

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

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

Thursday, the 7th day of March, 2024

O.P. No. 25 of 2022

Petitioner

: P.P.Eldhose
S/o. Pailey,
Pulparambil House,
Market P.O.,
Muvattupuzha - 686 673

(Chairperson,
Muvattupuzha Municipality)

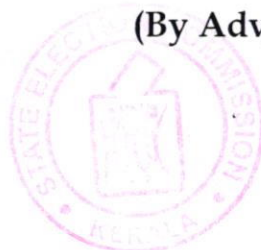
**(By Adv. S. Gopalakrishnan Nair &
Adv.A.Santhosh Kumar)**

Respondent

: Prameela Gireesh Kumar
W/o. Gireesh Kumar,
Kulangaredathu, Randar P.O.,
Muvattupuzha - 686 673.

(Councilor, Ward No.13,
Muvattupuzha Municipality)

(By Adv. P.K. Varghese)



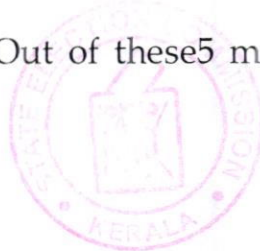
ORDER

This is a petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 to declare the respondent is disqualified to continue as a Councilor of Muvattupuzha Municipality and further to declare that the respondent is disqualified for a period of six years to contest any election to the Local Self Government Institutions.

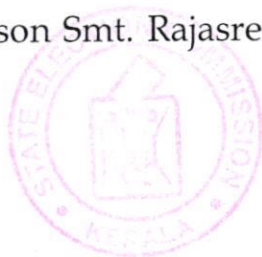
2. The Petitioner's case in brief is as below:

Petitioner and respondent were elected as councilors of Muvattupuzha Municipality from ward No. 25 and 13 respectively in the general election held in 2020. Both petitioner and respondent were elected as candidates of Indian National Congress (INC) under the symbol "hand". Petitioner is the Chairperson of Muvattupuzha Municipality and also the leader of Parliamentary party of United Democratic Front (UDF). One PM Abdul Salam was also elected as Secretary and Chief whip of the UDF Parliamentary Party. After the election respondent had given a sworn declaration in Form No. 2 as per rule 3 (2) of the Kerala Local Authorities (Prohibition of Defected members) Rules before the Secretary of the Municipality stating her political allegiance as a councilor of INC. On the basis of the declaration, a Register showing party affiliation of respondent was prepared by the Secretary in Form No.1.

3. The welfare standing Committee of the Muvattupuzha Municipality consists of 5 members. Out of these 5 members 2 members belong to



UDF, 2 members belonging to LDF and 1 independent. The respondent Smt. Prameela Girishkumar and Smt Bindu Jayan Councilor of Ward No. 20 were the UDF members in the Standing Committee. In the election to the post of welfare standing committee held after general election Smt. Rajasree Raju, an independent councilor was elected as Chairperson of welfare standing committee with the support of UDF members in the standing committee. While she was continuing as Chairman of welfare standing committee, LDF members in the Standing Committee along with respondent submitted a notice of intention to move no confidence motion against Smt. Rajasree Raju, Chairman of welfare Standing Committee. The President of District Congress Committee (I), issued written direction to the members of Welfare Standing Committee belongs to INC(I) to abstain from attending and voting of no confidence motion. Parliamentary Party meeting of UDF members convened on 27.07.2022 also decided to entrust the UDF Chief Whip Sri. Abdul Salam to intimate the stand of UDF to abstain from attending and voting of non confidence motion to the respondent. He served the whip through Speed post as well as by affixture on the premises of respondent's house. In the meeting to consider no confidence motion against Chairman of Welfare Standing Committee held on 01.08.2022 respondent attended the meeting and voted in favour of the no confidence motion against the Chairman, along with LDF members in the standing committee. The no confidence motion was carried and the incumbent Standing Committee Chairperson Smt. Rajasree Raju was ousted from the post.



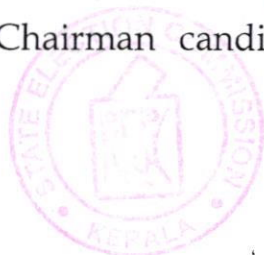
Based on the said cause of action, petitioner herein filed O P No. 21/2022 against the respondent under Section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 alleging violation of whip and voluntary abandonment of membership of political party and same has been taken up for orders.

4. In order to fill up the causal vacancy of welfare standing committee Chairman arose on 01.08.2022, Returning Officer issued notice to all the members of welfare standing committee intimating date and time of election as 20.08.2022 at 11am. The INC(I) has fielded Smt. Bindu Jayan, Councilor Ward No.20 as the Official Candidate of UDF for the post of Chairman of welfare standing committee. The President of District Congress Committee (I), Ernakulam District issued written direction (whip) dated 16.08.2022 to the members of Welfare Standing Committee belongs to INC(I), including the respondent. The whip was sent through registered speed post on 17.08.2022. It is directed in the whip to vote in favour of Smt. Bindu Jayan who is contesting as the official candidate of INC for post of Welfare Standing Committee Chairman. Though postal authorities intimated the respondent on 18.08.2022 that the item is available for delivery. But the Respondent has refused to accept the registered letter containing whip. Postal authorities in turn returned it to the sender with endorsement dated 20.08.2022 "addressee refused. Returned to Sender". The copy of the whip served to the Secretary, Muvattupuzha Municipality and who acknowledged the receipt on 19.08.2022 with his signature and seal.



The true copy of the whip was also served to the Returning Officer, who acknowledged the receipt.

5. Further, a meeting of UDF parliamentary party held on 18.08.2022 decided to field Smt. Bindu Jayan as UDF candidate for the post of standing committee chairman. The meeting has also decided to issue whip to respondent and Bindu Jayan to vote in favour of Bindu Jayan and authorized Chief Whip to serve the whip to them. On 19.08.2022, the Chief Whip along with few party members and Councilors went to the residence of the respondent. The respondent was present in her house and she was reluctant to receive the intimation. Hence the written intimation was affixed in the premises of the respondent's house. She was purposefully evaded from accepting the registered whip as well as written intimation of the decisions of UDF parliamentary party meeting given by the Chief Whip dated 18.08.2022.
6. In the election to the post of standing committee chairman held on 20.08.2022 respondent contested election as a candidate of LDF against the official candidate of UDF Smt. Bindu Jayan. Respondent casted her vote for herself in violation of whip. As a result the official candidate of UDF got defeated and respondent was emerged as successful with the votes of rival LDF members in the standing committee. The act and conduct of the respondent clearly indicates the fact that, the respondent deliberately joined hand with the opposition party to defeat the official Chairman candidate fielded by the UDF. The



respondent voluntarily abandoned her party membership in the Indian National Congress (I) which fielded her as a candidate in the election and thereby she suffers the vices of disqualification.

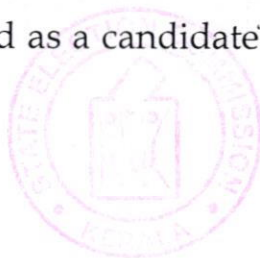
7. The respondent's case in brief is as below:

The Respondent contended that the petition is not maintainable either in law or in facts. The Respondent was not received any written direction commonly known as whip allegedly issued District President of INC calling upon her to vote for Smt. Bindu Jayan for the post chairman of the standing committee. The respondent was residing in her matrimonial home located at the far end of Maaradi Panchayat, which is 7 km from the address shown in the Petition. Respondent went to her matrimonial home on 25.07.2022 so as to meet the medical needs of her father in law. Documents are manipulated only for the sake of the petition. No information or intimation received regarding the whip. The respondent was unaware of the Parliamentary Party meeting held on 18.08.2022. Intimation was not affixed in the premises of the Respondent's house. The Respondent has not disobeyed the written direction issued either by the President of District Congress Committee or by chief Whip of UDF Parliamentary party. Respondent has no knowledge about the whip issued by the President of District Congress Committee, Ernakulam District, dated 16.08.2022 and the written intimation given by the Chief Whip of UDF Parliamentary Party, Muvattupuzha Municipality dated 18.08.2022. Respondent has not voluntarily abandoned her party membership from Indian



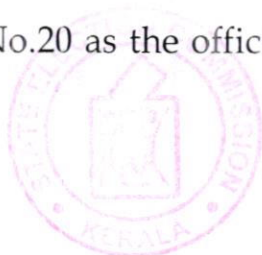
National Congress (I) and not liable to be disqualified under the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

8. Heard both sides.
9. The evidence in this case consists of oral depositions of PW1 to PW6 and RW1 and Exhibits A1 to A10 and X1 to X3.
10. The main questions that arise for consideration are:
 - i) Whether the petition is maintainable.
 - ii) Whether the respondent has committed defection as provided by Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 as alleged and liable to be declared as disqualified to continue as Councilor as prayed for.
 - iii) Whether the respondent may be declared as disqualified to contest as candidate to any election to the local body for a period of six years.
11. Points (i), (ii) & (iii) - PW1, the petitioner stated that both the petitioner and respondent contested and got elected in General Election held in 2020 to the Muvattupuzha Municipality as official candidates of INC with symbol 'Hand'. Respondent after election had given sworn declaration before the Secretary of the Municipality that she has won the election as official candidate of INC and on the basis of the declaration, a Register showing party affiliation of respondent was prepared by the Secretary. There is no dispute that respondent is contested and elected as a candidate of INC, a constituent of UDF. On



28.12.2020 UDF Parliamentary party met and elected the Petitioner as chairman of Parliamentary party and Abdul Salam as chief whip. The copy of the decision is marked as Exhibit-A1. It is evident from Ext A1 that respondent was present in the meeting. The respondent and Smt. Bindu Jayan Councilor of Ward No. 20 were elected as UDF members in the Welfare Standing Committee. After general election Smt. Rajasree Raju, an independent councilor was elected as Chairman of welfare Standing Committee with the support of UDF members in the Standing Committee. Meanwhile respondent along with 2 LDF members in the welfare Standing Committee submitted a notice of intention to move no confidence motion against Smt. Rajasree Raju, Chairman of welfare Standing Committee. INC issued a whip to the respondent and Smt. Bindu Jayan to abstain from voting. Smt. Bindu Jayan obeyed the whip. Respondent defied the whip by attending the meeting held on 01.08.2022 and voted in favour of the no-confidence motion along with the LDF members. The no confidence motion against Smt. Rajasree Raju was carried with the support of respondent and LDF members and Smt. Rajasree Raju was ousted from the post of standing committee chairman.

12. In order to fill up the causal vacancy of welfare standing committee Chairman arose on 01.08.2022, Returning Officer issued notice to all the members of welfare standing committee intimating date and time of election as 20.08.2022 at 11 am. The INC(I) has fielded Smt. Bindu Jayan, Councilor Ward No.20 as the official candidate of UDF for the



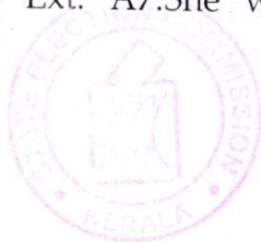
post of Chairman of welfare standing committee. The President of District Congress Committee (I), Ernakulam District issued written direction dated 16.08.2022 to the members of Welfare Standing Committee belong to INC(I), including the respondent. The whip was sent through registered speed post on 17.08.2022 as evident from Ext A3 postal receipt. It has directed in the whip to vote in favour of Smt. Bindu Jayan, who is contesting as the official candidate of INC for post of Welfare Standing Committee Chairman. The Respondent has refused to accept the registered letter containing whip though intimated on 18.08.2022. The postal authorities in turn returned it to the sender with endorsement dated 20.08.2022 "addressee refused. Returned to sender". In the election held on 20.08.2022 respondent contested election as a candidate of LDF against the official candidate of UDF Smt. Bindu Jayan. Respondent casted her vote for herself in violation of whip. As a result the official candidate of UDF got defeated and respondent was emerged as successful with the votes of LDF members in the standing committee.

13. PW2, the Secretary, Muvattupuzha Municipality has produced the copy of party affiliation register kept in the Municipality and the copy of the whip to Prameela Gireesh Kumar, Councillor of Ward 13, marked X1 and X2 respectively. PW3, the postman of Randar post office produced the certified copy of the intimation given to Prameela Gireesh Kumar, Councillor, Ward 13 of Muvattupuzha Municipality regarding the Registered post with acknowledgment due on 17.08.2022



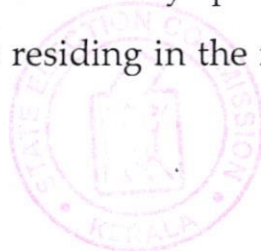
is marked as Exhibit X3. He deposed that the noting on the cover of Exhibit A2 as EMS denotes Express Mail Service, which is the registered speed post tapal. He said the EL number is Exhibit A2 and Exhibit A3 are the same and it is recorded in Exhibit A2 "Addressee refused, Returned to Sender". In the cross examination he stated that there is distinction between Registered post and Speed Post. In the case of speed post it can be handed over to another person in the house of addressee in the absence of addressee. There is no account due noting or acknowledgment card in the Exhibit A2. He received the speed post on 18.08.2022. 19.08.2022 being a holiday the postal article was returned to the sender on 20.08.2022 as evident from Ext.A2. He affirmed that he returned the post by noting "the addressee refused, returned to sender" since the addressee refused to receive the postal article when tendered, though addressee was present in the address.

14. Further, a meeting of UDF parliamentary party held on 18.08.2022 decided to field Smt. Bindu Jayan as UDF candidate for the post of welfare standing committee chairman. The meeting has also decided to issue whip to respondent and Bindu Jayan to vote in favour of Bindu Jayan and authorized Chief Whip to serve the whip to them. On 19.08.2022, the Chief Whip along with few party members and Councilors went to the residence of the respondent. The respondent was present in her house and she was reluctant to receive the intimation. Hence the written direction was affixed on the premises, which is marked as Ext. A7. She was purposefully evaded from

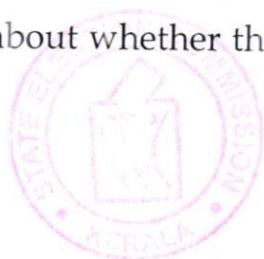


accepting the registered whip as well as written intimation of the decisions of UDF parliamentary party meeting given by the Chief Whip dated 18.08.2022. PW4, Municipal Councillor of Ward No.9 stated that he has affixed the Exhibit A7 whip on which he has signed with name along with three witnesses. PW5, identified his name and signature as witness in the Exhibit A8 Mahazer in proof of procedure observed while affixing Ext.A7.

15. PW6, President, District Congress Committee Ernakulam stated that Muvattupuzha Municipality is coming under his jurisdiction. He knows the petitioner and the respondent. He identified his name, seal, signature in the official letter head addressed to Secretary of Municipality and Returning Officer as Exhibit A4 and A5 respectively. Exhibit A2 and A3 shows his address as sender and Prameela Gireesh Kumar as addressee. He knows Abdul Salam, whose photo shown in Exhibit A9 as Parliamentary Party whip. In the cross examination he denied that the suggestion that Exhibit A4, A5 and A9 documents are fabricated for the purpose of the case.
16. RW1, the respondent deposed that she has not colluded with the opposition party LDF to move the no confidence motion against the then Chairman of Welfare Standing Committee, supported by the UDF on 01.08.2022. She has not received any written direction as whip by registered with acknowledgment due. The whip has to be sent through registered post as per rule and not by speed post. Therefore there is no service of whip. She was residing in the matrimonial home located at

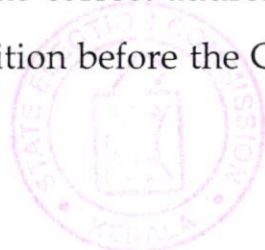


the fag end of Maaradi Panchayat which is 7 km away from the address shown in the petition. She went there on 25.07.2022 to attend medical needs of father-in-law. The Exhibit A4 and A5 are manipulated for the sake of the petition. She is unaware of the alleged Ext A6 parliamentary party meeting held on 18.08.2022 and the decision taken. She was not informed of the meeting. It is false that on 19.08.2022 the Chief whip along with party members and councilors went to her residence to handover written intimation since she was not present on 18.08.2022 and subsequent days. Exhibit A7 and A8 lacks independent witnesses therefore no authenticity. The allegation that the written intimation was affixed in the premises of her residence and mahazar prepared in the presence of witnesses is not correct. She does not disobeyed the written directions issued by the DCC President and Chief Whip of the UDF Parliamentary Party. She has not deliberately joined hands with the opposition party to defeat the official chairman candidate fielded by UDF. She was nominated as the welfare standing committee member alongwith Bindu Jayan. She does not know whether Bindu Jayan was nominated for the post of Chairperson by the INC. She contested against Bindu Jayan. She denied that there is party direction that Bindu Jayan is the official candidate of the INC and to vote in favour of Bindu Jayan. When the Exhibit A9 photographs shown to her, she stated that she does not know the residence shown and the persons standing in the photograph. She is totally unaware about the content of Exhibit A2 and A3 documents. When she was asked about whether the Exhibit A4, A5 documents are



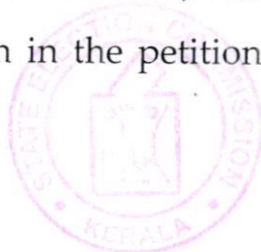
the direction for her to vote in favour of Bindu Jayan as Welfare Standing Committee Chairman. She said this is the first time she is seeing such a document.

17. Respondent further states that Exhibit A2 to Exhibit A6 are fabricated documents, but she has not made any complaint in this regard to any authority. She took the decision to contest to the Welfare Standing Committee Chairperson herself and contested against the official candidate of INC as she has no direction from the party to vote in favour of the official candidate. When she was asked whether LDF member voted in favour of her, the reply was her co-councilors voted for her. She claims that she still continue as Congress Worker.
18. Respondent has no case that petitioner is not a councilor of Muvattupuzha Municipality and therefore there is no question of *locus standi* of petitioner arose in the petition. There is no dispute that respondent is elected as a councilor of INC political party in general election held on 2020. Therefore the authority of PW6, DCC President to issue whip to her in connection with election held on 20.08.2022 has not disputed by the respondent. Respondent has also not disputed genuineness of Ext A1 Minutes. Respondent is one of the signatory to the document. Therefore the authority of PW1 as a parliamentary party leader of UDF is also not disputed. It appears from Ext A2 returned postal article as well as Ext A3 postal receipt that postal article is registered in the correct address of the respondent by speed post. RW1 in her deposition before the Commission stated that "Ext A



3 പോസ്റ്റൽ റെസിപ്റ്റിൽ എന്റെയും ഡിസിസി പ്രസിഡന്റിന്റേയും അഡ്രസാണ് കാണുന്നത്” It further seems from the endorsements in postal cover that the availability of the item is duly intimated to the respondent on 18.08.2022 and that addressee refused to accept the article irrespective of intimation. According to her, Exhibit-A4 whip is issued to her by way of speed post and therefore there is no proper service of written direction/whip in the manner indicated under Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected members) Rules, 2000.

19. As regards of the question of service of notice through speed post in ITAT, Mumbai in *Color Craft V ITO* held that “all the principal attributes of “registered post” were inherently present in “ Speed Post”, so that that two were of the same genus.” Moreover ordinarily the service through Speed post will take place within few days than registered post. Considering the paucity of time between issuance of notice of no confidence motion and meeting of no confidence. motion fixed by statute, it is only reasonable to serve whip through Speed post.
20. The consistent case of the respondent is that she has not received the postal intimations dated 18.08.2022 as she was not in the address shown in the speed post and it is not correct to say that the whip was refused by her. All the members of her family including respondent were away from residence for a period from 25.07.2022 to 04.09.2022. She was at her matrimonial home, which is seven kilometers away from the address shown in the petition. She was ignorant about the



arrangement to be made to receive the postal articles in her absence. However the respondent herein had raised dispute with regard to the existence of whip and the service of the whip by way of affixing at the residence. Rule 4 Kerala Local Authorities (Disqualification of Defected Members) Rules provides the manner in which a political party or coalition may give 'direction in writing' / whip to its members. It reads as follows:-

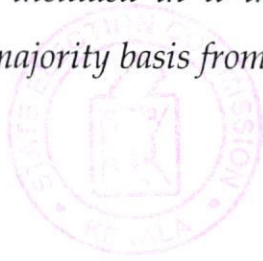
"4. The manner in which a Political party or Coalition may give direction to its members: (1) If a political party or coalition gives any direction in respect of the casting of vote in an election or in a voting as has been mentioned in clause (a) or clause (b) of Section 3, it shall be in writing and such a direction shall be given,-

(i)XXX

[(i) ഒരു രാഷ്ട്രീയ കക്ഷിയിൽപ്പെട്ട അംഗത്തിന്റെയോ അതിലുൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗത്തിന്റെയോ കാര്യത്തിൽ പ്രസ്തുത അംഗത്തിന് തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ആ രാഷ്ട്രീയകക്ഷിയുടേതായ ചിഹ്നം ശുപാർശ ചെയ്യുന്നതിന്, അതതു കാലങ്ങളിൽ, രാഷ്ട്രീയകക്ഷി അധികാരപ്പെടുത്തിയിട്ടുള്ള ആൾ ആയിരിക്കേണ്ടതാണ്.

എന്നാൽ, മേൽപ്പറഞ്ഞ നിർദ്ദേശം ആ രാഷ്ട്രീയകക്ഷിയുടെ ലെറ്റർഹെഡിൽ തീയതി വച്ച് ഒപ്പിട്ട് അതിന്റെ മുദ്രയോടുകൂടി ആയിരിക്കേണ്ടതാണ്.]

(ii) In the case of a member who belongs to a coalition or considered to be included in it; by the member whom the members of the said coalition and the members considered to be included in it in the local authority concerned elected for the purpose, on majority basis from among themselves.



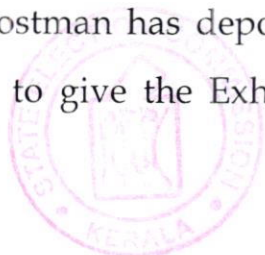
[(iii)XXX]

[XXXX]

[(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.

4[Copy of the direction in writing shall also be given to the Secretary]”.

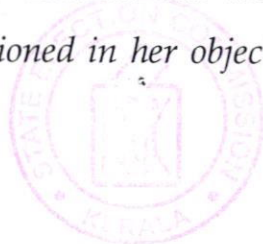
21. Rule 4 specifically provides that while issuing a direction under sub rule (1) directly the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixture; it shall be done in the presence of at least two witnesses. Moreover the rule mandates to furnish a copy of whip to the Secretary of the Municipality. Ext A4 go to show that copy of whip was duly served to the Secretary of the Municipality. Ext A5 is the copy of whip duly served to the returning Officer. Evidently, Exhibits-A4 and A5 whip are issued by the PW6 President, District Congress Committee in tune with the provisions under Clause 2 (iva) of Section 2 of the Act. It is to be noted that the competency of PW6 to issue 'direction in writing'/whip by virtue of his position as the President District Congress Committee is not at all disputed by the respondent. PW2 the Secretary of the Municipality received the copy of the whip as per Exhibit A4. PW3, the postman has deposed that he has gone to the home of the respondent to give the Exhibit A2 cover on 18.08.2022.



Even though she was at home, she refused to receive and thus postal article was returned noting "Intimation served" "addressee refused". PW1 claimed that the whips were served by affixing in presence of witnesses and apart from the assertions such witnesses were examined as PW5 and PW6. RW1 has deposed that Exhibit A2 was issued her by speed post and therefore no service of whip in the manner indicated under Rule 4(2) and she was not in the address shown in the speed post.

22. In a recent judgment Apex Court clarified that the word " refusal " can be interpreted as synonymous to the word " unclaimed ". The Hon'ble High Court in *Praveena Ravikumar V State Election Commission* (Judgment dated 08.12.2023 in WP (C) No. 36155/2023) examined elaborately the scope of service of whip, when the postal article returned as unclaimed as follows:

"The question that arises is whether the unclaimed postal article could be deemed to be a service of notice on the respondents. The postal receipts affixed on the returned postal covers - Ext.A6 and Ext.A8, show that the articles were posted on 24.12.2021 at 5.09 pm. The endorsement on the postal cover indicates that intimations were given to the addressees on 27.12.2021, and it was not claimed and hence returned to the sender on 08.01.2022. Though respondent contended that Smt. Praveena Ravikumar had shifted her residence to another place, and had intimated the change to the panchayat, during her evidence as RW1, she admitted that it was her own name and address that is mentioned in Ext.A4. She also admitted that the alleged address change was not mentioned in her objection and further that Ext.X1



was not registered in the inward register of the panchayat or at its front office. Thus, there is nothing conclusive to show that such an alleged change of address was informed to the Panchayat or that the question that arises is whether the unclaimed.

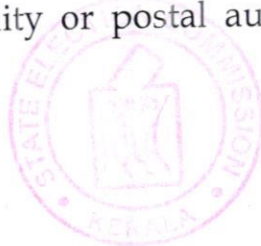
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*Apart from the above, if the notice sent to the correct address is returned either as unclaimed or as addressee left, the failure to serve the notice can only be attributed to the addressee and not to the sender. In such circumstances, the addressee should leave necessary instructions with the postal authorities either to redirect the letter to his new address or authorize a person to receive such postal articles. Failure to provide the new address to the postal authorities cannot prejudice the sender in such circumstances. Reference to the decision in *M/s Madan and Co. v. Wazir Jaivir Chand* [(1989) 1 SCC 264] is relevant.*

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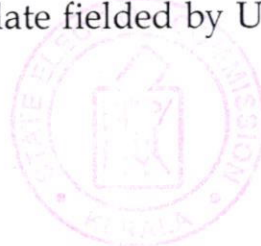
Further, under Rule 3(1) of the Kerala Panchayat Raj (Manner of Service of Notices) Rules 1996, service shall be done by serving or by sending notice to such person or leaving such notice at the last known place of abode, if he cannot be found or even by affixing in conspicuous part of his abode. Thus, when a registered letter is addressed to a person's last known address, the very sending itself is sufficient, as per the panchayat rules to be deemed to have served notice."

23. The respondent has no case that the change of address has been intimated to the Municipality or postal authorities. From the above



discussion the irresistible conclusion possible is that petitioner has proved that he has served the whip to the respondent through registered post as well as by affixture as provided under rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules.

24. The facts of the case would disclose that the petitioner and the respondent were contested and elected as nominees of INC. In the election held on 20.08.2022 respondent contested election as a candidate of LDF against the official candidate of UDF Smt. Bindu Jayan. Respondent has no case that she was fielded by UDF for the post of Chairman of welfare standing committee. However, respondent casted her vote for herself in violation of whip and in collusion with LDF. As a result the official candidate of UDF got defeated and respondent was emerged as successful with the votes of rival LDF members in the standing committee. Respondent acted this by defying the whip issued by her political party which allotted official symbol to her in the election to the Municipality. The moment one becomes disloyal by her conduct to the political party, the inevitable inference is that she has become voluntarily given up her membership in the party.
25. Apparently this is a case in which the basic issue is whether the respondent has defected by voluntarily giving up her membership of INC political party and joined hands with members of rival political party to defeat the candidate fielded by UDF for the post of Chairman



of the welfare Standing Committee in violation of the whip issued by her political party, amounts to such a defection as provided under Section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. Section 3(1) (a) reads as follows:-

"3. Disqualification on 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,-*

(a) 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,-

(i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of standing Committee or the Chairman of a standing committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or in a voting on a no-confidence motion against any one of them except a member of a Standing Committee;

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(2) *The direction in writing issued for the purpose of clauses (a) and (b) of Sub-section (1) shall be given to the members concerned in the manner as*



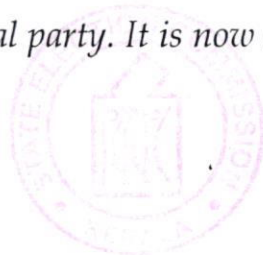
may be Prescribed and copy of such direction in writing shall be given to the Secretary of the Local Self Government Institution concerned.

(3) Where any dispute arises regarding the direction issued under this section between the political party or coalition concerned and the member authorised in this behalf as prescribed under sub-section (2), the direction in writing issued in this regard by the person authorised by the political party from time to time to recommend the symbol of the political party concerned for contesting in election shall be deemed to be valid.]

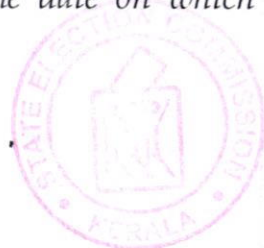
Explanation.- For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was [set up or given report] as a candidate for the election”.

26. The concept ‘voluntary giving up the membership’ was explained and elucidated in relation to the Act by the Division Bench of Hon’ble High Court of Kerala in *Varghese V.V. and Another v. Kerala State Election Commission and Another* [2009(3)KHC 42 (DB): 2009(3) KLT 1] after considering the issue with reference to the decision of the Hon’ble Apex Court in *Ravi.S.Naik v Union of India* [1994 KHC 633: AIR 1994 SC 1558]. In paragraph 7 the Division Bench held:

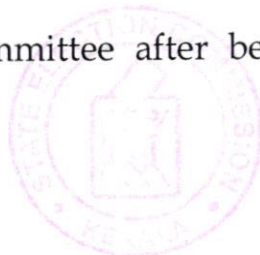
The expression ‘defection’ as such is not defined in the Act. Probably the expression does not require a definition since the concept is so plain. But the Legislature has left the disqualification to be decided on the defined conduct of the member. We are concerned with the conduct of voluntarily giving up membership in the political party. It is now settled law that in order to attract



the disqualification on the ground of voluntary giving up membership in the political party, the elected member need not resign from the party. In *Ravi S. Naik v. Union of India*, AIR 1994 SC 1558 it was held that voluntarily giving up membership is not synonymous with resignation. Voluntary giving up membership has a wider meaning than resignation as observed by a Division Bench of this Court in *Shajahan v. Chathannoor Grama Panchayat*, 2002 (2) K LJ 451. In *Ravi S. Naik's* case the Apex Court made it clear that "Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs". In *Rajendra Singh Rana v. Swami Prasad Maurya*, 2007 (4) SCC 270 also the Supreme Court held that it is the conduct of the elected members that is to be looked into while considering whether an elected member has become disqualified on the ground of defection based on voluntary giving up membership in the political party. In *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly*, 1996 (2) SCC 353 the Apex Court held that "the Act of voluntary giving up the membership of the political party may be either express or implied". In *Faisal v. Abdulla Kunhi*, 2008 (3) KLT 534 a learned Single Judge of this Court has taken the view that the expression "voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by express resignation; it is to be inferred from the conduct of the member. It was also held therein that the relevant date for deciding the question of disqualification is the date on which the member voluntarily gives up the membership".

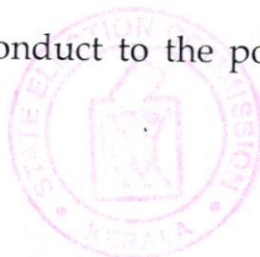


27. In *Varghese's case* (supra) the Hon'ble Division Bench also observed the decision in *Kihoto Hollohan v. Zachillhu and Others* reported in 1992 Supp (2) SCC 651 [1992 KHC 694: AIR 1993 SC 412) whereon the principle '*loyalty to the parties is the norm and voting against the party is disloyalty*' as stated in Griffith and Ryle on Parliamentary Functions, Practice and Procedure was referred to for holding "*any freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance - nay, indeed its very survival*".
28. Finally, considering all such aspects and the object of the Act the Hon'ble Division Bench held that if a member or 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. Further it was found that the moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership.
29. Indisputably the respondent herein, who was elected to Muvattupuzha Municipality as an official candidate of INC has joined hands with members of rival political party to defeat the candidate fielded by UDF for the post of Chairman of the welfare Standing Committee and she herself stood as candidate for the post of chairman of welfare standing committee after being sponsored by LDF and



emerged successful with the vote casts by LDF members in the standing committee, in violation of the whip issued by her political party.

30. The said act of the respondent also attracted the first limb of Section 3(1)(a). Needless to say, that an action of disloyalty of such nature would amount to voluntarily giving up membership of the particular political party. Therefore the respondent had incurred the disqualification of voluntarily giving up membership in the political party.
31. In *Lissy Valsalan V. Suja Salim and another* (2015 (3) KHC 968) (DB) and *Eruthavoor Chandran and Another V Kerala State Election Commission* (2018 (5) KHC 964) (DB) where the Division Bench of Hon'ble High Court held that where a member of political party is aware of the decision taken by the political party, but has failed to act in accordance with the political directive, it would amount to voluntarily abandoning the membership of the political party and he would be disqualified under section 3 (1) of the Act.
32. Consequently, it can very well be concluded that the respondent is quite aware of the decision, but took a different stand from that of her political party; and acted against the policies of the political party in which she was a member in collusion with rival political party. It is nothing but disloyalty. Further, it was found that the moment one becomes disloyal by her conduct to the political party the inevitable



inference is that she has voluntarily given up her membership in the political party.

For the aforementioned reasons the O.P. is allowed, and the respondent is declared as disqualified for being Councilor of Muvattupuzha Municipality as provided by section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. 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 by the section 4(3) of the Act.

Pronounced before the Commission on the 7th day of March, 2024.

Sd/-

A. SHAJAHAN
STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

PW1 : Sri. P.P. Eldhose

PW2 : Sri. M. Muhammed Aarif Khan

PW3 : Sri. Sreejith C.L.

PW4 : Sri. Abdul Salam

PW5 : Sri. Jinu Antony

PW6 : Sri. Muhammed Shiyas

Witness examined on the side of the Respondent

RW1 : Smt. Prameela Gireesh Kumar

Documents produced on the side of the Petitioner

A1 : Copy of the minutes of the meeting of the UDF Parliamentary Party, Muvattupuzha held on 28.12.2020

A2 : Returned Postal Article addressed to Smt. Prameela Gireesh Kumar

A3 : Postal Receipt

A4 : Copy of the whip dated 16.08.2022 endorsed with the receipt by Secretary, Muvattupuzha Municipality

A5 : Copy of the whip dated 16.08.2022, endorse with the receipt of Returning Officer, Muvattupuzha Municipality



- A6 : Copy of the minutes of the UDF Parliamentary Party, Muvattupuzha Municipality held on 18.08.2022
- A7 : Copy of the whip dated 18.08.2022 endorsed with the affixture details of whip
- A8 : Mahassar
- A9 : Photograph
- A9(a) }
A9(b) } Photograph
- A10 : Copy of the minutes of the meeting held on 20.08.2022 at Muvattupuzha Municipality Council Hall in connection with the election of Welfare Committee Chairperson.

Documents produced by Witnesses

- X1 : Copy of relevant page of the register showing the party affiliation of the members of Muvattupuzha Municipality
- X2 : Copy of whip dated 23.07.2022 endorsed with the receipt of the same by Municipal Secretary, Muvattupuzha Municipality
- X3 : Certified copy of the intimation given to Smt. Prameela Gireesh Kumar regarding Registered Speed Post with Acknowledgement Card.

Sd/-

A. SHAJAHAN
STATE ELECTION COMMISSIONER

//True Copy//



B. SURENDRAN PILLAI
Pen No : 101664
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram

