

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER

Tuesday, the 16th day of April, 2024

O.P. No. 27 of 2023

Petitioner

: P.S. Aneesh,
S/o. P.K. Sankaran
Putheekkadu House,
Kumarakam East P.O.,
Kottayam - 686 563

(Member, Ward No.5,
Kumarakam Grama Panchayat)

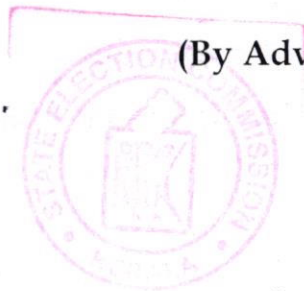
(By Adv. Pallichal S.K. Pramod)

Respondent

: Sreeja Suresh
W/o. Suresh,
Karivelil House,
Kumarakam P.O.,
Kottayam - 686 563

(Member, Ward No.7,
Kumarakam Grama Panchayat)

(By Adv. J.R. Padmakumar)

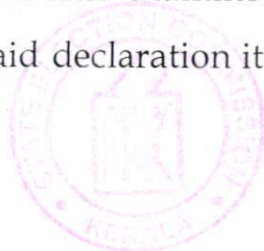


ORDER

This is a petition filed under Section 3(c) and 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

2. The Petitioner's case in brief is as below:

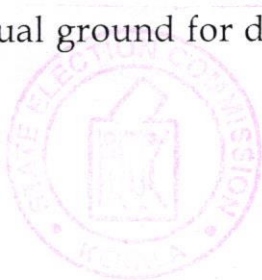
The petitioner is the elected member representing ward No.5. The Petitioner being an elected member of the Panchayat and is competent to file this petition and the Respondent is an elected member of ward No. 7 of Kumarakam Grama Panchayat elected at the General Election held during 2020. The respondent contested in the said election as an independent candidate and her election symbol was Mobile Phone. In the nomination form filled and submitted by the respondent, it is stated in column no. 10 that the respondent had not belong to any political party. In column no. 11 of the said nomination form the priority of the election symbol requested is also a clear indication in respect of the candidature of the Respondent. The respondent contested and canvassed in the said election purely as an independent candidate and she defeated the rival candidates supported by the political front. On 24.03.2023 the respondent herein participated and addressed an agitation lead by the Barathiya Janatha Party (BJP) staged in front of the Kumarakam Grama Panchayat. The active role of the respondent in the said political agitation was witnessed by the petitioner while he was present in the office of the Kumarakam Grama Panchayat. Then the petitioner examined her voluntary declaration in Form No.2 and in the said declaration it is stated that she belongs to a



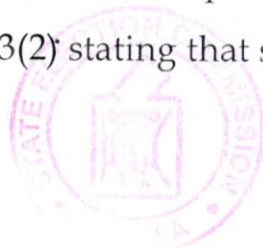
member of a political front ie; NDA and the said front includes BJP and BDJS. The respondent contested and elected as an independent candidate without the support of any political party or coalition. The respondent violated the assurance and promise tendered to the voters. The respondent won the election defeating the rival candidates fielded by the major political front. The respondent has no right or authority to join in a political party and to work for the same until her tenure is over. The respondent voluntarily abandoned the status of an independent elected member and commenced the political work for the BJP and on 24.03.2023 she openly participated in the agitation of BJP the respondent committed defection. The petitioner came to understand about the respondents act of joining the BJP only on 24.03.2023. The social media platforms are also being used by the respondent in order to express BJP loyalty. The cause of action for filing this petition arose on 17.11.2020 the date of nomination of the Respondent and on 21.12.2020 the date of declaration in Form No.2 and on 24.03.2023 the date on which the petitioner came to know about the Respondent act of joining the BJP and abandoned the Independent Member status of Kumarakam Grama Panchayat.

3. The Respondent's case in brief is as follows:

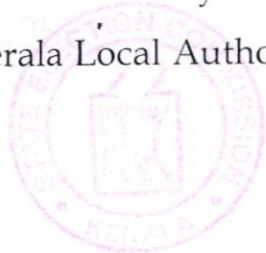
The petition is not maintainable either in law or in facts. The petition is only an imaginary story and a crooked narrative of something which had never happened and the petitioner has miserably failed to depict any legal or factual ground for disqualification of this respondent. The



respondent is an elected member of ward No.7 of Kumarakam Grama Panchayat elected at the General Election held during 2020. The respondent contested in the said election under the symbol of "mobile phone" as an independent candidate under the coalition of NDA in local arrangement including BJP, BDJS and this respondent. There was no other candidate from this coalition other than this respondent. The nomination submitted by the respondent stating that the respondent does not belong to any political party is true. In the nomination paper there was specific provision to denote whether the candidate belongs to any political party and this respondent honestly mentioned that she does not belong to any political party. But there was no provision prescribed by the Election Commission or under the Statute to record the arrangements made among political parties and independents for the purpose of contesting an election under the umbrella of 'coalition'. If there was any such provision, this respondent would have marked the details of coalition in the nomination paper itself. Respondent is a member of the coalition of NDA well before the submission of the nomination paper and the same was not marked in the nomination paper as there was no option to record the same in the nomination paper. The Respondent shall not be punished on account of lack of clarity and shortcomings in the nomination paper. Every vote canvassed was by clearly mentioning the fact that she is an independent candidate under the coalition of NDA. Immediately after she got elected, declared herself that she was part of NDA coalition by filing the declaration under Rule 3(2) stating that she is an independent

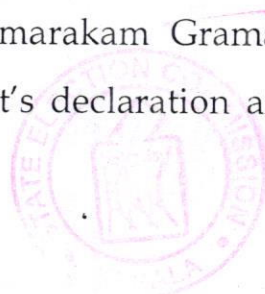


candidate supported by the coalition of NDA. The case of the petitioner is based on the documents submitted by the respondent before the Panchayat on 17.11.2020 and 21.12.2020. These documents are available to the petitioner and the general public from the above dates and no such issues were raised by the petitioner till 2023. As per Rule 4(A)(2) of Local Authorities Disqualification of Defection Members Rules 2000, it is clearly stated that the petition shall be filed within 30 days from the date of deemed disqualification of the member. The alleged deemed disqualification mentioned in the petition is dated on 21.12.2020 and hence as per the provisions, the petition is to be filed before 21.01.2021 and the limitation period to file the petition is over for about two and half years. Hence the petition is not maintainable as per law. The respondent won the general election held during 2020 and not even a member or any political party or fronts has never challenged the victory of the respondent till 2023. The reason for not challenging the same by anyone else is because everyone was aware of the fact that this respondent has contested the election as an independent candidate under the coalition of NDA. The petitioner alleges that the respondent has participated and addresses an agitation lead by BJP which was staged in front of the Kuntarakam Grama Panchayat. The protest was organized by BJP which was in the coalition of NDA. As this respondent is also a part of the coalition, there is no delinquency as alleged by the petitioner. The petitioner miserably failed to clearly state the grounds for attracting the said Sections of Kerala Local Authorities Prohibition of Defection Act, 1999.

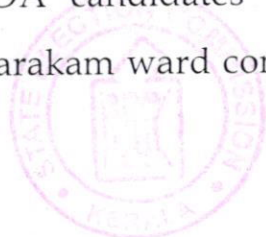


The Petition is filed with malafide intention and is a clear case of abuse of process of the Court. It is therefore prayed to dismiss the petition with cost.

4. Heard both sides.
5. The evidence in this case consists of oral deposition of and Exhibits
6. The main questions that arise for consideration are:
 - i) Whether the Respondent committed defection and hence she is disqualified to continue as Member of Kumarakam Grama Panchayat.
 - ii) Whether the Respondent may be declared as disqualified for a period of six years to contest in any election to the local bodies.
11. Points (i) & (ii) - PW1, the petitioner stated that he has contested and won from the Ward No.5 of Kumarakam Grama Panchayat in the General Election held in 2020 and the Respondent contested and won from Ward No.7. The Respondent submitted nomination paper to contest the election stating that she has no relation with any political party. Independent symbol was allotted as she requested for the same. The copy of the nomination paper is produced and marked as Exhibit A1. The Respondent campaigned as an independent candidate and defeated the candidates of political parties. The petitioner witnessed that the respondent's participation in a political strike led by the Bharatiya Janata Party in Kumarakam Grama Panchayat. Then he enquired about the respondent's declaration after the election in the



Panchayat in which she recorded her status as a member of NDA coalition. She noted the coalition partners as BJP and BDJS. Copy of the declaration is produced and marked as Exhibit-A2. She betrayed the voters in the ward who were assured that she would continue as an independent member. However, she participated in the strike organized by BJP on 24.03.2023 and continuously participating political programs of BJP and campaigning in social media for the party. Her conduct on 24.03.2023 attracts disqualification. In the cross examination, he said the panchayat is ruled by LDF. He has produced no documents to prove the respondent joined BJP. Nothing noted before 24.03.2023 that the respondent co-operating with BJP or NDA. He had seen the party affiliation register immediately after the election. In the register he signed as the fifth person and the respondent signed as seventh. In the register the respondent noted political affiliation as NDA supported independent. The copy of the register marked as Exhibit-B1 and copy of the nomination paper of the petitioner is marked as Exhibit-B2. In the Exhibit-B2 he mentioned the political party as CPI(M), but not noted as LDF as there is no provision to record the coalition in the nomination paper. He stated that free symbols allotted to independents, even if they are fielded by the coalition and official candidates of party get official symbol of the party. He has seen the campaign materials of Smt. Sreeja Suresh but could not say who printed it. He has the news paper size notice with photograph of 19 NDA candidates including Smt. Sreeja Suresh published by the Kumarakam ward committee of NDA. There was no

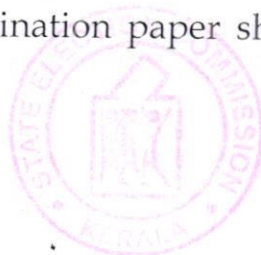


other NDA candidate in the ward where Smt. Sreeja Suresh contested. When he was asked about respondents voted in favour of NDA candidate for President/Vice President election in 2020 December, why could not file the petition he answered that it was not came into his notice.

PW2, the Secretary of Kumarakam Grama Panchayat produced the Form 2 declaration of Smt. Sreeja Suresh, Member of ward 7 marked as Exhibit-X1, the attested copy of party affiliation register marked as Exhibit-X2 and the copy of nomination paper of Smt. Sreeja Suresh obtained from the Returning Officer marked as Exhibit-X3. He deposed that in the column number 10 of nomination is written as "ബാധകമല്ല". The symbols demanded as per the column number 13 of nomination paper are free symbols. Smt. Sreeja Suresh recorded in the para C of declaration as "ഞാൻ NDA എന്ന സഖ്യത്തിന്റെ പിന്തുണയുള്ള സ്ഥാനാർത്ഥി" and in second column she recorded as "ഞാൻ ഉൾപ്പെടുന്ന NDA എന്ന സഖ്യത്തിൽ BJP, BJS എന്ന രാഷ്ട്രീയകക്ഷികൾ ഉൾപ്പെടുന്നു/യാതൊരു രാഷ്ട്രീയകക്ഷികളും ഉൾപ്പെടുന്നില്ല".

RW1, the respondent deposed that she does not belong to any political party. She contested and won from Ward No.7 as an independent candidate with the support of NDA coalition. In the election other three members also won in the NDA coalition.

In the election her symbol was "Mobile", which is a free symbol. In the nomination paper there was no question on the relationship both coalition. She stated in the nomination paper she has no connection



with political party. After the election she filed declaration in which she stated that she has support of NDA coalition since there is such a question. The same is recorded in the party affiliation register. Panchayat is now ruled by LDF and they attempt to expel her from the membership unlawfully. She stated that she contested as the NDA candidate for the President election and she voted in favour of NDA coalition in the Vice President election. In the general election, she contested as NDA supported independent candidate and there was no other NDA candidate in the ward. She campaigned as NDA supported candidate and the election campaign was co-ordinated by the NDA. She attended the NDA election convention and nomination filed alongwith other NDA candidates of Block and District Panchayat. Her photograph alongwith other NDA candidates was in the notice published by the NDA coalition and NDA arranged her polling agents. In the cross examination she affirmed that her candidature as part of NDA coalition is pre determined and she did not mention about the support NDA coalition in the nomination paper since there is no column for the purpose. Her understanding is that the NDA coalition comprises BJP, BDJS and independents. When she was asked about the entry in the nomination on the relationship with political party she stated that she has no relation with political party now and then. She participated many protest meetings organized by NDA against the panchayat administration led by the LDF. She does not remember whether she has participated in the protest meeting on 24.03.2023. She



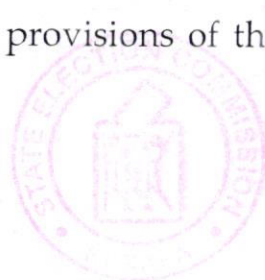
has not joined any political party including BJP after her election to the panchayat.

RW2, Member, Kumarakam Grama Panchayat, Ward No.9 deposed that she won the election to panchayat as part of NDA coalition in 2015 and 2020 General Election. He is a member of BJP Kottayam District Committee. He knows Smt. Sreeja Suresh and she contested from Ward No.7 as part of NDA coalition. He produced the notice "Printed and published by the NDA election committee 9 and 10 wards, Kumarakam" with photographs of all the NDA candidates of Grama, Block and District Panchayat wards including Smt. Sreeja Suresh, is marked as Exhibit-B3.

In the cross examination, he stated that independently also contest as part of the coalition in the election. He does not know whether the Election Commission registration required for coalition. He denied that Smt. Sreeja Suresh joined BJP.

The prime question that needs to be considered herein is that whether the alleged act of the respondent joining a political party and becoming an office bearer after being elected to the Ramamangalam Grama Panchayat as a pure independent during 2015 elections to Local Self Government Institutions tantamount to defection as provided in the Kerala Local Authorities (Prohibition of Defection) Act 1999.

In order to arrive at a logical conclusion in the matter, it would be apposite to discuss the relevant provisions of the Act 1999 and Rules



2000 which prescribe clear modality for dealing with a petition filed before Commission in the matter of defection.

Clause (c) of Section 3(1) of the Act is relevant to the context and they read thus:

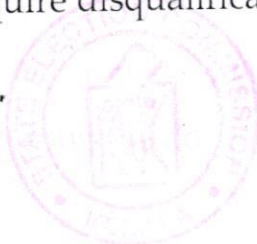
"3. Disqualification on ground of Defection - (1) Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act, -

xxxx xxxx xxxx xxxx xxxx

(c) 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.

xxxx xxxx xxxx xxxx xxxx

Section 3(1)(c) specifies that 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. It is quite clear that the said provision related to disqualification only refers to grounds of defection based on the conduct of an independent member after being elected as a member. As per the provision, any action on the part of an independent member joining any political party or coalition would acquire disqualification.



The implication of Section 3(1)(c) of the Act would be more clear when referred to Rule 3 of Kerala Local Authorities (Disqualification of Defected Members) rules and reads thus:

"3. To maintain register to record the party connections of members -

(1) The Officer authorized for the purpose by the State Election Commission shall record in the Register in Form 1 appended to these rules, the details as to whether a member duly elected to a local authority is one who belongs to a political party or coalition or is having the support of any one of them or is an independent member not belonging to any political party or coalition.

(2) If a member elected to a local authority is,-

xxxx xxxx xxxx xxxx xxxx

(c) an independent who contested election otherwise than as the candidate of a political party or a coalition or as the candidate with the support of the same shall file a declaration to that effect before the Officer authorized under sub-rule (1) and accordingly that member shall be treated as an independent member and;

a register under sub-rule (1) shall be maintained recording therein the respective facts.

(3) The declaration of the member under sub-rule (2) shall be in Form 2 appended to these rules and shall be filed on the same day he assumes office as member after the swearing:

Provided that a person who has been a member of a Local authority on the date of publication of these rules in the Gazette shall, in



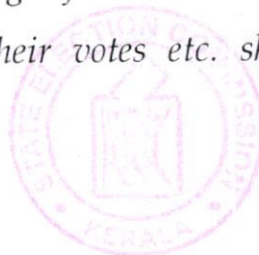
accordance with the position as on the date on which he was elected a member, file, before the expiry of the date fixed by order by the State Election Commission, the declaration under sub-rule (2) and the details in respect of the member shall be recorded in the register accordingly."

In Rule 3(2)(c) of Kerala Local Authorities (Disqualification of Defected Members) Rules 2000 it is mandated that an independent candidate who contested election otherwise than as the candidate of a political party or coalition have to file a declaration in accordance with the candidature and based on the declaration the authorized officer shall maintain the register showing the party affiliation of Members in Form 1 in accordance with Rule 3(1).

Again, Rule 5 of the Kerala Local Authorities (Disqualification of Defected Members) Rules 2000 enjoins the factors that weighed with commission while deciding the petition and also the scope of enquiry into the materials for the determination of disqualification and read as below:-

5. Decision of the Election Commission regarding disqualification - (1) Every petition mentioned under sub-section (1) of Section 4 shall, as far as may be disposed of within sixty days of its receipt.

(2) The register that is maintained under Rule 3, the declarations filed by the members for recording the details therein, the records in respect of voting or election conducted in the meetings of the local authority, the ballot papers on which the members marked their votes etc. shall, as the State Election



Commission may demand, be submitted before the Commission by the Officer maintaining the same or the Secretary, as the case may be.

(3) For the purpose of disposing a petition under sub-rule (1), the State Election Commission may, if it deems necessary, examine the veracity of the declaration filed by the member concerned under sub-rule (2) of Rule 3 or may also 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 or a coalition, and the decision that the commission may take on the basis of such examination in the matter shall be final.

Rule 5(3) specifies that for the purpose of disposing a petition under R.5(1) the Commission may if it deems necessary, examine the veracity of the declaration filed by the member concerned under sub-rule (2) of Rule 3 or may also 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 or a coalition, and the decision that the commission may take on the basis of such examination in the matter shall be final.

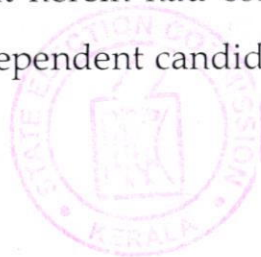
Apart from the aforesaid provisions, a reference to proposition laid down by the Apex court in Jagjit Singh Vs. State of Haryana (2006) 11 SCC 1, wherein the matter of disqualification of an independent member when he joins any political party after election as provided in paragraph 2(2) of the Tenth Schedule, is also contemplated, which read thus:



"As noted earlier, the object of the defection law has to be borne in mind. The question to be considered is whether a member formally joining a political party is the requirement so as to earn disqualification or the factum of joining can be inferred from facts and conduct of a member, without a member formally joining a political party in as much as not filling form required to be filled by a member of the political party under the rules and regulations of that party or payment of any prescribed fee. The respondents pleaded for a liberal construction and submitted that inference from conduct was sufficient to establish that an independent member has joined a political party. These are two extreme views on the issue.

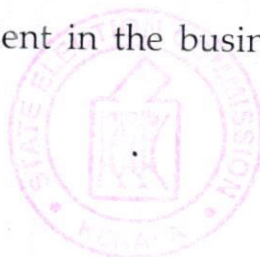
We are of the view that to determine whether an independent member has joined a political party the test is not whether he has fulfilled the formalities for joining a political party. The test is whether he has given up his independent character on which he was elected by the electorate. A mere expression of outside support would not lead to an implication of a member joining a political party. At the same time, non-fulfillment of formalities with a view to defeat the intent of paragraph 2(2) is also of no consequence. The question of fact that a member has given up his independent character and joined; for all intent and purposes, a political party though not formally so as to incur disqualification provided in paragraph 2(2) is to be determined on appreciation of the material on record."

Indisputably the respondent herein had contested and elected to the Grama Panchayat as an independent candidate in the 2020 election, as



evident from Exhibit-A1. The petitioner has produced Exhibits-A1 and A2 to prove that the respondent had contested as an independent candidate; but he affirmed in cross examination that there is no column in the nomination paper to mention about the coalition. He contested as CPI(M) candidate as part of the LDF coalition he has not noted about LDF in his nomination paper as there is no column insisting to declare the coalition one belongs to. He admitted that he signed in the party affiliation register after the respondent and he has not noted the writing by the respondent in the register as NDA supported independent. His admission that he has not noted respondent's action in supporting NDA candidate for the president/Vice President election held in 2020 December immediately after the General Election reveals he has no cause of action till the present petition. She campaigned as part of NDA coalition, but she has not mentioned her affiliation with NDA in the nomination as there is no mention about the coalition.

He got the knowledge about Respondent's status as a candidate only on her participation in a meeting organized by BJP on 24.03.2023 and there is no case that she joined BJP. Moreover, those materials on record are not such records mentioned in R.5(2) and hence the Commission cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the documents/materials furnished by the petitioner. Besides, no inference can be drawn from the conduct of the respondent in the business of the Panchayat and



from the materials on record that the respondent had given up his independent character and joined any political party. In the result, O.P. dismissed.

Pronounced before the Commission on the 16th day of April, 2024.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



B. SURENDRAN PILLAI
Pen No : 101664
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram

APPENDIX

Witness examined on the side of the Petitioner

PW1 : Sri. P.S. Aneesh

PW2 : Smt. Jayanthi Gopalakrishnan

Witness examined on the side of the Respondent

RW1 : Smt. Sreeja Suresh

RW2 : Sri. P.K. Sethu

Documents produced on the side of the Petitioner

A1 : Copy of the Nomination form submitted by Smt. Sreeja Suresh

A2 : Copy of the declaration in Form No.2 submitted by Smt. Sreeja Suresh

Documents produced on the side of the Respondent

B1 : Copy of the Register showing the party affiliation of the elected members of Kumarakam Grama Panchayat.

B2 : Copy of the nomination submitted by Sri. Aneesh

B3 : Election campaign notice published by NDA

Documents produced by Witnesses

X1 : Copy of the declaration in Form No.2 submitted by Smt. Sreeja Suresh on 21.12.2020

X2 : Copy of the Register showing the party affiliation of the elected members of Kumarakam Grama Panchayat

X3 : Copy of the nomination submitted by Smt. Sreeja Suresh

Sd/-

A. SHAJAHAN
STATE ELECTION COMMISSIONER

//True Copy//


B. SURENDRAN PILLAI
Pen No : 101664
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram

