

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A SHAJAHAN,
STATE ELECTION COMMISSIONER

Tuesday, the 25th day of February, 2025

O.P. No. 64 OF 2023

Petitioner

: Syam Samson
S/o. Samson Joseph,
Elamkunnam,
Puzhavathu, Changanassery P.O.,
Kottayam - 686 101

(Councillor, Ward No.24,
Changanassery Municipality)

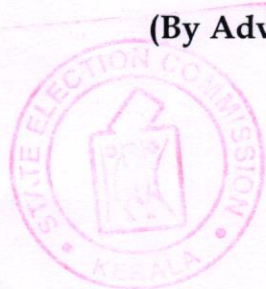
(By Adv. A.Santhosh Kumar)

Respondent

: Beena Joby
W/o. Joby Jose,
Thoombunkal Veedu,
Angady, Changanassery P.O.,
Kottayam - 686 101

(Councillor, Ward No.30,
Changanassery Municipality)

(By Adv. Kallambalam S. Sreekumar)



ORDER

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

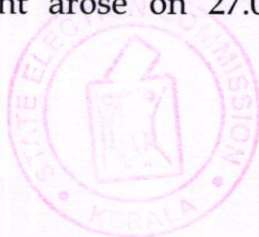
2. The petitioner's case in brief is as follows;-

The petitioner and respondent are elected members of ward No. 24 and ward No.30 respectively of the Changanassery Municipality, in the general election to the local authorities held in December, 2020. In the nomination paper submitted by the respondent for contesting election from ward No. 30, she made a specific statement that she belongs to Kerala Congress (M) PJ Joseph Group, a political party under UDF coalition. However, respondent contested election as an independent candidate not belonging to any political party or coalition, in the symbol "candles" and elected as a Councilor. Immediately after the election on 21.12.2020 she filed sworn declaration before the Secretary of the Municipality affirming that she was contested and elected as an independent candidate not belonging to any political party or coalition. On the basis of the same, Secretary of the Municipality has prepared a register showing the political affiliation of the respondent as an independent Councilor not belonging to any political party or coalition. Para 14 of the petition goes to show that cause of action arose on 21.12.2020, the date on which the respondent signed and filed the declaration before the Secretary of the Municipality that she is an independent elected councilor not belonging to any political party or coalition contrary to the statements in nomination paper.



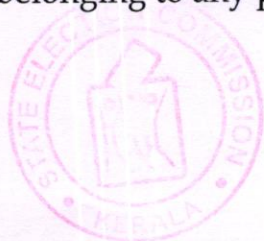
3. However, in the petition petitioner has taken another plea that subsequent to the election as an independent Councilor she joined the UDF coalition and got elected as Chairman of Welfare Standing Committee with the support of UDF coalition.
4. Meanwhile, the opposite LDF coalition moved a no confidence motion against the Chairperson of the Changanassery Municipality, who belongs to UDF. The respondent has signed the notice of intention to move the no confidence motion initiated by the LDF against the Chairperson of the Municipality and thereby joined the LDF coalition. The meeting to consider no confidence motion was scheduled to be held on 27.07.2023. The UDF coalition decided to defeat the no confidence motion. However, respondent voted in favour of the no confidence motion as if she is a part of LDF coalition and thereby the Chairperson belonging to the UDF coalition was unseated.
5. It is further contended that the conduct of the respondent, who was elected as an independent Councilor of Changanassery Municipality, moved no confidence motion along with elected Councilors of LDF and thereby joined the LDF coalition and incurred the disqualification as provided under section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act.
6. The respondent's case in brief is that;-

The petition is not maintainable either in law or on facts. The present petition is filed by the petitioner with an experimental motive to oust the respondent from Councillorship of the Municipality. There is no specific cause of action alleged against the respondent. It is disclosed from para 14 of the petition that cause of action arose on 21.12.2020, the date when the respondent filed declaration under rule 3 (2) before the Secretary of the Municipality. However, on the composite reading of the petition, it seems that his right to seek relief against the respondent arose on 27.07.2023, the date when respondent



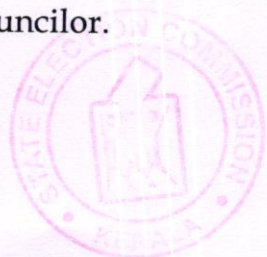
allegedly joined LDF coalition. In fact, petitioner has definite no cause of action against the respondent.

7. Respondent further submitted that during the time of submitting nomination paper, she tried to contest election as a candidate of Kerala Congress (M) P J Joseph Group, a constituent of UDF coalition. Accordingly, she submitted nomination paper describing herself as a candidate of Kerala Congress (M) P J Joseph Group. But her candidature was not approved by the Kerala Congress (M) P J Joseph Group political party. Instead, UDF fielded one Geemol George as their candidate in ward No. 30. In the said circumstances respondent contested election as an independent candidate not belonging to any political party or coalition in the symbol "candles" and got elected as Councilor by defeating both UDF and LDF candidates in fray. Respondent is still maintaining her status as an independent Councilor of the Municipality and never joined any political party or coalition as alleged.
8. In the objection respondent conceded that she signed and submitted the notice of intention to move the no confidence motion against the Chairperson of the Municipality. But contended that she has an ample right to do the same under the provisions of the Kerala Municipality Act. However, she has not joined LDF coalition as alleged. It is further prayed that petition may be dismissed with cost and compensatory cost to the respondent.
9. The evidence in this case consists of oral testimonies of PW1 to PW4, RW1 and Exts A1 to A6 and Exts X1 to X3.
10. Both sides were heard.
11. The following points arise for consideration
 - (i) Whether respondent was contested and elected as an independent candidate not belonging to any political party or coalition?

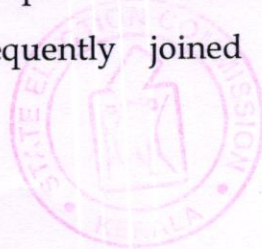


- (ii) Whether respondent has joined any political party after being elected as an independent Councilor?
- (iii) Whether the respondent has committed defection as contemplated under section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?

12. 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. Petitioner is an elected Councilor of ward No.24 of the Changanassery Municipality. A Councilor of the Municipality concerned is competent to file petition under section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act. It has come in evidence that petitioner is a Councilor belonging to Indian National Congress, a constituent of UDF. It has also come in evidence that respondent contested the election in the election symbol " candles", a free symbol earmarked for independent candidates. Ext.A4 is the declaration dated 21.12.2020 filed by the respondent before the Secretary of the Municipality that she was contested and elected as an independent candidate, under rule 3 (2) (c) of the Kerala Local Authorities (Disqualification of Defected members) Rules. Ext.A5 is the Party Affiliation Register maintained by the Secretary of the Municipality on the basis of the Ext.A4 declaration. Ext.X1 and X2 are the certified copy of Ext.A4 and A5 respectively produced by the Secretary of the Municipality, when he was examined as PW2. All the evidence on record and presumption under rule 3 (2) (c) leads that respondent was contested and elected as an independent candidate not belonging to any political party or coalition. Moreover, in paras 4 to 7 of the petition, petitioner himself admitted that respondent is an independent Councilor.

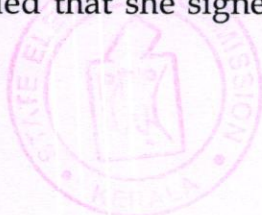


13. However, in the original petition petitioner has raised an inconsistent plea that in the Ext. A2 nomination paper submitted by the respondent for contesting election to ward No. 30, she had stated that she belongs to Kerala Congress (M) P J Joseph Group. Ext.X3 is the original nomination paper. But after the election she made Ext.A4 declaration dated 21.12.2020 that she is an independent Councilor. The cause of action stated in para 14 of the petition is based on the said plea. However, in para 6 of the objection respondent explained the circumstances under which she made such a statement in the nomination paper. Moreover, the statements made in serial No. 10 and 11 of the nomination paper as to the political party connection of the candidate and symbol of political party would not *ipso facto* make her a candidate of that political party. It is a conscious decision of political party to recommend the symbol of political party to the candidate or not. Such a decision shall be taken by political party and informed in writing to the Returning Officer before the time fixed for withdrawal of candidature. Only if the political party recommends its symbol to the candidate, she shall be deemed to be set up by political party for the purpose of para 8 of the Local Authorities Election Symbols (Reservation and Allotment) Order, 2017. In the present case Kerala Congress (M) P J Joseph Group has not recommended the candidature of the respondent from ward No. 30. Respondent has not been set up or given support as a candidate for the election by the Kerala Congress (M) PJ Joseph Group for the purpose Explanation to section 3 (3) of the Act. Therefore, the plea based on the alleged cause of action dated 21.12.2020 has no bearing and is unsustainable in law.
14. Crux of the case of the petitioner is that respondent, who was contested and elected as an independent candidate not belonging to any political party or coalition, subsequently joined LDF coalition and thereby incurred



disqualification under section 3(1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act. According to the petitioner respondent aligned with LDF coalition in moving no confidence motion against the Chairperson of the Changanassery Municipality, who belongs to UDF. Respondent was one of the signatories of notice intention to move the no confidence motion submitted to the Authorised Officer, under section 19 (2) of the Kerala Municipality Act. In the meeting of no confidence motion held on 27.07.2023 respondent attended and voted in favour of the no confidence motion, along with LDF Councilors. 16 out of 19 Councilors participated the meeting and voted in favour of the no confidence motion were LDF Councilors. As a result, the no confidence motion against the Chairperson of the Municipality was carried with majority of Councilors and she was removed from the office. Ext.A6 is the Minutes of the meeting of no confidence motion.

15. Petitioner, who is an elected Councilor belonging to UDF is aggrieved by the conduct of the respondent in the meeting of the no confidence motion held on 27.07.2023. According to the petitioner after being elected as a Councilor of the Municipality, respondent got elected as Chairman of Welfare Standing committee with the support of UDF Councilors in the Municipality and thereby she already joined UDF coalition. Prior to the meeting of no confidence motion held on 27.07.2023, UDF has taken a decision to defeat the no confidence motion. However, while continuing in UDF coalition respondent took part in moving no confidence motion and voted in favour of the no confidence motion along with LDF Councilors and thereby UDF lost the governance of the Changanassery Municipality.
16. In the objection, respondent denied both the allegations that she initially joined the UDF coalition and thereafter withdrawn from it and joined LDF coalition. Respondent conceded that she signed and submitted no confidence motion



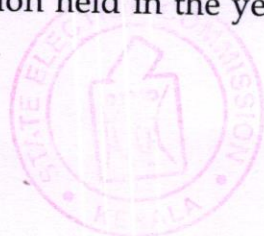
against the Chairperson of the Municipality. Which does to mean that she joined in LDF coalition, which moved the no confidence motion. She is having ample right to move no confidence motion and vote in the no confidence motion according to her free will under the provisions of the Kerala Municipality Act. In the chief affidavit filed by the respondent as RW1, she deposed that she never given up her status as an independent Councilor of the Municipality. She voted for independent candidate in the election for the post of Chairperson held in 2020. In July 2023, she signed the notice of no confidence motion against Chairperson of the Municipality according to her free will and in the subsequent meeting she voted in favour of the no confidence motion against the Chairperson. The Kerala Municipality Act permits an independent Councilor to take her own decisions in the voting of council.

17. The facts put forth by the petitioner shows that after being elected as an independent Councilor of the Municipality, respondent joined the UDF coalition. In this context it is pertinent to examine whether respondent was part of UDF coalition at any point of time.

"Coalition" is defined under section 2 (ii) of the Kerala Local Authorities (Prohibition of Defection) Act, which reads as follows; -

" (ii) 'coalition' means a coalition made between more than one political parties or between more than one political parties and one or more independents or between one political party and one or more than one independents or between more than one independents for the purpose of contesting any election of a local authority."

18. In the instant case, petitioner has no case that there was a pre-election arrangement between the respondent and any of the political parties for contesting the election held in the year 2020. On the other hand, after being



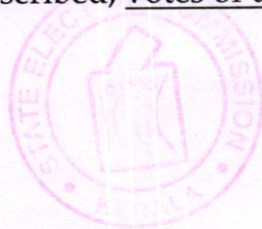
elected as a Councilor respondent allegedly accepted the support of UDF to secure the Chairmanship of welfare standing committee. Therefore, respondent cannot be treated as a part of UDF coalition at any point of time.

19. The next question is whether respondent, who was contested and elected as an independent not belonging to any political party or coalition has subsequently joined LDF coalition and thereby incurred disqualification under section 3 (1) (c) of the Act. Respondent admitted that she signed the notice of no confidence motion against the Chairperson of the Municipality and voted in favour of the no confidence motion against Chairperson, which was held on 27.07.2023. From the evidence on record, it is clear that LDF coalition has moved no confidence motion against the Chairperson. It is pertinent to examine whether the said conduct of the respondent amounts to joining of LDF coalition.

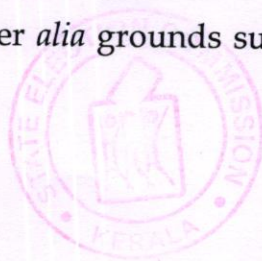
20. The only ground for disqualifying an independent elected Councilor not belonging to a political party or coalition is provided under section 3 (1) (c) of the Act. Section 3 (1) of the Act reads as follows; -

"3. Disqualification on the 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,--

(a) if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting,--



- (i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of Standing Committee or the chairman of a Standing Committee; or
- (ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or
- in a voting on a no-confidence motion against any one of them except a member of a Standing committee;
- (b) if an independent member belonging to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorised by the coalition in its behalf in the manner prescribed, votes or abstains from voting,-
- (i) in a meeting of a Municipality, in an election of its President, Vice President, a member of standing Committee or the Chairman of the Standing Committee; or
- (ii) in a meeting of a Panchayat in an election of its President/Vice President, a member of a Standing Committee or the Chairman of the standing Committee; or in a voting on a no-confidence motion against any one of them except a member of a Standing Committee;
- (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.
21. There is clear distinction between the section 3 (1) (c) and Section 3 (1) (a) and (b) of the Act. As per section 3 (1) (c), joining a political party is the only ground for disqualifying an independent member. However, as per Section 3 (1) (a) and (b) of the Act, *inter alia* grounds such as voting or abstains from voting



contrary to the directions of whip, in a voting on a no- confidence motion etc. are available. The scope of section 3 (1) (c) is entirely different from Section 3 (1) (a) and (b) of the Act. The grounds under Section 3 (1) (a) and (b) are not sufficient to disqualify a Councilor under section 3 (1) (c). Burden of proof is higher in section 3 (1) (c). Petitioner has not cited any instances of joining political party by the respondent. Petitioner has also no case that respondent connived with LDF coalition and moved no confidence motion. It is pertinent to note that petitioner has neither produced the notice of intention to move the no confidence motion allegedly signed by the respondent along with the LDF Councilors nor examined the Authorised Officer who accepted the notice and presided over the meeting of no confidence motion. Petitioner has not adduced any evidence that respondent has given up her independent character on which she was elected by the electorate. Signing notice of intention to move no confidence motion cannot be treated as a sperate transaction apart from the no confidence motion moved against the Chairperson for the purpose of section 19 of the Kerala Municipality Act.

22. In the cross examination of the respondent as RW1, she deposed before the Commission that:

(Q) അവിശ്വാസ പ്രമേയ ചർച്ചയിലും വോട്ടെടുപ്പിലും താങ്കൾ എൽ.ഡി.എഫ്. നു ഒപ്പുമായിരുന്നു എന്നു പറയുന്നു?

(Ans) അതെ, പൂർണ്ണ സ്വതന്ത്രയായ എനിക്ക് ഒറ്റയ്ക്ക് അവിശ്വാസ പ്രമേയം കൊണ്ടുവരാൻ കഴിയാത്തതിനാൽ എൽ.ഡി.എഫ്. നു ഒപ്പം അവിശ്വാസ പ്രമേയത്തിൽ കൂടെ നിന്നു.

This testimony of the respondent cannot be ignored.

23. The Hon'ble Supreme Court of India in *Jagjith Singh V State of Haryana* (2006) 11 SCC 1 considered the various aspects of joining a political party in the context of para 2 (2) of the Tenth Schedule to the Constitution of India and held as follows;-

