

BEFORE THE KERALA STATE ELECTION COMMISSION,  
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,  
STATE ELECTION COMMISSIONER

Thursday, the 23<sup>rd</sup> day of October, 2025

O.P. No. 19-20 of 2024

O.P. No. 19 of 2024

Petitioner

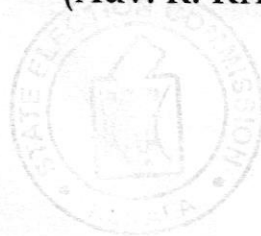
: Sri. V. V. Rajesh,  
S/o Velayudhan Nair,  
TENRA 6, Near Police Training  
College, Thycaud P.O,  
Thiruvananthapuram  
PIN-695035  
(President, Bharatiya Janatha  
Party Thiruvananthapuram District)

(Adv. Rajamohan G. J.)

Respondent

: Sri. A. Sureshkumar  
S/o. Ayyappan Nair,  
Santhwnam House,  
Arangavilakam, Kulathoor  
Uchakkada P.O.  
Thiruvananthapuram District  
(Member, Ward No.17,  
Kulathoor Grama Panchayat)

(Adv. R. Krishnappan Nair)



O.P. No. 20 of 2024

**Petitioner**

: Sri. V. V. Rajesh,  
S/o Velayudhan Nair,  
TENRA 6, Near Police Training  
College, Thycaud P.O,  
Thiruvananthapuram

(President, Bharatiya Janatha  
Party Thiruvananthapuram District)

(Adv. Rajamohan G. J.)

**Respondent**

: Smt. Priyakumari,  
W/o. Rajeev Kumar,  
Rajeevam, Kulathoor,  
Uchakkada P.O.  
Thiruvananthapuram District  
PIN-695505

(Member, Ward No.06,  
Kulathoor Grama Panchayat)

(Adv. R. Krishnappan Nair)

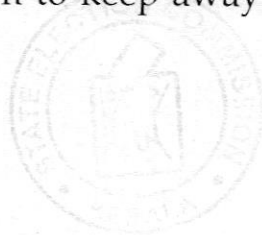
COMMON ORDER

These original petitions are filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that respondents, who are the elected members of Kulathoor Grama Panchayat, have committed defection and hence disqualified to continue as members of Kulathoor Grama Panchayat and also for declaring them as disqualified to contest as a candidate in any election to the local authorities for a period of six years. Since common questions of law and



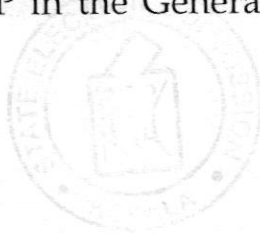
facts are arise in all these cases they are tried together, as OP 19/2024 as leading case.

2. The petitioner's case is that: - The petitioner is the Thiruvananthapuram District President of Bhartiya Janata Party (hereinafter BJP). Respondents are elected members of Kulathoor Grama Panchayat representing ward 17 and 6 respectively. Respondents were contested and elected as candidates of BJP in the General election to the local authorities held in 2020. While so, Indian National Congress (hereinafter INC), which is ruling the panchayat decided to replace the present incumbent President of the panchayat. Accordingly, a fresh election to the post of President was necessitated on 29.01.2024. In the said backdrop petitioner in his capacity as District President of the BJP issued whip to the respondents to keep away from the Presidential election to be held on 29.01.2024 at 11 am. The whip dated 26.01.2024 have been given to the respondents on the same day. Respondents accepted the whip when it served directly and acknowledged the receipt on the duplicate copy of the whip by putting their signature.
3. In the Presidential election held on 29.01.2024, the whip issued by BJP was openly read out by the Returning Officer. But on the contrary to the whip, respondents attended the election meeting held on 29.01.2024 at 11 am and voted in favour of the candidate fielded by INC for the post of President Smt. Geetha Suresh. Respondent acted in violation of the written direction issued by their political party. Therefore, respondents incurred a disqualification under section 3 (1) (a) (ii) of the Kerala Local Authorities (Prohibition of Defection) Act and liable to be disqualified under the Act.
4. Respondents' case in brief is as follows; - It is true that respondents are elected members of ward 17 and 6 respectively of the Kulathoor grama panchayat. Respondents contested and elected as candidates of BJP in the General Election to local authorities held in 2020. The alleged decision of the INC political party to replace their President is not known to the respondents. It is false and incorrect that petitioner issued whip to the respondents directing them to keep away from the Presidential election



held on 29.01.2024. No such whip or direction have been given to the respondents. The alleged whip 26.01.2024 produced along with the petition is forged and fabricated one. It is also false and incorrect that copy of the whip was served to the respondents on 26.01.2024 or any other date. It also incorrect that the contents of the whip were read out in the election meeting by the Returning Officer. Since no whip or direction has been issued by the political party, there is no question of disqualification of the respondents under section 3(1) (a) (ii) of the Kerala Local Authorities (Prohibition of Defection) Act. Respondents never violated any direction of political party. Respondent still working and doing all political activities for the best interests of the political party. The petitioner is not eligible for any reliefs sought for in the petition. Petition may be dismissed.

5. The evidence in this case consists of oral testimonies of PW1, RW1 and RW2 and documents Ext.A1 to A5 and B1 to B6.
6. Heard.
7. The following points arise for consideration, namely; -
  - (i) Whether the respondents have disobeyed the decision and direction of the BJP political party in the election of the President held on 29.01.2024?
  - (ii) Whether respondents have voluntarily given up membership of BJP?
  - (iii) Whether respondents have committed defection as contemplated under section 3 (1) (a) (ii) of the Kerala Local Authorities (Prohibition of Defection) Act?
8. Point No. (i) to (iii); - As common questions of law and facts are arise for consideration on these points, they are considered together for convenience and to avoid repetition. These petitions are filed by the petitioner herein in his capacity as District President of BJP political party. Respondents are elected members of ward 17 and 6 respectively of Kulathoor grama panchayat. Respondents were admittedly contested and elected as candidates of BJP in the General Election to local authorities





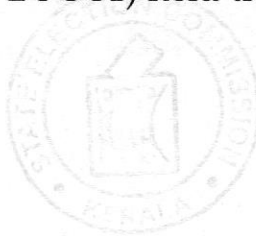
held in 2020. Ext.A5 is the extract of the Party affiliation register prepared by the Secretary of the panchayat under the provisions rule 3 (1) of the Rules on the basis of sworn declarations filed by the respondents. Ext.A5 would go to show that respondents are elected members belonging to BJP.

9. Admittedly, INC was ruling the Kuladhar grama panchayat. While so, INC decided to replace the present incumbent President of the panchayat, which necessitated fresh election to the post of President. The Returning Officer issued notice informing the date and time of the election meeting as 29.01.2024 at 11 am. The case of the petitioner is that on 26.01.2024 he issued whips to the elected members belonging to BJP, including the respondents directing them to abstain from the Presidential election to be held on 29.01.2024 at 11 am. The whip issued to the respondents are marked as Ext.A1 and A2 respectively. The whip was served directly to the respondents on 26.01.2024. Both respondents accepted the whip and signed the duplicate copy of whip in token of acceptance of whip.
10. However, in the Presidential election held on 29.01.2024, respondents were present in the election meeting and voted in favour of candidate fielded by INC Smt. Geetha Suresh. By the said conduct respondents violated the whip issued by BJP political party and incurred a disqualification under section 3(1) (a) (ii) of the Act. In order to substantiate his case petitioner produced copy of the minutes of the Presidential election held on 29.01.2024 as Ext.A3. However, as a matter of fact it is not forthcoming from the Ext.A3 minutes that respondents voted in favour of INC candidate Smt. Geetha Suresh, in violation of whip.
11. The specific case of the respondents is that they have not been given any whip issued by political party in connection with Presidential election held on 29.01.2024. Ext.A1 and A2 whips produced are forged and fabricated documents. Copy of the whip has not been communicated to the Secretary of the panchayat as mandated under rule 4 (2). There are no such pleadings in the original petition also. Respondents have not violated any whip issued by the political party. Respondent in OP 19/2024 is the



Kulathoor Area Committee President of the BJP and respondent in OP 20/2024 is the active worker of BJP. Respondents are still active in BJP. They are working for the best interest of the political party. Ext.B1 to B6 documents produced by respondents to establish that they are still continuing as workers and office bearers of BJP.

12. Petitioner, who is the Thiruvananthapuram District Secretary of the BJP was examined in this case as PW1 and marked Ext.A1 to A5 documents through him. In cross examination petitioner admitted that no whip has been served to the respondent by registered post. PW1 further stated that respondents have been suspended from the party for period of 6 years on account of their violation of whip in the Presidential election held on 29.01.2024. However, petitioner has not adduced any evidence to prove the service of whip to the respondents and Secretary of the panchayat.
13. On going through the original petition, petitioner has no case that copy of the whip was served to the Secretary of the panchayat as mandated under rule 4 (2). However, during the chief affidavit filed by him as PW1 petitioner improved his case by stating that copy of the whip has been served to the Secretary of the panchayat. In order to substantiate his case, he produced the copy of the whip addressed to the Secretary of the panchayat as Ext.A4. It is well settled that one could be permitted to let in evidence only in tune with the pleadings.
14. The Hon'ble Supreme Court of India in *Chinnasamy V K C Palanisamy* (AIR 2004 SC 341; (2003) JT 161 (SC) held that  
"It is now well settled principle of law that evidence adduced beyond the pleadings would not be admissible nor any evidence can be permitted to be adduced which is at variance with the pleadings. The Court at a later stage of the trial as also the appellate Court having regard to the rule of pleadings would be entitled to reject the evidence wherefore there does not exist any pleadings.
15. Further, the Hon'ble Supreme Court of India in *Kalyan Singh Chouhan V C P Joshi* (AIR 2011 SC 1127; (2011) 2 SCC1) held that



"The Court cannot travel beyond the pleadings and the issue cannot be framed unless there are pleadings to raise the controversy on a particular fact or law. It is, therefore, not permissible for the Court to allow the party to lead evidence which is not in the line of the pleadings. Even if the evidence is led that is just to be ignored as the same cannot be taken into consideration." (para 24)

As per section 3 (2) of the Act read with rule 4 (2) of the Rules, it is mandatory that copy of the whip should be given to the Secretary of the panchayat.

16. In *Lizy Valsalan V Suja Salim* (2015 (3) KHC 968) (DB) the Hon'ble High Court observed as follows,-

"The very purpose by which the rule making authority had imposed on a further stipulation to provide a copy of the direction to be given to the Secretary is to ensure existence of a valid direction by the political party to its members." (para 27)

Further, the Hon'ble High Court in *George Elamplakkadu V A V Mathew* (2020 (5) KHC 297) held that

17. Serving of copy of the direction in writing (whip) to the Secretary of the local authority concerned is the only method by which a member of that local authority belonging to any other political party to come to know about the whip. In the enquiry conducted by the State Election Commission under sub-section(2) of section 4 of the Act, the petitioner has to establish the existence of a valid direction in writing ( whip) by the political party to tis members, in terms of clause (i) of sub-rule (1) of Rule 4 and that, it was given to the members concerned and also the Secretary of the local authority, in the manner prescribed in sub-rule (2) of Rule 4. Keeping in view of the intendment of the enactment and context in which the word "shall" has been used in sub-section (2) of section 3 of the Act and sub-rule (2) of Rule 4 of the Rules, conclusion is irresistible that the said provisions, which require that copy of the direction in writing (whip) shall be given to the Secretary, are mandatory in nature."





18. Further, as per the record of proceedings, it appears that petitioner was examined in this case as PW1 on 19.12.2024 and thereafter the case was posted for further evidence of the petitioner for the next 6 postings up to 29.04.2025. But during the period petitioner not examined any witnesses from his side. It appears that petitioner has not even taken steps for examining witnesses from his side. Thereafter on 20.05.2025 respondent in OP No.19/2024 was examined as RW1 and Ext.B1 to B5 documents marked from his side. On 10.06.2025 respondent in OP No.20/2024 was examined as RW2 and Ext. B6 from her side. Neither petitioner nor his Counsel appeared before the Commission since 06.03.2025. The matter finally heard on 17.06.2025.
19. In the present case it is pertinent to note that there is no pleadings either in the original petition or in the Chief affidavit filed by the petitioner as PW1 that respondents have voluntarily given up their membership from the BJP political party in whose banner they were elected as members. There is also no evidence by the petitioner that respondents have incurred disqualification by voluntarily giving up of membership of the party as provided under 1st limb of section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. Quite contrary, in the original petition as well as evidence as PW1 petitioner specifically pleaded/ stated that respondents have acted contrary to the whip issued by the political party in the Presidential election held on 29.01.2024 and therefore respondents are liable to be disqualified under 2nd limb of section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. Therefore, the reliefs sought against the respondents in the petition are confined to 2nd limb of section 3(1) (a) of the Act alone.
20. In *Jomon K L V Kerala State Election Commission, Thiruvananthapuram* (2021 KHC 3056) the Hon'ble High Court held that in the absence of any evidence that the whip was served on the Secretary of the local authority, there cannot be a valid service of whip and it there is no valid service of whip, a member cannot be disqualified with reference to the second limb





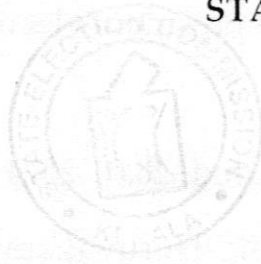
of section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.

21. In *Chinnamma Varghese V. State Election Commission of Kerala* (2009 (4) KHC 527) Division Bench of High Court held that " incurring of the disqualifications under any one of the contingencies depends upon the existence of a definite set of facts, which are required to specifically pleaded before they are sought to be proved to establish the allegation of disqualification under the Act."
22. In the present case there is no sufficient material on the record showing that respondents were violated the whip issued by the political party BJP and acted contrary to the directions issued by the political party in the election to the post of President held on 29.01.2024. Therefore, respondents have not incurred any disqualification under section 3 (1) (a) of the Act. In the result, the original petitions are dismissed.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



## APPENDIX

### Witness examined on the side of the Petitioner

PW1 - Sri. V. V. Rajesh

### Witness examined on the side of the Respondent

RW1 - Sri. A. Sureshkumar

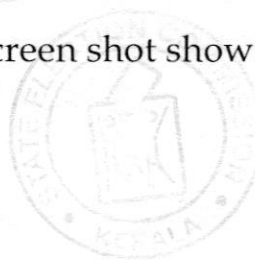
RW2 - Priyakumari S.

### Documents produced on the side of the Petitioner

- A1 - Copy of the whip dated, 26.01.2024 issued by V. V. Rajesh, District President, BJP Thiruvananthapuram to Sureshkumar A
- A2 - Copy of the whip dated, 26.01.2024 issued by V. V. Rajesh, District President, BJP Thiruvananthapuram to Priyakumari.
- A3 - Copy of the minutes of the meeting held on 29.01.2024 in connection with the president election of kulathoor Grama Panchayat.
- A4 - Copy of the letter dated, 26.01.2024 issued by V. V. Rajesh District President BJP, Thiruvananthapuram to Secretary, Kulathoor Grama Panchayat.
- A5 - Copy of the register showing the party affiliation of elected members of Kulathoor Grama Panchayat.

### Documents produced on the side of the Respondent

- B1 - Copy of the letter dated, 01.04.2023 issued by J. Sivakumar, President BJP, Kulathoor Mandalam Committee.
- B2 - Copy of the Mobile screen shot showing the BJP



membership card of A. Sureshkumar.

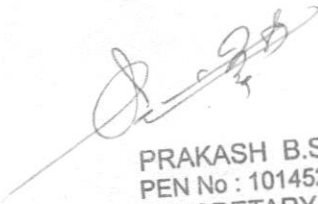
- B3 - Copy of the Mobile screen shot showing the BJP membership card of A. Sureshkumar.
- B4 - Copy of Mobile screen shot, showing the count of members.
- B5 - Copy of Mobile screen shot of receipt.
- B6 - Copy of the Mobile screen shot showing the BJP membership card of Priyakumari S.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//

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

