them for contesting election from their respective wards. Respondents while cross examination as RW2 and RW 3 respectively specifically admitted that they contested in 2020 General Election as a candidate of INC in the symbol "Hand". Respondents have further admitted that INC supported them in winning elections as against the candidates fielded by LDF in the wards.

14. The Hon'ble High Court in *Jiji Thomas and Others V Kerala State Election Commission and another* (Judgment dated 26.09.2024 in W P (c) No. 26132/2024) examined the above aspect and held the legal position as follows

"27. Further, on such allotment of the election symbol " Football" to the RMPI candidates, the legal consequences as envisaged in proviso to Paragraph 8 (i) of the symbols Order, 2017 would also set in and the respective candidate who has been allotted the election symbol " Football" solely on the basis of priority letter issued by RMPI, would be deemed to be set up by said Political Party."

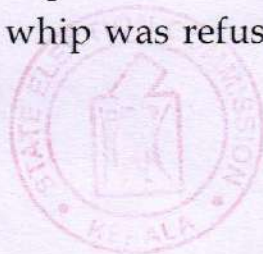
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Further, the Explanation to section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 explicitly provides that for the purpose of section 3 (Disqualification on the ground of Defection) an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was set up or given support as a candidate for the election."

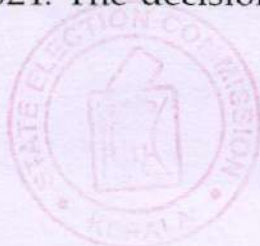
Therefore, in view of the explanation to section 3 of the Act the irresistible conclusion is that respondents were contested and elected as candidates of INC from their respective wards.

15. Further, the election to the office of President was scheduled to be held on 25.01.2024 at 2.30 pm. PW4, the District President of the INC categorically stated that he had convened the Parliamentary party meeting of the elected members of the panchayat on 19.01.2024 at DCC office to discuss the stand of the political party in the Presidential election and in the meeting, it was decided to field Sri. Ajayakumar, petitioner herein as a candidate for the post of Vice President. The Minutes of the Parliamentary party meeting is marked as Ext.A12. However, respondents were not turned up in the meeting. PW4 further deposed that he had authorised PW5, Thalavoor Block President of INC to serve the whip to the respondents. In the objection respondents have taken a case that parliamentary secretary of the political party alone is competent to serve whip to its elected members and as such PW5 is not competent to serve the whip to the respondents. However, on going through the provisions Kerala Local Authorities (Disqualification of Defected members) Rules it appears no substance in the above contention of the respondents.
16. PW5, who is one of the participants of the Parliamentary party meeting deposed that he served whip to all elected members of the INC in the panchayat directly. However, respondents were reluctant to accept the whip. Therefore, the whip was served to the respondents by registered post. Ext.A3 and A4 are the postal receipts in proof of despatch of whip to the addresses of the respondents on 19.01.2024. However, the postal articles containing the whip was refused by the respondents and it was



returned unserved to the sender on 23.01.2024 with the postal endorsement "addressee refused". The returned postal articles are marked as Ext.A5 and A6. Ext.A5 and A6 shows that due intimations were given by the postal authorities before returning the postal articles. Ext.A23 is the Delivery Manifest issued by the Postal Department. Respondents have no case that it was not sent in the correct addresses of the respondents. Petitioner further produced the ExtA7 and A8 receipts dated 20.01.2024 issued by the Professional Courier in proof of despatch of the whip to the respondents by PW4 himself. Ext.A9 and A10 are the returned unserved articles. PW4 identified the documents and confirmed it.

17. 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)
18. According to the petitioner, in addition to the despatch of whip through registered post, the whip was served to the respondent by affixture at the residences of the respondents in the presence of the witnesses. Petitioner examined PW5 who was authorised by PW4 to serve the whip to the respondents. PW5 deposed before the Commission that he along with PW2 Rahul and PW3 Sri. C R Surya Prakash and one Sri. Anish Khan undertaken affixture of whip at the residences of the respondents. As the respondents were reluctant to accept the whip directly at their residences, they affixed the whip at the residences in the presence of witnesses on 23.01.2024. Ext.A13 and A14 are the reports and mahazer of the service of whip prepared and signed by PW2 in the presence of witnesses. Ext.A19 series are the photographs taken at the time of affixture of whip. It proved through PW2 Rahul, who is a professional photographer. Ext.A20 is the text message sent to the mobile phone of the respondent. The original of these documents is already marked from the side of the petitioner in OP No.13/2024 and OP 14/2024. The decision and direction of the political



party was made known to the respondents by all means. Therefore, there is every reason to believe that respondents were aware of the decision and direction of the INC prior to the election held on 25.01.2024. Ext.A11 is the acknowledgment of receipt issued by the panchayat Secretary in token of acceptance of whip. Therefore, there is enough evidence on the record that the whip was properly served to the respondents and Secretary of the panchayat as mandated under rule 4 (2) and respondent was aware of the stand of her political party well before the Vice Presidential election held on 25.01.2024.

19. It has come out in evidence that there are 20 members in the Vilakkudy grama panchayat. Out of which 10 members belonging to INC, 9 members belonging to LDF and one BJP. Therefore, INC got majority of seats in the panchayat. Ext.A15 minutes of the Vice President election held on 25.01.2024 would go to show that all the elected members of the panchayat, except Smt. Rajeena Thomas the respondent in OP 16/2024 were present in the election meeting held on 25.01.2024. It further shows that name of Sri. R Ajayakumar petitioner herein for the post of Vice President was proposed by Sri. Shahul Kunnikode and seconded by Smt. Usaiba Beevi, both INC members. The name of LDF candidate Karikkathil K Thankappan Pillai was proposed by Smt. Rekha Vinu and seconded by Sri. Vishnu B, both LDF members. Ext.A15 minutes further shows that all elected members of INC except respondents voted for Sri. R. Ajayakumar petitioner herein, the official candidate of INC. RW2 Smt. K R Sreekala has also not denied the fact that she voted in favour of LDF candidate Karikkathil K Thankappan Pillai. Respondent Smt. Rajeena Thomas abstained from the election meeting. It is pertinent to note that even in the Chief affidavit filed by respondent Smt. Rajeena Thomas as RW3 she has no case that her abstinence in the meeting was not deliberate. Therefore, there is substance in the contention of the petitioner that Smt. Rajeena Thomas purposefully abstained from the meeting. Ext.A15 minutes further shows that the official candidate of INC got only 8 votes. Smt. K R Sreekala the respondent in OP 15/2024 voted for LDF candidate



Karikkathil K Thankappan Pillai. On the support of Smt. K R Sreekala, the LDF candidate Sri. Karikkathil K Thankappan Pillai secured 10 votes and elected as Vice President of the Vilakkudy grama panchayat.

20. The subsequent conduct of the respondents as revealed from Ext.A22 series minutes also relevant. It has come out in evidence from the Minutes dated 15.02.2014 of the Development Standing Committee that Smt. Rajeena Thomas, respondent in OP 14/2024 was elected as member of Development Standing committee with the support of LDF members by defeating the candidate fielded by INC Smt. Abadiya Nazarudeen. Thereafter Smt. Rajeena Thomas, respondent in OP 14/2024 was elected as the Chairman of the Development Standing committee with the support of LDF members in the Standing Committee by defeating the candidate of INC Smt. S Lathika. During the cross examination of Smt. Rajeena Thomas, the respondent as RW3 she admitted the fact that she is presently holding the post of President of the panchayat with the support of LDF. It also evident from Ext.A16 and A17 Minutes that INC political party has initiated disciplinary proceedings against the respondents for their conduct in the elections held on 25.01.2024.
21. In *Lissy Valsalan V Suja Salim and Another* (2015 (3) KHC 968) the Hon'ble Division Bench of High Court held that where a member of a political party is aware of the decision taken by the political party but 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 the Kerala Local Authorities (Prohibition of Defection) Act.
22. In reaching the above conclusion, the Hon'ble High Court had referred to the decision in *Kihoto Hllohan V Zachillhu* ((1992) Supp 2 SCC 651, where the Supreme Court had explained the objectives of the 10th Schedule to the Constitution in the following passage: -
"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 its which, in the



ultimate analysis, is its source of sustenance-nay, indeed, its very survival. "referring to the object behind the 10th Schedule to the Constitution of India dealing with disqualification on the ground of defection, it was held therein that," 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." The Father of our Nation had foreseen the possibility of such cancerous and endangering tendencies in the practice of democracy and hence only the Mahatma said that politics without principle is a vice. No doubt politics is an art. But the beauty of the art is lost when no value is attached to the art. It is to check erosion of the values in democracy the 10th Schedule to the Constitution of India and the Kerala Local Authorities (Prohibition of Defection) Act, 1999 were brought into force"

23. When the Vice Presidential election held on 25.01.2024, the candidate nominated by INC could have won the election, if all INC members voted for their candidate. The respondent in OP 15/2024 who were directed to vote in favour of candidate fielded by LDF. The respondent in OP 16/2024 abstained from the election meeting in support LDF candidate. Respondents rendered all aid and support to LDF in defeating the candidate fielded by her own political party. The said acts are nothing but a disloyalty, attracting disqualification under the Act. That conduct itself is sufficient to prove that respondents had voluntarily given up membership of INC. There is also evidence on record that respondent acted contrary to the directions issued by their political party INC. There is clear element of *quid pro que* in the transaction between LDF and both the respondents as evident from Ext.A22. By the conduct of respondents, INC lost governance of the panchayat, though majority in the panchayat. LDF with the support of respondents could effectively prevent the continuance of INC rule in the panchayat. There are clear elements of collusion with LDF and shifting of political loyalty to LDF by the conduct of the respondents.



In the result, OPs are allowed and the respondents are declared as disqualified for being a member of Vilakkudy Grama Panchayat as provided under section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. The respondents are 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.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

- PW1 - Sri. Ajayakumar
PW2 - Sri. Rahul R.
PW3 - Sri. C. R. Suryanath
PW4 - Sri. P. Rajendra Prasad
PW5 - Sri. T. M. Biju

Witness examined on the side of the Respondent

- RW1 - Sri. Suresh M. S.
RW2 - Smt. K. R. Sreekala
RW3 - Smt. Rajeena Thomas

Documents produced on the side of the Petitioner

- A1 - Copy of the whip dated, 19.01.2024 issued by Sri. Rajendra Prasad, DCC President Kollam to Smt. K. R. Sreekala
A2 - Copy of the whip dated, 19.01.2024 issued by Sri. Rajendra Prasad, DCC President Kollam to Smt. Rajeena Thomas
A3 - Copy of the postal receipt.
A4 - Copy of the postal receipt.
A5 - Copy of the returned postal article addressed to Smt. K. R. Sreeekala.
A6 - Copy of the returned postal article addressed to Smt. Rajeena Thomas.
A7 - Copy of the courier receipt addressed to Smt. K. R. Sreekala



- A8 - Copy of the courier receipt addressed to Smt. Rajeena Thomas
- A9 - Copy of the returned courier article addressed to Smt. K. R. Sreekala
- A10 - Copy of the returned courier article addressed to Smt. Rajeena Thomas
- A11 - Copy of acknowledgement receipt dated, 20.01.2024 issued by Secretary, Vilakkudy Grama Panchayat.
- A12 - Copy of the minutes of meeting held at District Congress Committee office Kollam, dated 19.01.2024
- A13 - Copy of the mahazar of affixture of whip at the residence of Smt. K. R. Sreekala.
- A14 - Copy of the mahazar of affixture of whip at the residence of Smt. Rajeena Thomas.
- A15 - Copy of the minutes of meeting held on 25.01.2024 in Connection with the President election of Vilakkudy Grama Panchayat.
- A16 - Copy of the letter dated, 31.01.2024 issued by Sri. D. Rajendra Prasad, District Congress Committee President, Kollam to Smt. K. R. Sreekala
- A17 - Copy of the letter dated, 31.01.2024 issued by Sri. Rajendra Prasad, District Congress Committee President, Kollam to Smt. Rajeena Thomas.
- A18 - Copy of the photographs.




- A19 - Copy of the photographs.
- A20 - Copy of the Whatsapp screen shot
- A21 - Copy of the candidate list of Ward No. 03 (Kulappuram)
& Ward No. 14 (Cheeyodu) of Vilakkudy Grama Panchayat.
- A22 - Copy of the minutes of the meeting held on 15.02.2024 in
connection with the Standing Committee elections of
Vilakkudy Grama Panchayat.
- A23 - Copy of the letter dated, 27.06.2024 issued by Superintendent
of Post Offices Pathanamthitta Division to Adv. T. M. Biju

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

