

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER

Tuesday, the 9th day of July 2024

O.P. No. 27 of 2022

Petitioner

: K.K. Valsa Raj
S/o. Kesavan K.P.,
Kandampulli House,
Irangippuram P.O., Thrissur

(District Secretary,
Communist Party of India,
Thrissur District Council)

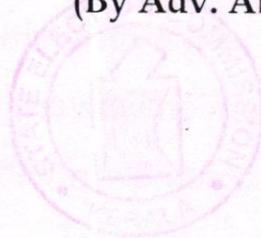
(By Adv. Bobby K. Joseph)

Respondent

: V.G. Gireesh Kumar
Veettil House,
P.O. Kara, Thrissur

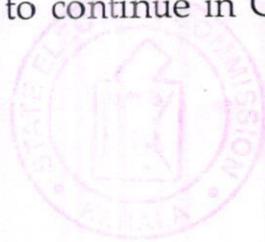
(Member, Ward No.1
Edavilangu Grama Panchayat)

(By Adv. Abhishek B. Pillai)



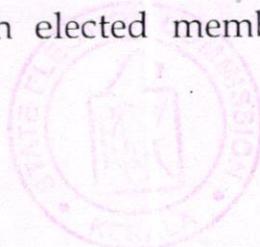
ORDER

1. 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 Edavilangu 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 is the District Secretary of Communist Party of India (CPI), Thrissur District. Respondent is the elected member of ward No.1 of Edavilangu Grama Panchayat. The respondent was contested election to ward No.1 of the panchayat and elected as a candidate of CPI in General Election to the local authorities held in 2020.
3. Pursuant to the election respondent filed a sworn declaration to the panchayat that he was elected as a candidate of CPI. On the basis of the same the party affiliation of respondent as an elected member of CPI was recorded in the Register maintained by the Secretary of the panchayat.
4. It is alleged that while serving and performing as an elected member of Edavilangu Grama Panchayat belongs to CPI, respondent took a political decision to join CPI (M) and subsequently respondent sent a resignation letter to the petitioner and it was received by the petitioner on 20.09.2022. In the resignation letter it was stated that due to the difference of opinion between him and local leaders of the CPI, he is not willing to continue in CPI and so resigning from the



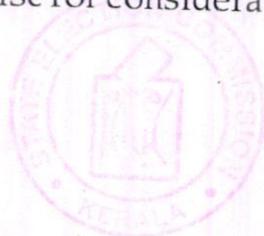
primary membership of the CPI. On receipt of the same, petitioner in his capacity as District Secretary of the CPI, sent a reply notice dated 27.09.2022 to the respondent in contemplation of legal proceedings against him for resigning from the political party while continuing as an elected member of CPI. Respondent disobeyed the direction given by the petitioner in his capacity as District Secretary of CPI and joined CPI (M).

5. After that petitioner came to know that the respondent made open declaration through print and social media that he joined CPI (M) and also declared that he will not abide by the direction of CPI. The conduct of respondent by refusing to obey the direction of CPI has degraded the status of CPI before the general public and before the other constituents of the LDF. The conduct of the respondent clearly establishes that he is not willing to abide by the lawful direction given by his political party, which has sponsored him as a candidate in the election. Having disobeyed the direction and will of the party, respondent has voluntarily given up membership of CPI and the conduct of the respondent would attract the first limb of Section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.
6. As regards of cause of action for filing the petition, it is stated in the petition that cause of action arose on 20.09.2022, the date on which the petitioner received the resignation letter.
7. Respondent's case in brief is as follows:- It is denied that respondent while continuing as an elected member belongs to CPI, took a



decision to join CPI (M). Respondent neither joined in any other political party nor obtained membership of any other political party. He is still an ardent follower of CPI. It is true that there is some difference of opinion among the petitioner and some local leaders of CPI with the respondent. Respondent is an activist, who is always loyal to CPI. Respondent never sent any resignation letter to the petitioner till date. The resignation letter purportedly submitted by him is fabricated one. Petitioner fabricated the said resignation letter with malafide intention to expel the respondent from CPI due to his difference of opinion with petitioner. Respondent admitted that he has received a letter dated 27.09.2022 from the petitioner. After receipt of the letter he approached the petitioner to know about the letter. On enquiry with petitioner he informed that the letter had been sent by mistake and told him to ignore it.

8. Respondent is still an ardent follower of CPI. He has not made any declaration that he will not abide by the direction of CPI. He never intended to join in any other party. Respondent never shown any disloyalty to CPI. There is no valid or sufficient grounds against the respondent and there is no cause of action for the petitioner. Petitioner has no bonafides. Respondent has not committed any act of defection warranting disqualification under the Act.
9. The evidence consists of the oral depositions of PW1 to PW4 and RW1 and Ext. A1 to A7 and B1.
10. Both sides were heard.
11. The following points arise for consideration;



(i) Whether this petition is filed within the time limit provided under rule 4A (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules, 2000?

(ii) Whether the alleged resignation of respondent from CPI amounts to voluntarily giving up of membership of the party?

(iii) Whether the respondent has disobeyed the alleged direction dated 27.09.2022 of the CPI?

(iv) Whether the respondent has voluntarily given up his membership of the CPI political party as alleged?

(v) Whether respondent has committed defection as contemplated under section 3 of the Act as alleged.

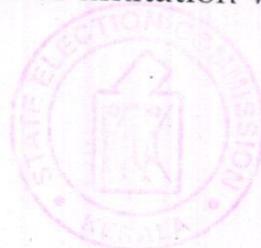
12. Point No. (i) to (v):- There is no dispute that respondent was elected as a candidate of CPI from ward No. 1 of Edavilangu Grama Panchayat. Petitioner is the District Secretary of CPI. There is no dispute that the petitioner has recommended the election symbol of CPI "Ears of Corn and Sickle" to the respondent for contesting election from ward No. 1. Therefore the petitioner has necessary *locus standi* to file petition under rule 4A (1) of the Rules.

13. Petitioner's case is that respondent while continuing as an elected member belongs to CPI, all of a sudden took a political decision to join CPI (M) and subsequently sent Ext A2 resignation letter to the petitioner, which was received by the petitioner on 20.09.2022. In response to the resignation letter petitioner sent Ext A3 letter to the respondent. Respondent received the notice on 30.09.2022, but did not give a reply. The cause of action for the petition is based on the



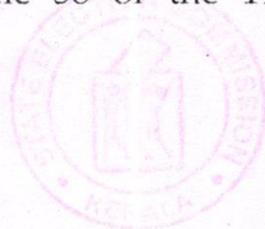
Ext.A2 resignation letter dated 15.09.2022 of the respondent, which was allegedly received by the petitioner on 20.09.2022. However, petitioner has not proved that it was received by him on 20.09.2022. Petitioner filed this OP on 19.10.2022.

14. Petitioner further averred that after receipt of the Ext.A2 letter, he came to know that respondent has already made an open declaration through print and social media that respondent joined CPI (M). While examining as PW1, petitioner further clarified that "*Kerala Kaumudi*" daily dated 29.04.2022 has published the said news item that respondent, who is elected member belongs to CPI joined CPI (M). The "*Kerala Kaumudi*" daily dated 29.04.2022 is marked as Ext.A5 (a). Likewise "*Madhyamam*" daily dated 30.04.2022 has also published the said news, which is marked as Ext.A6 (a). In order to prove that respondent has quit CPI and joined CPI (M) petitioner has examined PW4, who is the Local Committee Secretary of the CPI. Ext.A7 series photographs are marked through PW4. It is very well inferred from the evidence produced by the petitioner that the alleged event of joining CPI (M) by the respondent has taken place prior to 29.04.2022. However, cause of action for the O.P is based on resignation letter allegedly received by the petitioner that is on 20.09.2022 and O.P is filed on 19.10.2022.
15. It appears from the OP that petition is based on multiple causes of action viz. events occurred on 29.04.2022 and thereafter on 20.09.2022. It is settled position that if a suit is based on multiple causes of action, the period of limitation will begin to run from the



date when the right to sue first accrues, viz. 29.04.2022. Further, successive violation of right will not give rise to fresh cause of action and the suit is liable to be dismissed if it is beyond the period of limitation from the day when the right to sue first accrues.

16. Looking at the provisions of sub rule (2) of rule 4A of the Kerala Local Authorities (Disqualification of Defected members) Rules, 2000, a petition regarding disqualification of a member shall be filed within 30 days from the deemed disqualification of the member. Provided that if the petitioner proves that there exist sufficient reason for not filing the petition within the time limit specified, the State Election Commission may accept the petition.
17. Admittedly the right to sue first accrued to the petitioner on 29.04.2022. But O P based on first cause of action arose on 29.04.2022 was filed on 19.10.2022. There is a delay of more than 5 months in filing the O P. In cross examination as PW1, petitioner admitted that the Ext.A5 and Ext A6 news papers published on 29.04.2022 and 30.04.2022 respectively were came to his knowledge on the respective days itself, but he has not taken any action against the respondent till receipt of Ext.A2 resignation letter dated 22.09.2022.
18. The general principles of law on multiple cause of action is laid down in Article 58 of the Schedule to the Limitation Act. While interpreting Article 58 of the Schedule to the Limitation Act, the Hon'ble Supreme Court of India in *Khatri Hotels Pvt. Ltd and another V Union Of India and another* (2011) 9 SCC 126 observed that "While enacting Article 58 of the 1968 Act, the legislature has



designedly made a departure from the language of Article 120 of 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

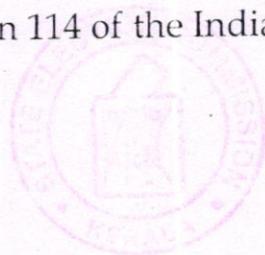
19. In the instant case the right to sue first accrued on 29.04.2022, when the respondent allegedly joined CPI (M) came to the knowledge of the petitioner. From that standpoint there is a delay of more than 5 months in filing the OP. But petitioner has not cared to file a petition for condoning the delay along with O P. Even though petitioner had option to relinquish the plea based on earlier cause of action dated 29.04.2022, he has not exercised it. Therefore the plea based on cause of action dated 29.04.2022 and 30.04.2022 are barred by limitation and hence unsustainable.
20. Moreover from the testimonies of PW1, who is the District Secretary of the CPI, PW4, who is the Local Committee Secretary of CPI, Edavilangu, it appears that they are having no personal knowledge that respondent had joined CPI (M) in April, 2022, but they are relied on media reports. In cross examination of PW1, he answered that

"(Q) എതിർ കക്ഷി CPM-ൽ ചേർന്നതായി താങ്കൾക്ക് തെളിവുണ്ടോ? ഉണ്ടെങ്കിൽ അതിന്റെ രേഖകൾ ഹാജരാക്കാമോ?"



(Ans) പത്രത്തിലും സോഷ്യൽ മീഡിയയിലും, പ്രാദേശിക നേതൃത്വം പറഞ്ഞു മുളള അറിവാണു്. രേഖകൾ ഹാജരാക്കിയിട്ടില്ല.

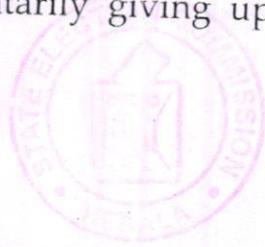
21. PW2, who is the reporter of Ext A6 news item published in the Madhyamam daily, deposed before the Commission that he has reported the news based either on a channel report or online visuals. The evidence of PW1 and PW2 are here say evidence and as such inadmissible. PW3, who is the reporter of Kerala Kaumudi daily dismissed that he has given Ext A5 news report. Therefore on merit also there is no evidence that respondent has voluntarily given up the membership of CPI by joining CPI (M).
22. Petitioner has a definite case that respondent while continuing as an elected member of CPI, submitted Ext.A2 resignation letter dated 15.09.2022 to the petitioner resigning from the primary membership of the CPI and thereby voluntarily abandoned from the membership of the party. Ext.A2 is prepared in printed format, but having a signature purportedly signed by the respondent. According to the petitioner it was received by him on 20.09.2022. The cause of action for the OP is based on the alleged receipt of Ext.A2 by the petitioner. The definite case of the respondent that he never resigned from the CPI and Ext. A2 is fabricated by the petitioner with malafide intention to expel the respondent from CPI. Despite serious dispute with regard to the genuineness of the Ext.A2, petitioner has failed to produce the postal cover containing Ext.A2 to rebut the case of respondent. Therefore adverse inference can be drawn against the petitioner under section 114 of the Indian Evidence Act.



23. Even assuming that respondent had submitted Ext.A2 resignation letter to the petitioner resigning from CPI, the question is whether such conduct amounts to voluntarily giving up of the membership of the party.

In *Varghese V V and another V Kerala State Election Commission and another* (2009 (3) KHC 42 (DB) the Hon'ble High Court examined that aspect and observed as follows;

"We are concerned with the conduct of voluntarily giving up in the political party. It is now settled law that in order to attract the disqualification on the ground of voluntarily giving up of in the political party, the elected member need not resign from the party. In *Ravi S Naik V Union of India* it was held that voluntarily giving up of membership is not synonymous with resignation. Voluntarily giving up membership has a wider meaning than resignation as observed by Division Bench of this Court in *Shajahan V Chathannoor Grama Panchayat*. In *Ravi S Naik's* case the Apex Court made it clear that " Even in the absence of 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* also Supreme Court held that it is the conduct of elected member that is to be looked into while considering whether an elected member has become disqualified in the political party. In *G Viswanathan V Speaker, Tamil Nadu Legislative Assembly* the Apex Court held that " the Act of voluntarily giving up the membership of the political



party may either express or implied'. In *Faisal V Abdulla Kunhi* a learned Single Judge of the 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 political party by express resignation; it is to be inferred from the conduct of the member."

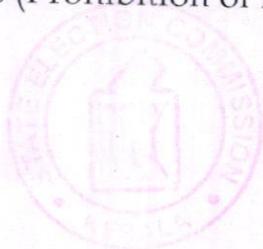
24. Apart from allegations of resignation, petitioner has no case that respondent while continuing as an elected member of CPI, acted against the interest of CPI.
25. Petitioner has a case that respondent has disobeyed the Ext A3 direction issued by him in his capacity as District Secretary of CPI. But on going through the Ext. A3 produced by the petitioner, it appears that it was issued in contemplation of legal proceedings against the respondent for his alleged resignation from the CPI. There is no direction in the Ext A3 to the respondent to do or refrain from doing something. Ext.A3 is not in the nature of any political directive to the respondent. Petitioner has also no case that respondent has disobeyed any of the "directives" contained in Ext A3 subsequent to Ext A2. Therefore the petitioner's case that respondent has violated the Ext.A3 directive issued by the District Committee Secretary of CPI is unsustainable.
26. Petitioner has no case that respondent has violated any whip or direction issued by the political party in his capacity as an elected member of Edavilangu Grma Panchayat. The Hon'ble High Court in *Varghese K V @ Thankachan Kanirakakkattu V State Election Commission*



and Anr (2020 KHC 841 (DB) has drawn a distinction between conduct which may attract only disciplinary action within the political party and the conduct which attract disqualification under the Kerala Local Authorities (Prohibition of Defection) Act, in the following manner;-

"A distinction has to be drawn as to the conduct which may attract only disciplinary action within the political party and conduct which attract disqualification under the Prohibition Act. If a conduct has no relation or bearing with the membership in a local authority, that may only attract disciplinary action within the party. The conduct of a member of a political party in relation to the affairs of the local authority alone has to be considered for disqualification under the Prohibition Act. If a member of a political party defies any political directive in relation to the affairs of the local body, that amounts to voluntarily giving up of membership of such political party." (Paras 13 and 14)

27. The alleged act of resignation from CPI has neither any relation with his membership in the Edavilangu Grama panchayat nor to the affairs of the local body. There is no allegation that respondent has violated whip or voluntarily abandoned his membership of CPI through his conduct in relation to the affairs of the local body. Therefore petitioner has failed to prove that respondent has committed defection and liable for disqualification under the Kerala Local Authorities (Prohibition of Defection) Act.



In the result Original Petition is dismissed.

Pronounced before the Commission on the 9th day of July, 2024.



Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER

APPENDIX

Witness examined on the side of the Petitioner

- PW1 : Sri. Valsaraj K.K.
PW2 : Sri. Ashraf
PW3 : Sri. Udaya Kumar N.P.
PW4 : Sri. P.A. Thajudheen

Witness examined on the side of the Respondent

- RW1 : Sri. V.G. Gireesh Kumar

Documents produced on the side of the Petitioner

- A1 : Copy of the Register showing the party affiliation of the members of Edavilangu Grama Panchayat
A2 : Resignation letter of Sri. V.G. Gireesh Kumar, dated 15.09.2022
A3 : Copy of the letter issued by Sri. K.K. Valsaraj, Secretary, CPI Thrissur District Council, to Sri. V.G. Gireesh Kumar
A4 : Acknowledgement card
A5 : Copy of the daily Kerala Kaumudi dated 29.04.2022
A5(a) : News report at page no.6 of Kerala Kaumudi daily dated 29.04.2022
A6 : Copy of the daily 'Madhyamam' dated 30.04.2022
A6(a) : News report at page no.11 of Madhyamam daily dated 30.04.2022
A7 : Screen shot from facebook
A7(a) : Screen shot from facebook



A7(b) : Screen shot from facebook

A7(c) : Photograph

Documents produced on the saide of the Respondent

B1 : Copy of the relevant page of the Oath Register, Edavilangu Grama Panchayat.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

// True Copy //


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

