

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER

Tuesday, the 2nd day of July, 2024

O.P. Nos. 06 of 2021, 07 of 2021, 08 of 2021 and 09 of 2021

O.P. No. 06 of 2021

Petitioner

: Adv. Joseph Mutholi,
S/o. George,
Mutholi House,
Chittarikkal P.O., Neeleswaram,
Kasargod - 671 326

(Member, Ward No.16,
East Eleri Grama Panchayat)

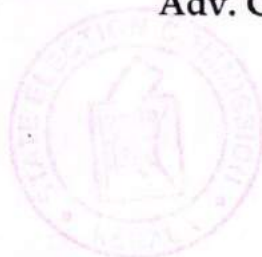
(By Adv. A. Santhosh Kumar)

Respondent

: Jiji Thomas Tacharkudiyil,
W/o. Thomas,
Tacharkudiyil House,
Mandapam P.O.,
Kasargod - 671 326

(Member, Ward No.01,
East Eleri Grama Panchayat)

(By Adv. B. Vasudevan Nair &
Adv. C.P. Praveen)



O.P. No. 07 of 2021

Petitioner

: Adv. Joseph Mutholi,
S/o. George,
Mutholi House,
Chittarikkal P.O., Neeleswaram,
Kasargod - 671 326

(Member, Ward No.16,
East Eleri Grama Panchayat)

(By Adv. A. Santhosh Kumar)

Respondent

: Jiji Puthiyaprambil,
S/o. Joseph,
Puthiyaparambil House,
Kamballoor P.O., Cherupuzha Via,
Kasargod - 670 511

(Member, Ward No.14,
East Eleri Grama Panchayat)

**(By Adv. B. Vasudevan Nair &
Adv. C.P. Praveen)**



O.P. No. 08 of 2021**Petitioner**

: Adv. Joseph Mutholi,
S/o. George,
Mutholi House,
Chittarikkal P.O., Neeleswaram,
Kasargod - 671 326

,(Member, Ward No.16,
East Eleri Grama Panchayat)

(By Adv. A. Santhosh Kumar)

Respondent

: Vineeth (Lalu) Thengumpallil,
S/o. Joseph,
Thengumpallil House,
Kannivayal P.O., Cherupuzha Via,
Kasargod - 670 511

(Member, Ward No.10,
East Eleri Grama Panchayat)

**(By Adv. B. Vasudevan Nair &
Adv. C.P. Praveen)**



O.P. No. 09 of 2021

Petitioner

: Adv. Joseph Mutholi,
S/o. George,
Mutholi House,
Chittarikkal P.O., Neeleswaram,
Kasargod - 671 326

(Member, Ward No.16,
East Eleri Grama Panchayat)

(By Adv. A. Santhosh Kumar)

Respondent

: Detty Francis,
W/o. Francis,
Kandanchira House,
Chittarikkal P.O., Neeleswaram,
Kasargod - 671 326

(Member, Ward No.03,
East Eleri Grama Panchayat)

**(By Adv. B. Vasudevan Nair &
Adv. C.P. Praveen)**

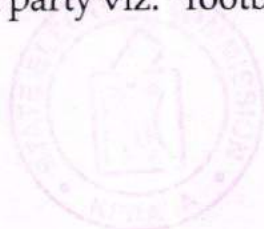


COMMON ORDER

These petitions are filed under Section 3 and Section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that the respective respondents have committed defection and hence became disqualified to continue as members of East Eleri Grama Panchayat and also for declaring the respondents as disqualified to contest as candidates in any election of the local self government institutions for a period of six years.

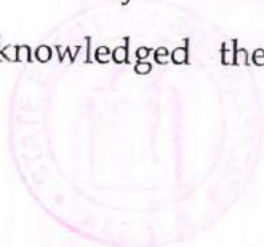
2. As the question of law and facts involved in all the four petitions are common, they were tried together treating OP No. 6/2021 as the main case. The petitioner in all the petitions is same person.
3. Common case of the petitioner in all the four petitions in brief is as follows:

Petitioner and respondents are elected members of East Eleri Grama Panchayat in the election held in December, 2020. Petitioner is contested and elected as candidate of Indian National Congress (INC). The respondent in O P No. 6/2021 is a member of ward No.1. The respondent in O P No. 7/2021 is a member of ward No.14. The respondent in O P No. 8/2021 is a member of ward No.10 .The respondent in O P No. 9/2021 is a member of ward No.03. The Respondents submitted their nomination for the General Election to the local bodies held during December 2020. The State Secretary of Revolutionary Marxist Party of India (RMPI), has recommended the symbol of that political party viz. "football" to the respondents. On the



basis of said recommendation Returning Officer allotted the symbol "foot ball" to the respondents. The respondents contested election as a candidate of RMPI.

4. The East Eleri Grama Panchayat is having a total of 16 ward members. Out of which, INC secured 7, RMPI secured 4, CPI(M) secured 2 and 3 are independent members. Thus INC got majority of seats. After the election, arrangements were made by the Indian National Congress with RMPI to rule the Panchayat. The post of the President of the Panchayat was allotted to Indian National Congress and as such, Adv. Joseph Mutholi, the Petitioner herein, of Ward No.16, was allowed to contest as the president of the Panchayat. The said arrangement was made known to the all the members of INC and RMPI and thus the Petitioner as well as the Respondent were fully aware of the said arrangement. State Secretary of RMPI, has given a written instruction by way of whip dated 29.12.2020, to all the respondents, being elected members of RMPI. It was directed in the whip to attend the meeting to elect president scheduled to be held on 30.12.2020 and cast their valid vote in favour of the petitioner. Since respondents were reluctant to accept the whip when tendered directly to them, it was served by affixture at their residences, as provided under the law, with a duplicate copy of the same attested by 2 witnesses was obtained. The whips were also sent through Whatsapp messages to the respondent in addition to the publication of whip in News Paper. A copy of the whips were also served to the Secretary of East Eleri Grama Panchayat. The Secretary has duly acknowledged the receipt. The whips were



communicated to the Returning Officer also, who acknowledged it's receipt.

5. In the President election held on 30.12.2020, the respondents, who were directed to vote in favour of the petitioner, failed to obey the direction of their political party and voted in favour of another member who stood for the post as the candidate opposite to INC. The official candidate of INC could only obtain 7 votes and the opposite candidate obtained 9 votes and won the election. Respondents casted their vote in favour of candidate opposite to the INC in violation of the whip issued by their political party RMPI. The 3 independent elected members and 2 CPI (M) elected members also supported them and voted in favour of candidate opposite to INC. Respondents violated the whip issued by their political party RMPI and has also voluntarily abandoned or given up their membership in RMPI, and thereby committed defection. The respondents are disqualified to continue as member of East Eleri Grama Panchayat and they are liable to be disqualified to contest the election for a period of six years.

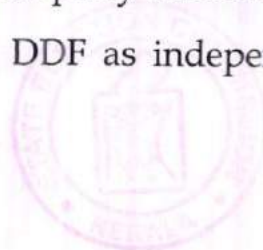
6. The Respondent's contentions in short are as follows:

The Original Petition is not maintainable either in law or on facts. The respondents had contested the election as independent candidates under the Democratic Development Front (DDF), a non-political party. The respondents had submitted nomination papers to contest election to the various wards of East Eleri Grama Panchayat as an independent candidates without any leanings towards any political party. The



contention that the respondents were contested election and elected as members of the RMPI is absolutely false. The respondents had never applied for or obtained any membership in the RMPI political party or any other political party. The Petitioner has not produced the relevant extract of the membership register portraying that the respondents are members of the said political party. Respondents had never even attended any of meeting of the said party. Respondents had not even made any contribution for membership in the said party. The Petitioner himself had contested from Ward No.16 of East Eleri Grama Panchayat and was pitted against Smt. Jessy Thomas, who owed allegiance to the DDF and had contested election in the symbol of 'football'.

7. The candidates sponsored by the DDF had contested elections during the 2015 general election under the Symbol of Football. However, subsequently during 2020 the symbol "football" was allotted to the RMPI on a priority basis. The DDF had resolved to contest the elections with the sponsored candidates under symbol "football". Since RMPI had not fielded any candidate in the election to East Eleri Grama Panchayat, they had resolved to request RMPI to recommend the symbol "football" to the 4 candidates, the respondents. However, the said party refused to recommend initially, though ultimately, they relented and issued the request letter based on which the symbol of football was allotted to the 4 candidates, the respondents. Priority symbol allotted to any political party can be assigned to independent candidate where political party does not field any candidate. Out of 12 candidates fielded by DDF as independents 8 candidates had been



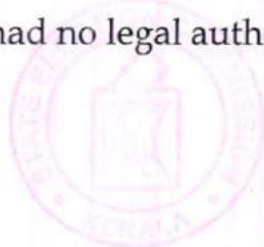
allotted the "football" symbol. But in case of 4 candidates, the respondents candidate with the same name had been set up as independents. This issue was deliberated by the DDF and they reckoned the fact that RMPI had not fielded any candidate in any of the wards of East Eleri Grama Panchayat, they requested RMPI to issue letters recommending symbol football to the respondents and ultimately recommended symbol football to the respondents.

8. The respondents had won in the said elections, by contesting in the election symbol of 'football', but not as candidates of RMPI. 12 candidates had been fielded as sponsored by the said front as 'Independent Candidates', all of whom had contested under the symbol "Football". The Democratic Development Front also supported 2 candidates who had contested from Ward Nos.7 and 12 under the symbols of "two leaves" and "fan" respectively. RMPI had never supported the respondents and had supported the said Indian National Congress Candidate. In the general election held on 14.12.2020, 7 among the independent candidates sponsored and fielded by the Democratic Development Front, 7 belonging to the Indian National Congress and 2 belonging to the CPI (Marxist) won the elections. The contention that RMPI had fielded 4 candidates are absolutely incorrect.
9. No direction in writing, or any whip had been issued to the respondents to attend the meeting and to cast their valid vote in favour of the petitioner in the president election held 30.12.2020 as alleged. No communication dated 29.12.2020 or any other communication or



document had been served on the respondents directing them to cast their vote in favour of the petitioner. The respondents have no legal liability to act in terms of the said communication. The allegation that the whip issued by the State Secretary was served directly on the respondents through the State Committee Member of RMPI is absolutely false. The contention that the respondents were reluctant to accept the whip in person is a mere fantasy. The further contention that the direction was affixed at the residences of respondents is also false. The contention that the whip had been sent through Whatsapp message and publication of the same in newspaper are also denied. The respondents have no legal liability or responsibility to act as dictated by by the RMPI or any of its authorized official. Though the Petitioner asserted that respondents were members of the RMPI, not a single paper had been produced portraying so.

10. Sri. James Panthammakkal, who contested for the post of President against the petitioner had also contested in the general election under the symbol 'football' as was the case of respondents. In such circumstances, the conduct on the part of the Respondent who had also contested under the symbol of 'football' can never be characterized as an act of defection in any manner. The nomination paper, serial number 10 seeks information of the candidate about his relationship with any political party, where in the respondents had clearly written that they had no political inclination/relationship and that they are contesting as independent candidates. The Petitioner or the RMPI or any other authorized official had no legal authority to require the respondents to

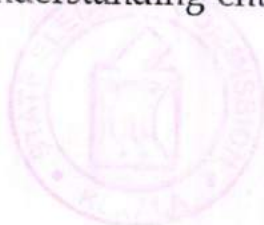


vote in favour of the Petitioner. Nor had the respondents any legal responsibility to do so. The question of abandonment of membership would come only if the respondents were members of the said party.

11. The Respondents had not submitted any declaration that they had contested election as a candidate of a coalition or as a candidate with the support of the coalition. The Respondents had filed a declaration that they are independent candidates who contested election otherwise than as the candidate of a political party or coalition without any support from such political party or coalition. Further the person who issues the direction/whip is required to obtain a receipt from the member and while sending it by registered post, it shall be done along with acknowledgement due and while effecting it by affixing it shall be done in the presence of at least 2 witnesses. Significantly, no communication by registered post had been issued to the respondents. The communication had never been served on the respondents either personally or by registered post or by affixture. The fact remains that the Respondents were never a member of any political party as alleged.
12. The evidence consists of the oral depositions of PW1 to PW7, RW1 to RW3 and documents Exhibits A1 to A14, B1 to B6 and X1 to X5.
13. Both the parties were heard.
14. The following points arise for consideration
 - i) Whether respondents are contested and elected as candidates of RMPI or as independents?



- ii) Whether the respondents have disobeyed the direction of their political party as alleged?
 - iii) Whether the respondents have voluntarily given up their membership from RMPI as alleged?
 - iv) Whether respondents have committed defection as provided under section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 as alleged?
15. Petitioner is an elected member of ward No. 16 of East Eleri Grama Panchayat in the general election held in 2020 and continues as member. Respondents are the elected as members of East Eleri Grama Panchayat. Therefore petitioner having locus standi to file the petition under section 4(1) of the Act against the respondents. Petitioner contested and elected as member belonging to INC in the official symbol "hand". Respondent contested and elected as member belonging to RMPI in the official symbol of the party football. The State Secretary of RMPI has recommended the official symbol of RMPI viz. "football" to the respondent, The said letters all dated 22.11.2020 are marked as Exts A1 to A4. On the basis of the said recommendation Retuning Officer of East Eleri Grama Panchayat allotted the official symbol of RMPI "football" to the respondent on priority basis.
16. There are 16 seats in East Eleri Grama Panchayat. INC secured 7 seats; RMPI secured 4 seats; CPI (M) secured 2 seats and 3 independents. After the election an understanding entered in between the INC and



RMPI for sharing the post of President of the panchayat. Accordingly the petitioner who belongs to INC was nominated to contest the election as President. The said arrangement was made known to all members of INC and RMPI and thus petitioner and respondents were fully aware of the arrangement.

17. As per the understanding the State Committee Secretary of the RMPI issued whip dated 29.12.2020 to all the 4 elected members of RMPI in the panchayat, the respondents herein. The whips dated 29.12.2020 issued to the respondents are marked as Exts. A5 to A8. It was specifically directed in the whip to attend the meeting scheduled to be held on 30.12.2020 to elect president and cast their vote in favour of Sri. Joseph Mutholi, petitioner herein. Since respondents had reluctant to accept the whip served directly to each of them, it was served to the respondents through affixture at the residences of the respondents in the presence of two witnesses. The documents in proof of service of whip to the respondents individually through affixture are marked as Ext. A9 to A12. The copy of the whip issued to the respondents was served to the Secretary of East Eleri Grama Panchayat as mandated under rule 4 (2), which is marked as Ext A13 (a to d). It goes to indicate that panchayat secretary has acknowledged the receipt of the copy of whip with her signature and seal.
18. In the election of president held on 30.12.2020, petitioner stood as candidate of INC. Respondents who were directed to vote in favour of the petitioner, fails to obey the direction and voted in favour of Sri.

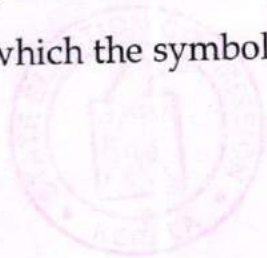


James Panthammakkal, an independent member who stood as the candidate opposite to INC. The name of Sri. James Panthammakkal for the post of President was proposed by Sri. K K Mohanan, member belongs to CPI (M) and it was seconded by Sri. Jiji Kambaloor. All the 4 members of RMPI and 2 members of CPI(M) and three independents colluded and voted in favour of Sri. James Panthammakkal and Sri. James Panthammakkal secured 9 votes as against 7 votes secured by the petitioner. Thereby the post of president was lost to the official candidate of the INC. Copy of the Minutes of the meeting to elect president dated 30.12.2020 is marked as Ext. A14. The respondents have violated the whip and voluntarily abandoned their membership in their political party.

19. The respondent in O P No. 7/2021 Sri. Jiji Puthiyaprarambil was examined as RW1. According to him the respondents were contested election to the respective wards of East Eleri Grama Panchayat not as the candidates of RMPI, but as independent candidates. In order to prove his case that he contested election as independent he produced the certified copy of nomination paper submitted at the time of election, which is marked as Ext B1. Respondent is one among the twelve candidates fielded by Democratic Development Front, a non political organization to different constituencies of East Eleri Grama Panchayat. He has produced the request of Democratic Development Front to the electorate to vote in favour 12 independents fielded by Democratic Development Front for election to different constituencies of East Eleri Grama Panchayat. There is also a request of Democratic Development

Front to vote for two candidates supported by DDF. The election manifestos of DDF are marked as Ext B2 and B3. In the party affiliation register maintained by the Panchayat Secretary on the basis of the sworn declarations submitted by the respondents it is stated that respondents are independent members. He has sought vote from the electorate of ward No. 14 of East Eleri Grama Panchayat as a candidate of DDF, which is explicit from the Ext.B2. RMPI has not fielded any candidate for any of the wards of East Eleri Grama Panchayat during 2020 election.

20. During 2015 general election to the East Eleri Grama Panchayat, candidates of DDF was contested in the symbol "football". In subsequent 2020 general election to East Eleri Grama Panchayat also DDF has taken a decision to field candidates in the symbol "football". However, out of the 12 candidates of the DDF, 4 candidates, the respondents confronted with candidate with the same names in fray and they also sought for the same symbol "football". The situation makes it difficult to the respondents to get the symbol football being allotted to them. In the meanwhile in 2020 the symbol "football" was allotted to RMPI on priority basis. Since RMPI did not contest the elections to any of the wards of East Eleri Grama Panchayat, the DDF resolved to request them to recommend the symbol football to the 4 candidates. Though initially RMPI refused to recommend the symbol football to the respondents, ultimately they conceded and issued letter recommending the symbol "football" to the 4 candidates, the respondents. Based on which the symbol "football" was allotted to the



4 candidates. In the election to East Eleri Grama Panchayat, the RMPI has supported the candidates fielded by INC-UDF. There was a tripartite contest in the East Eleri Grama Panchayat viz. DDF, UDF and LDF during 2020 election. RMPI was in fact supported the candidate fielded by INC and not respondents as alleged.

21. In the President election held on 30.12.2020 petitioner contested the election as INC candidate against Sri. James Panthamakkal, who stood as DDF candidate for the post. The respondent has no alliance with either UDF or RMPI before or after the election. Petitioner has no knowledge about the candidature of petitioner for the post of President and whip issued by RMPI to vote in favour of him in the election. Whip has not been served either directly or through registered post or through affixture at the residence of the respondents. The whip was not read out in the election meeting held on 30.12.2020 by the RO. The State Secretary of RMPI has no authority to issue whip to the respondents and such a whip was not served to him or other respondents. Respondent is not a member of RMPI and as such there is no question of voluntarily giving up of membership from RMPI. Respondent is an independent member belonging to DDF.
22. The State Committee Secretary of RMPI has examined as PW4. He deposed that the election symbol football is allotted to RMPI on priority basis. As the State Committee Secretary of RMPI he is competent to recommend party symbol football to the candidates to be sponsored by RMPI. Respondents are party sympathizers of RMPI and as such he



recommended party symbol to them to contest election to various constituencies of East Eleri Grama Panchayat in the election held in December, 2020. The letters addressed to Returning Officer recommending symbol football to the respondents are shown to him and marked as Ext. A1 to A4. He further deposed that there was alliance between RMPI and INC in East Eleri Grama Panchayat during 2020 election. He has issued the party direction to the respondents to vote for Sri. Joseph Mutholi in the election to the post of President of East Eleri Grama Panchayat held on 30.12.2020. The whip dated 29.12.2020 issued to the respondents are marked as Ext. A5 to A8. He further deposed that the whip was served through Sri. Appukkuttan Karai, who is the State Committee member of RMPI. Ext. A9 to A13 are duplicate copy of whip served to the respondents by affixture at their residences. Copy of the whips served to the respondents were communicated to the Secretary of the East Eleri Grama Panchayat.

23. Sri. Appukkuttan Karai, the State Committee member of RMP is examined as PW5. He deposed that the respondents are elected as members of RMPI in East Eleri Grama Panchayat. In the President election held on 30.12.2020 the party decision was to vote for Sri. Joseph Mutholi. But respondents violated the party whip. He has been authorized by his political party to serve whip to the respondents. Accordingly he approached the respondents to hand over the whip directly to them. But they were reluctant to accept the whip. Therefore the whips were served through affixture at the residences of the respondents in the presence of witnesses. He has also served copy of

the whips to the Secretary of East Eleri Grama Panchayat, same is marked as Ext.A13. In the cross examination he denied the suggestion that respondents are not the sympathizers of the RMPI.

24. Panchayat Secretary of East Eleri Grama Panchayat was examined as PW2. He has produced the official records pertaining to the service of copy of whip on the Secretary of East Eleri Grama Panchayat, which is marked as Ext. X1 series. Returning Officer of East Eleri Grama Panchayat has examined as PW3. He has produced official records pertaining to nomination submitted by respondents, recommendation of party symbol of RMPI to the respondents and allotment of party symbol by him to the respondents, which are marked as Ext.X2 to Ext X5 series. Petitioner has also examined the two witnesses of service of whips through affixture as PW6 and PW7. PW6 and PW7 deposed that they are associated with identification of the residences of the respondents and witnessed the affixture of whips.
25. Respondent in OP No. 7/2021 was examined as RW1. He has produced the certified copy of the nomination paper to prove that he has contested and elected as independent candidate, which is marked as Ext. B1. He has also deposed that his political affiliation is duly recorded in the Party Affiliation Register prepared by the Secretary as an independent candidate. But he has not produced the copy of party affiliation register and sworn declaration. His consistent case is that he is contested and elected as an independent candidate under DDF. In order to prove the same he has produced the election manifesto of DDF,



which is marked as Ext. B2. The other respondents filed statements in lieu of examination in chief and turn up before the commission as RW2 and RW3. They agreed to the depositions of RW1 and subjected to cross examination.

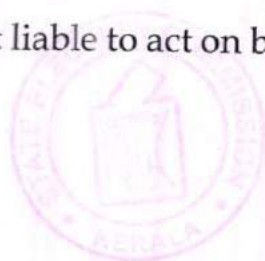
26. It appears from the nomination paper of respondents produced as X2 to X5 that they filed nomination papers to the respective wards as independents. It is the admitted case of the respondents that subsequently the State Committee Secretary of RMPI political party recommended symbol "football" the respondent. RMPI is a registered unrecognized political party eligible to get a symbol on priority basis. At the time of 2020 election the symbol "football" was allotted to the RMPI on priority basis. The Returning Officer admitted that he had allotted the symbol of RMPI to the respondent on the basis of Ext A1 to A4 letters of RMPI State Committee Secretary. Respondent has no case that they contested the election not in the symbol "football" allotted to RMPI.
27. The contention of the respondents that they filed nomination papers as independent candidate does not hold good in the matter in view of the paragraph 8 (i) and (ii) of Local Authorities Election Symbols (Reservation and Allotment) Order, 2017, which reads as follows;-
- " (i) The candidate has mentioned the name of the political party in the prescribed column in the nomination paper and has chosen the symbol, if any, reserved or allotted for that party in the nomination paper;



Provided that if a political party recommends the symbol of that party to a candidate who has not mentioned the name of political party or its symbol in the nomination paper and has mentioned a symbol from the list of free symbols in the nomination paper, he is eligible to get the symbol of that party allotted to him

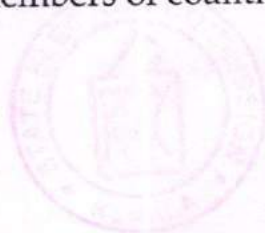
(ii) A notice by the political party in writing to that effect, not later than 3.00 pm on the last date of withdrawal of nomination, is delivered to the Returning Officer of the constituency."

28. Therefore the Returning Officer has every right to allot symbol "football" to the respondents on the basis of the Ext A1 to A4 letters of RMPI notwithstanding the entries in column No.10 of the Ext. X2 to X5 nomination papers submitted by respondents.
29. The symbol "football" was allotted to the RMPI on priority basis. In the light of the provisions of the Local Authorities Election Symbols (Reservation and Allotment) Order, 2017, priority basis means in a ward where a candidate sponsored by a registered political party has filed nomination paper, he get that symbol in preference. However in a ward where political party has not fielded any candidate, the said symbol can be claimed by the independents.
30. Another contention of the respondents are that in the party affiliation register maintained by Panchayat Secretary under rule 3 of the Kerala Local Authorities (Disqualification of Defected members) Rules it is stated that the respondents are independent members. Therefore the respondents are not liable to act on basis of any whip issued by RMPI.



It is pertinent to note that party affiliation register is maintained by the panchayat secretary solely on the basis of declarations filed by elected members.

31. In *Sheeba James V T C George* (2012 (3) KHC 174) considered the relevance of entries in the party affiliation register made on the basis of declarations of elected members and held that
“Commission may examine the veracity of the declarations filed by the members concerned under rule 3(2) or may examine as to whether the member belongs to a political party or to a coalition or is an independent member not included in a political party and the decision that Commission may take on the basis of such examination in the matter shall be final.”
32. In view of the foregoing discussions it is unreasonable to hold that respondents are contested the election not as a candidate of RMPI, but as independents. Therefore the entries in the party affiliation register prepared on the basis of declaration of the respondents cannot be considered as a determinative factor in the present case.
33. The case of the respondents is that they contested the election as independent candidates under DDF. Respondents heavily relied on the Ext. B2 and B3 election manifestos issued by the candidates of DDF. But respondents has no case that they are part of DDF coalition and such a declaration had been given under rule 3 (2) (b) the Kerala Local Authorities (Disqualification of Defected members) Rules and liable to be treated as members of coalition. The respondents has also



no case that they convened a meeting of elected members belonging to DDF to elect a member as Chief Whip of DDF to give directions to its elected members as provided under rule 4 (1) (ii) of the Kerala Local Authorities (Disqualification of Defected members) Rules.

34. Petitioner has examined the State Committee Secretary of the RMPI who issued Ext. A1 to A 4 letters recommending its symbol to the respondents and Ext. A5 to A8 whips to respondents on the eve of President election held on 30.12.2020. It is evident from Ext. A13 series that copy of the whip was given to the Secretary of the East Eleri grama panchayat as provided under rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules. Petitioner has produced the duplicate copy of whips affixed as Ext. A9 to A 12 and PW5 who served the notice to the respondents. The two witnesses to the service of whip to the affixation are examined as PW6 and PW7. It shows that respondents are well aware of the whip. Petitioner has also examined the Secretary of East Eleri Grama Panchayat and the Returning Officer as PW2 and PW3.

35. In this regard it is pertinent to examine the scope of sub section (3) of the Kerala Local Authorities (Prohibition of Defection) Act, which reads as follows

“(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 support] as a candidate for the election.

36. By virtue of the sub section (3) of section 3 of the Act the respondents are considered as members of the political party RMPI.
37. There is no dispute that INC has secured majority of seats in East Eleri Grama Panchayat during the general election 2020. The RMPI political party has supported the INC in electing Panchayat President among the members of INC. But respondents thwarted it by colluding and conniving with rival political party and independents.
38. In *Lissy Valsalan V. Suja Salim and another* (2015 (3) KHC 968) where the Division Bench of HC 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.
39. In *Eruthavoor Chandran and another V State Election Commission* (2018 (5)KHC 962(DB) held that failure of a member of a political party to act in accordance with political directives amounts to voluntarily abandoning membership of the political party to attract



disqualification under first limb of section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act,1999.

40. Taking into account the entire aspects of the matter and the legal situations discussed above I have no hesitation to hold that respondents are committed defection under section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

In the result O.P. No.06/2021, 07/2021, 08/2021 and 09/2021 are allowed and the respondents are declared as disqualified for being elected members of East Eleri grama panchayat as provided under section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act,1999. The respondents are further declared as disqualified from contesting as a candidates in any election to any local authorities for a period of six years from this date, as provided under section 4 (3) of the Act.

Pronounced before the Commission on the 2nd day of July, 2024.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX**Witness examined on the side of the Petitioner**

- PW1 : Adv. Joseph Mutholi
PW2 : Sri. Biju K.
PW3 : Sri. P. Lohithakshan
PW4 : Sri. N. Venu
PW5 : Sri. Appukkuttan Karayil
PW6 : Sri. Jose K.E.
PW7 : Sri. Sebastian Pathalil

Witness examined on the side of the Respondent

- RW1 : Sri. Jiji P.J. (Jiji Puthiyaparambil) (OP No.07/2021)
RW2 : Smt. Detty Francis (OP No.09/2021)
RW3 : Sri. Vineeth (Lalu) Thengumpallil (OP No.08/2021)

Documents produced on the side of the Petitioner

- A1 : Letter to Returning Officer regarding issuance of symbol to RMPI candidate Smt. Jiji Thomas Thacharkudy by N. Venu, Secretary, RMPI Kerala State Committee, dated 22.11.2020
A2 : Letter to Returning Officer regarding issuance of symbol to RMPI candidate Sri. Jiji Puthiyaparambil by N. Venu, Secretary, RMPI Kerala State Committee, dated 22.11.2020
A3 : Letter to Returning Officer regarding issuance of symbol to RMPI candidate Sri. Vineeth (Lalu) Thengampalli by N. Venu, Secretary, RMPI Kerala State Committee, dated 22.11.2020



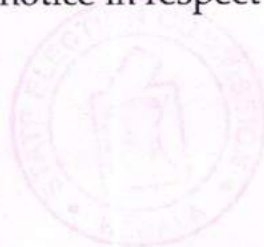
- A4 : Letter to Returning Officer regarding issuance of symbol to RMPI candidate Sri. Detty Francis by N. Venu, Secretary, RMPI Kerala State Committee, dated 22.11.2020
- A5 : Copy of the whip dated 29.12.2020 issued to Smt. Jiji Thomas Thacharkudiyil issued by N. Venu, Secretary, Revolutionary Marxist Party of India, Kerala State Committee, Kozhikode
- A6 : Copy of the whip dated 29.12.2020 issued to Sri. Jiji Puthiyaparambil issued by N. Venu, Secretary, Revolutionary Marxist Party of India, Kerala State Committee, Kozhikode
- A7 : Copy of the whip dated 29.12.2020 issued to Sri. Vineeth (Lalu) Thengumpallil issued by N. Venu, Secretary, Revolutionary Marxist Party of India, Kerala State Committee, Kozhikode
- A8 : Copy of the whip dated 29.12.2020 issued to Smt. Detty Francis issued by N. Venu, Secretary, Revolutionary Marxist Party of India, Kerala State Committee, Kozhikode
- A9 : Copy of the whip dated 29.12.2020 showing the affixture details at the residence of Smt. Jiji Thomas Thacharkudiyil
- A10 : Copy of the whip dated 29.12.2020 showing the affixture details at the residence of Sri. Jiji Puthiyaparambil
- A11 : Copy of the whip dated 29.12.2020 showing the affixture details at the residence of Sri. Vineeth (Lalu) Thengumpallil
- A12 : Copy of the whip dated 29.12.2020 showing the affixture details at the residence of Smt. Detty Francis



- A13 : Letter dated 29.12.2020 issued by Secretary, RMPI, Kerala State Committee to Secretary, East Eleri Grama Panchayat regarding the issuance of whip to the Respondents Smt. Jiji Thomas Thacharkudiyil, Dmt. Detty Francis, Sri. Vineeth (Lalu) Thengumpallil and Sri. Jiji Puthiyaparambil
- A13(a) : Copy of the whip dated 29.12.2020 issued to Smt. Jiji Thomas Thacharkudiyil issued by N. Venu, Secretary, Revolutionary Marxist Party of India, Kozhikode
- A13(b) : Copy of the whip dated 29.12.2020 issued to Smt. Detty Francis, Kandanchira by Secretary, RMPI, Kerala State Committee, Kozhikode
- A13(c) : Copy of the whip dated 29.12.2020 issued to Sri. Vineeth (Lalu) Thengumpallil by Secretary, RMPI, Kerala State Committee, Kozhikode
- A13(d) : Copy of the whip dated 29.12.2020 issued to Sri. Jiji Puthiyaparambil by Secretary, RMPI, Kerala State Committee, Kozhikode
- A14 : Copy of the minutes of the meeting held on 30.12.2020 at East Eleri Grama Panchayat

Documents produced on the saide of the Respondent

- B1 : Copy of the nomination form in respect of Sri. Jiji, East Eleri Grama Panachayat
- B2 : Election campaign notice in respect of Sri. Jiji Kamballoor



- B3 : Election campaign notice published by Janakeeya Vikasana Munnani
- B4 : Copy of the nomination form submitted by Smt. Detty Francis
- B5 : Copy of the election campaign notice in respect of Smt. Detty Francis
- B6 : Copy of the nomination form in respect of Sri. Vineeth (Lalu) Thengumpallil

Documents produced by Witnesses

- X1(a) : Copy of the whip issued in connection with President Election by N. Venu, Secretary, Revolutionary Marxist Party of India, Kerala State Committee, Kozhikode to Smt. Jiji Thomas Thacharkudiyil
- X1(b) : Copy of the whip issued in connection with President Election by N. Venu, Secretary, Revolutionary Marxist Party of India, Kerala State Committee, Kozhikode to Smt. Detty Francis
- X1(c) : Copy of the whip issued in connection with President Election by N. Venu, Secretary, Revolutionary Marxist Party of India, Kerala State Committee, Kozhikode to Sri. Vineeth (Lalu) Thengumpallil
- X1(d) : Copy of the whip issued in connection with President Election by N. Venu, Secretary, Revolutionary Marxist Party of India, Kerala State Committee, Kozhikode to Sri. Jiji Puthiyaparambil

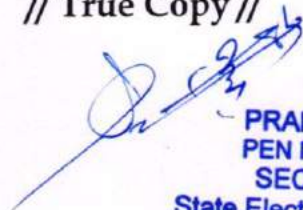


- X1(e) : Copy of the whip dated 29.12.2020 issued to Smt. Jiji Thimas Thacharkudiyil in connection with Vice President Election, East Eleri Grama Panchayat
- X1(f) : Copy of the whip dated 29.12.2020 issued to Smt. Detty Francis in connection with Vice President Election, East Eleri Grama Panchayat
- X1(g) : Copy of the whip dated 29.12.2020 issued to Sri. Vineeth (Lalu) Thengumpallil in connection with Vice President Election, East Eleri Grama Panchayat
- X1(h) : Copy of the whip dated 29.12.2020 issued to Sri. Jiji Puthiyaparambil in connection with Vice President Election, East Eleri Grama Panchayat
- X2 : Copy of the nomination in respect of Smt. Jiji, W/o. Thomas Joseph Thacharkudiyil
- X3 : Copy of the nomination in respect of Sri. Jiji, Puthiyaprambil, Kamballoor East Eleri Grama Panchayat
- X4 : Copy of the nomination in respect of Sri. Vineeth, Thengumpallil, Kannivayl, East Eleri Grama Panchayat
- X5 : Copy of the nomination in respect of Smt. Detty Francis, kandanchira, Chittarikkal P.O., East Eleri Grama Panchayat

Sd/-

A. SHAJAHAN**STATE ELECTION COMMISSIONER**

// True Copy //



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

