

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

PRESENT: SHRI.A SHAJAHAN, STATE ELECTION COMMISSIONER

Tuesday, the 17th day of December, 2024

O.P. No.06 of 2023

Petitioner

: Jijo Thomas Nelluvelil,
S/o N.M. Thomas
Nelluvelil Valekalam,
Punnakunnam P.O., Champakkulam,
Kuttanad, Alappuzha

(President, Nationalist Congress Party (NCP)
Niyojaka Mandalam Committee,
Nedumudi, Alappuzha)

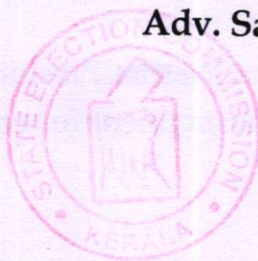
(By Adv. Abdulla N.M.)

Respondent

: Leena Joshi,
Parippallil House,
Kayalpuram, Pulincunnoo
Pulincunnoo P.O
Alappuzha - 688504

(Member, Ward No.12,
Pulincunnoo Grama Panchayat)

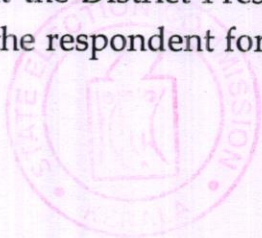
**(By Adv. Mridul John Mathew &
Adv. Sajitha S.)**



ORDER

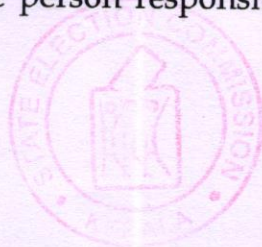
This is a petition filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that this respondent committed defection and hence disqualified to continue as member of Pulincunnoo Grama Panchayat and also for declaring her as disqualified to contest as candidate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

2. The petitioner's case in brief is as follows;- Petitioner is the President of Nationalist Congress Party, Kuttanad Niyajakamandalam Committee (Block President). The respondent was contested and elected as a member of ward No.12 of Pulincunnoo Grama Panchayat as a candidate of Nationalist Congress Party, in the General Election to the Local Self Government Institutions held in the year 2020. Nationalist Congress Party is constituent of LDF coalition.
3. It is submitted that after the election as a member of Pulincunnoo Grama Panchayat, the respondent filed a sworn declaration before the Secretary of Pulincunnoo Grama Panchayat stating her political allegiance as an elected member of Nationalist Congress Party. On the basis of the said declaration, the Panchayat Secretary had prepared a party affiliation register under rule 3 (1) of the Kerala Local Authorities (Disqualification of Defected members) Rules, 2000, showing *interalia* that respondent is an elected member of Nationalist Congress Party. Certified copy of the Register is marked as Ext.A3.
4. Total number of seats in Pulincunnoo Grama Panchayat is 16. Out of which UDF secured 8 seats, LDF secured 6 seats, BJP-1 and Independent-1. Out of 6 seats secured by LDF, CPI (M)-4, CPI-1, NCP-1. Respondent is the lone elected member belongs to NCP in the Grama Panchayat. UDF got majority of seats in the Panchayat and hence INC managed to get the Presidentship of the Panchayat. Thereafter ruling UDF moved a no confidence motion against the said President of the Grama Panchayat, which was slated to be held on 21.01.2023.
5. It is further submitted that the District President of NCP is the competent person to allot symbol to the respondent for contesting the election. But by



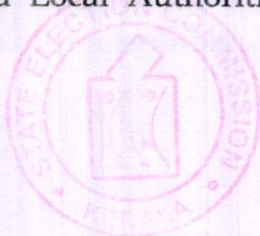
the time the District Committee was dissolved by the State Committee and charge was given to the petitioner to issue whip to the respondent. As an authorized person, petitioner issued whip to the respondent on 20.01.2023, directing her to abstain from the meeting of no confidence motion against the President to be held on 21.01.2023. The authorization issued by the State President of NCP in favour of the petitioner to issue whip is marked Ext.A1 (subject to proof).

6. According to the petitioner, when the whip was served to the respondent directly, she was reluctant to accept it. Hence the whip was affixed at the residence of respondent, in the presence of the witnesses on 20.01.2023. The contents of whip was also communicated to the Secretary of Pulincunnoo Grama Panchayat, who acknowledged the receipt. Copy of the whip is marked as Ext.A4. It's acknowledgement by Secretary is marked as Ext.A5.
7. However, on 21.01.2023, when the no confidence motion against the President was considered, the respondent wilfully participated the meeting of no confidence motion and voted in favour of the no confidence motion against the President in violation of whip. The certified copy of the Minutes dated 21.01.2023 is Ext.A6. According to the petitioner the decision and direction of NCP and LDF was to abstain from the meeting of no confidence motion. However, contrary to the said direction respondent participated the meeting of no confidence motion held on 21.01.2023 and voted in favour of the no confidence motion, along with UDF members in the Panchayat.
8. Respondent acted in defiance of the whip issued by her political party. The conduct of the respondent itself is a disloyalty to her political party NCP. Therefore respondent has voluntarily given up her membership of the political party. The respondent committed defection and liable to be disqualified under the Kerala Local Authorities (Prohibition of Defection) Act, 1999.
9. The respondent's case in brief is that;- The petition is not maintainable either in law or on facts. The petitioner has got no *locus standi* to file a petition under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act. In the instant case neither the political party in which the respondent is an elected member nor the person responsible for issuance of symbol to the



respondent in the local body elections nor any member of Pulincunnoo Grama Panchayat has filed this petition before the Commission. The petitioner is not authorized by any lawful Authority under the Act or Rules for filing this proceedings before the Commission. Therefore, the petition is not maintainable and hence liable to be dismissed on that score alone.

10. She further submitted that it is incorrect to state that the District Committee of NCP was dissolved. District Committee is functional. Neither District Committee nor State Committee has given any authority to the petitioner to issue whip to the respondent. Petitioner is not the authorized person to issue whip to the members of the Panchayat. The whip was not served to the respondent either directly or through affixture at her residence as alleged. The letterhead in which the whip was allegedly issued and seal affixed thereon are not that of the NCP. Therefore, the whip is illegal and improper.
11. Her political party NCP has never given any direction to the respondent regarding the no-confidence motion held on 21.01.2023 and she never ignored any direction of the political party. No disloyalty was committed by the respondent. The President of Nationalist Congress Party, Kuttanad Niyojakamandalam Committee (Block President) has no authority to issue such a whip to the respondent. No decision was taken either in the NCP or in LDF regarding the no-confidence motion. Petitioner has no cause of action against the respondent. Respondent has not committed any defection and hence not liable to be disqualified under the provisions of the Act.
12. The evidence in this case consists of the oral depositions of PW1 to PW5 and Ext A1 to A7.
13. Both sides were heard.
14. The following points arise for consideration, namely;-
 - (i) Whether petitioner has got the necessary *locus standi* to file the petition under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act?
 - (ii) Whether petitioner was competent to issue whip to the respondent under rule 4 of the Kerala Local Authorities (Disqualification of Defected members) Rules?



(iii) Whether the respondent has by her conduct voluntarily given up her membership of NCP as alleged?

(iv) Whether respondent has committed defection as contemplated under section 3 of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?

15. Point No. (i) to (iv);- As common questions of law and facts arise for consideration in these points, they are considered together for convenience and to avoid repetition. Petitioner in this case is the President of Nationalist Congress Party, Kuttanad Niyojakamandalam Committee (Block President). There is no dispute over the position of the petitioner as Niyojakamandalam Committee President. The specific case of the respondent is that such a person has no *locus standi* under the Act or Rules framed thereunder to file a petition before the Commission.

16. The substantive provisions with regard to the *locus standi* of a person to file a petition under the Act is incorporated in section 4 (1) of the Act, which reads as follows;-

"4. Decision on question as to disqualification on the ground of defection.-

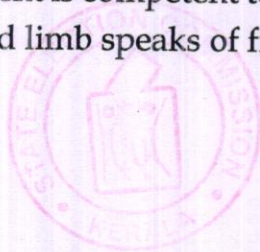
(1) If any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act, a member of that local authority or the political party concerned or a person authorized by it in this behalf may file a petition before the State Election Commission for decision."

In order to carry out the provisions of the Act, rule 4A of the Kerala Local Authorities (Disqualification of Defected members) Rules are framed under the Act, which reads as follows;-

"4A. Petition regarding disqualification.-(1) Petition regarding disqualification.- (1) ആക്ട് പ്രകാരം ഒരു തദ്ദേശസ്വയംഭരണ സ്ഥാപനത്തിലെ ഒരു അംഗത്തിന് അയോഗ്യത ഉണ്ടായോ എന്ന പ്രശ്നം ഉദിക്കുന്ന പക്ഷം, (പ്രസ്തുത അംഗം ഉൾപ്പെട്ടതോ ഉൾപ്പെട്ടതായി കണക്കാക്കാവുന്നതോ ആയ രാഷ്ട്രീയ കക്ഷിക്കോ, ആ രാഷ്ട്രീയ കക്ഷി അധികാരപ്പെടുത്തിയ വ്യക്തിക്കോ അഥവാ പ്രസ്തുത രാഷ്ട്രീയ കക്ഷിയുടേതായ ചിഹ്നം തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ശുപാർശ ചെയ്യുന്നതിനായി അധികാരം നൽകപ്പെട്ടിരുന്ന ആളിനോ) ബന്ധപ്പെട്ട തദ്ദേശ സ്വയം ഭരണ സ്ഥാപനത്തിലെ മറ്റേതെങ്കിലും അംഗത്തിനോ, അക്കാര്യം തീരുമാനിക്കുന്നതിനായി സംസ്ഥാന തെരഞ്ഞെടുപ്പ് കമ്മീഷൻ മുമ്പാകെ ഒരു ഹർജി ബോധിപ്പിക്കാവുന്നതാണ്.

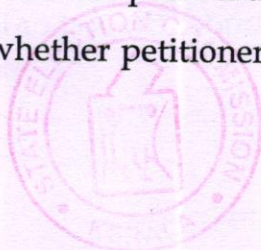


17. As per the aforesaid provision, four categories of persons are competent to file petition under the Act. The first limb of rule 4A provides that political party is competent to file a petition against its elected members. The second limb provides that a person authorized by political party or a person authorized by the political party to recommend its symbol for contesting an election are competent to file petition against an elected member belongs to it. As per the third limb of rule 4A an elected member of the local authority is competent to file petition against another member of the local authority.
18. The specific case of the respondent is that petitioner is neither any political party nor the person authorized by the political party to recommend its symbol to the respondent for contesting election nor an elected member of the Pulincunnoo grama Panchayat and as such petitioner has no *locus standi* to file the petition.
19. As regards of his locus standi, it is averred in the chief affidavit filed by the petitioner as PW1 that he is the President of Nationalist Congress Party, Kuttanad Niyojakamandalam Committee and he is authorized by the State President of the NCP to issue whips to the elected members belonging to NCP. Petitioner has produced the said authorization, which is marked as Ext.A1, subject to proof. During the cross examination petitioner admitted that there is no authorization in the Ext.A1 to file petition before the Commission under the Act. It appears from the Ext.A1 that respondent was given authorization by the State President of NCP to issue whip to various elections to be held within Kuttanad Niyojakamandalam, since District Committee of NCP is not in existence at that time. But State President of NCP who issued the Ext.A1 was not cited as a witness in the case. Further, it is pertinent to note that petitioner has allegedly issued whip to the respondent in connection with a no confidence motion and not in connection with election as empowered in Ext.A1. It is also not come in evidence that Pulincunnoo grama Panchayat is within the area of Kuttanad Niyojakamandalam.
20. As per the provisions of rule 4A, of the Kerala Local Authorities (Disqualification of Defected members) Rules, NCP Kerala State Committee represented by State President is competent to file the petition as per the first limb of the said rule. Second limb speaks of filing petition on the strength of



authorization issued by a political party. As a matter of fact, political party has not issued any such authorization to the petitioner to file petition against the respondent.

21. In the petition, petitioner has admitted that the District President of NCP has recommended the symbol of NCP to the respondent for contesting the election in ward No. 12 of Pulincunnoo grama Panchayat in the General Election to local authorities held in 2020. In the cross examination also petitioner admitted the said facts. Petitioner has a case that now District Committee was dissolved and charge was given to him to issue whip to the respondent. However, petitioner failed to prove that charge of District President had been given to him.
22. As per the second limb of rule 4A of the Kerala Local Authorities (Disqualification of Defected members) Rules, a person authorized by the political party to recommend its symbol for contesting an election is competent to file the against an elected member belongs to it. However, petitioner has no case that he got necessary authorization to recommend the symbol of NCP as provided under paragraph 8 (iv) of the Local Authorities Election Symbols (Reservation and Allotment) Order, 2017, at any point of time.
23. It is true that petitioner was given Ext.A1 authorization by none other than the State President of the NCP to issue whip to various elections that held within the Kuttanad Niyojakamandalam, since District Committee of NCP was not in existence. However, the said authorization is not in the nature of authorization to recommend the symbol of the political party as provided under paragraph 8 (iv) of the Local Authorities Election Symbols (Reservation and Allotment) Order, 2017. On going through rule 4A, it appears that such an authorization to recommend the symbol of political party is *sine qua non* for filing a petition before the Commission. Therefore petitioner has got no such authorization and as such no *locus standi* to file the petition under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act. In *Prasannakumary D V G R Shibu and Others* (2020 (5) KHC 602) the Hon'ble High Court held that when petition is filed by a person who has no locus standi, Election Commission will not be justified in entertaining the petition, therefore the first point is answered against the petitioner.
24. The next question is whether petitioner is competent to issue a direction in



writing (whip) to the respondent for the purpose of section 3(1) (a) of the Act. Section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act 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,

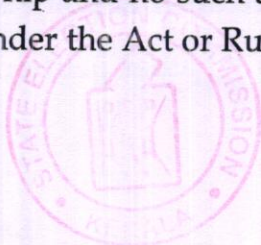
(a) If a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorized by it in this behalf in the 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 standing committee.

25. According to the petitioner, since District Committee of the NCP had been dissolved, the charge was given to him as Ext.A1 to issue whip to the respondent. As a authorized person he has issued whip to the respondent to abstain from the meeting of no confidence motion held on 21.01.2023. Petitioner has produced the Ext.A4 whip issued by him to the respondent and the Ext. A5 in proof of communication of whip to the Secretary. Petitioner examined the Secretary of Pulincunnoo Grama Panchayat as PW2. Petitioner has also examined PW3 to PW5 to prove that Ext.A4 whip was duly served to the respondent through affixture at her residence. However, the respondent has taken a specific contention that petitioner is not an authorized person to issue a whip and no such authority was ever given to him by any lawful authority under the Act or Rules.



26. On going through the provisions of section 3 (1) (a) of the Act, it appears that the issuance of a direction in writing (whip) by political party or an authorized person of political party is a *sine qua non* for a proceedings under section 3 (1) (a) (second limb) of the Act. Further a deeming fiction is provided under section 3 (3) of the Kerala Local Authorities (Prohibition of defection) Act that 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.

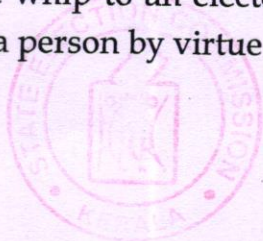
27. Besides in rule 4 (1) (i) of the Kerala Local Authorities (Disqualification of Defected members) Rules, which is framed under the Act reads as follows:-

"ഒരു രാഷ്ട്രീയ കക്ഷിയിൽപ്പെട്ട അംഗത്തിന്റേയോ അതിലുൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗത്തിന്റേയോ കാര്യത്തിൽ, പ്രസ്തുത അംഗത്തിന് തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ആ രാഷ്ട്രീയ കക്ഷിയുടേതായ ചിഹ്നം ഉപാർശ ചെയ്യുന്നതിന് അതതു കാലങ്ങളിൽ രാഷ്ട്രീയകക്ഷി അധികാരപ്പെടുത്തിയിട്ടുള്ള ആൾ ആയിരിക്കേണ്ടതാണ്. എന്നാൽ മേൽപ്പറഞ്ഞ നിർദ്ദേശം ആ രാഷ്ട്രീയ കക്ഷിയുടെ ലെറ്റർഹെഡിൽ തീയതി വെച്ച് ഒപ്പിട്ട അതിന്റെ മുകളേയോടു കൂടി ആയിരിക്കേണ്ടതാണ്.

The authority of a person to recommend the symbol of a political party is governed by the provisions of paragraph 8 (iv) of the of the Local Authorities Election Symbols (Reservation and Allotment) Order, 2017, which reads as follows:-

"(iv) The State President, Secretary or Convener as the case may be, of the political party shall authorize a person to recommend the symbol of that political party and shall intimate his name and office to the State Election Commission, District Election Officer or the concerned Returning Officer."

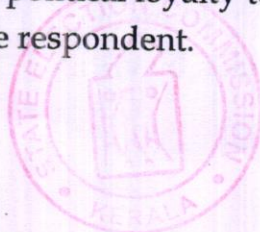
28. Petitioner has no case that he had been given an authorization under paragraph 4 (iv) of the said Order to recommend the symbol of NCP to its candidates at any point of time. Ext.A1 authorization is *de hors* to the provisions of paragraph 8 (iv) of the Local Authorities Election Symbols (Reservation and Allotment) Order, 2017. As per the provisions of rule 4 (1) (i) the authority to issue whip to an elected member belongs to a political party is conferred upon a person by virtue of his position as the person who



recommended symbol to its candidate for contesting the election under paragraph 8 (iv). Hence such an authorization cannot be given in vacuum.

29. Therefore, the petitioner was not competent to issue whip to the respondent and there is no valid whip in the present case. Hence the second point is also decided against the petitioner.
30. The next question is whether respondent by her conduct voluntarily given up her membership of NCP as alleged. From the foregoing discussions, it is found that petitioner has *no locus standi* to file the petition and was not competent to issue a valid whip to the respondent. Therefore other points are inconsequential. It has come in evidence that District Committee of the NCP has been dissolved by the State Committee and none was entrusted to issue a valid whip to the respondent. It has not come in evidence that either NCP or LDF has convened any meeting of its elected members prior to the meeting of no confidence motion to take a decision or announce its decision vis-a vis no confidence motion held on 21.01.2023. There is no allegation that respondent was motivated by lure of office or other similar considerations while exercising her vote in the no confidence motion. The no confidence motion was moved by members of UDF coalition against their own elected President. Respondent has a case that no whip was given to her. There is no allegation that respondent has acted in collusion with UDF members to remove the President.
31. In *Joseph KM V Babychan Mulangasseri and Others* (2015(1) KHC 111 (DB) the 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 their membership of that political party and hence they cannot be disqualified.

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 this case there is no allegations of shifting of political loyalty to UDF by the respondent. There is no valid directions to the respondent.



32. On appreciation of evidence on the record on the basis of relevant statutory provisions, it is found that petitioner has no *locus standi* to file the petition under the Act and was not competent to issue a valid whip to the respondent. It is also found that respondent has not incurred any disqualification on the ground of voluntarily giving up of membership of her political party. Therefore, it not possible to say that the respondent has committed any act of defection warranting disqualification under the section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.

In the result, the original petition is dismissed.

Pronounced before the Commission on the 17th day of December 2024.



Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER

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

APPENDIX

Witness examined on the side of the Petitioner

PW1 : Jijo Thomas Nelluvelil

PW2 : Ashli Nair

PW3 : N.P. Vincent

PW4 : P.K. Ponnappan

PW5 : K.S. Sreekumar

Documents produced on the side of the Petitioner

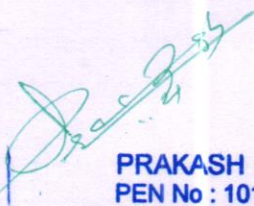
- A1 - Letter dated, 12.12.2022 issued by P.C. Chacko, President, Nationalist Congress Party (NCP) to Jijo Thomas Nelluvelil
- A2 - Copy of the relevant page of oath register showing the oath details of Smt. Leena Joshi.
- A3 - Copy of the relevant page of the Register showing the political affiliation of Smt. Leena Joshi, Pulincunnoo Grama Panchayat
- A4 - Copy of the whip dated, 20.01.2023 showing the affixture details
- A5 - Copy of the whip dated, 20.01.2023 showing the receipt of it by Secretary Pulincunnoo Grama Panchayat
- A6 - Copy of the minutes in connection with the no confidence motion against President, Pulincunnoo Grama Panchayat dated, 21.01.2023
- A7 - Copy of the minutes of the meeting dated, 20.02.2023 in connection with the President Election at Pulincunnoo Grama Panchayat

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

