

BEFORE THE KERALA STATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,  
STATE ELECTION COMMISSIONER

Tuesday, the 2<sup>nd</sup> day of July, 2024

O.P. No. 30 of 2022

**Petitioner**

: Sunil Kumar  
S/o. Mani Vettiyoor,  
Padavayal, Kallamala,  
Palakkad - 678 582.

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

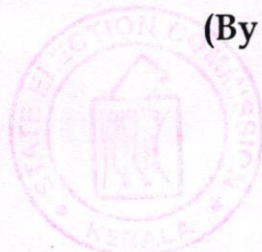
(By Adv. Geetha Nair S.)

**Respondent**

: Muhammad Basheer N.,  
S/o. Nagoor M.,  
Panamaravayal,  
Swarnagadha, Pudur P.O.,  
Palakkad - 678 581.

(Member, Ward No.4,  
Pudur Grama Panchayat)

(By Adv. A. Rajayyan)



### 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 Pudur Grama Panchayat and also for declaring him as disqualified to contest as candidate in any election to the local authority for a period of six years.

2. The petitioner's case in brief is as follows:- The petitioner and respondent are elected members of Pudur Grama Panchayat in the General Election held to the local authorities, during December, 2020. The petitioner was contested and elected as the official candidate of BJP in the official symbol of the party "lotus". The respondent was contested as an independent candidate, not belonging to any coalition in the symbol "tree". After the election both petitioner and respondent had given sworn declaration before the Secretary of the Pudur Grama Panchayat stating their political affiliation. In the sworn declaration respondent had stated that he is an independent member. On the basis of the same, the Secretary of the Pudur Grama Panchayat had prepared a register showing that respondent is elected as an independent candidate.
3. The total strength of seats in Pudur Grama Panchayat is 13. Out of which BJP got 4 seats, CPI (M) 3 seats, CPI 3 seats, INC 2 seats and Independent 1. Thereafter respondent was elected as Vice President of the panchayat with the support of LDF. Respondent has supported



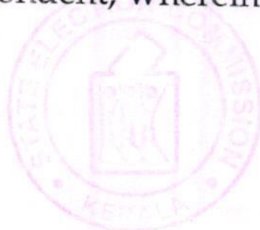
the LDF in panchayat committee in several occasions. Besides, respondent continuously participated the strike organized by CPI (M) with CPI (M) flag. On 22.09.2022 an all party meeting was convened by the Returning Officer in connection with bye-election in ward No. 3 Kolappad held on 06.11.2022. Respondent was present in the meeting as a representative of CPI (M). The election campaign in ward No. 3 was conducted by CPI(M) under the leadership of the respondent. Respondent openly declared that he has joined in LDF. The respondent has voluntarily abandoned his independent status by joining and accepting the membership of CPI(M).

4. The respondent case in brief is as follows:- Petition is filed with *malafide* intention to harass the respondent with political vengeance. It is true that respondent had participated in the protest organized by CPI(M) against the petrol price hike. Being a social worker who has committed to the society he found the cause for strike to be genuine and took part in the protest organized by CPI(M). Respondent denied the allegation that he has participated in the all party meeting held on 22.09.2022 as a representative of the CPI(M). He is not a party member of the CPI(M) and for the sole reason he cannot take part in any meeting representing CPI(M). From the Minutes of the meeting it can be seen that somebody has signed the minutes in the name of respondent as CPM and not CPI(M). The said document is a forged one. The respondent has not attended the meeting. The respondent has not acquired membership in the CPI(M) party and without acquiring a party membership he cannot attend any meeting



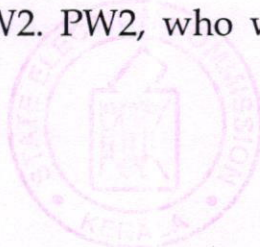
convened by Returning Officer, representing the party. Without any authorization from Area Committee Secretary of the party, respondent cannot attend the meetings. The respondent never took part in any election campaign conducted by any political party. He never declared that he has joined any political party. Respondent is still an independent member and has not committed defection as alleged.

5. The evidence in this case consists of oral testimonies of PW1 to PW5 and RW1 and the documents Exhibits A1 to A7 and Exhibits X1 to X4.
6. Heard both sides.
7. The following points arise for consideration.
  - (i) Whether the respondent become disqualified to continue as a member of the panchayat as he joined a political party after contested an elected as an independent candidate as alleged ?
  - (ii) Whether he is disqualified to contest any election to the local authority for a period of 6 years under section 4 (3) of the Kerala Local Authorities (Prohibition of Defection) Act ?
8. Points (i) and (ii): There is no serious disputes with regard to the *locus standi* of the petitioner to file the petition or jurisdiction of the Commission to entertain the petition. As regards of the merit of the matter, Ext A2 is the nomination paper submitted by the respondent at the time of general election, which would show that respondent is an independent candidate. Ext. A3 is the party affiliation register prepared by the Panchayat Secretary on the basis of sworn declaration of the respondent, wherein it is stated that respondent is



an independent elected member of the panchayat. In the objection respondent admitted that he is elected as an independent candidate.

9. The specific case of the petitioner is that on 22.09.2022 an all party meeting was convened by the Returning Officer of 3.Kolappadi constituency of Pudur Grama panchayat and respondent participated the meeting as a representative of CPI(M). The said meeting was convened by Retuning Officer for discussing the request of certain political parties to shift the Polling Station from the existing building prior to the bye election to 3. Koolappadi constituency, as per the standing instructions of the Commission. In order to prove the participation of the respondent in the meeting petitioner has produced Ext. A4 Minutes of the meeting held on 22.09.2022. Ext. A4 Minutes was prepared by the Retuning Officer, who was examined as PW2. It appears from the Ext A4 Minutes that among others one "Muhammed Basheer. N" participated the meeting held on 22.09.2022 and signed the attendance portion of the Minutes in token of his presence in the meeting as a representative of CPI (M). The Other participants of the meeting are Anil Kumar for CPI, Sreenivasan for BJP, K K Manoj, who is the Returning Officer and Ajeesh O P, who is the Election Clerk. It is further noted in the minutes that the representative of CPI (M) objected the proposed change of polling station and it was finally decided not to change the polling station from the existing building.
10. Sri. K K Manoj, the Returning Officer of 3. Kolappadi constituency was examined as PW2. PW2, who was presided over the meeting

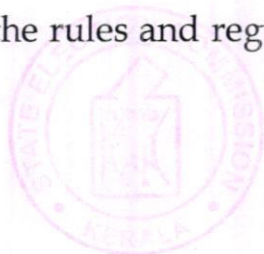


held on 22.9.2022, categorically deposed before the Commission that Sri. Muhammed Basheer, the elected member of ward No.4 attended the all party meeting held on 22.09.2022 as a representative of CPI (M) and signed the Minutes in his presence. Further, Sri. Ajeesh O P, the then Election Clerk of Pudur Grama Panchayat, who prepared the Ext. A4 Minutes of the meeting has been examined as PW 4. PW4 deposed before the Commission that

“Ext X1 shown to me. ഈ മിനിറ്റ്സ് ഞാൻ എന്റെ കൈപ്പടയിൽ എഴുതിയിട്ടുള്ളതാണ്. ഈ മിനിറ്റ്സിൽ പേരെഴുതി ഒപ്പിട്ടിരിക്കുന്ന എല്ലാവരെയും എനിക്കറിയാം. മുഹമ്മദ് ബഷീർ പങ്കെടുത്തിരുന്നു. (Q) അദ്ദേഹം തന്നെയാണോ മിനിറ്റ്സിൽ CPM എന്നു എഴുതിയിട്ടുള്ളത് (Ans) അതിനാണു സാധ്യത. മിനിറ്റ്സിൽ CPI(M) പ്രതിനിധി അറിയിച്ചു എന്നു രേഖപ്പെടുത്തിയിട്ടുള്ളത് മുഹമ്മദ് ബഷീർ എന്നു തന്നെയാണ് ഉദ്ദേശിച്ചത്”

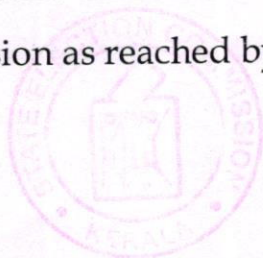
PW2 and PW4 are independent witnesses and there is no reason to disbelieve their testimony.

11. Petitioner has also examined Sreenivasan K, the person participated the meeting held on 22.09.2022 as a representative of BJP as PW5. He deposed before the Commission that respondent has participated the meeting and signed the Minutes as a representative of CPI (M). He supported the testimonies of PW2 and PW4.
12. The respondent's case is that he had not participated the meeting held on 22.09.2022. However, it seems that somebody has signed the Ext. A4 Minutes in his name and written the abbreviation "CPM". The signature in Ext A4 is not that of respondent. Ext.A4 is a forged document. The respondent has not acquired any party membership of CPI(M) and as per the rules and regulations of CPI(M) one cannot



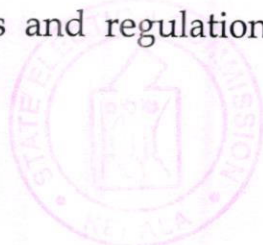
attend such meetings without acquiring the party membership of CPI(M).

13. Petitioner through PW2, who presided over the meeting and PW4 Election Clerk, who was written down the Ext.A4 Minutes of the meeting dated 22.09.2022 proved that respondent has participated the meeting and signed the Minutes representing CPI (M). The respondent has no case that PW2 and PW4 official witnesses are interested witnesses. Further, respondent has no case that he had participated the meeting and signed the Minutes as an independent member, and somebody added "CPM" to victimize him.
14. Further, petitioner has produced the Ext.A5 photograph of an election convention of LDF in connection with bye election to 3. Kolappadi constituency held on 09.11.2022. Ext. A6 and Ext.A7 photographs showing the election campaign of LDF. While examining as PW4, Sri. Ajeesh identified the respondent from Ext A5 and Ext A6 photographs.
15. The respondent has a case that the signature shown in Ext.A4 minutes is not that of him and it is forged one. However in view of the testimony of PW2 and PW4 official witnesses, who presided over the meeting and prepared the minutes, the contention of the respondent cannot be hold good.
16. Further, section 73 of the Indian Evidence Act enables the Court to compare disputed signature with admitted signatures and arrive at a conclusion, when there are other supporting evidence also pointing to the same conclusion as reached by the Court. Respondent disputed



signature in Ext.A4 minutes purportedly signed by him. However respondent admitted the signatures in Ext X2- nomination paper in Form No.2, Details of candidates in Form 2A and Oath or affirmation taken by him in First Schedule of the Kerala Panchyat Raj Act. On comparison of Ext. A4 with Ext.X2 series it appears that the element of permanency and continuity of signatures are there in both disputed signatures and admitted signatures of the respondent. It is pertinent to note that respondent has not so far filed any complaint against the alleged forgery of his signature, either to the Returning Officer or to the Police for initiating action for forgery of official documents. It shows his lack of *bonafides*.

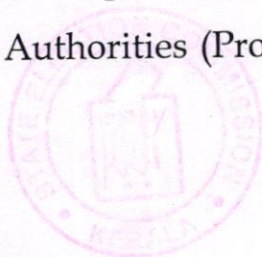
17. The respondent has not disputed the case of the petitioner that after elected as an independent candidate, he was aligned with LDF and elected as Vice President with the votes of elected members of LDF. The respondent has a case that he has not accepted any party membership of CPI (M) and hence the question of his joining CPI (M) would not arise.
18. In *Sheeba George V State Election Commission* (2022 KHC 763) the Hon'ble Division Bench of High Court has occasion to consider the above question and by relying on the Supreme Court judgment in *Jagajith Sing V State of Haryana* (2006) 11 SCC 1) held that " the factum of joining can be inferred from the facts and conduct of a member, without a member formally joining a political party in as much as not filling form required to be filled by a member of the political party under the rules and regulations of that party or payment of any





prescribed fee."

19. The all party meeting was convened by the Returning Officer to discuss the request of certain political parties to shift the polling station from the existing building to another building in the locality. As per the standing instructions of the Commission, it is a compulsory procedure to convene the all party meeting prior to the shifting of polling station. Therefore the meeting held on 22.09.2022 was as per the standing instructions of the Commission. Therefore there is legal sanctity attached to the Ext. A4 Minutes of the meeting. Admittedly respondent has elected as Vice President of the panchayat with the support of LDF. Ext.A5, Ext.A6 and Ext.A7 photographs goes to show that respondent has taken part in the election campaign for LDF candidate in bye election to 3 Kolappadi constituency of Pudur Grama Panchayat. It is evident from Ext .A4 minutes that respondent participated the meeting held on 22.09.2022 and signed the minutes as a representative of the CPI (M).
20. Petitioner has proved the participation of respondent in the all party meeting held on 22.09.2022 as a representative of the CPI (M), through PW2 and PW4 independent witnesses and Ext.A4 minutes. Therefore the question of authorisation by political party as per its rules and regulations to attend the meeting would not arise in this case, as alleged by the respondent.
21. The question to be decided is whether the respondent had become disqualified on the ground of defection as per section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act. Section 3 (1)



(c) reads as follows:-

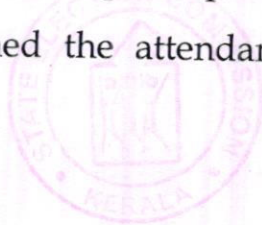
" 3. Disqualification on the ground of Defection.- (1) Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 ( 13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act,-

.....  
.....

(c) If an independent member not belonging to any coalition joins any political party or coalition; he shall be disqualified for being a member of that local authority.

.....  
.....

22. Section 3 (1) (c) deals with the manner in which an independent member can acquire disqualification. As per the provision, if an independent member who had contested in the elections without the affiliation or support of any political party or coalition joins a political party or coalition after the election, he shall become disqualified for being a member of that local authority. Ext A2 nomination paper and Ext A3 party affiliation register would go to show that respondent has elected as an independent candidate, not belonging to any coalition. Thereafter with the help of LDF members, respondent has elected as the Vice President of the panchayat. Thereafter the respondent participated the all party meeting held on 22.09.2022 and signed the attendance portion of the Minutes as



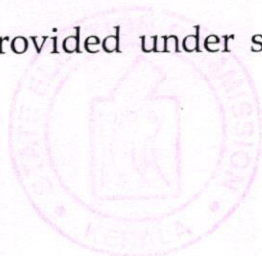
representative of CPI (M) political party. These conduct are sufficient to establish that the respondent had joined CPI (M).

23. In *Vasanthakumary V State Election Commission* ( judgment dated 06.02.2024 in WA No. 45/2024, the Hon'ble Divison Bench of High Court held that

"we are of the view that to determine whether an independent member has joined a political party, the test is not whether he has fulfilled the formalities for joining a political party. The test is whether he has given up his independent character on which he was elected by the electorate. A mere expression of outside support would not lead to an implication of a member joining a political party. At the same time, non fulfilment of formalities with a view to defeat the intent of para 2 (2) is also no consequence. The question of fact that a member has given up his independent character and joined, for all intent and purposes, a political party though not formally so as to incur disqualification provided in para 2 (2) is to be determined on appreciation of the materials on the record."

24. From the materials on the record, I am convinced that respondent, who was elected as an independent candidate, by his conduct given up his independent character, and joined the political party CPI (M) and thereby incurred disqualification under section 3 (1) (c) of the Act.

In the result the Original Petition is allowed and respondent is declared as disqualified for being a member of Pudur Grama Panchayat as provided under section 3 (1) (c) of the Kerala Local



Authorities (Prohibition of Defection) Act, 1999. The respondent is 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.

Pronounced before the commission on the 2<sup>nd</sup> day of July, 2024.

Sd/-

**A. SHAJAHAN**

**STATE ELECTION COMMISSIONER**



**APPENDIX****Witness examined on the side of the Petitioner**

- PW1 : Sri. Sunil Kumar  
PW2 : Sri. K.K. Manoj  
PW3 : Sri. Abhayan C.  
PW4 : Sri. Ajeesh C.D.  
PW5 : Sri. Sreenivasan K.

**Witness examined on the side of the Respondent**

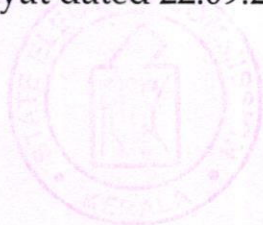
- RW1 : Sri. Muhammad Basheer N.

**Documents produced on the side of the Petitioner**

- A1 : Copy of the relevant page of the Oath Register, Pudur Grama Panchayat  
A2 : Copy of the nomination in Form No.2, in respect of Sri. Muhammad Basheer N., dated 18.11.2020  
A3 : Copy of the relevant page of the Register showing the party affiliation of the members of Pudur Grama Panchayat  
A4 : Copy of the minutes of the meeting of decisions in connection with the by-election at Pudur Grama Panchayat, dated 22.09.2022  
A5 : Photograph  
A6 : Photograph  
A7 : Photograph

**Documents produced by Witnesses**

- X1 : Minutes of the meeting in connection with the by-election Pudur Grama Panchayat dated 22.09.2022



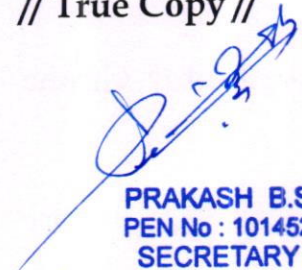
- X2 : Nomination in Form No.2 in respect of Sri. Muhammad Basheer N.
- X3 : Register showing the party affiliation of members of Pudur Grama Panchayat
- X4 : Oath Register of members of Pudur Grama Panchayat.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

// True Copy //

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

