

BEFORE THE HON'BLE STATE ELECTION COMMISSION OF
KERALA, THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN, STATE ELECTION
COMMISSIONER

Thursday, the 23rd day of October, 2025

O.P.No.01-05/2024

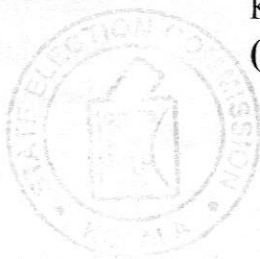
O.P.No.01/2024

Petitioner : Kanthalloor Saji
S/o Madhusoodhanan Nair K,
"Sethu", Dananthuvila, Kanthalloor
Plamoottukada P.O.
Thiruvananthapuram
(Member, Ward No.06,
Karode Grama Panchayat)
(Adv. J.R. Padmakumar)

Respondent : C. A. Jose
S/o Arulappan
Anupama Bhavan,
Kakkavila P.O.
Thiruvananthapuram-695506
(Member, Ward No.13,
Karode Grama Panchayat)
**(Adv. B. Vasudevan Nair &
Praveen C.P.)**

O.P.No.02/2024

Petitioner : Kanthalloor Saji
S/o Madhusoodhanan Nair K,
"Sethu", Dananthuvila, Kanthalloor
Plamoottukada P.O.
Thiruvananthapuram
(Member, Ward No.06,
Karode Grama Panchayat)
(Adv. J.R. Padmakumar)



Respondent : Susimol
W/o Sadhu
Viralivila, Vadakkepurathuveedu
Ayira P.O.
Thiruvananthapuram-695502
(Member, Ward No.04,
Karode Grama Panchayat)

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

O.P.No.03/2024

Petitioner : Kanthalloor Saji
S/o Madhusoodhanan Nair K,
"Sethu", Dananthuvila, Kanthalloor
Plamoottukada P.O.
Thiruvananthapuram
(Member, Ward No.06,
Karode Grama Panchayat)

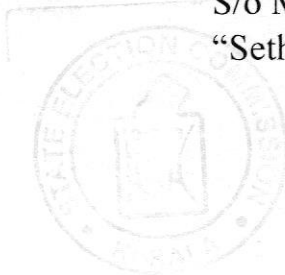
(Adv. J.R. Padmakumar)

Respondent : Angel Kumari C
W/O Babu
Mundakkavila Veedu
Pazhaya Uchakkada
Uchakkada P.O.
Thiruvananthapuram-695506
(Member, Ward No. 17,
Karode Grama Panchayat)

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

O.P.No.04/2024

Petitioner : Kanthalloor Saji
S/o Madhusoodhanan Nair K,
"Sethu", Dananthuvila, Kanthalloor



Plamoottukada P.O.
Thiruvananthapuram
(Member, Ward No.06,
Karode Grama Panchayat)

Respondent

:

(Adv. J.R. Padmakumar)
Edwin Sam C
S/o Chellappan
Seenai, Ambanavila,
Karode P.O.
Thiruvananthapuram-695506
(Member, Ward No. 12,
Karode Grama Panchayat)

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

O.P.No.05/2024

Petitioner

:

Kanthalloor Saji
S/o Madhusoodhanan Nair K,
“Sethu”, Dananthuvila, Kanthalloor
Plamoottukada P.O.
Thiruvananthapuram
(Member, Ward No.06,
Karode Grama Panchayat)
(Adv. J.R. Padmakumar)

Respondent

:

Jasmin Prabha C
W/o Clement
Clement Bhavan,
Pottayilkada,
Plamoottukada P.O.
Thiruvananthapuram-695122
(Member, Ward No. 02,
Karode Grama Panchayat)

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



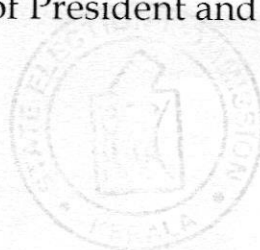
ORDER

These petitions are filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that respondents herein committed defection and hence disqualified to continue as elected members of Karode Grama Panchayat and also for declaring them as disqualified to contest as candidate in any election to the local authorities for a period of six years. Since common questions of law and facts arise in all the cases, they are tried together, as OP No. 01/2024 as leading case.

2. The petitioner's case in brief is as follows; - Petitioner and respondents are elected members of Karode grama panchayat. Petitioner representing ward No. 6 and respondents in O P No.01/2024 to 05/2024 representing ward No.13,04,17,12, 02 respectively of Karode Grama Panchayat. Petitioner was contested and elected as candidate of Bharatiya Janata Party whereas respondents were contested and elected as candidates of Indian Nation Congress (hereinafter "INC") during the General Election to local authorities held in December, 2020. After the election respondents filed sworn declarations under the relevant rules before the Secretary of the panchayat stating that they are elected members belonging to INC. On the basis such declarations, Secretary had prepared a Party Affiliation Register, wherein also it is stated that respondents are elected members of INC.
3. There are altogether 19 wards in Karode grama panchayat. Out of which 10 seats were secured by UDF. LDF-6. (CPI (M)-4, CPI-1, LDF (IND)-1) BJP- 2, Independent -1. Thus, UDF secured majority of seats in the Karode grama panchayat. Whereupon Sri. M Rajendran Nair and Agnus T both belonging to INC were elected as President and Vice President respectively.



4. While so, on 04.12.2023, the respondents herein, who belonging to INC colluded with elected members belonging to LDF and submitted a written notice of moving intention to move no confidence motion against the President and Vice President of the Karode grama panchayat, who belongs to their own party INC. The said conduct of the respondents itself would attract the voluntarily given up of membership of one's own party as provided under the first limb of section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. The no confidence motion signed by the respondents, together with LDF members placed before the Officer Authorised by the Commission. The no confidence motion was slated for consideration on 13.12.2023. Meanwhile on 06.12.2023 Sri. M Rajendran Nair resigned from the office of President. The parliamentary party meeting of INC has taken a decision to abstain from the meeting of the no confidence motion against the Vice President of the Panchayat Smt. Agnus T. Accordingly the whips have been issued by the District President of the INC to all the elected members of the INC to abstain from the meeting of no confidence motion against Vice President to be held on 13.12.2023. The copy of the said whip was communicated to the Secretary of the panchayat as mandated under law.
5. On 13.12.2023, the respondents, in collusion with the elected members of LDF, intentionally defied the whip issued by the District President of the INC, attended the meeting and cast their votes in favour the no confidence motion. Accordingly, the no confidence motion against Smt. Agnus T was carried out with the support of elected members belonging to LDF and she was removed from the post. The respondent by their conduct became disloyal to the political party they belong to and thereby voluntarily given up their membership of the political party, INC.
6. In the causal vacancies of the President and Vice President arose due to the resignation of President and removal of Vice President through no confidence motion respectively, Returning Officer issued notice of scheduled election to be held on 28.12.2023. The respondents in O P No. 01/2024 and 02/2024 viz. Sri. C A Jose and Smt. Susimol contested the election for the posts of President and Vice President without the consent



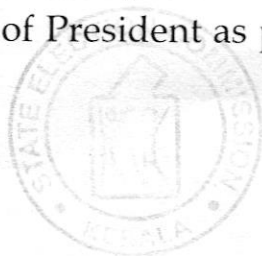
of the INC. The nomination of Sri. C A Jose for the post of President was supported by Smt. Soumya Udayan, an elected member belongs to opposite CPI (M). The nomination of Smt. Susimol for the post of Vice President was supported by Smt. Anitha B, an elected member belongs to opposite, CPI. The constituents of opposite LDF coalition viz. CPI (M) and CPI issued whips to the elected members belonging to them to vote in favour of respondents in O P No. 01/2024 and 02/2024 for the post of President and Vice President respectively. In the election held on 28.12.2023, the respondents voted along with opposite LDF in favour of the respondents in O P No. 01/2024 and 02/2024. The respondents in O P No. 01/2024 and 02/2024 were elected as President and Vice President respectively with the vote cast by the LDF. Respondents colluded with the opposite LDF in every possible way by moving no confidence motion against elected Vice President belongs to their political party on 04.12.2023, voting along with opposite LDF in the no confidence motion against the Vice President held on 13.12.2023 and voting along with LDF for the election of President and Vice President held on 28.12.2023. The respondents through their conduct voluntarily given up their membership of the INC political party and liable to be disqualified under the Kerala Local Authorities (Prohibition of Defection) Act.

7. Respondents filed objection contending as follows, - It is true that respondents were contested and elected as candidates of INC, in the symbol "Hand". It is also true that INC got 10 out of 19 seats in the panchayat. On getting majority to rule the panchayat, INC took a decision to elect Sri. M Rajendran Nair, who belongs to INC as President of the panchayat for the initial two and half years and thereafter Sri. C A Jose, the respondent in O P No. 01/2024 would be elected as President for the remaining two and half years of the duration of the panchayat. The parliamentary party meeting held on 27.12.2020 took a decision as per the said advice and recommendations of the political party.
8. Accordingly, Sri. M Rajendran Nair became the President of the panchayat and his term expired on 30.06.2023. However, Sri. M Rajendran Nair was not inclined to resign from the post as agreed upon even after specific



direction issued by the INC. Subsequently he was suspended from the party for the same same reason on 11.10.2023. Respondents moved no confidence motion against the President and Vice President as per the decision taken in the parliamentary party meeting of the INC held on 27.12.2020. The no confidence motion against the Vice President of the panchayat was also moved as per the direction of the INC. The INC was fed up with the allegations of corruption against Smt. Agnus T, then Vice President. Smt. Agnus T was found guilty by the Ombudsman for Mahatma Gandhi NREGS. In fact, she was ceased to be a member of Karode grama panchayat even before passing of no confidence motion as she was found guilty of corruption by a competent authority as provided under section 35 of the Kerala Panchayat Raj Act.

9. It is further stated in the objection that on the date of submitting notice of no confidence motion against Smt. Agnus and on the date of meeting of no confidence motion against her, she was not even an elected member of Karode grama panchayat. Sri. M Rajendran Nair was constrained to resign from the post of the President of the panchayat as he was very well known that his conduct in continuing as President will result in his disqualification under the provisions of defection law. There was no decision in the parliamentary party meeting to issue whip to the elected members belonging to INC to abstain from the meeting of the no confidence motion to be held on 13.12.2023. No such whip was served to the respondents. The whip marked as Ext.A6 is a fabricated document. No such whip was served to the Secretary of the panchayat. The whip was not read over in the meeting to consider no confidence motion.
10. Respondents admitted that they cast their vote against Smt. Agnus as directed by the authorised leaders of the political party, with the bonafide intention to save the party from corruption. Respondents never disobeyed the directions of District President of INC and hence there exists no question of voluntarily abandonment of membership of the party.
11. Petitioner has no manner of right or authority to say about the matters transpired in the INC. Respondent in O P No.01/2024 was contested election for the post of President as per the decision taken by the INC in



the meeting held on 27.12.2020. Respondent in OP No. 02/2024 was contested election for the post of Vice President as directed by the leaders of INC. Petitioner being an elected member of BJP having no manner of right to move petition for the disqualification of respondents. Respondents has not committed any act of defection and fully eligible to continue as member. Hence petition may be dismissed.

12. The evidence in this case consists of oral testimonies of PW1 to PW3, Ext.A1 to A15 and Ext.X1 to X7. Though respondents produced Japtha 1 to Japtha 10 documents, respondents have not adduced any oral evidence.

13. Both sides were heard.

14. In the light of pleadings following points arise for consideration, -

- (i) Whether respondents have moved no confidence motion against the President and Vice President of the panchayat, who belongs to INC with the support of the opposite LDF coalition as alleged?
- (ii) Whether INC has taken a decision to abstain from the meeting of no confidence motion against Vice President held on 13.12.2023 and issued whips to the respondents?
- (iii) Whether respondents have voted in favour the no confidence motion against Vice President along with the opposite LDF coalition?
- (iv) Whether respondents in OP No.01/2024 and 02/2024 had contested election to the office of President and Vice President held on 28.12.2023 without the consent of UDF.
- (v) Whether the opposite LDF coalition supported the candidature of respondents in OP No.01/2024 and 02/2024 for the office of President and Vice President?
- (vi) Whether the respondents have voluntarily given up their membership of INC as alleged?
- (vii) Whether respondents have committed defection as contemplated under section 3 of the Kerala Local Authorities (Prohibition of Defection) Act.

15. Point No. (i) to (iv); - As common questions of law and facts are arise for consideration in these points, they are considered together for



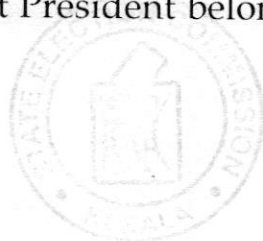
thereon and report of no confidence motion were marked through PW3, the Authorized Officer as Ext.X2 to X7 respectively.

18. On receipt of notice of no confidence motion against the President and Vice President, the Officer Authorized by the Commission fixed the date and time of meeting to consider the no confidence motion against President and Vice President as on 13.12.2023 at 11 am and on 13.12.2023 at 2 pm respectively and issued notice to the elected members of the panchayat as evident from Ext.A3 dated 05.12.2023 and Ext.A4 dated 06.12.2023. Ext.X6 is the office copy of Ext.A4. Meanwhile Sri. M Rajendran Nair resigned from the post of President on 06.12.2023. Therefore, the Officer Authorized decided to dispense with the meeting to be held on 13.12.2023 at 11 am as evident from Ext.A5.
19. In the aftermath of no confidence motion against the Vice President of the panchayat Smt. Agnus T, the District President of the INC, who is the authorized person to recommend the symbol of INC, had issued whip to all the 10 elected members belonging to INC, to abstain from the meeting of no confidence motion against Vice President as evident from Ext.A6. The abstinence from the meeting is a method to defeat the no confidence motion for want for quorum. In the meeting held on 13.12.2023, after debate the motion of no confidence was put to vote. All the 11 elected members, 5 belonging to INC (respondents) and 6 belonging to LDF were present in the meeting and supported the no confidence motion and resultantly the no confidence motion against Vice President was carried with majority and St. Agnus T was removed from the post. The Authorised Officer informed the fact to the Secretary of the panchayat as per Ext.A10 and reported the vacancy to the Commission as per Ext.A9. It is pertinent to note that elected members of UDF except respondents stay away from the meeting in obedience of whip.
20. The respondents filed objection and additional objection to the petition. They cross examined the PW1 to PW3. Produced Japtha 1 to 10 documents. However, respondent has not adduced any oral evidence irrespective opportunities given to them. The case of the respondents is that on getting majority of seats in the panchayat, Sri. M Rajendran Nair



was elected as President of the panchayat for an initial term of two and half years and it was agreed upon that he would resign from the post on expiry of term for Sri. C A Jose, the respondent. In order to substantiate their case respondents produced the minutes of Parliamentary party meeting of INC held on 27.12.2020 as Japtha 1. It shows that all the 10 elected members belonging to INC, including Sri. Rajendran Nair were present in the meeting and signed the minutes. In order to further substantiate their case respondents produced the letter issued by the District President of INC directing Sri. M Rajendran Nair to resign from the post of President of the panchayat before 21.09.2023 so that respondent Sri. C A Jose could be elected as President on 05.10.2023. However, Sri. M Rajendran Nair was not inclined to obey the direction by resigning from the post. Therefore, Sri. M Rajendran Nair was suspended from the primary membership of the INC political party on 11.10.2023 as evident from Japtha 3. However, as a matter of fact INC has neither taken any decision to move no confidence motion against Sri. M Rajendran Nair nor to elect Sri. C A Jose as President of the panchayat.

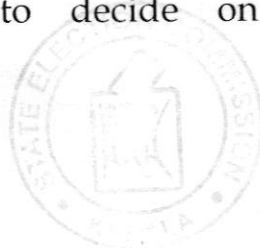
21. Subsequently, on 04.12.2023 respondents moved no confidence motion against the President and resultantly Sri. M Rajendran Nair resigned from the post of President on 06.12.2023 as evident from Japtha 4. Therefore, the Authorised Officer has taken a decision to dispense with further proceedings in the no confidence motion against President jointly moved by respondents and LDF. According to the respondents they moved no confidence motion against President in accordance with the decision taken in the parliamentary party meeting held on 27.12.2020 and as per the direction of the INC. However, as per the provisions of defection law the political party alone is competent to take decisions which are to be communicated to its members through whip issued by political party from time to time as per rule 4 of the Kerala Local Authorities (Disqualification of Defected members) Rules. The alleged decision taken by parliamentary party of INC way back in 27.12.2020 for sharing the Presidentship is not a justification for moving no confidence motion against an incumbent President belongs to their party. Petitioner has not



adduced any evidence to prove that political party itself had taken a decision to move no confidence motion against Sri. M Rajendran Nair. Even if Sri. M Rajendran Nair failed to obey the direction of the political party to resign from the post of President, it is not a reason for the respondents to move no confidence motion against the President who belongs to their political party, in the absence of whip.

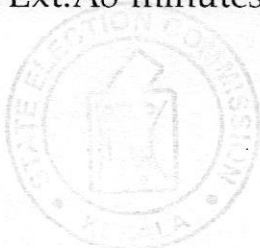
22. The respondents further explained the circumstances under which they moved no confidence motion against the Vice President of the Panchayat Smt. Agnus T. According to respondents, Vice President has caused loss to the panchayat by receiving sitting fee as a member and wages as worker under Mahathma Gandhi NREGS on the very same days. Respondents produced the order dated 29.11.2023 passed by Ombudsman for Mahathma Gandhi NREGS in this regard as Japtha 9. On the appeal, it appears that the State Appellate Authority under Mahathma Gandhi NREGS confirmed the order dated 29.11.2023 of the Ombudsman for Mahathma Gandhi NREGS as evident from Japtha 10. According to the respondents they moved no confidence motion against Vice President as per the directions of the political party as Smt. Agnus was found guilty of corruption and loss caused to the panchayat. According to the respondents, in fact Smt. Agnus was ceased to hold office as member by incurring the disqualifications provided under section 35 of the Kerala Panchayat Raj Act on date of order of the Ombudsman. Actually, the removal of Smt. Agnus. T through no confidence motion regained the confidence of public and voters on INC. However, petitioner has not adduced any evidence to prove that political party has taken a decision to move no confidence motion against Smt. Agnus T.

23. Further, the Ombudsman for Mahathma Gandhi NREGS has no authority to pass an order either under section 35 (1) (a) or under section 35 (1) (o) of the Kerala Panchayat Raj Act. The disqualification will come in to force only from the date of order of the Commission under section 36 of the Kerala Panchayat Raj Act. The Hon'ble High Court in *Mohammed Haneefa V Saudath Ashraf* (2013 (3) KHC 104) (DB) held that there has to be an adjudicatory process to decide on disqualification and hence,



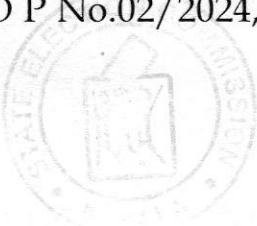
disqualification under section 35 can come into effect only on an order passed by the State Election Commission under section 36 of the Kerala Panchayat Raj Act. Respondent has no case that Commission passed an order disqualifying Smt. Agnus T from the membership of the panchayat. Therefore, the contentions of the respondents that Smt. Agnus ceased to hold office on the date of order of Ombudsman for Mahathma Gandhi NREGS is unsustainable and not a reason for moving no confidence motion against Vice President. Even if Vice President is having involved in corruption, members cannot move no confidence motion without the written direction of the political party. The essential connotation of a no confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of the requisite majority of members as held by the Hon'ble High court in *Sherly George V State of Kerala* (Judgment dated 28.06.2019) Therefore it is impermissible to import new grounds for moving no confidence motion against an elected Vice President of their own political party.

24. From the averments in the objection and documents produced by respondents it is unequivocally clear that they issued notice of no confidence motion against President and Vice President, who belonging to their own political party with the active support of opposite LDF coalition. Respondents have not even disputed the authenticity of Ext.A2 notice of no confidence motion dated 04.12.2023 moved by them along with LDF members, Ext. A 7 letter issued by the Returning Officer stating that the Ext.A6 whips have been served to the elected members belonging to INC, including the respondents. The direction in the Ext.A6 whip was to abstain from the meeting of no confidence motion against Vice President. Though respondents have taken a case that whips were not served upon him. Respondents have not examined the Returning Officer to rebut authenticity of Ext.A7, which is a public document. It has come out in evidence through the admission of the respondents and other evidence that they attended the meeting of no confidence motion against Vice President held on 13.12.2023 and voted in favour of the no confidence motion as evident from Ext.A8 minutes. As a matter of fact, neither LDF



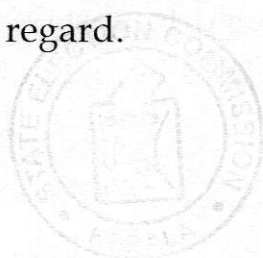
nor respondent have the required majority to move or carry the no confidence motion against the Vice President as provided under section 157 of the Kerala Panchayat Raj Act. Therefore, there is every reason to believe that they colluded together in furtherance of a common intention to remove the elected Vice President from the office and to install them in the positions. Ext.A2 notice of no confidence and Ext.A3 motion of no confidence are jointly prepared and signed by respondents and LDF members. It is pertinent to note that 5 out of 10 elected members belonging to INC abstained from the meeting of no confidence motion held on 13.12.2023 in obedience to the direction of INC. The contention of the respondent that there is no collusion with LDF is unbelievable for a moment.

25. As discussed, Sri. M. Rajendran Nair was resigned from the office of President on 06.12.2023 and Sri. Agnus T was removed from the office of Vice President in the no confidence motion held on 13.12.2023. Commission notified the election to the said casual vacancies and Returning Officer in turn issued Ext.A14 notice of scheduled election to the post of President to be held on 28.12.2023 at 11 am. The respondent in OP No. 01/2024 Sri. C A Jose contested the election without the consent of INC. LDF did not field any candidates against Sri. C A Jose. But they supported the candidature of Sri. C A Jose. The District Secretary of the CPI (M) issued the Ext.A13 whip to the elected members belonging to CPI (M) to cast vote in favour of Sri. C A Jose. The minutes of the meeting is marked as Ext.A11. Ext.A11 would goes to show that the name of Sri. C A Jose for the post of President was proposed by Sri. Edwin Sam, the respondent in O P No.04/2024 and seconded by Smt. Soumya Udayan, an elected member belongs to CPI (M). The UDF members other than respondents abstained from the meeting. All the elected members of LDF cast votes in favour of Sri. C A Jose and Sri. C A Jose was elected as President with the support of the LDF. Whereupon the Returning Officer submitted Ext.A12 report of election result to the Commission.
26. Similarly, in the election to the office of Vice President held on 28.12.2023 at 2 pm, respondent in O P No.02/2024, Smt. Susi mol contested election



without the consent of the INC. LDF did not field any candidates against Smt. Susi mol. But they supported the candidature of Smt. Susi mol. Ext.A13 is the whip issued by CPI (M) to the elected members belonging to CPI (M). Ext.A15 is the minutes of the meeting. Ext.A15 would go to show that the name of Smt. Susimol was proposed by Smt. Jasmin Prabha, the respondent in O P No.05/2024 and seconded by Smt. Anitha, an elected member belongs to CPI, another constituent of LDF. UDF has not fielded any candidate. The UDF members other than respondents stay away from the election meeting. All the elected members belonging to LDF and respondents voted in favour of Smt. Susi mol and Smt. Susi mol was elected as Vice President with the support of LDF.

27. Admittedly, UDF got majority of seats in the Karode grama panchayat. However, due to the unscrupulous acts of the respondents UDF lost governance of the panchayat. Neither LDF nor respondents have the required majority to remove the elected President and Vice President or to elect President or Vice President, therefore they colluded together and managed to obtain the required numbers to move no confidence motion, to carry no confidence motion and to elect President and Vice President of their choice by subjugating the interest of the INC. By extending support to the respondents LDF could overthrow the UDF rule in the Panchayat. In *quid pro quo* they supported respondents in gaining positions and power as President, Vice president etc. There are elements of *quid pro quo* in all the above transactions.
28. During the hearing respondents *inter alia* contended that Ext.A6 whip and Ext.A7 service of whip to the respondents cannot be proved without examining the District President of INC, who allegedly issued whip to the respondents. However, the existence of whip to elected members belonging to INC is proved through PW2, who has produced the office copy of whip received as Ext. X1. Petitioner has also produced the Ext.A7 letter issued by Returning Officer stating that whips were duly served to the elected members belonging to INC. PW3 has produced the office copy of documents pertaining to no confidence motion. There is no cross examination in this regard.



29. During the cross examination of the petitioner as PW1, he deposed before the Commission that

" സത്യവാങ്മൂലത്തോടൊപ്പം RTI പ്രകാരം ലഭിച്ച വിപിന്റെ പകർപ്പ് ഹാജരാക്കിയിട്ടുണ്ട്. സത്യവാങ്മൂലത്തിൽ Ext.A6 എന്ന് പറഞ്ഞിട്ടുള്ളത് വിപിന്റെ കോപ്പിയാണ് .Ext.A6 shown to me. ഇതു ഡിസിസി പ്രസിഡന്റ് കാരോട് ഗ്രാമ പഞ്ചായത്ത് സെക്രട്ടറിക്കു നൽകിയ കത്താണ്. Ext.A7 ഷോൺ ടു മി. ഇതു റിട്ടേർണിങ് ഓഫീസർ കാരോട് ഗ്രാമ പഞ്ചായത്ത് സെക്രട്ടറിക്കു നൽകിയ കത്താണ് . ഡിസിസി പ്രസിഡണ്ട് ഡിസിസി യിൽ നിന്നും ഗ്രാമ പഞ്ചായത്ത് സെക്രട്ടറിയ്ക്കും റിട്ടേർണിങ് ഓഫീസർക്കും നൽകിയ വിപ് സബ്മിറ്റിച്ച കത്തുകൾ RTI പ്രകാരം ലഭിച്ചതാണ് ഞാൻ ഹാജരാക്കിയിട്ടുള്ളത്."

30. Petitioner has proved the existence of a valid whip by District President of the INC to the respondents through Ext.A6 and A7. Ext.X1 is the copy of the whip dated 08.12.2023 communicated to the Secretary of the panchayat under rule 4 (1) (i) of the Rules, which is marked through PW2, the Secretary of the Karode grama panchayat. The very purpose of informing the Secretary of such a direction is to ensure proof regarding existence of a valid direction in terms of Rule 4 (1) (i). In *Lizy Valsalan V Suja Salim* (2015 (3) KHC 968) (DB) the Hon'ble High Court observed as follows, -

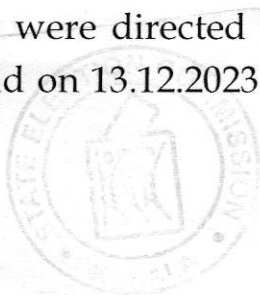
" The very purpose by which the rule making authority had imposed on a further stipulation to provide a copy of the direction to be given to the Secretary is to ensure existence of a valid direction by the political party to its members." (para 27)

31. Through Ext.A6, A7 and Ext.X1 documents petitioner has proved the existence of whip by the political party. In the objection respondents have not taken a case that they were not aware of the whip issued by the political party.

32. In *Eruthavoor Chandran and Another V Kerala State Election Commission* (1018 (5) KHC 964) (DB) the Hon'ble High Court held that

"Where a member of a political party is aware of the decision taken by the political party, but had failed to act in accordance with the political directives, it would amount to voluntarily abandoning of the membership of the political party and he would be disqualified under section 3 (1) of the Act."

33. The respondents who were directed to abstain from the meeting of no confidence motion held on 13.12.2023 by the political party attended the



meeting and cast vote in favour of no confidence motion along with opposite coalition, which resulted in the removal of Vice President from the office. Similarly, in the elections to the posts of President and Vice President held on held on 28.12.2023, respondents stood as candidates without the consent of their political party and elected to the posts with the active support of opposite coalition and respondents. The definite case of the petitioner is that respondents by their conduct voluntarily given up their membership of the political party to which they belong.

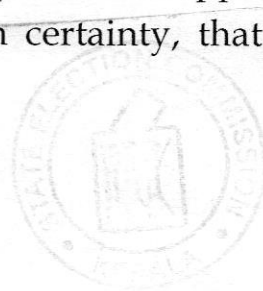
34. In para 23 of the Chief affidavit filed by the petitioner as PW1, he stated that

"ഇപ്രകാരം മേൽ പ്രവർത്തികളിലൂടെ, സ്വന്തം പാർട്ടിയെ വഞ്ചിച്ച സ്വന്തം താല്പര്യത്തിനു വേണ്ടി രാഷ്ട്രീയ എതിരാളികളുമായി അധികാരം പങ്കിടുന്നത് വഴി, എതിർകക്ഷികൾ പഞ്ചായത്ത് മെമ്പർമാരായി പ്രവർത്തിക്കുവാൻ അർഹരല്ലാതായിരിക്കുന്നു. എതിർകക്ഷികൾ, മത്സരിക്കാൻ ചിഹ്നം നൽകിയ പാർട്ടിയെ വഞ്ചിക്കുകയും, ആ പാർട്ടിക്ക് അധികാരം നഷ്ടപ്പെടുത്തുകയും അത് വഴി തന്നെ വിജയിപ്പിച്ച വാർഡിലെ മുഴുവൻ വോട്ടർമാരുടെയും ആഗ്രഹങ്ങൾക്കു എതിരെ പ്രവർത്തിക്കുകയും ചെയ്തിരിക്കുന്നു."

There is no cross examination on the above evidence.

35. In this context, in *M Liju V Kerala State Election Commission* (judgment dated 29.11.2023 in WP (C) No.33740/2022) the Hon'ble High Court held that

"16. If the conduct of a particular member indicates that he had, after being elected under the banner of one party, supported the opposite party, the same is sufficient to attract the disqualification of voluntarily giving up membership. The evidence in the present case brings to the fore the circumstances that the second respondent had supported the no confidence motion against the President of the panchayat, who was a member of his own party. After the President of the panchayat was voted out, the second respondent himself stood for the Presidentship of the panchayat with the support of the opposite party members. This conduct by itself indicates, with certainty, that the second respondent became

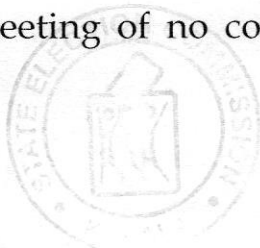


disloyal to his party. The said conduct can only be at the risk of inviting disqualification for voluntarily giving up membership of the party under whose banner he was elected.

36. In this context, it is relevant to refer to the decision in **Biju R S and Other V Kerala State Election Commission and Others** (2009 (4) KHC 527), wherein this Court had observed that disqualification for voluntarily giving up the membership of one's party is not dependent only on the violation of the whip. The facts of the aforementioned case also indicate that supporting a no confidence motion against the member's own political party was treated as conduct sufficient to fall within the scope of voluntarily giving up membership.
37. The second respondent has not adduced any evidence to disprove the allegations raised in the election petition and brought out in evidence. Therefore, it is evident that by his conduct, the second respondent had voluntarily given up membership of the party under whose banner he was elected."

The above judgment is squarely applicable to the facts and circumstances of the present case.

38. Further, in *Varghese V V and Another V Kerala State Election Commission and Another* (2009 (3) KHC 42 (DB) when the members decided to sit as a separate block and voted in favour of the no confidence motion moved by the rival political parties, it was held by the Hon'ble High Court that it amounts to shifting of loyalty. It was further held that if a member or a group of the elected members of the political party takes a different stand from that of the political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he was voluntarily given up his membership.
39. It has come out in evidence that respondents had moved notice of no confidence motion against the President and Vice President, who belonging to INC, with the active connivance of opposite LDF. Though respondents were aware of the decision and direction of the political party to abstain from the meeting of no confidence motion against the Vice

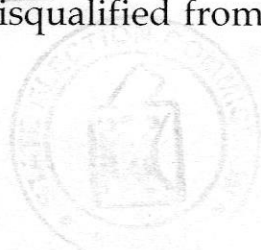


President belonging to UDF, they attended the meeting and cast vote in favour of the no confidence motion along with LDF. Admittedly, LDF coalition is having no required strength in the panchayat to expel the Vice President through no confidence motion, but respondents in collusion with LDF, extended their support in expelling the Vice President and thereby overthrow the UDF rule in the panchayat. They succeeded in their efforts. Thereafter they stood as candidates for the post of President and Vice President with the support of LDF. They succeeded once again in their efforts. The respondents have also acted in defiance of the whip issued by their political party. There is also clear evidence that respondents shifted their political loyalty to the opposite LDF coalition through their overt acts. Therefore, the only inference possible is that respondents have voluntarily given up membership of the INC political party, as provided under section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.

40. 37. In *Kihoto Hlohan V Zachillhu* ((1992) Supp 2 SCC 651, where the Supreme Court had explained the objectives of the 10th Schedule to the Constitution in the following passage: -

"Any freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance-nay, indeed, its very survival. "referring to the object behind the 10th Schedule to the Constitution of India dealing with disqualification on the ground of defection, it was held therein that," provision is to curb the evil of political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The only remedy would be to disqualify the member."

41. In the result OPs are allowed and the respondents in OP No. 01/2024 to OP No.05/2024 are declared as disqualified for being elected members of Karode 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 candidate in an

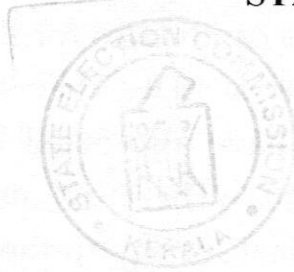


election to any local authorities for a period of 6 years from this date, as provided under section 4 (3) of the Act.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

- PW1 - M.Saji Kumar (Kanthalloor Saji)
 PW2 - Kalarani R.I.
 PW3 - Chitra K.P.

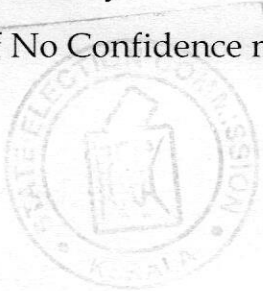
Documents produced on the side of the Petitioner

- A1 - Copy of the register showing the party affiliation of elected Members of Karode Grama Panchayat.
- A2 - Notice as per KPR Act 157(3)(4) - No Confidence motion against President & Vice President
- A3 - No Confidence motion - resolutions against President & Vice President
- A4 - Notices issued by the Secretary, Parassala Block Panchayath dated, 06.12.2023 regarding conduct of No Confidence motion against President & Vice President.
- A5 - Notice regarding cancellation of the No Confidence motion against President & Vice President, dated 07.12.2023
- A6 - Copy of the intimation given regarding whip to Secretary, Karode Grama Panchayat by the DCC President on 08.12.2023
- A7 - Letter from Returning Officer No. TLK/NTA-8498/2023/G2 regarding meeting of No Confidence motion to Secretary, Grama Panchayat.
- A8 - Copy of minutes of meeting of no confidence motion held on 13.12.2023
- A9 - Copy of letter No.B.P3/2153/2023/PSLA dated 13.12.2023 of Block Secretary Parassala addressed to SEC regarding No Confidence motion & vacancy report.

- A10 - Copy of letter No.B.P3/2153/2023/PSLA dated 13.12.2023 of Block Secretary Parassala addressed to Secretary Karode Grama Panchayat regarding No Confidence motion & vacancy report.
- A11 - Copy of minutes of meeting dated 28.12.2023 of President election Karode Grama Panchayat
- A12 - Result of President & Vice President election Karode Grama Panchayat.
- A13 - Copy of intimation given to Returning Officer by Adv. V. Joy, Secretary Communist Party of India (Marxist) Thiruvananthapuram date 27.12.2023.
- A14 - Copy of oath register and notice regarding oath of president & Vice President dated 19.12.2023 of secretary Karode Grama Panchayat.
- A15 - Copy of minutes of meeting held on 28.12.2023 in connection with the Vice President election of Karode Grama Panchayat.

Documents produced on the side of the Witness

- X1 - Copy of the letter dated 08.12.2023 showing the receipt intimation of whip.
- X2 - Copy of letter dated, 04.12.2023 from C. A. Jose to Secretary, Parassala Block Panchayat
- X3 - Copy of No Confidence motion - resolution against President, Karode Grama Panchayat.
- X4 - Copy of No Confidence motion against Vice president letter dated 04.12.2023 from C.A Jose to Secretary, Parassala Grama Panchayat.
- X5 - Copy of No Confidence motion-resolution against Vice



President, Karode Grama Panchayat.

- X6 - Copy of letter No.B.P3/2152/2023/PSLA dated 06.12.2023 of Block Secretary Parassala addressed to Secretary Karode Grama Panchayat regarding directions to conduct of No Confidence motion.
- X7 - Copy of letter No.B. P3/2153/2023/PSLA dated 13.12.2023 of Block Secretary Parassala addressed to Secretary Karode Grama Panchayat regarding No Confidence motion & vacancy report.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//

PRAKASH B.S
PEN No : 101452
SECRETARY

State Election Commission
Kerala, Thiruvananthapuram

