

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

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

Tuesday, the 25th day of February, 2025

O.P. No. 12 of 2024

Petitioner

: Mathews Varkey
S/o. V.M. Varkey
Punnoppady Veliyath,
Punnoppady, Mudavoor P.O.
Ernakulam District-686669

(Member, Ward No. 19,
Paipra Grama Panchayat)

(By Adv. Santhosh Kumar)

Respondent

: Azeez P.M.
S/o. Mackar,
Pthusserykudiyil Veedu,
Mulavoor P.O.
Ernakulam District-686673

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

(By Adv. E. Sulfickar)



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 Paipra 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;- The petitioner and respondent are the elected members of Paipra grama panchayat representing ward No. 19 and 7 respectively. They were contested and elected as candidates of Indian National Congress (herein after 'INC') in the General Election to local authorities held in December, 2020. The Ernakulam District President of INC recommended the official symbol of the party "Hand" to the respondent for contesting in the election. INC is a constituent of United Democratic Front (hereinafter 'UDF'). Respondent won the election from ward No. 7 by defeating his rival candidate, who belongs to Communist Party of India (hereinafter 'CPI'), which is a constituent of Left Democratic Front (herein after 'LDF'). After becoming an elected member of the panchayat, respondent filed a sworn declaration before the Secretary of Paipra grama panchayat that he was contested as a candidate of INC. The certified copy of the sworn declaration is Ext.A2. On the basis of said declaration the Secretary of panchayat prepared a register showing the political affiliation of the member, wherein also it is stated that respondent belongs to INC. The political affiliation register is marked as Ext.A3.
3. In the General Election to local authorities held in 2020, the contest was mainly between UDF and LDF, based on the Statewide allegiance. INC and Indian Union Muslim League (hereinafter 'IUML') are constituents of UDF, whereas Communist Party of India (Marxist) (hereinafter "CPI (M)") and CPI are constituents of LDF. Paipra grama panchayat is having 22 wards. Out of which 9 members belong to INC, 3 members belong to IUML, part of UDF coalition. 8 members belong to CPI (M) and 2 members belong to CPI, part of LDF coalition. Thus, UDF got majority of seats in the Paipra grama panchayat.



4. After General Election, petitioner was elected as the President of the panchayat. Subsequently he resigned from the post as per the understanding in the UDF and hence fresh election to the said casual vacancy was scheduled to be held on 23.01.2024. It was decided in the UDF to elect Sri. M S Aliyar of ward No.5, who belongs to IUML as the new President. Accordingly, the Ernakulam District President of INC, who is the authorised person to issue whip to elected members belonging to INC, issued whip dated 15.01.2024 to all elected members of INC, including the respondent directing them to vote in favour of Sri. M S Aliyar in the President election to be held on 23.01.2024. Ext.A4 is the whip issued to the respondent. The whip was sent to respondent by registered post with acknowledgment due. Ext.A5 is the postal receipt dated 16.01.2024 in proof of despatch of the postal article to the respondent. Further, copy of the whip was communicated to the Secretary of the panchayat, who duly acknowledged the receipt of whip on 23.01.2024 at 10.25 am. Ext.A6 is the copy of whip duly acknowledged by the Secretary.
5. According to the petitioner thereafter meeting of elected members belonging to INC was held on 17.01.2024. It was decided in the meeting to vote in favour of Sri. M S Aliyar, the IUML nominee for the post of President in the election to be held on 23.01.2024 and thereby to act in accordance with the whip issued by District President of INC . The minutes of the meeting dated 17.01.2024 is marked as Ext.A7. Besides office bearers of INC, all the elected members belong to INC, including respondent were present in the meeting and signed the minutes in token of their attendance in the meeting. The minutes was also signed by District President of INC with his office seals.
6. Though the whip was sent to the respondent by registered post with acknowledgment due, it was not received back to the sender. Therefore the District President of INC himself complained on the non-receipt of acknowledgment card to the Department of posts. The Department of posts as per Ext.A8 informed that the registered article was duly delivered to the respondent on 17.01.2024. They have also forwarded a delivery slip. The whip was also served to the respondent by affixture at the residence of the



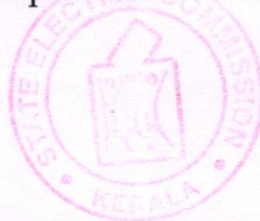
respondent in the presence of independent witnesses. Duplicate copy of the affixed whip and photographs taken at the time affixture are marked as Ext.A9 series. Therefore respondent had sufficient notice of the direction of his political party before the scheduled meeting on 23.01.2024.

7. However, in the election meeting held on 23.01.2024 respondent stood as a candidate for the post of President as against the official candidate of UDF Sri. M S Aliyar. Respondent secured majority of votes in the election, with the active support of opposite LDF coalition. All the elected members belonging to LDF voted in favour of the respondent. Respondent defied the whip issued by his political party by standing against the candidate fielded by UDF and by voting against him in the election. Out of 11 votes secured by respondent 10 votes are from LDF and 1 vote cast by himself. The certified copy of the minutes of the meeting held on 23.01.2024 is marked as Ext.A10.
8. The moment one becomes disloyal by his conduct towards the political party, the inevitable inference is that he has voluntarily given up his membership from the political party. Respondent by his conduct voluntarily abandoned the membership of the INC. Respondent was fully aware of the whip of his political party, but intentionally defied the same by standing as a candidate against the candidate of his own coalition and defeated the candidate of his political party/coalition with the active support of opposite LDF coalition. Respondent committed defection and hence liable to be disqualified under both limbs of section 3(1) (a) the Kerala Local Authorities (Prohibition of Defection) Act.
9. Respondent's case in brief is as follows;- Respondent is admittedly contested and elected as a candidate of INC, a constituent of UDF in General Election held in 2020. It was the District President of INC who recommended the symbol of INC to the respondent for contesting the election. There is also no dispute as to the political party position in the panchayat as stated in para 7 of the petition. The definite case of the respondent is that there was an understanding among the coalition partners of UDF viz. INC and IUML regarding the sharing of Presidentship of the panchayat. Accordingly initial two years term was given to the petitioner, subsequent two years term was



given to respondent and thereafter the remaining one-year term was given to the nominee of IUML. However, the petitioner overstayed in the presidentship beyond two years in violation of understanding in the UDF. Hence the District President of INC forced him to resign from the presidentship of the panchayat, which necessitated fresh election to the said casual vacancy on 23.01.2024.

10. It is true that a meeting of elected members of INC was convened on 17.01.2024. Respondent was present in the meeting. In the meeting it was unanimously decided to elect the respondent as the President of the panchayat in the ensuing election on 23.01.2024 on the basis of the understanding in 2020 and thereafter he would resign for IUML nominee to get elected. It is false and incorrect that Sri. M S Aliyar was decided as the candidate of UDF in the said meeting. Neither Ernakulam District Committee of INC nor the UDF members in the panchayat taken such a decision to elect Sri. M S Aliyar as new President. Likewise, neither District President of INC nor Sri. Mathew Kuzhalsadan MLA were present in the meeting as alleged. Only UDF members were present in the meeting. The Ext.A7 minutes of the meeting held on 17.01.2024 is forged one. The Ernakulam District Committee never convened a meeting prior to 15.01.2024, the date of whip to elect its nominee for the post of President. Respondent was not served with any whip issued by District President of INC by registered post. No whip or direction was communicated to the Secretary of the panchayat as alleged.
11. The Ext.A5 postal receipt, Ext.A8 letter and delivery slip issued by postal authorities are fabricated documents. Respondent already submitted a complaint in this regard to the postal authorities on 12.03.2024, which is marked as Ext.B3. It is false and incorrect that whip was served to the respondent by affixture at the residence of the respondent. He is not residing in the house appears in the Ext.A9 series photographs. Respondent has no knowledge of the alleged whip by INC or decision to field another candidate by UDF for the post of President.
12. Respondent attended the election meeting held on 23.01.2024 and informed the Returning Officer, who presided over the meeting that he is the UDF



candidate for the post of President. But to his utter dismay and surprise, the petitioner proposed the name of Sri. M S Aliyar for the post of President and one Sri. Nasar seconded it, while the said drama was going on, the name of respondent was proposed by Sri. E M Shaji and it was seconded by Sri. Zakeer Husain. In the subsequent election respondent got majority of votes and became the President of the panchayat.

13. There is no collusion with LDF members of the panchayat as alleged. LDF members unconditionally supported him in the election. Respondent was the official candidate of the UDF in the election, but petitioner proposed the name of Sri. M S Aliyar for the post of President. Respondent is an active member of INC before and after the election held on 23.01.2023. He attended many functions of INC and INC has not taken any disciplinary action against him so far. Respondent never abandoned his membership in INC and he has no alliance or relationship with LDF. He is having every right to continue as an elected member of Paipra grama panchayat. Therefore the petition may be dismissed with costs to the respondent.

14. The evidence in this case consists of oral testimonies of PW1 to PW7, RW1 to RW3, documents Exts.A1 to A10, Exts.B1 to B17 and Ext.X1 to X6.

15. Both sides were heard.

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

- (i) Whether respondent was the official candidate of UDF in the Presidential election held on 23.01.2024 as claimed by the respondent?
- (ii) Whether INC had fielded any candidate for the post of President in the election held on 23.01.2024 as alleged by the petitioner?
- (iii) Whether respondent was aware of the decision of the INC/UDF to field Sri. M S Aliyar for the post of President of the panchayat as alleged by the petitioner?



- (iv) Whether respondent has disobeyed the decision and direction of the INC in the Presidential election held on 23.01.2024 as alleged by petitioner?
- (v) Whether respondent has voluntarily given up his membership of the INC as alleged by petitioner?
- (vi) Whether respondent has committed defection as contemplated under section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act?

17. Point No. (i) and (ii);-Admittedly petitioner and respondent were contested and elected as candidates of INC, a constituent of UDF coalition in the General Election to local authorities held in 2020. It was the District President of INC, who recommended the official symbol of INC to the respondent for contesting election. There is no dispute as to the political party position in Paipra grama panchayat as stated in para 7 of the petition. According to the respondent, there was an understanding among the UDF constituents in the panchayat viz. INC and IUML to share the Presidentship. Accordingly initial two years term was given to petitioner, subsequent two years term to the respondent and the remaining one-year term to the nominee of the IUML. However, according to the respondent, petitioner overstayed in the presidentship for one more year in violation of understanding and to the detriment of his interest. Hence District President of INC forced him to resign from the Presidentship. During the cross examination as PW2, District President of INC categorically denied such an understanding. Respondent has neither produced any material to prove such an understanding nor examined the District President of INC, who has approved such an understanding or office bearers or elected members who are aware of the understanding. It is pertinent to note that during the cross examination of District President of INC as PW2, respondent put nothing to him regarding the alleged overstay of the petitioner in the Presidentship and consequent resignation of respondent by force.

18. Following the resignation of Petitioner as President of the panchayat, fresh election to the post of President necessitated. Commission notified the



election and Returning Officer in turn issued election notice to members informing the date of scheduled election to be held on 23.01.2024. Admittedly, a meeting of elected members of INC was convened on 17.01.2024 to discuss about the President election to be held on 23.01.2024. Admittedly, respondent was present in the meeting and signed the minutes, as evident from Ext.A7 minutes. According to the respondent it was unanimously decided in the meeting to elect the respondent as the President of the panchayat for a term of one year. However, Ext.A7 minutes of the meeting shows that it was decided in the meeting to vote for IUML nominee Sri. M S Aliyar in the Presidential election to be held on 23.01.2024 as directed in the whip issued by the District President of INC. The Ext.A7 minutes was also signed by District President of INC in token of his approval.

19. In para 13 of the objection respondent has taken a case that he was the official candidate of UDF in the president election held on 23.01.2024. However, during the cross examination of District President of INC as PW2, respondent put nothing in this regard to him. During the cross examination of PW2, the counsel for respondent put a question that

(Q) Ext.A7-ൽ 17.01.2024 -ലെ മീറ്റിങ്ങിന്റെ തീരുമാനം എന്തായിരുന്നു??

(Ans) Ext A7-1 23.01.2024 ന് നടക്കുന്ന പ്രസിഡന്റ് തിരഞ്ഞെടുപ്പിൽ M.S. അലിയാരെ പ്രസിഡന്റ് സ്ഥാനാർത്ഥിയായി തീരുമാനിച്ചുകൊണ്ടും അതിന് ജില്ലാ പ്രസിഡന്റിന്റെ വിപ്ലവകരമായ തീരുമാനിച്ചു. 23.01.2024-ലെ പ്രസിഡന്റ് തിരഞ്ഞെടുപ്പുമായി ബന്ധപ്പെട്ട് 17.01.2024-ലെ മീറ്റിംഗ് അല്ലാതെ എന്റെ സാന്നിധ്യത്തിൽ പാർലമെന്റി പാർട്ടി യോഗം ചേർന്നിട്ടില്ല.

Respondent has a further case that the decisions now appear in Ext A7 minutes are incorporated to suit the convenience of the vested interests in INC. However, PW2 confirmed the contents in the Ext.A7 minutes. Further, respondent has not examined any persons mentioned in Ext.A7 to rebut the petitioner's case that it was decided in the meeting to cast vote in favour of Sri. M S Aliyar in the presidential election to be held on 23.01.2024. Moreover petitioner has produced the Ext.A4 whip issued by the District President of INC to the respondent, directing him to attend the scheduled meeting to be held on 23.01.2024 and to vote in favour of Sri. M S Aliyar for



the post of President. While examining as PW2, District President of INC identified the Ext.A4 whip issued by him to the respondent. Further, while examining as PW3, the Secretary of the panchayat has also identified the Ext.A6, copy of the whip received by her on 23.01.2024 at 10.25 am and she has produced the office copy of Ext.A6 as Ext.X3. Ext.A4, A6 and Ext.X3 would goes to show that UDF fielded Sri. M S Aliyar for the post of President and not the respondent.

20. In para 12 of the objection respondent has taken a case that during the commencement of the scheduled election meeting on 23.01.2024, he intimated to the Returning Officer that he is the UDF candidate for the post of President. It is pertinent to note that during the cross examination of the Returning Officer as PW4, respondent has put nothing in this regard to the Returning Officer. Further, PW4 Returning Officer, who presided over the election meeting held on 23.01.2024 and prepared the Ext.A10 minutes categorically stated that he had read out the whip issued by INC, directing the elected members belongs to INC to vote for Sri. M S Aliyar, at the commencement of the meeting. Further more, Ext.A10 would goes to show that one elected member of UDF proposed the candidature of Sri. MS Aliyar and another UDF member seconded it. All elected members of UDF, except respondent voted in favour of Sri. M S Aliyar. But unfortunately, the vote cast by Smt. Niza Mytheen, who belongs to INC is found invalid in counting. It is well settled that mere oral evidence contrary to the facts obtained from documentary evidence is impermissible. There is no material on record showing that UDF has fielded respondent as the presidential candidate in the election held on 23.01.2024 and the case of the respondent in this regard is untenable.

21. Point No. (iii);- Admittedly, the Ernakulam District President of INC had recommended the official symbol of INC to the respondent for contesting election from ward No. 7. As per rule 4(1) (i) he is competent to issue whip to the respondent in respect of casting vote etc. The District President of INC, who has been examined in this case as PW2, identified the Ext.A4 whip dated 15.01.2024 issued by him to the respondent, by registered post with acknowledgment due. Ext.A5 is the postal receipt issued on

