

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER

Tuesday, the 7th day of October, 2025

O.P. No.61-63 of 2023

O.P. No.61 of 2023

Petitioner

: Sri. B. B. Gopakumar,
S/o Balakrishnan,
Krishna Nandanam,
Meanad,
Nedungolam P. O,
Kollam District

(District President, Bharatiya
Janatha Party, Kollam)

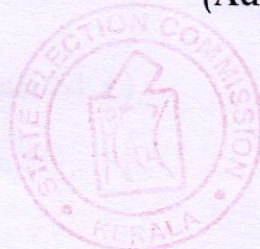
(Adv. Rajmohan G. J.)

Respondent

: Sri. Thevannoor Harikumar,
S/o Sivaraman Pilla,
Agasthya Bhavan,
Thevanoor P.O,
Kollam District -

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

(Adv. A. Santhosh Kumar)



O.P. No.62 of 2023

Petitioner

: Sri. B. B. Gopakumar,
S/o Balakrishnan,
Krishna Nandanam,
Meanad,
Nedungolam P. O,
Kollam District

(District President, Bharatiya
Janatha Party, Kollam)
(Adv. Rajmohan G. J.)

Respondent

: Smt. Usha M,
W/o Madhusoodanan pillai,
Sreyas,
Vilangara
Nellikunnam P. O,
Kollam District

(Member, Ward No.20,
Ummannoor Grama Panchayat)
(Adv. A. Santhosh Kumar)

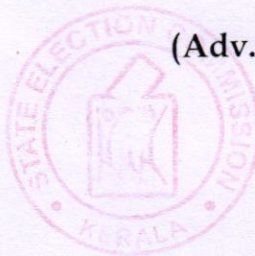
O.P. No.63 of 2023

Petitioner

: Sri. B. B. Gopakumar,
S/o Balakrishnan,
Krishna Nandanam,
Meanad,
Nedungolam P. O,
Kollam District

(District President, Bharatiya
Janatha Party, Kollam)

(Adv. Rajmohan G. J.)



Respondent : Smt. Sindhu S,
W/o Madhusoodanan pillai,
Chaithram,
Kollam District

(Member, Ward No.15,
Ummannoor Grama Panchayat)

(Adv. A. Santhosh Kumar)

COMMON ORDER

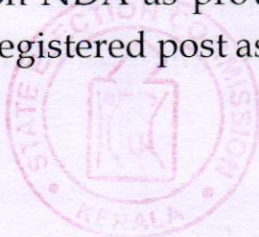
These original petitions are filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that respondents, who are the elected members of Ummannoor Grama Panchayat, have committed defection and hence disqualified to continue as members of Ummannoor Grama Panchayat 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 61/2023 as leading case.

2. The petitioner's case is that: - The petitioner is the Kollam District President of Bhartiya Janata Party (hereinafter BJP). Respondents are elected members of Ummannoor Grama Panchayat representing ward 12, 20 and 15. Respondents were contested and elected as candidates of Bhartiya Janata Party. After the General Election Left Democratic Front (hereinafter LDF) secured majority of seats in the Grama Panchayat and LDF members were elected as President and Vice President of the panchayat. Subsequently the President and Vice President resigned from the posts. The election to the said vacancies of President and Vice President scheduled on 26.07.2023 at 11 am and 2 pm respectively. The petitioner herein in his capacity as District



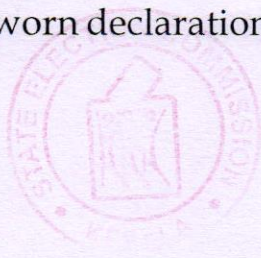
President of the BJP issued whip to the respondents on 25.07.2023 directing them to vote in favour of Smt. M Usha, respondent in OP No. 62/2023 for Presidential election and Sri. Thevannoor Harikumar respondent in OP No. 61/2023 for Vice Presidential election. The whip was accepted by the respondents when it served directly.

3. The election to the post of President and Vice President were held on 26.07.2023 at 11 am and 2 pm respectively. Respondents were present in the both election meetings. Before voting the whip was openly read out in the election meeting by the Returning Officer, Panchayat Secretary and Assistant Returning Officer. In the subsequent voting respondents acted contrary to the direction issued by the District President of Bhartiya Janata Party. The above conduct of the respondent is suitable and enough for their disqualification under section 3 (1) (a) (ii) of the Kerala Local Authorities (Prohibition of Defection) Act.
4. Respondents' case in brief is as follows; -The original petitions are not maintainable either in law or on facts. Petitioner has no *locus standi* to file the petition. Altogether 20 elected members in Ummannoor grama panchayat. Out of which LDF having 9 members, Indian National Congress (hereinafter INC) having 8 members and BJP having 3 members. On getting majority of seats in the panchayat after General Election, an elected member belongs to Communist Party of India (hereinafter called CPI) was elected as President and an elected member belongs to Communist Party of India (Marxist) was elected as Vice President, both political parties are part of LDF coalition. Subsequently, they resigned from the respective positions, which necessitated fresh election to the posts of President and Vice President. The scheduled election to the said posts were held on 26.07.2023.
5. Respondent further submitted that though elections scheduled on 26.07.2023 no whips were served to the respondent by their political party BJP or coalition NDA as provided under law. No whip either directly or through registered post as contemplated under the relevant



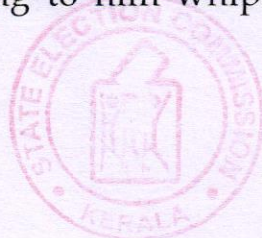
rules have been served to respondents as alleged. It is false and incorrect that whip have been served to the respondents on 25.07.2023. The said averment is only for the purpose of filing petition before the Commission. Similarly, copy of the was never communicated to the Secretary of the panchayat as mandated under law. The copy of the whip produced is concocted and artificially made for the purpose of filing this petition. It is false and incorrect that contents of the whip were openly read out by the Panchayat Secretary at the election meetings held on 26.07.2023. There are no violations of any directions issued by political party. Respondent never committed any act of defection as alleged and therefore respondents are not liable to be disqualified under the provisions of Kerala Local Authorities (Prohibition of Defection) Act.

6. The evidence in this case consists of oral testimonies of PW1 to PW3, RW1 to RW3, documents Ext.A1 to A6 and Ext.X1 to X12.
7. Both sides were heard.
8. The following points arise for consideration, namely; -
 - (i) Whether petitioner is having *locus standi* to file the petition under the provisions of the Act?
 - (ii) Whether respondents had disobeyed the decision and direction of the BJP political party in the elections to the post of President and Vice President held on 26.07.2023?
 - (iii) Whether respondents have committed defection as contemplated under section under section 3 (1) (a) (ii) of the Kerala Local Authorities (Prohibition of Defection) Act?
9. Point No. (i) to (iii); - As common questions of law and facts are arise for consideration in these points, they are considered together for convenience and to avoid repetition. In the chief affidavit filed by the respondents as RW1 to RW3, they specifically admitted that they were contested and elected as candidate of BJP in the General Election to the local authorities held in 2020 in the symbol "lotus". Moreover, the petitioner has marked sworn declarations filed by the respondents and



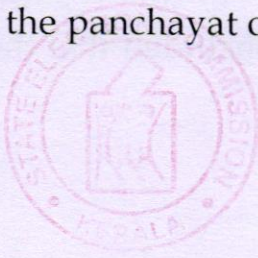
Party affiliation register maintained by the Secretary of the panchayat based on the said declarations as Ext.X1 to X3. It would go to show that respondents are elected members of the BJP.

10. However, during the cross examination of petitioner as PW1, respondents put a specific suggestion that the authority to recommend the symbol of the BJP is vested with State President of the BJP and not District President of the Party and as such District President has no manner of authority to file this petition. Petitioner refuted the said contention of the respondents and he categorically stated that he had recommended the symbol of the BJP to the respondent for contesting election from their respective wards. In the further cross examination respondent failed to discredit the testimony of the petitioner. Therefore, the only possible conclusion is that petitioner having *locus standi* to file the petition under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. The said point is answered accordingly.
11. Admittedly, after General Election LDF got majority of seats in the grama panchayat and elected members belonging to LDF became President and Vice President of the panchayat. However, subsequently they resigned from the posts, which necessitated fresh election to the said causal vacancies. Admittedly, election to the posts of President and Vice President were held on 26.07.2023 at 11 am and 2 pm respectively. Petitioner has also examined Returning Officer of the elections as PW3 and marked the Minutes of the elections as Ext.X11 and X12 through him.
12. Kollam District President of the BJP, who is the petitioner herein was examined as PW1. PW1 deposed before the Commission that prior to the elections to the post of President and Vice President held on 26.07.2023 he had issued whips to respondents directing them to vote in favour of Smt. M Usha for Presidential election and Sri. Thevannoor Harikumar for Vice Presidential election. The copy of the whips issued to the respondent in the said elections are marked through PW1 as Ext.A1 to A6. According to him whips were served directly to the



respondent through Mandalam General Secretary of the BJP Sri. Renjith and respondent accepted it on 25.07.2023, the previous day of election. In the objection respondents vehemently denied the acceptance of whip by them. According to the respondents the whips produced are concocted and artificially made for the purpose of filing the original petition. It is pertinent to note that Ext.A1 to A6 whips produced are only photocopies. There is no endorsement by the respondents in Ext.A1 to A6 whips that they accepted the whip. Petitioner neither produced the original receipts allegedly issued by the respondent in token of acceptance of whip nor explained the reason for not producing the originals. Further petitioner has neither examined the Mandalam General Secretary of the BJP Sri. Renjith, who allegedly served whip to the respondents nor explained the reason thereof.

13. As regards of law on the point, as per rule 4 (2) of the Kerala Local Authorities (disqualification of defected members) Rules, it is mandatory that while issuing a whip in respect of casting a vote in an election, the person who gives it shall obtain a receipt from the member. In the present case petitioner has not produced any receipts issued by the respondents in token of their acceptance of whip. Petitioner has not even produced the originals of Ext.A1 to A6 before the Commission. Therefore, service of whip to the respondent are not proved by petitioner. The said point is answered accordingly.
14. Further, 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. However, there is no pleadings in petition that copy of the whip has been served to the Secretary of the panchayat. In the Chief affidavit filed petitioner as PW1 also there is no such statement. However, when the petitioner examined the Secretary of the panchayat as PW2, the latter produced the photocopy of the whips as Ext.X5 to X10. PW2 further deposed that copy of the whip has been given to the Secretary of the panchayat on 25.07.2023. However, apart



from the testimony of PW2 there is no authentication in Ext.X5 to X10 by PW2 that whips have been received in the panchayat.

15. As discussed above there is no pleadings in the petition that copy of the whips has been communicated to the Secretary. It is well settled that one could be permitted to let in evidence only in tune with the pleadings.

The Hon'ble Supreme Court of India in *Chinnasamy V K C Palanisamy* (AIR 2004 SC 341: (2003) JT 161 (SC) held that

- (i) "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.

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)

16. In view of the dictum laid down by the Hon'ble Supreme Court the uncorroborated testimony of the PW2 panchayat Secretary that he was given Ext.X5 to X10 copy of whip by District President of the panchayat in connection election cannot be admissible in evidence as there is no pleadings in this regard in the petition. As a necessary corollary, it can be concluded that there is no communication of whip



to the Secretary of the panchayat as mandated under section 3 (2) of the Kerala Local Authorities (Prohibition of Defection) Act in the present case.

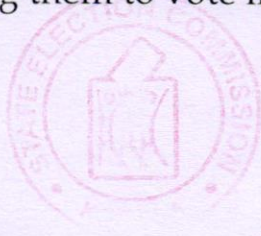
17. In *Lizy Valsalan V Suja Salim* (2015 (3) KHC 968) (DB) the Hon'ble High Court observed as follows, -

" 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)

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

" 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."

19. The consistent case of the respondent as appears from the pleading and evidence let in by them is that the District President of the BJP did not issue whip directing them to vote in favour Smt. M. Usha and Sri.



Thevannoor Harikumar in the Presidential and Vice Presidential election held on 26.07.2023. During the cross examination of petitioner as PW1, he deposed that prior to the election of President and Vice President, a parliamentary party meeting of the party chaired by Sri. Thevannoor Harikumar, respondent in OP No.61/2023 was held. However, petitioner has neither produced the minutes of the said meeting nor corroborated it through independent evidence. Therefore, petitioner has failed to prove that BJP political party had fielded Smt. M. Usha and Sri. Thevannoor Harikumar as Presidential and Vice-Presidential candidates respectively in the election held on 26.07.2023. Petitioner has also failed to prove that all elected members of the BJP were aware of the decision of the political party prior to the election meeting. Petitioner has no specific case that Smt. M. Usha and Sri. Thevannoor Harikumar were failed to contest election held on 26.07.2023 as directed by the party. This is a major lacuna in the present case.

20. In the petition petitioner has taken a case that at the commencement of election meetings the Returning Officer had openly read out the whip issued by the BJP political party to the hearing of all elected members including respondents. However, during examination both PW2 panchayat Secretary and PW3 Returning Officer did not support the case of the petitioner.
21. It has further come out in evidence through the Ext.X11 and X12 minutes of the election meeting held on 26.07.2023 that in the Presidential election respondents on masse voted in favour of Smt. Sheeba Chellappan and Vice-Presidential election they voted in favour of Sri. S Sujathan. During the cross examination of respondent in O P No.61/2023 he expressed ignorance of the political affiliation of the respondents. However, Ext.X4 party affiliation register shows that both Smt. Sheeba Chellappan and Sri. S Sujathan belonging to INC political party.



22. In the present case it is pertinent to note that there are no pleadings in either in the original petition or in the Chief affidavit that respondent have voluntarily given up their membership from the BJP political party in whose banner they were elected as members. There is also no evidenced by the respondent 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 and Vice Presidential election held on 26.07.2023 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 are confined to 2nd limb of section 3(1) (a) of the Act.
23. 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 if 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.
24. 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."
25. 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 elections to the post of President and Vice President held on 26.07.2023. Therefore, respondents have not incurred any disqualification under section 3 (1) (a) of the Act.

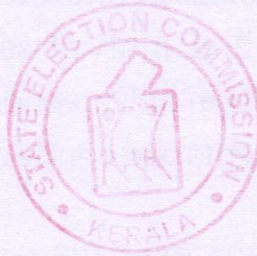
In the result, the original petitions are dismissed.

Pronounced before the Commission on the 7th day of October 2025.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

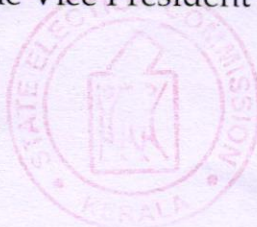
- PW1 - Sri. Gopakumar B. B.
PW2 - Sri. Biju C. Nair
PW3 - Sri. Jamal Muhammed A.

Witness examined on the side of the Respondent

- RW1 - Sri. Harikumar S.
RW2 - Smt. M. Usha
RW3 - Smt. Sindhu S.

Documents produced on the side of the Petitioner

- A1 - Copy of the whip dated, 25.07.2023 issued to Thevannoor Harikumar by B. B. Gopakumar, President Bharatiya Janatha Party, Kollam District, in connection with the President election.
- A2 - Copy of the whip dated, 25.07.2023 issued to Thevannoor Harikumar by B. B. Gopakumar, President Bharatiya Janatha Party, Kollam District, in connection with the Vice President election.
- A3 - Copy of the whip issued to Smt. M. Usha by B. B. Gopakumar, Bharatiya Janatha Party, District President, Kollam in connection with the President election.
- A4 - Copy of the whip dated, 25.07.2023 issued to Smt. M. Usha by B. B. Gopakumar, Bharatiya Janatha Party, District President, Kollam in connection with the Vice President election.
- A5 - Copy of the whip dated, 25.07.2023 issued to Smt. Sindhu S. in connection with the President election by B. B. Gopakumar, President, Bharatiya Janatha Party, Kollam District.
- A6 - Copy of the whip dated, 25.07.2023 issued to Smt. Sindhu S. in connection with the Vice President election by B. B. Gopakumar,



PRAKASH B.S.
PEN No. 101482
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram

President, Bharatiya Janatha Party, Kollam District.

Documents produced on the side of the Witness

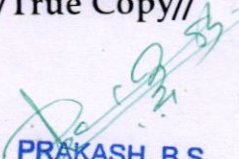
- X1 - Copy of the declaration in form No. 02 submitted by Smt. M. Usha
- X2 - Copy of the declaration in form No. 02 submitted by Sri. Harikumar S.
- X3 - Copy of the declaration in form No. 02 submitted by Smt. Sindhu S.
- X4 - Copy of the register showing the party affiliation of the elected members of Ummannoor Grama Panchayat.
- X5 - Copy of the whip dated, 25.07.2023 issued to Sri. Thevannoor Harikumar in connection with the President election.
- X6 - Copy of the whip dated, 25.07.2023 issued to Smt. M. Usha in connection with the President election.
- X7 - Copy of the whip dated, 25.07.2023 issued to Smt. Sindhu S. in connection with the President election.
- X8 - Copy of the whip dated 25.07.2023 issued to Sri. Thevannoor Harikumar.
- X9 - Copy of the whip dated 25.07.2023 issued to Smt. Sindhu S.
- X10 - Copy of the whip dated 25.07.2023 issued to Smt. M. Usha
- X11 - Copy of the minutes of the meeting held on 26.07.2023 in connection with the President election at Ummannoor Grama Panchayat.
- X12 - Copy of the minutes of the meeting held on 26.07.2023 in connection with the Vice President election at Ummannoor Grama Panchayat.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

