

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

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

**Thursday, the 23<sup>rd</sup> day of October, 2025**

**O.P. No. 66-69 of 2023**

**O.P. No. 66 of 2023**

**Petitioner**

**: Sri. B. B. Gopakumar,  
S/o Balakrishnan,  
Krishna Nandanam,  
Meaned, Nedingolam P. O,  
Kollam District**

**(President, Bharatiya Janatha  
Party, Kollam District)**

**(Adv. Rajmohan G. J.)**

**Respondent**

**: Sri. N. Appukkuttan Pillai,  
S/o. Neelakandapillai,  
Neela Nivas,  
Edavattom, Chirakkara P.O,  
Kollam District**

**(Member, Ward No.19,  
Kalluvathukkal Grama Panchayat)**

**(Adv. Rajagopalan Nair & V. Subha)**



**O.P. No. 67 of 2023**

**Petitioner**

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

(President, Bharatiya Janatha  
Party, Kollam District)

**(Adv. Rajmohan G. J.)**

**Respondent**

: Smt. Alli Aji,  
D/o. Aji,  
Sundar Villa,  
Karimpalloor, Puthenkulam P. O,  
Kollam District

(Member, Ward No.17,  
Kalluvathukkal Grama Panchayat)

**(Adv. Rajagopalan Nair & V. Subha)**

**O.P. No. 68 of 2023**

**Petitioner**

: Sri. B. B. Gopakumar,  
S/o Balakrishnan,  
Krishna Nandanam,  
Meaned, Nedingolam P. O,  
Kollam District  
(President, Bharatiya Janatha  
Party, Kollam District)

**(Adv. Rajmohan G. J.)**



**Respondent**

: Smt. B. R. Deepa,  
W/o. Syam,  
Mulayil Arikathuveedu,  
Aruthala P. O,  
Kalluvathukkal  
Kollam District  
(Member, Ward No.22,  
Kalluvathukkal Grama Panchayat)

**(Adv. Rajagopalan Nair & V. Subha)**

**O.P. No. 69 of 2023**

**Petitioner**

: Sri. B. B. Gopakumar,  
S/o Balakrishnan,  
Krishna Nandanam,  
Meaned, Nedingolam P. O,  
Kollam District  
(President, Bharatiya Janatha  
Party, Kollam District)

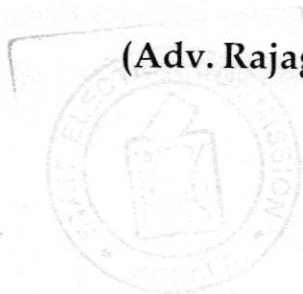
**(Adv. Rajmohan G. J.)**

**Respondent**

: Smt. Rajithakumari,  
W/o. Ratheesh,  
Thoduvakkadu Veedu,  
Puthiyapalam, Parippally P. O,  
Kollam District

(Member, Ward No.09,  
Kalluvathukkal Grama Panchayat)

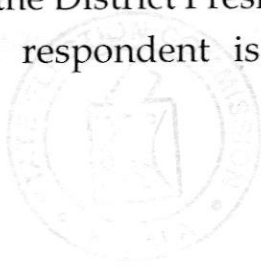
**(Adv. Rajagopalan Nair & V. Subha)**



### COMMON ORDER

These original petitions are filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that respondents, who are the elected members of Kalluvathukkal Grama Panchayat, have committed defection and hence disqualified to continue as members of Kalluvathukkal Grama Panchayat and also for declaring them as disqualified to contest as a candidate in any election to the local authorities for a period of six years. Since common questions of law and facts arise in all these cases they are tried together, as OP 66/2023 as leading case.

2. The petitioner's case is that: - The petitioner is the Kollam District President of Bhartiya Janata Party (hereinafter BJP). Respondents are elected members of Kalluvathukkal Grama Panchayat representing ward 19, 17, 22 and 9 respectively. Respondents were contested and elected as candidates of BJP in the General election to the local authorities held in 2020. While so, persons elected as President and Vice President of the panchayat were removed from the offices through no confidence motion. Which necessitated fresh election to the said vacancies of President and Vice President on 26.09.2023. The petitioner herein in his capacity as District President of the BJP issued whip to the respondents directing them to vote in favour of Smt. Sudheepa S and Sri. Sathyapalan S for the post of President and Vice President respectively. The whip has been served directly to the respondents, who accepted the whip by acknowledging receipt on the duplicate copy of the whip as evident from Ext.A1 to A8.
3. The election to the post of President and Vice President were held on 26.09.2023. Respondents were present in the both election meetings. Before voting the whip was openly read out in the election meeting by the Returning Officer. In the subsequent voting respondents acted contrary to the direction issued by the District President of Bhartiya Janata Party. The above conduct of the respondent is suitable and enough for their



disqualification under section 3 (1) (a) (ii) of the Kerala Local Authorities (Prohibition of Defection) Act.

4. Respondents' case in brief is as follows; -The original petitions are not maintainable either in law or on facts. Petitioner has no *locus standi* to file the petition. Petitioner has not produced the authorization issued by the BJP political party authorizing him to file the petition before the Commission against the respondents. Petitioner is not the authorised person to recommend the symbol of the political party to the respondents. Respondent have not violated any direction issued by BJP. Respondents were not given any direction by the BJP political party to vote in favour of Smt. Sudheepa S and Sri. Sathyapalan S for the post of President and Vice President respectively. The averments that respondents accepted and signed the copy of the whip are false. The signature found in the duplicate copy of Ext.A1 to A8 whips are not put by the respondents. It is forged and fabricated to suit the contentions of the petitioner. Petitioner has no case that copy of the whip was given to the Secretary of the Kalluvathukkal grama panchayat as mandated under rule 4 (2). Hence the alleged whip is not valid one.
5. Respondent further submitted that in para 4 of the petition it is stated that the whip was openly read out in the election meeting by the Returning Officer. This is in violation of the procedure formalities contemplated under law. The petitioner is not legally authorised to litigate on behalf of the BJP political party. Respondents were not given any direction by the political party prior to the election held on 26.09.2023. Hence there is no question of any violation of whip. Petitioner has no cause of action against respondents. Therefore, petition is not maintainable. Hence the original petition may be dismissed.
6. The evidence in this case consists of oral testimonies of PW1, documents Ext.A1 to A8.
7. Both sides were heard.
8. The following points arise for consideration, namely; -

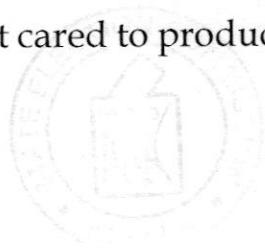




- (i) Whether petitioner is having *locus standi* to file the petition under the provisions of the Act?
- (ii) Whether respondents had disobeyed the decision and direction of the BJP political party in the elections to the post of President and Vice President held on 26.09.2023?
- (iii) Whether respondents have committed defection as contemplated under section under section 3 (1) (a) (ii) of the Kerala Local Authorities (Prohibition of Defection) Act?

9. Point No. (i) to (iii);- As common questions of law and facts are arise for consideration in these points, they are considered together for convenience and to avoid repetition. These petitions are filed by the petitioner herein in his capacity as District President of BJP political party. In the objection respondent disputed the authority and competency of the petitioner to file the original petitions against the respondents. The Ext.A1 to A8 are the whip issued by the petitioner in his capacity as District President of the BJP. Ext.A1 to A8 prepared in the letter head of the BJP political party and bears the seal and signature of the District President of the BJP. Ext.A1 to A8 documents are produced along with the original petitions at the time of filing the case. However, in the objection filed by the respondent he has no case that Ext.A1 to A8 documents are forged or fabricated documents. What contented by the respondents is that their signatures appear in Ext.A1 to A8 are forged and fabricated. Moreover, during the cross examination petitioner made it clear that he had recommended the election symbol of BJP to the respondents for contesting from their respective wards. There is no further cross examination on the point. Person recommended the symbol of political party is competent to file the petition before the Commission as per the provisions of rule 4A of the Rules. Therefor petitioner is having necessary *locus standi* to file the original petition against the respondents.

10. The specific case of petitioner is that respondents are contested and elected as candidate of BJP in the General Election to local authorities held in 2020. However, petitioner has not cared to produce the sworn declarations filed



by the respondents under rule 3 (2) of the Rules or Party Affiliation Register prepared by Secretary of the panchayat under 3 (1) of the Rules. Further, petitioner has not examined the Secretary of the panchayat, who is the custodian of said documents. However, petitioner is the District Secretary of the BJP categorical stated before the Commission that respondents were contested and elected as candidates of BJP. On going through the Objection, it appears that respondents have no case that they are not belonging to BJP political party. It is well settled that an allegation of fact in the petition if not denied in the objection by the respondents, shall be taken to be admitted by the respondents. Therefore, it is found that respondents are elected members belonging to BJP.

11. While so, election to the offices of President and Vice President of the panchayat were held on 26.09.2023. Prior to that the District President of the BJP, the petitioner herein issued Ext.A1 to A8 whip to the respondents in the original petitions directing them to vote in favour of Smt. Sudheepa S and Sri. Sathyapalan for the posts of President and Vice President respectively. It is evident from the Ext.A1 to A8 that whip was served directly to the respondents and they accepted the whip by putting their signature thereon. It appears from Ext.A1 to A8 that they accepted the whip on 25.09.2023, on the previous day of election. However, in the objection respondent has taken a case that signature found in the Ext.A1 to A8 forged and fabricated to suit the contentions of the petitioner. However, respondents have not adduced any evidence to impeach the geniuses of the Ext.A1 to A8. Therefore, the contentions of the respondents that Ext.A1 to A8 forged and fabricated is unsustainable.
12. In the objection respondents have taken another case that there is no pleadings in the original petitions that copy of the whip was given to the Secretary of the Kalluvathukkal grama panchayat as mandated under section 3(2) of the Act read with rule 4 (2) of the Rules. As per section 3(2) of the Act read with rule 4 (2) of the Rules, it is mandatory that copy of the whip should be given to the Secretary of the panchayat. However, as a matter of fact there is no such pleadings in petition that copy of the whip



has been served to the Secretary of the Kalluvathukkal grama panchayat. Even in the Chief affidavit filed by the petitioner he has no case that copy of the whip had been communicated to the Secretary of the panchayat.

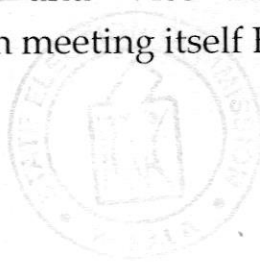
13. In *Lizy Valsalan V Suja Salim* (2015 (3) KHC 968) (DB) the Hon'ble High Court observed as follows, -

" 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)

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

" Serving of copy of the direction in writing (whip) to the Secretary of the local authority concerned is the only method by which a member of that local authority belonging to any other political party to come to know about the whip. In the enquiry conducted by the State Election Commission under sub-section(2) of section 4 of the Act, the petitioner has to establish the existence of a valid direction in writing ( whip) by the political party to tis members, in terms of clause (i) of sub-rule (1) of Rule 4 and that, it was given to the members concerned and also the Secretary of the local authority, in the manner prescribed in sub-rule (2) of Rule 4. Keeping in view of the intendment of the enactment and context in which the word "shall" has been used in sub-section (2) of section 3 of the Act and sub-rule (2) of Rule 4 of the Rules, conclusion is irresistible that the said provisions, which require that copy of the direction in writing (whip) shall be given to the Secretary, are mandatory in nature."

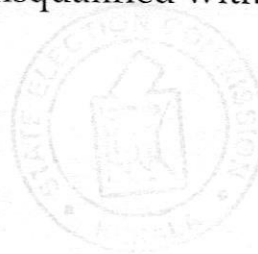
14. The consistent case of the petitioner is that in the elections held on 26.09.2023 Smt. Sudheepa S and Sri. Sathyapalan S stood as candidates for the posts of President and Vice President respectively. At the commencement of election meeting itself Ext.A1 to A8 whips were openly





read out by the Returning Officer for the information of the respondents. Respondents were present in the election meeting and voted against the candidate fielded by the BJP and thereby acted contrary to the direction issued by the District President of Bhartiya Janata Party. The above conduct of the respondent is suitable and enough for their disqualification under section 3 (1) (a) (ii) of the Kerala Local Authorities (Prohibition of Defection) Act. However, in the original petition petitioner has neither produced the minutes of the said meeting nor corroborated it through independent evidence. Therefore, petitioner has failed to prove that BJP political party had fielded Smt. Sudheepa S and Sri. Sathyapalan S as Presidential and Vice Presidential candidates respectively in the election held on 26.09.2023 and respondent acted in contrary to the whip issued.

15. In the present case it is pertinent to note that there are no pleadings in either in the original petition or in the Chief affidavit that respondent have voluntarily given up their membership from the BJP political party in whose banner they were elected as members. There is also no evidence by the petitioner that respondents have incurred disqualification by voluntarily giving up of membership of the party as provided under 1st limb of section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. Quite contrary, in the original petition as well as evidence as PW1 petitioner specifically pleaded/ stated that respondents have acted contrary to the whip issued by the political party in the Presidential and Vice Presidential election held on 26.09.2023 and therefore respondents are liable to be disqualified under 2nd limb of section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. Therefore, the reliefs sought against the respondents in the petition are confined to 2nd limb of section 3(1) (a) of the Act alone.
16. In *Jomon K L V Kerala State Election Commission, Thiruvananthapuram* ( 2021 KHC 3056) the Hon'ble High Court held that in the absence of any evidence that the whip was served on the Secretary of the local authority, there cannot be a valid service of whip and if there is no valid service of whip, a member cannot be disqualified with reference to the second limb



of section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.

17. In *Chinnamma Varghese V. State Election Commission of Kerala* (2009 (4) KHC 527) Division Bench of High Court held that " incurring of the disqualifications under any one of the contingencies depends upon the existence of a definite set of facts, which are required to specifically pleaded before they are sought to be proved to establish the allegation of disqualification under the Act."
18. In the present case there is no sufficient material on the record showing that respondents were violated the whip issued by the political party BJP and acted contrary to the directions issued by the political party in the elections to the post of President and Vice President held on 26.09.2023. Therefore, respondents have not incurred any disqualification under section 3 (1) (a) of the Act.

In the result, the original petitions are dismissed.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

PW1 - Sri. Gopakumar B. B.

Documents produced on the side of the Petitioner

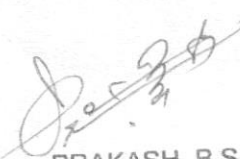
- A1 - Receipt of the whip regarding President election issued to Sri. N. Appukkuttan Pillai dated, 25.09.2023.
- A2 - Receipt of the whip regarding Vice President election issued to Sri. N. Appukkuttan Pillai dated, 25.09.2023.
- A3 - Receipt of the whip regarding President election issued to Smt. Alli Aji dated, 25.09.2023.
- A4 - Receipt of the whip regarding Vice President election issued to Smt. Alli Aji dated, 25.09.2023.
- A5 - Receipt of the whip regarding President election issued to Smt. B. R. Deepa dated, 25.09.2023.
- A6 - Receipt of the whip regarding Vice President election issued to Smt. B. R. Deepa dated, 25.09.2023.
- A7 - Receipt of the whip regarding President election issued to Smt. Rejithakumari dated, 25.09.2023.
- A8 - Receipt of the whip regarding Vice President election issued to Smt. Rejithakumari dated, 25.09.2023.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//

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

