

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

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

Tuesday, the 27th day of May, 2025

O.P. No.58/2023

Petitioner

: Sri. Rajaneesh,
S/o. Shanmukhan Pillai,
Nikunjam,
Nedungolam P.O.,
Kollam District

(Member, Ward No.13,
Chirakkara Grama Panchayat)

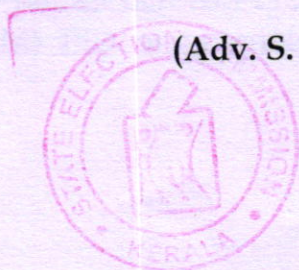
(Adv. Nithya R.S.)

Respondent

: Smt. Sajila T. R.
D/o. Rajendran,
Panamoottil Veedu,
Chirakkarathazham-69157
Kollam District

(Member, Ward No.9,
Chirakkara Grama Panchayat)

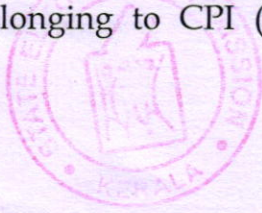
(Adv. S. P. Sohan Lal)



ORDER

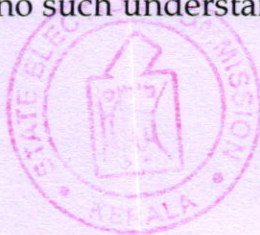
This is a petition filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that this respondent committed defection and hence disqualified to continue as member of Chirakkara Grama Panchayat and also for declaring her as disqualified to contest as candidate in any election to the local authorities for a period of six years.

2. The petitioner's case in brief is as follows; - Petitioner and respondent are elected members of Chirakkara grama panchayat representing ward No. 13 and 9 respectively, elected in the General Election to local authorities held in December, 2020. Both petitioner and respondent contested and elected as candidates of Communist Party of India (Marxist) (hereinafter CPI (M)), a constituent of Left Democratic Front (hereinafter LDF). The Kollam District Secretary of the CPI (M) had recommended the election symbol of the CPI (M) "Hammer Sickle and Star" to both petitioner and respondent for contesting the election.
3. There are altogether 16 elected members in the Chirakkara grama panchayat. Out of which CPI (M) secured 5 seats, Communist Party of India (hereinafter CPI) secured 2 seats. Thus, LDF got 7 seats. Indian National Congress (hereinafter INC), a constituent of UDF secured 6 seats, Bharatiya Janata Party secured 2 seats. An independent elected member Sri. Devadas supported LDF. Thus, LDF got majority in the panchayat.
4. After the election, an understanding to share the Presidentship of the panchayat was entered between the LDF constituents viz. CPI (M) and CPI. Accordingly, Smt. Susheela Devi, an elected member belonging to CPI was elected as President for the initial two and half years and thereafter to the nominee of CPI (M) for the remaining two and half years. As agreed upon Smt. Susheela Devi resigned from the Presidentship of the panchayat on expiry of her term, which necessitates fresh election to the post of President.
5. Commission notified election to the said causal vacancy of President and the Returning Officer in turn issued election notice of scheduled election to be held on 08.08.2023. LDF decided to field Smt. Minimol Josh, an elected member belonging to CPI (M) as their President candidate. The Kollam District Secretary of the CPI (M) had issued direction in writing (whip) to the elected members belonging to CPI (M), including the respondent,



through the Parliamentary party Secretary of the CPI (M) on 08.08.2023. It was directed in the whip to vote in favour of Smt. Minimol Josh in the Presidential election to be held on 08.08.2023. The original whip duly signed by elected members belonging to CPI (M) viz. Sri. Sudharshanan Pillai, Smt. Minimol Josh, Smt. Sajila T R, R Suchithra and Sri. Rajaneesh with acknowledgment of the receipt of whip duly received by the Secretary of the Chirakkara grama panchayat on 08.08.2023 is marked as Ext.A1. The Kollam District Secretary of the CPI (M) issued copy of the direction in writing to the Returning Officer of the panchayat and authorised Sri. Rajaneesh, who is the Parliamentary Party Secretary of the CPI (M), to convey the whip to the Returning Officer on 08.08.2023. The copy of Authorisation addressed to the Returning Officer is marked as Ext.A5.

6. However, in the Presidential election held on 08.08.2023 at 11 am respondent stood as a candidate of UDF against the official candidate of CPI (M). In the subsequent voting respondent secured 8 votes. Smt. R Suchithra, another elected member belonging to CPI (M), and all the 6 UDF members voted in favour of respondent. Respondent voted for herself. Respondent defeated the official candidate fielded by CPI (M) for Presidential election with the support of UDF members. The official candidate of LDF got only 6 votes.
7. The respondent by her conduct voluntarily given up her membership of the CPI (M). Respondent has also disobeyed the direction in writing (whip) issued by the Kollam District Secretary of the CPI (M). At the moment the respondent violated the whip, stood as a candidate of UDF and voted contrary to the direction issued by the District Secretary of the CPI (M), she became disloyal to the political party. In the election held on 08.08.2023, respondent has taken a different stand from her political party and secured the votes of opposite INC. Respondent has committed defection and hence liable to be disqualified under section 3 (1) (a) of the Act.
8. Respondent's case in brief is as follows; - The original petition is not maintainable either in law or on facts. The mandatory provisions of the Kerala Local Authorities (Prohibition of Defection) Act and Rules framed thereunder are not complied in this case. It is true that both petitioner and respondent were elected to the Chirakkara grama panchayat as candidates of CPI (M). Respondent has no knowledge about alleged understanding to share the Presidentship of panchayat among the CPI and CPI (M). On the best of her knowledge no such understanding. Smt. Susheela devi resigned



from the post of President and fresh election to the said casual vacancy was scheduled to 08.08.2023 by the Returning Officer.

9. LDF never nominated Smt. Minimol Josh as President candidate. It is false and incorrect that the District Secretary of CPI (M) Mr. Sudevan had issued whip/direction in writing in respect of casting of vote in the President election held on 08.08.2023 under section 3 (1) (ii) to the CPI (M) members of the grama panchayat through the Parliamentary Secretary of the CPI (M) Mr. S. Rajaneesh on 08.08.2023. No such whip was given to the respondent and the respondent has not given any acknowledgment thereof, as alleged by the petitioner. Respondent has not elected as Parliamentary party leader of CPI (M). Petitioner has no *locus standi* to convey the alleged whip to the Returning Officer.
10. CPI (M) has not fielded any candidate for the Presidential election held on 08.08.2023. Neither CPI (M) nor LDF has given any communication regarding the candidature of Smt. Minimol Josh to the respondent. It is false and incorrect that respondent has become the Presidential candidate of UDF. There is no restriction from the CPI (M) to the respondent to contest in the Presidential election held on 08.08.2023. The respondent has not violated the whip of her political party. No whip in any manner served to the respondent. In the absence of whip or decision from her political party, respondent stood as Presidential candidate. The respondent has not violated the whip of her political party. Her political party or Sri. Rajaneesh has not issued whip to the respondent. The respondent has not voluntarily given up her membership of the political party CPI (M). Respondent still continues as a member of CPI (M) by obeying the directions of the political party. It is incorrect that respondent had taken a different stand from her political party.
11. Petitioner has no bonafides. Sri. Rajaneesh has no authority to issue whip to the elected members of the CPI (M). District Secretary of the CPI (M) cannot authorise or delegate any other person to issue whip to the elected members belonging to CPI (M). CPI (M) has not communicated their decision regarding the President election to the respondent. The original petition is liable to be dismissed.
12. The evidence in this case consists of oral testimonies of PW1 to PW9, RW1 and RW2 and Exts A1 to A5, Ext.X1 to X6.
13. Both sides were heard.

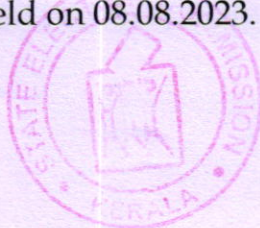


14. The following points arise for consideration, namely; -

- (i) Whether the respondent has disobeyed the decision and direction of CPI (M) political party in the Presidential election held on 08.08.2023 as alleged?
- (ii) Whether the respondent has voluntarily given up her membership from CPI (M) political party as alleged?
- (iii) Whether respondent has committed defection as contemplated under section 3 (1) (a) of the 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 elected member of Chirakkara Grama Panchayat representing ward No. 13 and 9 respectively. Admittedly, both petitioner and respondent belonging to CPI (M), a constituent of LDF. 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 elected member under section 3 (1) (a) of the Act. No dispute with regard to the *locus standi* of the petitioner has been raised by the respondent.

16. Admittedly, an election to the casual vacancy of the President of Chirakkara grama panchayat was scheduled on 08.08.2023. According to the petitioner the District Secretary of the CPI (M) had issued direction in writing to the respondent through the Parliamentary Party Secretary of the CPI (M) Sri. Rajaneesh to vote for Smt. Minimol Josh in the Presidential election scheduled on 08.08.2023. The direction in writing is marked as Ext A1. It is also admitted that the District Secretary of the CPI (M) had recommended the election symbol of the political party to the respondent for contesting the election. However, respondent acted contrary to the said direction, stood as a candidate of UDF and voted for herself in the election. It is alleged that by violating the whip issued by the District Secretary of CPI (M), the respondent had voluntarily given up her membership of the political party CPI (M) to which she belonged. In the objection, respondent specifically denied that she has been received any whip issued by the District Secretary of the CPI (M) directing her to vote in favour of Smt. Minimol Josh in the Presidential election held on 08.08.2023. Respondent further stated that, Sri.



Rajaneesh has not been elected as the Parliamentary Party Secretary of CPI (M) and Sri. Rajaneesh has no *locus standi* to convey the alleged direction in writing (whip) to the Returning Officer.

17. 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, -

- i. 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, -

.....

- ii. 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

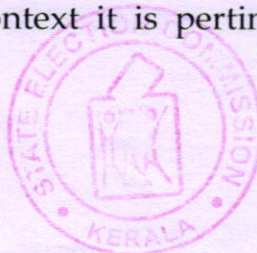
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he shall be disqualified for being a member of that local authority. "

18. 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 up 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 of section 3(1) (a) are distinct and are not interlinked.

19. The foremost contention of the petitioner is that respondent incurred disqualification by acting contrary to the direction in writing issued by the political party. In this context it is pertinent to examine the scope and



meaning of " direction in writing" as defined in section.2 (iv a) of Kerala Local Authorities (Prohibition of Defection) Act, 1999, namely; -

"(iv a) " direction in writing " means a direction in writing, signed with date, issued to a member belonging to, or having the support of, a political party, by the person authorised by the political party from time to time to recommend the symbol of the said political party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting;"

Therefore, a direction in writing (whip) issued by the person authorised by the political party to recommend the symbol of the political party for contesting the election, is the *sine qua non* to attract the second limb of section 3 (1) (a).

20. In para 7 of the Chief affidavit filed by the petitioner as PW1, it is stated that the District Secretary of the CPI (M) had issued whip to the respondent directing her to vote in favour of Smt. Minimol Josh. However, as a matter of fact petitioner has not produced any such whip issued to the respondent. Petitioner has relied on Ext.A1 to prove that District Secretary of the CPI (M) had issued whip to the respondent through the Parliamentary Party Secretary of the CPI (M), who is the petitioner herein. Ext.A1 dated 08.08.2023 is a letter addressed to Returning Officer of the Chirakkara grama panchayat by the petitioner. From the recitals of Ext.A1, it appears that petitioner had been authorised by the District Secretary of the CPI (M) as a Whip of political party to issue whip to the elected members of Chirakkara grama panchayat and accordingly he issued whip to the elected members, including respondent directing them to vote in favour of Smt. Minimol Josh in the Presidential election. It further seems from Ext.A1 that all the 5 elected members belonging to CPI (M), including the respondent have acknowledged the receipt of whip by putting their signature thereon. Ext.A5 is a letter issued by District Secretary of CPI (M) to the Returning Officer authorising petitioner to issue whip to the elected members belonging to CPI (M) to vote in favour Smt. Minimol Josh in the election to be held on 08.08.2023. Neither petitioner nor the PW2 District Secretary has a case that Ext.A5 Authorisation had been given to the respondent along with Ext.A1.
21. In para 8 of original petition petitioner has taken a case that Panchayat Secretary served the Ext.A1 whip to elected members belonging to CPI (M) and obtained the acknowledgment thereof. However quite the contrary, in para 7 of the Chief affidavit filed by the petitioner as PW1, it is stated that

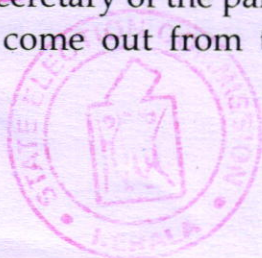


he served the whip issued by the District Secretary of the CPI (M) to the elected members, including the respondent. The District Secretary of the CPI (M) while examining as PW2 confirmed that he has entrusted the whip to the respondent for being served it to the elected members. In para 9 of the original petition petitioner has taken a case that he has conveyed the Ext.A5 Authorisation to the Returning Officer. However, petitioner has no case that Ext.A5 authorisation has been handed over to the respondent along with Ext.A1. Therefore, petitioner has no case that at least the decision of the political party has been made known to the respondent prior to the election. It also mandatory that whip should be issued by the person who recommended the symbol to the elected member for contesting the election. Ext.A1 is not issued in conformity with section 2 (iv a) of the Kerala Local Authorities (Prohibition of Defection) Act. Petitioner has no manner of right or authority to issue whip to the elected members by virtue of section 2 (iv a) of the Act. Even if Ext.A5 Authorisation has been issued properly, that would not make any difference. Therefore, petitioner has failed to prove the existence of a valid whip prior to the Presidential election held on 08.08.2023.

22. Further, the manner in which a political party or coalition may given direction to its members is provided for in rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules, which reads as follows; -

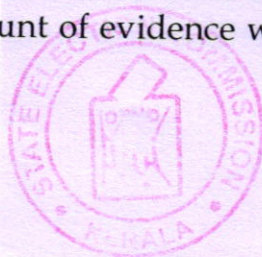
"(2) While issuing a direction under sub-rule (1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixing it shall be done in the presence of at least two witnesses. Copy of the direction in writing shall also be given to the Secretary."

However, in para 8 of the original petition it is averred that " the original whip duly signed by M/s B Sudharshanan Pillai, Minimol Josh, Sajila T R Suchithra and S Rajaneesh with the acknowledgment of the receipt of whip duly received by the Secretary of Chirakkara Grama Panchayat on 08.08.2023 is produced herewith" as Ext.A1. Ext.X1 is the office copy of Ext.A1. However, neither petitioner nor Panchayat Secretary concerned has produced the original acknowledgment of receipt of whip before the Commission. As a matter of fact, Ext.A1 is addressed to the Returning Officer and not to the Secretary of the panchayat or elected members of CPI (M). However, it was come out from the testimony of PW4, Returning



Officer that he had handed over the Ext.X1 to the Secretary of the panchayat. When the Secretary of the panchayat has been examined as PW3 he confirmed that the Ext.X1 had been entrusted to him by the Returning Officer, but Ext.X1 having the signature of the elected members of the CPI (M) when he received it. PW3 further clarified that he has not received any whip issued by the District Secretary of the CPI (M). Therefore, petitioner failed to prove that the District Secretary of the CPI (M) issued any whip either to the respondent or Secretary of the panchayat in terms of rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules.

23. As already discussed, in the original petition petitioner has no case that he had handed over Ext.A5 authorisation to the respondent. Therefore, respondent did not get any opportunity to come to know either the authorisation issued by the District Secretary of the CPI (M) or the decision of the political party. Further, there is no reference in the Ext. A1 regarding the alleged authorisation issued by the District President in favour of the petitioner. As already noted, rule 4 of the Rules deals with the manner in which the political party may give direction to its members. Prior to the amendment to rule 4 by the Amendment Act 2005, a direction in respect of casting vote etc shall be in writing and such direction shall be given in the case of a member who belongs to a political party or considered to be included in it, by the member whom the members of the said political party elect for the purpose, on majority basis from among themselves. However, after the amendment, with effect from 30.09.2005 such a direction in writing shall be issued by the person authorised by the political party from time to time to recommend the symbol of the said political party for contesting in the election. Therefore, the alleged election of the petitioner as Parliamentary Party Secretary of the CPI (M) or Whip would not confer any right or authority to the petitioner to issue any direction in writing to the elected members belonging to CPI (M).
24. Further, in para 6 of the Chief affidavit filed by the respondent as RW1, she has taken a case that the signature and handwriting seen in the Ext.A1 is not that of her and is a fabricated one. PW2, the District Secretary of CPI (M) deposed that he had entrusted the whip to the petitioner in his capacity as Parliamentary Party Secretary of CPI (M). However, in the original petition petitioner has no case that he has served whip to the respondent and obtained the signature thereof in Ext.A1. It is well settled that in the absence of pleading, any amount of evidence will help the party. In para 8 of the

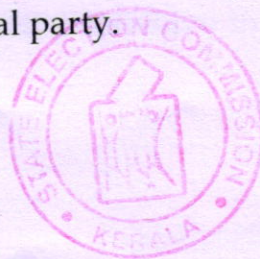


petition petitioner has stated that the acknowledgment of receipt appears in Ext.A1 was obtained by the Secretary of the Chirakkara Grama panchayat. However, during the cross examination PW3 panchayat Secretary categorically stated that

"CPI(M) കൊല്ലം ജില്ലാ സെക്രട്ടറി ഒപ്പിട്ട ഒരു വിപിന്റെ കോപ്പി എനിക്ക് ലഭിച്ചിട്ടില്ല. Ext X1 X2 രേഖകൾ റിട്ടേണിംഗ് ഓഫീസർക്ക് നൽകിയത്. അത് അക്നോളജ് ചെയ്ത റസിപ്റ്റ് നൽകാനുള്ള പ്രൊവിഷനില്ലാത്തതുകൊണ്ട് അതിനായി എന്നെ ഏൽപ്പിച്ചതാണ്. പഞ്ചായത്ത് സെക്രട്ടറിയെ അഡ്രസ്സ് ചെയ്തുകൊണ്ട് Ext X1 X2 രേഖകൾ ലഭിച്ചിട്ടില്ല Ext X1 രേഖയിൽ ഒപ്പ് രേഖപ്പെടുത്തിയിട്ടുള്ള സജിലയുടെ ഒപ്പ് ചിറക്കര ഗ്രാമ പഞ്ചായത്ത് പ്രസിഡന്റായ സജിലയുടെ ഒപ്പിനോട് സാമ്യമുള്ളതാണ്."

From this it clear that Panchayat Secretary has not served the whip to the respondent as alleged in the petition. Further it appears from the evidence of PW4 Returning Officer that he has not served the Ext. A1 to the elected members, but handed over it to the Secretary. Petitioner has neither examined nor even cited any person allegedly served whip to the respondent. Therefore, there is substance in the contention of the respondent that her signature appears in Ext. A1 is a fabricated one. Petitioner has no case that copy of the whip has been communicated to the Secretary of the panchayat as mandated under Section 3 (2) of the Act. Therefore, petitioner has failed to prove the existence of valid whip and service of whip prior to the Presidential election held on 08.08.2023. Therefore, the second limb of the section 3 (1) (a) of the Act would not be attracted in this case.

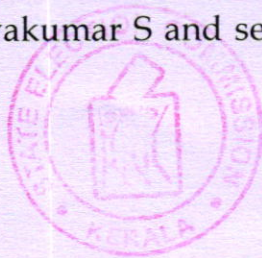
25. Coming to the first limb of the section 3 (1) (a) of the Act, in *Varghese V Kerala State Election Commission* (2009 (3) KHC 42; 2009 (3) KLT 1), the Division Bench of the Hon'ble High Court held that, if a member or a group of the elected members of the political party takes a different stand from that of the political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. In para 13 of the original petition petitioner has taken a case that respondent belongs to CPI (M) had taken a different stand from the decision of political party and acted against the decision of the political party thereby committed disloyalty to the political party.



26. In order to support the above plea, petitioner has marked the Minutes of the meeting of Chirakkara Local Committee held on 28.12.2020 as Ext.A2 through PW7, the then Chirakkara Local Committee Secretary of CPI (M). Ext.A2 would go to show that CPI (M) has taken decision on 28.12.2020 itself to share the Presidentship between CPI and CPI (M) for 2 and half years each. However, petitioner has not adduced any concrete evidence to support her case that respondent had attended the meeting and was aware of the decision taken in the meeting held on 28.12.2020. Petitioner has also marked the Minutes of the meeting dated 28.12.2020 of Chathanoor Mandalam Committee of LDF as Ext.A 5 (a), through PW9, the then LDF Convenor of Chathanoor Mandalam Committee. Petitioner has no case that respondent was attended the meeting and aware of the decision. It is pertinent to note that there is no decision in the Ext. A3 or Ext.A5 (a) meetings to field Smt. Minimol Josh as the Presidential candidate of LDF. Petitioner examined PW8, who is the Chathanoor Area Committee Secretary of the CPI (M) to prove the contents of the Ext.A4 Minutes of the meeting dated 07.08.2023. It appears from Ext.A4 that Area Committee has taken a decision to field Smt. Minimol Josh. Ext.A4 is a copy of an unauthenticated document having no evidentiary value. It is well settled that mere oral evidence contrary to the facts obtained from the documentary evidence is impermissible in law. However, neither petitioner nor PW8 has case that respondent was present in the meeting held on 07.08.2023 or aware of the decisions in the meeting. Therefore Ext.A2, Ext.A4 and Ext.A5 (a) are insufficient to prove that respondent was aware of the decision or direction of the Political party to field Smt. Minimol Josh as the Presidential candidate of CPI (M).

In *Lizy Valsalan V Suja Salim and Another* (2015 (3) KHC 968) Division Bench of 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 voluntary abandoning the membership of the political party and he would be disqualified under section 3 (1) (a) of the Act. In *Moly George V Benny Thomas and another* (2021 KHC 2056) Hon'ble High court has observed that when there is no a valid whip as per law, disqualification with reference to voluntarily giving up of the membership must be with clear evidence to prove that a member had defied party directives.

27. Ext.X5 Minutes goes to show that name of respondent for the post President was proposed by one Jayakumar S and seconded by one K Sujayakumar,



both elected members belonging to INC. However, it has come out in evidence of RW2 that INC has fielded Smt. Subi Parameswaran as their candidate in the Presidential election held on 08.08.2023, though she withdrawn her candidature subsequently. Petitioner has no case that withdrawal of Smt. Subi Parameswaran from fray was a part of conspiracy hatched by INC with respondent. RW2 has produced the copy of the whip issued by the District President of INC directing its elected members to vote in favour of Smt. Subi Parameswaran as X6. Therefore, the contention of the petitioner that INC had fielded respondent as their candidate in the election is untenable. Petitioner has no case that respondent had colluded with elected members belonging INC to defeat the candidate fielded by CPI (M). Petitioner has not even produced the Party Affiliation Register of the elected members of the Chirakkara grama panchayat.

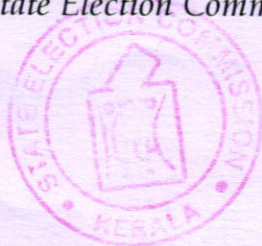
28. In para 10 of the Chief affidavit filed by the petitioner as PW1, he stated that

"വിപ് ലംഘിച്ച നടപടിയിൽ തന്നെ ടിയാളുടെ കൂറ് മാറ്റം വ്യക്തമാണ്. യു.ഡി.എഫ് ന്റെ പഞ്ചായത്ത് പ്രസിഡന്റ് സ്ഥാനാർത്ഥിയായി എതുകക്ഷി മത്സരിച്ചത് സി.പി.ഐ(എം) ന്റെ അറിവോ സമ്മതമോ ഇല്ലാതെയാണ്. ആകയാൽ വിപ്/നിർദ്ദേശം ലംഘിച്ച് പഞ്ചായത്ത് പ്രസിഡന്റ് സ്ഥാനാർത്ഥിയായി എതുകക്ഷി മത്സരിച്ചത് സ്വമേധയാൽ മെമ്പർഷിപ്പ് ഉപേക്ഷിക്കുന്നതിന് തുല്യമാണ്."

Therefore, in the instant case the alleged conduct of voluntarily giving up of membership of the CPI (M) by the respondent is based on violation of whip issued in the election held on 08.08.2023, which is already found unsustainable.

In *Joseph K M V Babychan Mulangasseri and Others* (2015 (1) KHC 111) Hon'ble High Court held that in the absence of floor crossing or shifting of political loyalty to any rival political party or coalition, it cannot be said that the elected members have voluntarily given up membership of that political party.

In the said judgment, it is further held that in order to draw an inference that elected members have voluntarily given up membership of the political party, there must be concrete proof that they have acted in defiance of any valid directions of the political party, which should be established by positive, reliable and unequivocal evidence. In the said judgment, the Hon'ble High Court reiterated the decision of the Hon'ble Division Bench in *Chinnamma Varghese V State Election Commission* (2009 (4) KHC 527)



29. There is no sufficient material on the record showing that respondent was aware of the decision and direction of the political party to field Smt. Minimol Josh as the Presidential candidate of the CPI (M), defiance of any direction issued by her political party or collusion with opposite political party to defeat the candidate fielded by her political party or shifting of loyalty or floor crossing to opposite political party. Therefore, respondent has not incurred any disqualification under section 3 (1) (a) of the Act.

In the result, the original petition is dismissed.

Pronounced before the Commission on the 27th day of May 2025

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

- PW1 - Rajaneesh S.
- PW2 - S. Sudevan
- PW3 - R. Sunil Kumar
- PW4 - Jyothi Vidhyadharan
- PW5 - Suseela Devi C.
- PW6 - Minimol Josh
- PW7 - N. Sasi
- PW8 - K. Sethumadhavan
- PW9 - N. Sadanandan Pilla

Witness examined on the side of the Respondent

- RW1 - Sajila T. R.
- RW2 - R. Sunil Kumar

Documents produced on the side of the Petitioner

- A1 - Copy of the whip issued by S. Rajaneesh dated, 08.08.2023 addressed to Returning Officer, received by the Secretary Chirakkara Grama Panchayath
- A2 - Copy of the minutes of the meeting held on 28.12.2020 of CPI(M) Chirakkara Local Committee
- A3 - Copy of the minutes of the meeting held on 28.12.2020 of Chathannoor LDF Mandalam Committee.
- A4 - Copy of the minutes of the meeting of CPI(M) Area Committee held on 07.08.2023.
- A5 - Copy of the authorization letter to issue whip dated, 08.08.2023 to the Returning Officer, received by the Secretary Chirakkara Grama Panchayath



Documents produced on the side of the Witness

- X1 - Copy of the whip issued by S. Rajaneesh dated, 08.08.2023 addressed to Returning Officer, received by the Secretary Chirakkara Grama Panchayath
- X2 - Copy of the letter dated, 08.08.2023 to Returning Officer Chirakkara Grama Panchayath by Sri. S. Sudevan, CPI(M) Kollam District Committee
- X3 - Copy of the relevant page of the Oath Register, related to Smt. Sajila T. R, member ward No. 9, Chirakkara Grama Panchayath
- X4 - Copy of the minutes of the meeting held on 08.08.2023 in connection with President election, Chirakkara Grama Panchayath.
- X5 - Copy of the minutes of the meeting held on 08.08.2023 in connection with the President election.
- X6 - Copy of the whip issued to the Returning Officer, issued by Sri. P. Rajendra Prasad DCC President, Kollam dated, 08.08.2023

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//

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

