

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

**PRESENT: SHRI. A. SHAJAHAN,  
STATE ELECTION COMMISSIONER**

**Tuesday, the 25<sup>th</sup> day of February, 2025**

**O.P. No. 07 of 2023**

**Petitioner**

: Venukkuttan M. S.  
S/o. Sivaraman  
Murickal House,  
Mariyathuruthu P.O.,  
Perumpayikkadu Village.  
Kottayam District - 686017

(Councilor, Division No. 11,  
Kottayam Municipality)

(By Adv. Pallichal S.K. Pramod)

**Respondent**

: Bincy Sebastian  
W/o. Shoby Lukose,  
Chamathara Veedu  
Perumbaikkadu P.O.  
PIN. 686016

(Councilor, Division No. 52,  
Kottayam Municipality)

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





**ORDER**

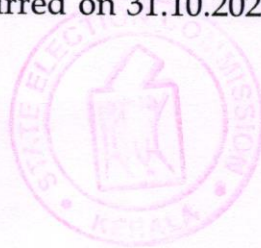
This is a petition filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that this respondent committed defection and hence disqualified to continue as Councillor of Kottayam Municipality and also for declaring her as disqualified to contest as candidate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

2. The petitioner's case in brief is as follows;- The petitioner and respondents are elected Councillors of ward No.11 and ward No.52 respectively of Kottayam Municipality, in the election to the local authorities held in December,2020. Respondent contested election as an independent not belonging to any political party or coalition, in the election symbol "mobile phone". After swearing as a Councillor of Kottayam Municipality, respondent filed a declaration to the Secretary of the Municipality that she was elected as an independent Councillor not belonging to any political party or coalition. On the basis of such declaration the Secretary prepared a register showing the party connection of the respondent as an independent Councillor. After the election respondent became the Chairperson of the Kottayam Municipality with the support of UDF.
3. Petitioner submitted that thereafter on 31.10.2022, which is the commemoration day of Smt. Indira Gandhi, the respondent joined INC political party, in a function held at Kottayam DCC Office. According to the petitioner respondent joined INC as a gratitude to their support to respondent in the election to the office of Chairperson. Respondent voluntarily abandoned her status of an independent elected Councillor and commenced political work for INC during December, 2022.





4. On 14.12.2022, respondent participated and addressed an agitation against the alleged backdoor appointments and price hike of essential commodities organised by the INC at Chanthakavala, Kottayam. The said protest meeting was inaugurated by Congress leader and MLA Sri. Thiruvanchoor Radhakrishnan. In the said agitation respondent raised slogans praising the INC and against LDF Government. The photograph and news of said agitation was published in the *Malayala Manorama* daily dated 15.12.2022 (Ext.A2(a)). The presence of respondent is clearly visible in Ext.A2(a) photograph.
5. Subsequently on 03.01.2023, respondent participated and addressed a protest gathering organised by UDF at Samkranthi, Kottayam. The photograph and news of said agitation published in the *Malayala Manorama* daily dated 04.01.2023 is marked as Ext. A3 (a). The presence of the respondent is visible in the Ext.A3 (a) photograph also.
6. The cause of action for filing this petition arose on 10.12.2020, the date of declaration under rule 3 (2) (c) filed by the respondent, on 04.01.2023 the date on which the last news item of her joining INC was published in the *Malayala Manorama* daily and on 20.01.2023, the date on which the petitioner came to know about the respondent's act of defection to the INC. The respondent has committed defection as provided under section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act and liable to be disqualified under the Act.
7. The respondent's case in brief is that; - Petition is barred by limitation as the alleged cause of action occurred on 31.10.2022. The cause of action is false





and baseless. It is true that respondent contested and elected as an independent candidate not belonging to any political party or coalition.

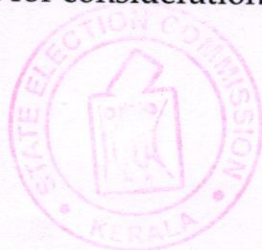
8. In the Kottayam Municipality LDF having a strength of 22 Councillors, UDF having a strength of 21 Councillors, BJP 8 Councillors and independent 1. Respondent is the lone independent Councillor of the Municipality. Respondent contested election to the office of Chairperson of Kottayam Municipality and elected to the post with the support of UDF. She has been continuing as an independent Councillor and Chairperson of the Municipality. She discharges her duties in the Municipality without fear or favour by upholding the interest of public. She neither joined any political party or coalition nor taken any membership of any political party or taken part in any political activities of any party or even shown any allegiance to any political party or coalition.
9. Respondent further submitted that she contested the election to the post of Chairperson of the Kottayam Municipality as an independent candidate and won the same without seeking the support of any political party or coalition. She has not joined INC on 31.10.2022 or any other dates shown in the petition. She never gone to DCC office for any political activities. The allegations are nothing but a malafide attempt to foist false case against the respondent. The allegation that she has voluntarily abandoned the status of an independent councillor since 31.10.2022 and had commenced political work for INC from December, 2022 is utter false, baseless and imaginary.
10. The averment that the petitioner came to know about the respondent joining INC (not admitted) on 20.01.2023 is false and misleading as respondent never joined INC. Respondent has never participated in any protest





organised by INC at Chanthakavala or any other place. It is also untrue that respondent raised slogans praising INC and against the LDF Government.

11. It is true that respondent participated the protest gathering at Samkranthi, Kottayam. The background of the protest was that a nurse aged 33 years had consumed "Kuzhimandi" from a restaurant by name Park Hotel at Samkranthi and passed away due to the alleged food poisoning. There were huge protest against the Hotel and the officers of the Municipality responsible, after the incident. This incident happened around 700 metres away from the residence of the respondent and as a public spirited citizen, the respondent was present at the venue. The protest programmes were organised by the political parties, consumer groups and organisations of youth and women. As a public figure residing close to the place, respondent participated and addressed the protest meets organised by many organisations at Sankranti. The UDF was just one among the organisations that led the agitation in protest against the Restaurant and respondent has participated and addressed the said protests as a member of public and not as a member of INC or any other organisation.
12. Petitioner has no cause of action against the respondent.
13. The evidence in this case consists of oral testimonies of PW1 to PW4, RW1 to RW6, Exts. A1, A2, A2 (a), A3, A3(a), A4, A4 (a), A4(b), A5 (a), B1 and B2.
14. Both sides were heard.
15. The following points arise for consideration, -

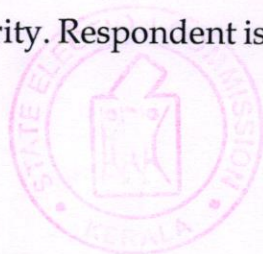




- a. Whether the petition is filed within the time limit provided under rule 4A (2) of the of the Kerala Local Authorities (Disqualification of Defected members) Rules?
- b. Whether the petitioner has any cause of action against the respondent?
- c. Whether the respondent has joined INC as alleged?
- d. Whether the respondent has committed defection as contemplated under section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act?

16. Point No. (i) to (iv);- As common questions of law and facts are arise for consideration in these points, they are considered together for convenience and to avoid repetition. Petitioner in this case is admittedly a Councillor of ward No.11 of the Kottayam Municipality and as such the petitioner has the necessary *locus standi* to file the petition under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. Rule 4A (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules provides that a petition regarding the disqualification of a member shall be filed within 30 days from the date of deemed disqualification of the member; Provided that if the petitioner proves that there exists sufficient reason for not filing the petition within the time specified, the State Election Commission may accept the petition.

17. As per section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act, if an independent member not belonging to any coalition joins any political party or coalition; he shall be disqualified for being a member of that local authority. Respondent is undisputedly an independent





Councillor of Kottayam Municipality and as such the only ground for disqualifying the respondent is under section 3 (1) (c) of the Act.

18. According to the petitioner the respondent who was elected as an independent Councillor joined the INC political party on 31.10.2022 viz. the commemoration day of Smt. Indira Gandhi at a function held in DCC office Kottayam. Petitioner came to know about the respondent's act of joining INC only on 20.01.2023. After getting knowledge regarding said conduct of the respondent, he made enquiries and reliably understood that the respondent joined INC and actively participated in their political campaigns held on 14.12.2022 at Chanthakavala and thereafter on 03.01.2023 at Samkranthi, Kottayam.

19. In cross examination of the petitioner as PW1, he stated that

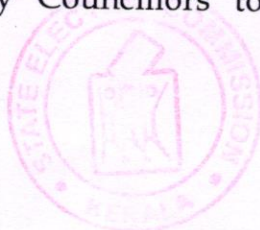
(Q) 31.10.2022 -ൽ എതിർകക്ഷി ബിൻസി സെബാസ്റ്റ്യൻ കോൺഗ്രസിൽ ചേർന്നതായി താങ്കൾ പറയുന്ന ആരോപണത്തെ സംബന്ധിച്ചു എങ്ങനെ അറിഞ്ഞെന്നോ ആരുപറഞ്ഞു അറിഞ്ഞെന്നോ അന്യായത്തിലും സത്യവാങ്മൂലത്തിലും പറയാതിരുന്നതിനു പ്രത്യേകിച്ച് കാരണമുണ്ടോ?

(Ans) പ്രത്യേകിച്ച് കാരണമില്ല.

(Q) അപ്രകാരമൊരു ആരോപണം കേസിന്റെ ആവശ്യത്തിനായി താങ്കളുടെ ഭാവനയിൽ നിന്ന് സൃഷ്ടിച്ചതുകൊണ്ടാണോ അതിന്റെ അടിസ്ഥാനകാര്യങ്ങൾ അന്യായത്തിൽ വ്യക്തമാക്കിയിരിക്കുന്നതെന്നു എതിർകക്ഷി പറയുന്നു.

(Ans) പത്രവാർത്തയിലും അത് കഴിഞ്ഞുള്ള കൗൺസിലർമാരുടെ സംഭാഷണത്തിലുമാണ് അക്കാര്യം അറിഞ്ഞത്.

20. However, petitioner has neither produced any copy of the newspaper reports nor examined any Councillors to substantiate his case that





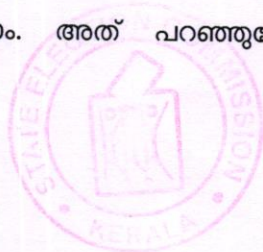
respondent joined INC on 31.10.2022. Moreover, while cross examining the respondent as RW1, petitioner put nothing in this regard to her. During the cross examination, RW4 categorically denied the suggestion of petitioner in this regard. Therefore, there is nothing on the record that respondent joined the INC on 31.10.2022.

21. According to the petitioner respondent had participated the agitation held on 14.12.2022 at Chanthakavala, which was organized by INC against the alleged backdoor appointments and price hike of essential commodities. According to him respondent has also participated the protest gathering held on 03.01.2023 at Samkranthi, Kottayam organized by the UDF against the death of a nurse who ate contaminated food from a hotel. The photographs and news of the said political agitations were published in the *Malayala Manorama* daily dated 15.12.2022 and 04.01.2023 respectively, which are marked as Ext. A2(a) and Ext.A3(a). According to the petitioner the cause of action for the petition arose on 04.01.2023, the date on which the last news item was published in the said daily and on 20.01.2023, the date on which the petitioner came to know about the respondent's act of joining INC.

22. The definite case of the petitioner is that he came to know the conduct of the respondent only on 20.01.2023 through newspaper reports and through the conversations of Councillors. In pursuance of it he filed the original petition before the Commission on 17.02.2023.

In cross examination of PW1 he replied that

"എതിർകക്ഷി കോൺഗ്രസ്സിൽ ചേർന്നു എന്നുള്ള ആരോപണം സംബന്ധിച്ച് 31.10.2022 മുതൽ എനിക്ക് അറിയാം. അത് പറഞ്ഞുകേട്ടുള്ള അറിവാണ്. എന്റെ കൂടയുള്ള





കൗൺസിലർമാർ പറഞ്ഞുള്ള അറിവാണു. 2023 ജനുവരി 04-ലെ പത്രവാർത്തയെ തുടർന്നാണ് ഈ വിഷയം എന്റെ ശ്രദ്ധയിൽ വന്നത്. ജനുവരി 20- നാണ് പ്രസ്തുത പത്രം തപ്പിയെടുത്തു ഞാൻ മനസ്സിലാക്കിയത്"

23. Respondent is admittedly contested election as an independent candidate and subsequently elected as a Chairperson of the Kottayam Municipality with the support of UDF. RW4, DCC President categorically stated that INC supported the respondent to keep LDF at a bay from power. Joining a political party by a Councillor of the Municipality, who is none other than the Chairperson of the Municipality is an important news, especially to another Councillor of the Municipality. According to the petitioner he was aware of the same from 31.10.2022 onwards but collected the related newspaper only on 20.01.2023.

In cross examination of PW1 he further deposed before the Commission that

"കോട്ടയം മുനിസിപ്പാലിറ്റിയിലേയും ഏറ്റുമാനൂർ ഏരിയയിലേയും രാഷ്ട്രീയ സ്ഥിതിയെക്കുറിച്ച് വ്യക്തമായി അറിയാം."

Therefore *ex facie* lacking bonafides in the statement that petitioner was aware of the alleged act of defection only on 20.01.2023. This is only to tide over the period of limitation.

24. It is settled law that if a petition is based on multiple causes of action, the period of limitation would begin to run from the date when the right to sue first accrues. In the instant case the right to sue accrued on 31.10.2022.

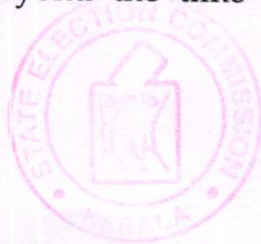
25. In *Vinayakumar R and Others V A A Raouf and Another* (2015 (3) KHC 787), the Hon'ble High Court held that "it is true that, it is the satisfaction of the





second respondent (Commission) that is material, in deciding whether to accept a petition filed, in spite of the delay, where there exists sufficient reason for not filing the petition within time. In the present case, apart from the statement of the petitioner in his affidavit that he had come to know of the defection only on 17.05.2024 from Sri. Surya Prakash, there is nothing on record to support his bonafides. It is worth noticing that, the petitioner is a Councillor of the Municipality.....Petitioner being a Councillor of the very same Municipality ought to have been aware of the said developments. If the petitioner had no knowledge of the above facts; he should atleast have pleaded such lack of knowledge and the circumstances under which he was prevented from coming to know of the said developments..... It is very easy for a person to give a date and to say that, he came to know of the defection only on that date. That is not sufficient to lend credence to the statement. He should have explained the special circumstances that prevented him from acquiring knowledge of the said facts, despite being a Councillor of the Municipality." (Paragraph 15). Further, during cross examination petitioner has deposed that he is well aware of all the political developments in Kottayam Municipality.

26. Petitioner has not examined the Councillor who gave information regarding the act of defection of the respondent to him. Petitioner failed to substantiate his case that he came to know the respondent's acts of defection only on 20.01.2023. From the pleadings and evidence adduced, it appears that the right to sue first accrued in this case on 31.10.2022. However, petition was filed on 17.02.2023, beyond the time limit of 30 days, without being





supported by a petition to condone the delay. Therefore the original petition is barred by limitation.

27. The next question is whether petitioner has got cause of action against the respondent. As discussed in foregoing paras, petitioner is having *locus standi* to file petition under the Act. As per section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act, if an independent member not belonging to any coalition joins any political party or coalition; he shall be disqualified for being a member of that local authority. Respondent is undisputedly an independent Councillor of Kottayam Municipality. It has come out in evidence that she was subsequently elected as the Chairperson of the Municipality with the support of the UDF. According to the petitioner as a gratitude of support extended by UDF in her election as Chairperson of the Municipality she joined INC political party on 31.10.2022. However, as discussed in the foregoing paragraphs, petitioner has failed to prove that respondent joined INC on 31.10.2022.
28. Another case put forth by the petitioner is that respondent participated the agitation held on 14.12.2022 at Chanthakavala, which was organized by the INC against the alleged back door appointments and price hike of essential commodities. PW2 allegedly witnessed the agitation held on 14.12.2022, deposed before the Commission that respondent was present at the venue and having talks with Sri. Thiruvanchoor Radhakrishnan MLA of INC, who inaugurated the agitation. In cross examination he deposed that respondent addressed the gathering. However, there is nothing on record that respondent expressed any allegiance to the INC during her alleged speech. PW2 has not supported the case of petitioner that respondent raised slogans in favour of INC and against LDF Government. PW2 is the only witness





cited by the petitioner to prove that respondent was present at the venue of agitation. According to him he witnessed the programme appears in the Ext.A2(a) *Malayala Manorama* daily dated 14.12.2022. Petitioner has no case that only INC/UDF leaders were present at the venue of agitation.

29. Another act of defection pointed out by petitioner is that the respondent participated and addressed the protest gathering organized by UDF at Smkarathi, Kottayam on 03.01.2023. Petitioner cited PW3 to prove that respondent has attended the protest gathering held on 03.01.2023 at Samkrathi. According PW3, respondent was present in the meeting along with Sri. Thiruvanchoor Radhakrishan, MLA and other INC leaders and she addressed the gathering against the spiralling price hike of commodities. According to him he witnessed the programme reported in the Ext.A3 (a) *Malayala Manorama* daily dated 04.01.2023.

30. Petitioner has no direct knowledge about the allegations in the petition against the respondent. Being a Councillor of the Municipality, he never came across with any act of defection of the respondent either inside the Municipal Council or outside the Municipal Council. Therefore he heavily relied on the photographs and news of agitations held on 15.12.2022 and 04.01.2023 allegedly attended by the respondent, which is marked as Ext. A2 (a) and Ext. A3 (a) respectively. In order to prove the authenticity of Ext. A2 (a) and Ext.A3 (a) photographs and news, petitioner examined the Bureau Chief of the *Malayala Manorama* daily, Kottayam as PW4. He testified before the Commission that said photographs and news items were published in the *Malayala Manorama* daily. He has also identified the presence of the respondent in the photographs. However, in the cross examination he deposed that

