

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

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

Tuesday, the 6th day of March, 2025

O.P. No. 08 of 2019

Petitioner : Nirmala Mathews,
W/o Mathews P. Abraham
Elappunkal Puthenpurayil,
Kurungazha P.O., Pullad,
Pathanamthitta District-689548

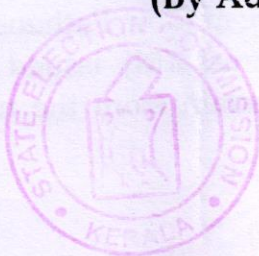
(Member, Ward No. 11
Koiprum Block Panchayat)

(By Adv. B. Vasudevan Nair)

Respondent : Susan George,
Ayyankavil House,
Vennikulam, Thelliyoor
Pathanamthitta District - 689544

(Member, Ward No.03,
Koiprum Block Panchayat)

(By Adv. Ajith Kumar S.)



ORDER

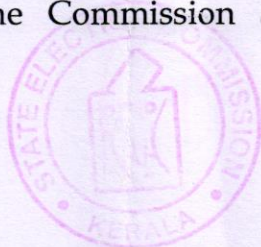
This is a petition filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that this respondent committed defection and hence disqualified to continue as member of Koipuram Block Panchayat and also for declaring her as disqualified to contest as candidate 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 to Koipuram Block Panchayat in the General Election to local authorities held in November, 2015. Petitioner contested the election as a candidate of INC and respondent contested the election as an official candidate of Kerala Congress (M), both part of UDF coalition at that time. The Pathanamthitta District Committee President of Kerala Congress (M) had recommended the symbol of Kerala Congress (M) " two leaves" to the respondent for contesting the election. After the election respondent filed sworn declaration before the Secretary of the panchayat in Form No. 2 stating that she is an elected member of Kerala Congress (M). On the basis of the same, Secretary of the panchayat had prepared Party Affiliation Register in Form No. 1.
3. There are 13 wards in Koipuram Block Panchayat. Out of which INC got 4 seats, Kerala Congress (M) got 1 seat. Thus UDF coalition got 5 seats, CPI (M) in LDF coalition got 4 seats, BJP in NDA coalition got 1 seat and independents secured 3 seats. Out of the said 3 independents members, 2 supported LDF and 1 supported UDF. In the President and Vice President election held after the General Election, LDF and UDF got equal number of votes. BJP abstained from voting. Therefore petitioner and one Smt. Ackamma Johnson were elected as President and Vice President respectively through draw of lots.
4. While so, LDF members in the panchayat submitted notice of no confidence against the President of the panchayat, who is the petitioner herein. The Secretary of the Pathanamthitta District Panchayat, who is the authorised officer to convene the meeting to consider the no confidence motion, issued notice to the elected members of Koipuram Block panchayat informing the scheduled meeting to be held on 13.12.2018 at 10 am.
5. In the aftermath of no confidence motion, Pathanamthitta District Committee President of the Kerala Congress (M) issued specific directions to the respondent herein either to abstain from the meeting to consider the no



confidence motion or to defeat the no confidence motion. The respondent refused to accept the whip issued. Therefore the whip was sent to the respondent by registered post. In addition to it, the whip was also served to the respondent through affixture at her residence. Though respondent had sufficient knowledge about the contents of whip, she participated the meeting to consider no confidence motion held on 13.12.2018 and voted in favour of the no confidence motion. Resultantly, the no confidence motion was carried. As regarding the said cause of action arose on 13.12.2018, petitioner filed OP No.118/2018 before the Commission for disqualifying the respondent under the provisions of Kerala Local Authorities (Prohibition of Defection) Act.

6. The petitioner was removed from the post of President through the no confidence motion held on 13.12.2018. Commission notified elections to the casual vacancies of President and Vice President and Returning Officer in turn issued notice of the scheduled election to be held on 07.01.2019. The District Committee President of the Kerala Congress (M) issued specific directions to the respondent to vote in favour of the UDF candidates for the posts. Respondent refused to accept the whip. Therefore the whip was issued to the respondent by registered post. The whip was also served to the respondent through affixture at her residence on 06.01.2019.
7. Respondent has sufficient knowledge about the direction of her political party Kerala Congress (M). However, in the election held on 07.01.2019, respondent wilfully acted against the directions of her political party and stood as a candidate for the post of Vice President against the candidate of UDF and voted in favour of LDF candidate for the post of President. Accordingly with the support of LDF, respondent was elected as Vice President of the panchayat and with the support of respondent LDF managed to elect their candidate for the post of President.
8. The respondent colluded with the LDF members and acted in gross violation of whip issued by her political party. Respondent was fully aware of the whip issued by her political party. But she intentionally defied the same. Respondent has voluntarily abandoned her membership of Kerala Congress (M) and thereby committed defection and liable to be disqualified under the Kerala Local Authorities (Prohibition of Defection) Act.
9. The respondent's case in brief is that;- The original petition is not maintainable either in law or on facts. The petitioner herein has also filed OP No. 118/2018 before the Commission alleging defection against the



respondent based on the cause of action arose on 13.12.2018, the meeting of no confidence motion. One cannot commit defection by voluntarily giving up membership of the political party twice.

10. It is true that respondent was contested and elected as candidate of Kerala Congress (M). However, she was expelled from the Kerala Congress (M) on 30.10.2018. No direction was issued by her political party with regard to the stand to be taken by her at the meeting of no confidence motion held on 13.12.2018. No whip of political party was served to the respondent by affixture. No further comment with regard to the subject matter pending before the Commission as O P No. 118/2018.
11. Further, no direction was issued by Kerala Congress (M) with regard to the President election and Vice President election held on 07.01.2019 as alleged. No service of whip to the respondent. The whip was not affixed at the residence of the respondent as alleged. No registered postal article was received by the respondent in this regard. Respondent never acted against the lawful whip issued by her political party. It is true that she was elected as Vice President of the panchayat. Respondent has not voluntarily abandoned her membership of the Kerala Congress (M), but she was expelled from the political party on 30.10.2018. Respondent has not committed any act of defection warranting disqualification under the Act.
12. Neither petitioner nor respondent have adduced any oral or documentary evidence in the case. However, when the case was posted for evidence of the petitioner, she filed chief affidavit *in lieu of* examination in chief and produced copy of Party Affiliation Register, copy of the notice dated 21.12.2018 issued by the Returning Officer, copy of the whips dated 03.01.2019 issued in connection with President election and Vice President election and postal receipts dated 05.01.2019.
13. Both sides were heard.
14. Based on the pleadings, following points arise for consideration
 - (i) Whether the respondent has disobeyed the decision and direction of the Kerala Congress (M) in the Presidential election held on 07.01.2019 as alleged?
 - (ii) Whether respondent has voluntarily given up her membership of the Kerala Congress (M) as alleged?



(iii) Whether respondent has committed defection as contemplated under the Kerala Local Authorities (Prohibition of Defection) Act?

15. Point No. (i) to (iii);- As common questions of law and facts arise for consideration in these points, they are considered together for convenience. On going through the record of proceedings, it seems that petitioner has not adduced any oral evidence in support of her case. Though some documents are produced from the side of petitioner, it was not formally presented and marked as Exhibits. It is settled position that unmarked documents are not considered as part of the evidence on record and have no probative value in determining the case.
16. Petitioner herein had filed O P No. 118/2018 before the Commission contending that respondent has committed defection and hence disqualified to continue as a member of the 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. Commission, after trial and hearing, as per Order dated 30.06.2022 allowed the O P No. 118/2018 disqualifying the respondent. The cause of action for filing the O P No. 118/2018 was the alleged conduct of the respondent on 13.12.2018.
17. From the record of proceedings of the present case, it seems that the case was posted for evidence of the petitioner on 09.03.2021 and thereafter on 06.08.2021 and on 03.09.2021. However, on 03.09.2021 it was adjourned for hearing based on the submission of petitioner that she has no further evidence. Petitioner has not adduced any evidence in this case presumably for the reason that in O P No. 118/2018 respondent had already been disqualified. Petitioner and respondents were heard on 05.05.2022.
18. There is no material on the record to conclude that respondent has committed any act of defection warranting disqualification under Kerala Local Authorities (Prohibition of Defection) Act. Therefore, the original petition is dismissed.

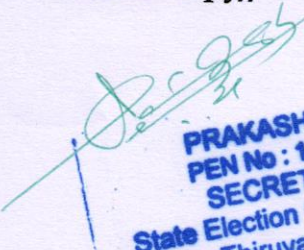
Pronounced before the Commission on the 6th day of March 2025

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

