

**BEFORE THE KERALA STATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM  
PRESENT: SHRI.A SHAJAHAN, STATE ELECTION COMMISSIONER  
Tuesday, the 29<sup>th</sup> day of October, 2024**

**O.P. No.33/2022**

**Petitioner**

: Hemalatha S  
W/o Murali M  
S.P. Lane  
Malampuzha,  
Malampuzha Dam  
Palakkad

**Member:** Ward No.12,  
Malampuzha Grama Panchayat

**(By Adv. P.T. Ajmal & Sajitha S)**

**Respondent**

: Salaja Suresh  
W/o Suresh  
Valiyakkadu  
Annakal P.O  
Malampuzha,  
Palakkad

**Member:** Ward No.02,  
Malampuzha Grama Panchayat

**(By Adv. Vazhuthacaud R. Narendran Nair  
& Saji S.L)**





ORDER

1. This petition is filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that respondent, who is an elected member of ward No. 2 of Malampuzha Grama Panchayat, has committed defection and hence disqualified to continue as member of Malampuzha Grama Panchayat and also for declaring her 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 and respondent are the elected members of ward No.12 and 2 respectively of Malampuzha Grama Panchayat, who were elected in the General Election to the local authorities held in December, 2020. The petitioner was contested and elected as a candidate of Indian National Congress. The respondent was contested and elected from ward No. 2 as an independent candidate without any support from a political party or coalition. In ward No. 2 there were candidates of LDF, UDF and BJP in fray. One Smt. Sali Varghese was contested as an independent candidate supported by LDF, in the symbol "football"
3. There are 13 wards in Malampuzha Grama Panchayat and after the election LDF and BJP secured 5 seats each and UDF secured 2 and independent (respondent) secured 1 seat. Thereafter with the support of respondent, being an independent member, LDF came to power in the panchayat. While going so, no confidence motion against the President and Vice President of the panchayat, who belong to LDF, was moved by opposite BJP and it was considered in the meeting held on 21.10.2022 and 22.10.2022 respectively.
4. On 21.10.2022 before the discussion on no confidence motion, the respondent openly declared that she is a member of CPI and same was informed in the panchayat. She has also stated that if any member have any doubt regarding the fact, they can verify the documents submitted by her in the panchayat after the election. Immediately the petitioner and certain other members of the panchayat verified the declaration submitted by the respondent and found that after the election respondent joined CPI, a constituent of LDF coalition. Respondent voluntarily abandoned her status as an independent member not belonging to a political party or coalition and joined the CPI, a constituent of LDF after the election. The respondent has committed defection and thereby incurred





disqualification under section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

5. Respondent's case in brief is as follows; - Petitioner has no cause of action against the respondent. The original petition is not maintainable. The respondent contested and elected as an independent candidate of CPI and not as an independent candidate not belonging to any political party or coalition as alleged by the petitioner. It is clearly stated in the Party affiliation Register that respondent was contested and elected as an independent candidate of CPI, a constituent of LDF. Further, in the election campaign poster published by LDF during the election, it is clearly stated that the respondent is contesting as an independent candidate of LDF in the election symbol "mobile phone". Moreover in the election manifesto published by LDF in connection with the election to Malampuzha Grama Panchayat, respondent name is shown as a candidate of LDF. In the nomination paper submitted by the respondent, it is clearly written in column No. 10 that she is an "independent candidate of Communist Party of India". But now in the copy of nomination paper produced by the petitioner there is a correction that words "Communist Party of India" are seen scored out. The said correction is made with an intention to use the same as against the respondent. The respondent is the only candidate with LDF alliance contested in ward No.2. The averments that Smt. Sali Varghese contested as the candidate supported by LDF is false. Smt. Sali Varghese contested as an independent candidate without support of either LDF or UDF. Respondent is the only candidate fielded by LDF in ward No. 2 and she was elected with the support of LDF. The voter's trend during the previous elections shows that ward No. 2 is a LDF predominant constituency. The respondent has not done anything which invites disqualification under the Kerala Local Authorities (Prohibition of Defection) Act.
6. The evidence consists of oral testimonies of PW1 to PW3, RW1 and RW2 and Ext.A1 to A7 and Ext.B1 to B4 and Ext.X1.
7. Both sides were heard.
8. The following points arise for consideration
  - (1) Whether the petition is barred by limitation?
  - (2) Whether the respondent is contested and elected as an independent candidate not belonging to any political party or coalition as alleged in the petition?





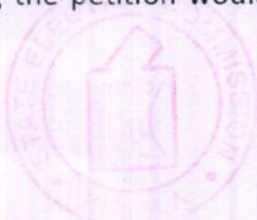
- (3) Whether the respondent has joined CPI political party, a constituent of LDF coalition after being elected as pure independent candidate as alleged?
- (4) Whether respondent has committed defection as contemplated under section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act?

9. Point No. (1) to (4); - As common question of law and facts arise for consideration in these points, they are considered together for convenience and to avoid repetition. It avers in para 15 of the petition that petition is filed within the period of limitation as material incident occurred on 21.10.2022, when the respondent publically and expressly declared that she has voluntarily given up her membership as an independent member of Malapuzha Grama Panchayat and already joined CPI. The period of limitation for filing a petition under the Kerala Local Authorities (Prohibition of Defection) Act is provided under rule 4A (2) of the Kerala Local Authorities ( Disqualification of Defected members) Rules,2000, which reads as follows;-

“(2) The petition as per sub-rule (1) shall be filed within 30 days from the date of deemed disqualification of the member.

Provided that if the petitioner proves that there exist sufficient reason for not filing the petition within the time limit specified, the State Election Commission may accept the petition.”

10. As section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act, joining a political party or coalition is the only ground, in which a pure independent member can be disqualified. Therefore the right to sue accrues from the date when respondent allegedly joined the CPI. It appears from para 9 of the petition that petitioner is relaying on the sworn declaration filed by the respondent to establish that respondent has joined CPI. The sworn declaration was filed by the respondent on 21.12.2020. Further, petitioner has produced the Ext.A7 Party affiliation Register to fortify her case that respondent joined CPI on 21.12.2020. Petitioner has no case that deemed disqualification of the respondent arose on 21.10.2022, the date shown in the petition for attracting cause of action. It is settled position that right to sue and the commencement of the running of time for the purpose of the limitation depend on the date when the cause of action arose. In this case the cause of action for filing the petition would arise on 21.12.2020 and as such a





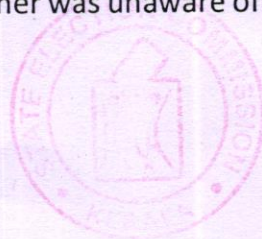
petition for determining the disqualification of a member shall be filed within 30 days from 21.12.2020 as provided under rule 4A (2). However, the Original Petition was filed on 21.11.2022 and there is a delay of 11 months in filing the Original Petition. As per the proviso to rule 4A any petition may be accepted after the prescribed period, if petitioner proves that there exists sufficient reason for not filing the petition within the time limit specified. But petitioner has not even filed any application for condoning the delay.

11. On the other hand, in order to cover up the delay in filing the petition, petitioner avers that it was on 21.10.2022 before the discussion of the no confidence motion against the President of the panchayat, the respondent openly declared that she is a member of CPI and then petitioner and other members verified the documents given by the respondent to the panchayat and came to know that respondent joined CPI, after being elected as pure independent candidate. But petitioner has not adduced any evidence to prove that she was unaware of the respondent's alleged act of joining CPI, till 21.10.2022.

12. In *Vinayakumar R and Others V A A Roaaf and Another* ( 2015 ( 3 ) KHC 787) the Hon'ble High Court examined the relevant aspects of condoning the delay based on the date of knowledge and observed that

"It is worth noticing that, the petitioner is a Councilor of the Municipality.....The petitioner being the Councilor of the Municipality ought to have been aware of the said developments. If the petitioner has no knowledge of the above facts, he should at least have pleaded such lack of knowledge and circumstances under which he was prevented from coming to know of such developments .....It is very easy for a person to give a date and to say that, he came to know of the defection only on that date. That is not sufficient to lend credence to the statement. He should have explained the special circumstances that prevented him from acquiring knowledge of the fact, despite being a Councilor of the Municipality, who had participated the entire proceedings."

13. The above observations are relevant and applicable with equal force to the facts and circumstances of the present case also. Admittedly, the total strength of the panchayat is only 13. According to the petitioner, out of which LDF and BJP secured 5 seats each and respondent, lone independent member supported the LDF to rule the panchayat. Therefore the party affiliation or otherwise of the respondent was decisive even at the inception of panchayat committee. Therefore it is unbelievable that petitioner was unaware of the party affiliation of the respondent





till 21.10.2022. Petitioner has not explained the circumstances that prevented her from acquiring the knowledge of respondent's party affiliation despite being a member of the panchayat. Therefore the irresistible conclusion is that the original petition is filed beyond the period of limitation as provided under rule 4A (2) and hence barred by limitation. Section 3 of the Limitation Act enjoins a Court to dismiss any suit instituted, appeal preferred and application made, after the period of limitation prescribed for it.

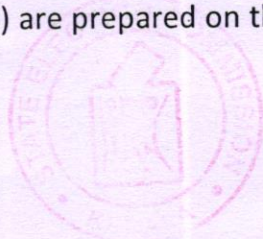
14. However, Commission considered the matter on its merit also. Petitioner is an elected member of ward No. 12 and belongs to INC. The consistent case of the petitioner is that respondent, who contested and elected as a pure independent candidate in the election symbol "mobile phone", joined CPI political party after the election. In order to strengthen her case, petitioner has produced the nomination paper in Form No. 2 filed by the petitioner, which is marked as Ext.A1, the List of contesting candidates in Form No. 6 and the Return of Election in Form No. 27, which are marked as Ext. A2. All the above documents show that respondent is contested and elected as an independent candidate. However the party connection of the respondent is not discernible from Ext A1 and A2 documents. Petitioner herself was examined as PW1 and in her deposition she stated that respondent was contested as pure independent in ward No. 2 of Malampuzha Grama panchayat. One Smt. Sali Varghese was contested as independent candidate of CPI. Respondent, who was contested and elected as a pure independent candidate, joined CPI after the election. The respondent by her conduct voluntarily given up her status as pure independent member and joined CPI, a constituent of LDF. PW2 was examined from the side of the petitioner. PW2 was one of the candidates contested the election from ward No. 2. She unsuccessfully contested the election as an INC candidate. PW2 reiterated that respondent has contested the election as a pure independent candidate and Smt. Sali Varghese was the independent candidate supported by LDF. A voter of ward No. 2 was examined as PW3, he deposed that respondent has contested the election as pure independent candidate.
15. Respondent in her objection, controverted the contentions of the petitioner. According to the respondent, she has contested the election as an independent candidate belonging to CPI, a constituent of LDF. After the election the Secretary of the Malampuzha Grama panchayat prepared the party connection of the respondent as an independent elected member of CPI, as evident from Ext.B1





Register. The Register was prepared on the basis of sworn declaration filed by her before the Secretary of the panchayat. In order to establish her case respondent produced the Campaign Poster and Election Manifesto published by Convener of LDF Malampuzha Election Committee in connection with election, which are marked as Ext B2 and B3 respectively. Ext. B2 and Ext B3 would go to show that respondent was contested and elected as an independent candidate of LDF coalition. During the cross examination, though petitioner put several questions concerning the veracity of Ext. B2 and B3 documents to RW1, petitioner failed to destruct its evidentiary value. Ext. B3 is a detailed Election Manifesto issued by LDF. Election Manifesto set out the program and objectives, they would deliver in Malampuzha Grama Panchayat if they voted to power. Among others, Ext.B3 contains the names, photographs and election symbols of all the candidates fielded by the LDF in the Malampuzha Grma Panchayat. Ext B3 further shows that all the three independent candidate of LDF, including the respondent contested the election in a common election symbol "mobile phone". Petitioner has not examined Smt. Sali Varghese, who was allegedly the candidate of LDF in ward No. 2 or the Secretary of the Grama panchayat before whom the respondent submitted the sworn declaration to rebut the Ext.B1 to B3 documents.

16. Further, during the cross examination, RW1 categorically deposed that one Reghudas, who is a CPI (M) member proposed her name in the nomination paper. It shows that a CPI (M) activist suggested her name for ward No. 2. It also shows the support of CPI (M), a constituent of LDF to the candidature of the respondent. There is no cross examination of the above testimony of the respondent. Moreover as per section 52, 55 and 56 of the Kerala Panchayat Raj Act, the proposer is the person competent to act on behalf of a candidate before the Returning Officer. It would also strengthen the case of the respondent that she is contested and elected as an independent candidate of CPI and not as purely independent candidate as alleged by the petitioner. It is a strong circumstance leading to the conclusion that respondent was contested election as a LDF candidate.
17. The petitioner mainly relied on the Ext. A1 nomination paper submitted by the respondent to drive home that respondent was contested as an independent candidate not belonging to any political party or coalition. However, it is pertinent to note that there is no column in Form No. 2 nomination paper to record whether candidate belongs to a coalition. Form 6 List of contesting candidates and Form 27 Return of Election (Ext A2) are prepared on the basis of Form 2 nomination paper





and there is no column in these forms also to record coalition arrangements of the candidate for contesting the election. Further, as per para 8 (i) of the Local Authorities Election symbols (Reservation and Allotment) Order, 2017 even if a candidate, who has not mentioned the name of the political party or its symbol in the nomination paper and has mentioned a symbol from the list of free symbols in the nomination paper, he is eligible to get the symbol of that party allotted to him. It has come in evidence through Ext B2 and B3 that LDF supported the candidature of respondent and on the strength of votes respondent was elected as member of ward No. 2 of Malampuzha Grama Panchayat and thereafter she filed the declaration that she is an independent member of CPI, a constituent of LDF. It is well settled that oral evidence contrary to the facts obtained from the documentary evidence is impermissible. Therefore the testimony of PW2 and PW3 are unbelievable.

18. Therefore petitioner failed to prove that respondent committed defection and liable for disqualification under Kerala Local Authorities (Prohibition of Defection) Act, 1999.

In the result Original Petition is dismissed.

Pronounced before the Commission on the 29<sup>th</sup> day of October 2024.

Sd/-

A.SHAJAHAN

STATE ELECTION COMMISSIONER





### APPENDIX

#### Witnesses examined on the side of the Petitioner

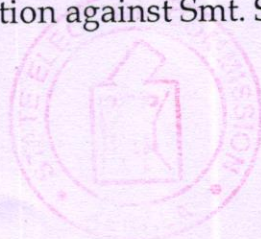
- PW1 : Smt. Hemalatha S
- PW2 : Smt. Fathima
- PW3 : Smt. Prakash K

#### Witnesses examined on the side of the Respondent

- RW1 : Smt. Salaja Suresh
- RW2 : Smt. Deepthi S

#### Documents produced on the side of the Petitioner

- A1 - Copy of the nomination submitted by Salaja Suresh dated, 17.11.2020
- A2 - Copy of the election result in form 27 sharing Salaja Suresh as elected candidate dated, 16.12.2020
- A3 - Notice No. BDOMPZ/403/2022-A (1) issued by Secretary, Malampuzha Grama Panchayat dated, 12.10.2022
- A4 - Notice No. BDOMPZ/403/2022-A (2) issued by Secretary, Malampuzha Grama Panchayat dated, 12.10.2022
- A5 - Copy of the minutes of the meeting held on 21.10.2022 at Malampuzha Grama Panchayat Hall in coalition with the no-confidence motion against Smt. Radhika Madhavan.
- A6 - Copy of the minutes of the meeting held on 22.10.2022 in connection with the no-confidence motion against Smt. Sumalatha Mohandas



PRAKASH B.S.  
 PEN No: 101432  
 SECRETARY  
 State Election Commission  
 Kerala, Thiruvananthapuram



A7 - Copy of the Relevant page of the Register sharing the party affiliation of Smt. Salaja Malampuzha Grama Panchayat .

Documents produced on the side of the Respondent

- B1 - Copy of the Relevant of the register sharing the party affiliation of Smt. Salaja, Malampuzha Grama Panchayat
- B2 - Election Poster of the Smt. Salaja Suresh
- B3 - Election Manifesto of LDF, Mlampuzha Grama Panchayat
- B4 - Copy of the candidates contesting at G09079002, Anakkal constituency Malampuzha Grama Panchayat dated, 23.11.2020

Documents produced on the side of the Witnesses

- X1 - Nomination forms (3 Sets) submitted by Smt. Salaja suresh

Sd/-

A. SHAJAHAN  
STATE ELECTION COMMISSIONER

//True Copy//



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