

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

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

Tuesday, the 9th day of July, 2024

O.P. No. 22 of 2022

Petitioner

: Shiju P. Kuruvila,
S/o. M.K. Kuruvila,
Peroor House,
Puramattom P.O.,
Pathanamthitta.

(Member, Ward No.13,
Puramattom Grama Panchayat)

(By Adv. V.S. Sunil Kumar)

Respondent

: Soumya Vijayan
D/o. Vijayan,
Vadakethattu House,
Paduthodu P.O., Vennikulam,
Pathanamthitta - 689 544.

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

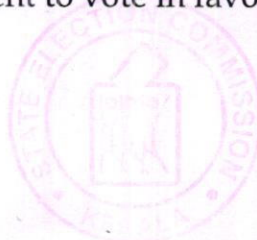
(By Adv. E. Sulfickar)



ORDER

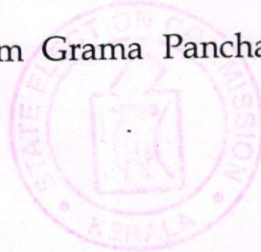
This is a petition filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that the respondent committed defection and hence disqualified to continue as member of Puramattom Grama Panchayat and also for declaring her as disqualified to contest as a candidate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

2. Petitioner's case in brief is as below:- The petitioner and respondent are elected members of ward No. 13 and 5 respectively of Puramattom Grama Panchayat in the General Election to local authority held in 2020. Petitioner was elected as a candidate of CPI (M). Respondent was elected as an independent candidate supported by CPI (M). After the election respondent filed a sworn declaration before the Secretary of the Panchayat stating that she has contested election as an independent candidate with the support of CPI (M) and same was duly recorded in the Register showing the party affiliation of members by the Secretary. Later respondent was elected as President of the panchayat with the support of LDF members of the panchayat.
3. However the respondent took hostile attitude towards the LDF and CPI (M) and started violating the directions and whips issued by the parliamentary party leader of LDF and the political leadership of CPI (M). Meanwhile election to the post of Vice President was scheduled to be held on 25.07.2022. CPI (M) fielded Smt. Sosamma Thomas as a candidate for the post of Vice President. On 23.07.2022, the Pathanamthitta District Secretary of CPI (M) issued whip to the respondent to vote in favour of Smt. Sosamma Thomas.



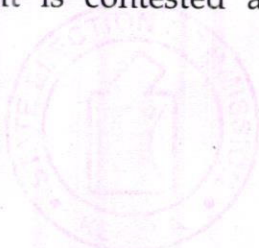
A similar whip was also issued by Parliamentary party leader of LDF to the respondent. Respondent was refused to accept both whips when directly served. Therefore these whips were served through affixture at the residence of the respondent in the presence of witnesses. Copy of the whip was also served to the Secretary of Puramattom Grama Panchayat.

4. In the election to the post of Vice President held on 25.07.2022, respondent in gross violation of whip issued by her political party voted in favour of Smt. Lekshmimol K V, the candidate fielded by rival UDF coalition and consequently the candidate fielded by LDF was defeated. The above conduct of respondent amounts to voluntary abandonment of her membership in the CPI (M). Thereby the respondent committed defection and liable to be declared as disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.
5. Respondent filed written statement contending as below:- Respondent was contested in the election to ward No. 5 of the Puramattom Grama Panchayat as an independent candidate not belonging to any coalition, in the election symbol " cup and saucer" and got elected as an independent candidate. As a matter of fact respondent filed nomination paper to contest election as an independent candidate and solicited votes as an independent candidate. After the election she filed Form 2 declaration to the panchayat stating that she is an independent candidate without the support of any political party or coalition. The entire entries in Form 2 declaration was filled up by her in her own hand writing.
6. After the General Election, both LDF and UDF coalitions did not get majority in the Puramattom Grama Panchayat. Hence respondent has



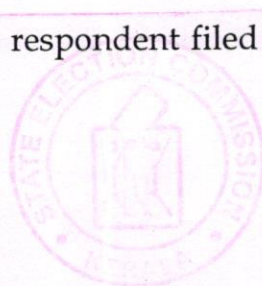
decided to contest in the election to the post of President as an independent candidate. In the election 6 elected members of Grama Panchayat voted in her favour, accordingly she secured 7 votes in the 13 member Grama Panchayat and was elected as President.

7. Later in the election to the post of Vice President held on 25.07.2022, respondent being an independent member, acted according to her free will.
8. Petitioner filed this OP for disqualifying the respondent relying on the Form 2 declaration dated 21.12.2020 allegedly filed by the respondent. After getting notice from the Commission, she had obtained a certified copy of Form 2 declaration purportedly filed by her and she became shocked and to the dismay the Form 2 declaration now available in the panchayat is forged and fabricated one. The LDF members including the petitioner have manipulated the record with the support of Secretary of the panchayat and destroyed the declaration given by the respondent with an intention to include her as a CPI (M) member. Respondent is an independent member and hence neither the LDF Parliamentary party leader nor District Secretary of CPI (M) has any right or authority to issue whip to her and she is having every right to take her own decisions. Respondent has not committed any act of defection as alleged.
9. The evidence in this case consists of the oral testimonies of PW1 to PW8, RW1 and RW2 and the documents Exts A1 to A13, Exts B1 and B2 and Ext. X1.
10. Heard both sides.
11. The following points arise for consideration.
 - (i) Whether respondent is contested and elected as an independent



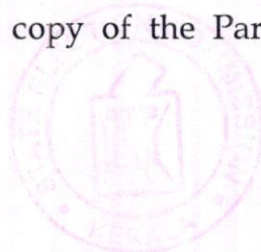
candidate supported by CPI (M)/LDF or an independent not belongs to any coalition ?

- (ii) Whether CPI (M)/LDF has any manner of right or authority to issue whip to the respondent ?
 - (iii) Whether respondent has disobeyed the whip issued by CPI (M)/LDF in the election to the post of Vice President held on 25.07.2022 ?
 - (iv) Whether the respondent has voluntarily given up her membership of CPI (M) political party ?
 - (v) Whether respondent has committed any act of defection as contemplated under section 3 of the the Kerala Local Authorities (Prohibition of Defection) Act ?
12. Point No.(i) : The pivotal question to be examined is whether respondent has contested election as an independent candidate of CPI (M) or an independent not belonging to any coalition. Petitioner has produced the sworn declaration filed by the respondent under rule 3 (2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000, which is marked as Ext A1. Ext.A1 would goes to show that respondent has duly filed a declaration that she was contested and elected as an independent candidate supported by CPI (M). Ext.A1 declaration was obtained by the petitioner from the panchayat under the Right to Information Act. Ext A1 is the certified copy of the official records maintained in the panchayat. Petitioner has also examined the SPIO who issued the cerfied copy of Ext.A1 as PW2.
13. Petitioner has examined the Panchayat Secretary of Puramattom Grama Panchayat before whom the respondent filed Ext.A1 declaration, as PW3.



PW3 deposed in unequivocal terms that he was present in the oath or affirmation of elected members of the panchayat. He received the declarations filed by the elected members, including respondent. Ext.A1 is the declaration filed by respondent. In Ext.A1 respondent has stated that she is an independent candidate supported by CPI (M). Ext.A2 is the Party affiliation Register prepared by him on the basis of Ext.A1 declaration of the respondent. The seal and signature seen in Ext.A2 is that of him. In the cross examination PW3 categorically stated that respondent has signed the Ext.A1 before him.

14. Ext.A1 is the certified copy of Form 2 declaration filed before the Secretary of the Panchayat as contemplated under the provisions of rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and as such it is a public document for the purpose of section 74 of the Indian Evidence Act. PW3 Secretary of the panchayat deposed before the Commission that respondent has signed the Ext.A1 before him. Respondent has a case that Ext.A1 is forged and fabricated with the support of Secretary of the panchayat. But no cross examination on this aspect. Petitioner has also examined the SPIO, who issued the certified copy of SPIO. It is pertinent to note that respondent has not filed any complaint in the matter of alleged forgery of Ext.A1 either with the Police or Panchayat. However she had filed IAs belatedly on 31.10.2023 for sending Ext.A1 for State Forensic Laboratory and it was dismissed by the Commission finding lack of bonafides. In view of the evidence on the record there is no reason to doubt the genuineness and authenticity of Ext.A1.
15. Ext.A2 is the certified copy of the Party affiliation Register of elected



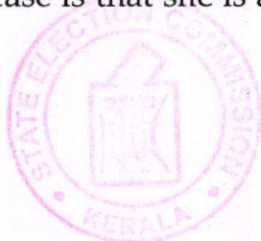
members of Puramattom Grama Panchayat prepared on the basis of Ext.A1 declaration. In Ext.A2 the party affiliation of the respondent is recorded as an independent member having support of CPI (M)/LDF. In the written statement filed by respondent she has no case that Ext A2 is a forged and fabricated document. The Panchayat Secretary, who prepared the Ext.A2 Register was examined as PW3. In the cross examination PW3 deposed that "Ext. A2 വിലെ കൈപ്പട കോളം 1 മുതൽ 7 വരെയുള്ള കോളങ്ങൾ പൂരിപ്പിച്ചിട്ടുള്ളത് പഞ്ചായത്തിലെ അസിസ്റ്റന്റ് സെക്രട്ടറിയാണ്. കോളം 8-ൽ അസിസ്റ്റന്റ് സെക്രട്ടറിയും സെക്രട്ടറിയും പൂരിപ്പിച്ചിട്ടുണ്ട്. 9-ആം കോളത്തിൽ അസിസ്റ്റന്റ് സെക്രട്ടറിയും 10-ആം കോളത്തിൽ സെക്രട്ടറിയും ഒപ്പിട്ടിട്ടുണ്ട്.

(Q) സൗമ്യ വിജയൻ പഞ്ചായത്തിലേക്ക് മത്സരിച്ചത് യാതൊരു കക്ഷിയുടെയും പിന്തുണയില്ലാതെ പൂർണ്ണ സ്വതന്ത്രയായാണ് മത്സരിച്ചത് എന്നു പറഞ്ഞാൽ ശരിയാണോ? (Ans) അല്ല.

He further disposed that the seal and signature seen in the Ext.A2 is that of him.

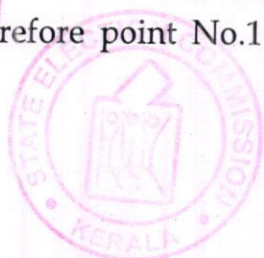
16. Petitioner has also examined the SPIO of the Puramattom Grama Panchayat as PW2, who issued the certified copy of Ext.A2. PW4 is the elcted member of ward No. 12 and Parliamentary Party Leader of LDF in Puramattom Grama Panchayat, who deposed that respondent is representing the CPI (M) in the panchayat. He further stated that he was the publisher of campaign notices for 2020 election in his capacity as LDF Convenor of the panchayat. PW5 is the LDF Convenor of Puramattom Grama Panchayat, who was the polling Agent of respondent in the lone polling station of ward No.5. Petitioner produced Form 24A Account of Votes Recorded to prove that he was signed the 24A as a polling agent of the respondent.

17. The respondent's case is that she is an independent member not belonging



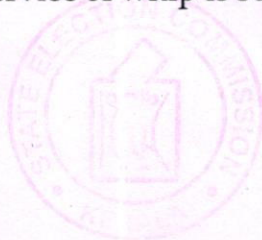
to any coalition or political party. Therefore she has taken independent decisions and cast her vote in the Vice President election held on 25.07.2022. The respondent heavily relied on the nomination paper submitted by her during her election from ward No.5, which is marked from her side as Ext.B1. In column No. 10 of the Form No.2 it is recorded by her that she is contesting as an independent candidate. In order to strengthen her case she has examined the then Returning Officer of Ward No. 5. It is true that respondent has not mentioned the name of any political party, which supports her in the election in the requisite column of Ext B1 nomination paper. In other words respondent submitted nomination to contest from ward No. 5 as independent. However, it has come in evidence that the CPI (M)/LDF supported her in the election. The respondent has no case that CPI (M)/LDF was having another candidate in ward No.5. Ext. A9 campaign notice issued by LDF also indicates that respondent was contested election as an independent candidate supported by LDF. Respondent won the election and immediately filed Ext.A1 before the Authorised Officer under rule 3 (2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules declaring that she is an independent member belonging to CPI (M)/LDF.

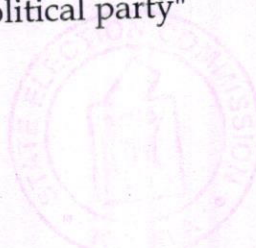
18. As regards of law on this aspect, as per Local Authorities Election Symbols (Reservation and Allotment) Order, 2017, there is no inhibition for a political party to support or sponsor a candidate, who has not mentioned the name of the political party in the nomination paper, in an election. There is ample evidence to prove that the respondent was supported by CPI (M)/LDF in the election. Therefore point No.1 is answered in favour of the



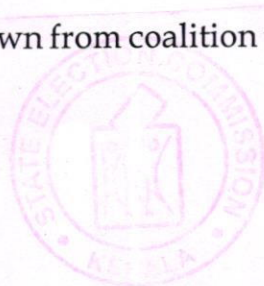
petitioner.

19. Point No. (ii) to (v):- It has come in evidence through the testimony of PW4 that respondent has elected as the President of Puramattom Panchayat by the other LDF members of the panchayat for a period of one year. Admittedly her name for the post of Vice President was proposed by the petitioner and seconded by one Sabu Behanan, both LDF members. It did further come in evidence through PW1 that subsequently LDF moved a no confidence motion against the respondent and it was defeated by UDF with the support of respondent. No cross examination on these evidence.
20. Meanwhile election to the post of Vice President was scheduled to be held on 25.07.2022. LDF fielded Smt. Shosamma Thomas for the post of Vice President. The District Secretary of CPI (M), who was examined as PW6 issued Exhibit A3 whip to the respondent directing her to vote for Smt. Shosamma Thomas. In addition to it, PW4 issued Ext.A4 whip to the respondent in his capacity as Parliamentary Party Leader of LDF in Puramattom Grama Panchayat. Both whips were served through PW4. PW4 deposed that though both whips were tendered to the respondent directly she refused to accept it. Therefore the whips were served by affixture at the residence of respondent in the presence of two witnesses. PW 7 is one such witness. Photograph of affixture taken is produced as Ext A6. The photographer of Ext A6 has examined as PW8. Ext A7 is the certified copy of the whip served to the Secretary of the Puramattom Grama Panchayat as mandated under rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. Therefore the mandatory requirements with regard to the issuance and service of whip is seen complied with in this case.



21. However in the election to the post of Vice President held on 25.07.2022, the respondent in gross violation of whip issued by her political party voted in favour of Smt. Lakshminol K V, the candidate fielded by the rival UDF coalition for the post of Vice President and consequently the candidate fielded by LDF was defeated. It is evident from the certified copy of Minutes that respondent has not voted for Smt. Shosamma Thomas, the official candidate of LDF, but voted for Lakshminol K V, the UDF candidate. In the Written Statement respondent has admitted that in the Vice President election held on 25.07.2022, respondent voted according to her free will.
22. Respondent has a case that she being an independent member not belongs to any coalition, either the District Secretary of the CPI (M) or Parliamentary party leader of the LDF has no manner of right to issue whip or direction to her and she is having every right to take her own decisions in the election. In *Sindhu Anilkumar V. State Election Commission* (Judgment dated 22.02.2024 in WA No. 1474/2023) the Hon'ble High Court examined the position and held that;-
- "As per explanation to Section 2 (ii) of the Act, a member who stood as a candidate in an election with the support of any one of the political parties shall be deemed to be a member included in that political party. The position further clarified by Explanation to section 3 of the Act. The above deeming provision creates a fiction by which an independent candidate, who had contested the election with the support of a political party, is to be considered as a member of that political party even without the member joining the political party"
- 

23. In the written statement, respondent has no case that whip was not served to him or copy of the whip was not served to the Secretary of the Panchayat. Petitioner has proved that whip was served to the respondent by affixture at the residence of the respondent. There is enough material on the record that respondent was aware of the whip issued by her political party, but acted in disobedience of the whip in the election held on 25.07.2022.
24. In *Eruthavoor Chandran and Another V Kerala State Election Commission* (2018 (5) KHC 964) Hon'ble High Court held that "where a member of a political party is aware of the decision taken by the political party but failed to act in accordance with the political directive, it would amount to voluntarily abandoning of the membership." The respondent has voluntarily given up her membership by supporting a rival party candidate for the election to the post of Vice President.
25. Another judgment in *Biju R S and others V. Kerala State Election Commission and others* (2009 (2) KHC 839) Hon'ble High Court held that disqualification of voluntarily giving up of the membership of one's party is not dependent on violation of whip.
26. Hon'ble High Court in *Mohandas K P V State Election Commission* (2009 (4) KHC 935) (decision prior to 17.01.2012) held that " Therefore, the principles laid down by this Court in the different precedents referred to above on the concept of appreciation of evidence regarding the question whether a member of a local authority belonging to a political party has voluntarily given up his membership of such political party, apply with same vigour to cases where the allegations of defection is made against an independent, who has allegedly withdrawn from coalition to which he belonged by virtue



of section 2(ii) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 and Explanation thereto."

27. There is evidence on the record that respondent was aware of the decision taken by CPI (M)/ LDF, but failed to act in accordance with the political directive and acted hand in glove with UDF members to defeat the candidate fielded by LDF by voting in favour of the candidate fielded by UDF for the post of Vice President. It is nothing but disloyalty under section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act.

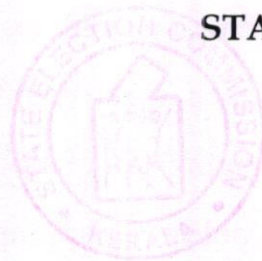
In the result OP is allowed and the respondent is declared as disqualified for being a member of Puramattom Grama Panchayat as provided under section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. The respondent is further declared as disqualified from contesting as a candidate in an election to any local authorities for a period of 6 years from this date, as provided under direction 4 (3) of the Act.

Pronounced before the Commission on the 9th day of July, 2024.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



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

- PW1 : Sri. Shiju P. Kuruvila
PW2 : Sri. Biju Anand A.
PW3 : Sri. B.P. Kumar
PW4 : Sri. Mohandas K.O.
PW5 : Sri. Sanup Thomas
PW6 : Sri. K.P. Udayabhanu
PW7 : Sri. Sasi P.T.
PW8 : Sri. Binu John

Witness examined on the side of the Respondent

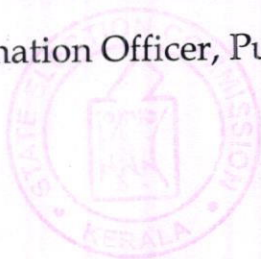
- RW1 : Smt. Soumya Vijayan
RW2 : Smt. Ambili V.L.

Documents produced on the side of the Petitioner

- A1 : Copy of the Declaration in Form 2 submitted by Smt. Soumya Vijayan, Puramattom Grama Panchayat dated 21.12.2020
A2 : Copy of the Relevant page of Register showing the party affiliation of the elected members of Puramattom Grama Panchayat
A3 : Copy of the whip dated 23.07.2022 issued by Sri. K.P. Udayabhanu, Secretary, CPI(M) Pathanamthitta District Committee to Smt. Soumya Vijayan dated 23.07.2022



- A4 : Copy of the whip issued to Smt. Soumya Vijayan dated 23.07.2022 by Sri. Mohandas K.O., LDF Parliamentary Party Leader
- A5 : Submission by Sri. Kunjumon Varghese regarding the affixture of whip in connection with the Vice President election, Puramattom Grama Panchayat
- A5(a) : Submission by Sri. Sasi P.T. regarding the affixture of whip in connection with the Vice President election, Puramattom Grama Panchayat
- A5(b) : Submission by Sri. Mohandas K.O regarding the affixture of whip
- A6 : Photograph
- A6 (a-c) : Photographs
- A7 : Copy of the letter showing the intimation to Secretary, Puramattom Grama Panchayat regarding the issuance of whip to LDF members.
- A8 : Copy of the Acknowledgement Receipt
- A9 : Copy of the Election Campaign Notice of LDF candidates
- A10 : Copy of the Result of Vice President Election held on 25.07.2022 at Puramattom Grama Panchayat
- A11 : Copy of the minutes of the meeting held on 25.07.2022 at Puramattom Grama Panchayat in connection with the Election of Vice President, Puramattom Grama Panchayat
- A12 : Letter dated 15.03.2023 issued under RTI Act, by the State Public Information Officer, Puramttom Grama Panchayat



A13 : Form 24A Part-1 showing the number of polled votes

Documents produced on the side of the Respondent

B1 : Copy of the Form 2A submitted by Smt. Soumya Vijayan along with the nomination form

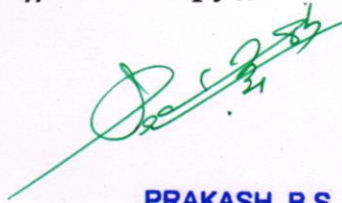
B2 : Copy of the order dated 23.02.2023 of the State Election Commission in unnumbered O.P., Puramattom Grama Panchayat

Documents produced by Witnesses

X1 : Nomination Form submitted by Smt. Soumya Vijayan.

Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER

// True Copy //



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

