

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Wednesday, the 10th day of January 2018

O.P.No.01/2017

Petitioner : GijiKattakayam,
S/o Mathew, Kattakayam House,
Koodaranji P.O.,
Kozhikode District,
PIN: 673 604.
Member, Ward No.14,
KoodaranjiGramam Panchayat

(By Adv. S.Sajitha)

Respondent : GracyKeelath,
W/o Augustin,
Keelath House, Kumbara Bazar
P.O., Koodaranji,
Kozhikode District.
Member, Ward No.07,
KoodaranjiGramam Panchayat

(Adv. Adv.Fathahudeen.M)

This petition having come up for hearing on the 29th day of **December 2017**, in the presence of Adv. **S.Sajitha** for the petitioner and **Adv.Fathahudeen.M** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

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

2. The petitioner's case in brief is as below:- The petitioner and respondent are elected members of KoodaranjiGrama Panchayat, Kozhikode District, in the election held in November 2015. Petitioner was elected as the candidate of Communist Party of India (Marxist) (CPI(M)) and the respondent as the candidate of Kerala Congress (M) (KC(M)). There are 14 wards in KoodaranjiGrama Panchayat. In the election the congress led UDF got 7 seats and LDF secured 6 seats. One seat was won by an independent. The UDF with the support of the independent member formed the Panchayat board. The independent member Smt.Soly Joseph was elected as the Panchayat President and the Congress nominee Shri.V.A.Nazeer was elected as the Vice President. Later dispute arose regarding the functioning of the Panchayat President. She started to take decision ignoring the interest of the UDF. Following that the KC(M) party decided to withdraw the support given by the party to the President.

As the President was not ready to resign from the post, the KC(M) members with the approval of the State committee and District committee of the party decided to move no confidence motion against the President and Vice President and notice of no confidence motion was given on 21.11.2016. It was decided to call for a meeting on 01.12.2016 to discuss the motion and accordingly notice was issued to all the elected members. The District President of the KC(M) issued whips to the elected members of KC(M) to support the no confidence motion. The respondent received the whip. But on the day of the meeting for discussing the no confidence motion the respondent deliberately abstained from the meeting defying the direction of the party. She disobeyed the whip and purposely abstained from the meeting with a view to defeat the motion. By doing so the respondent committed defection incurring disqualification under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act and the petitioner filed this petition for a declaration to that effect.

3. The respondent filed counter statement contending as below. The petitioner has no locus standi to file this petition. The petitioner is an elected member of Communist Party of India (Marxist) and the respondent belongs to Kerala Congress (M). A member of another political party cannot file a petition like this against the respondent who belongs to a different political party. Only a member of the KC(M) party can file a

case against the respondent alleging defection. No member from the respondent's party or coalition filed any case against the respondent alleging that the respondent became disloyal to her party and committed defection. Such things are the internal affairs of the political party to which the member belongs. This petition is not at all maintainable.

4. The absence of the respondent on the day of meeting convened for discussing the no confidence motion was not intentional. She was not well and was laid up in her home. There was no decision of her political party to support the no confidence motion. Her party was not serious about the no confidence motion. Though the District President issued a letter asking her to vote in favour of the no confidence motion she was later informed that there is no party decision to support the no confidence motion. The District President informed her in that regard. The respondent has not abandoned her membership in her party. She has not done any act of disloyalty to her party as alleged. There is no merit in the petition and hence it is only to be dismissed.

5. The evidence in this case consists of the oral testimonies of PWs1 to3, RW1 and Exts.A1to A10,X1and X1(b).

6. Both sides were heard.

7.The following points arise for consideration;

(1) Whether the petition is maintainable?

- (2) Whether the abstention of the respondent in the meeting held on 01.12.2016 is justifiable?
- (3) Whether the respondent has committed defection as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (4) Whether the petitioner is entitled to the declaration prayed for?
- (5) Reliefs and costs?

8. **POINT No.(1)**: This is a petition filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks a declaration that the respondent committed defection and hence she became disqualified to be the member of Koodaranji Grama Panchayat and also to contest the election to any local body for a period of six years.

9. The petitioner and respondent are elected members of Koodaranji Grama Panchayat in the election held in November, 2015. The petitioner was elected as the candidate of Communist Party of India (Marxist) (CPI(M)) and the respondent as the candidate of Kerala Congress (M) KC(M). According to the petitioner the members of the KC(M) decided to move a no confidence motion against the Panchayat President and Vice President and when the motion was tabled for discussion on 01.12.2016 the respondent abstained from the meeting with a view to defeat the motion despite the whip issued to her by the District President of her party to attend and support the motion. The respondent

disobeyed the whip and purposely abstained from the meeting. The above act of the respondent amounts to defection and hence she is to be disqualified, the petitioner further contends. The respondent denied the allegations. According to her she did not do any act of defection. Due to her illness she could not attend the meeting on 01.12.2016 and her absence was not deliberate. It is also her contention that the petitioner has no locus standi to file this petition and that the petition is not maintainable.

10. It may be noted this original petition is filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. As per Section 4(1) of the Act, if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it in this behalf may file a petition before the State Election Commission for decision.

11. From the contentions of the respondent in his objection statement it can be seen that a question arises as to whether the respondent has become subject to disqualification as provided by Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act. Admittedly the petitioner is a member of the local authority in which the respondent is also a member. The petitioner being a member of the local authority he is entitled to file this petition as per law. Submission of the learned counsel for the respondent is that the petitioner has no locusstandi to file this petition as he is an elected

member of CP(M) and not from the KC(M). As the respondent is an elected member of KC(M) only a KC(M) member can file a case against the respondent alleging defection, the counsel further submits. It is to be stated here that such a contention is not at all sustainable. There is no such stipulation either in the Act or in the Rules framed thereunder.

12. As per Section 4(1) of the Act, as noted above, if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the act a member of that local authority can file a petition before the State Election Commission for decision. He need not be from the same party of the respondent. The consent or authorization of his political party or the respondent's party is also not necessary for a member to file a petition under Section 4 of the Act. The petitioner herein being a member of Koodaranji Grama Panchayat he has every right to file this petition against the respondent. As this petition is filed by a competent person within the time limit and a question arises as to whether the respondent has become subject to disqualification as provided by Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, this petition is held to be maintainable. Point is answered accordingly.

13. **POINT Nos.2 to 5:** As stated above, the petitioner and respondent are elected members of Koodaranji Grama Panchayat in the election held in November 2015. The petitioner was elected as the candidate of CPI(M) and the respondent as the candidate of KC(M). So

Exts.A1 and A2 require no discussion. Ext.A1 is the copy of the declaration given by the respondent to the Panchayat Secretary declaring her party affiliation wherein she has declared that she belongs to KC(M) and UDF. Ext.A2 is the copy of the register showing the party affiliation relating to the respondent. Ext.A2 also would show that the respondent contested and was elected as the candidate of KC(M)/UDF. As there is no dispute over the party affiliation of the respondent no discussion is required on that aspect also.

14. There are 14 wards in KoodaranjiGrama Panchayat and out of which the UDF got 7 seats – Congress 3, KC(M) 2 and IUML 2. The LDF got 6 seats including one independent supported by the LDF. The remaining one seat was won by an independent. It is stated that after the election the Congress led UDF formed the Panchayat board with the support of one independent member and the independent member Smt.Soly Joseph was elected as the Panchayat President and Shri.V.A.Nazeer of the Congress became the Vice President.

15. Later, it is stated, dispute arose over the functioning of the President. She started to take decision against the interest of the UDF members who supported her to become the Panchayat and she openly declared that she was an independent member and she was not bound by the decisions of either UDF or LDF, PW1 states. Due to the above attitude of the President the KC(M) party decided to move a no confidence

motion against the President and Vice President. Ext.A3 is the copy of the no confidence motion against the President of the Panchayat.

16. The no confidence motion was tabled on 01.12.2016 for discussion. The District President of KC(M) issued whips to the elected members of KC(M) including the respondent directing them to support the no confidence motion against the President and Vice President. Exts.A4 and A5 are the copies of the whips issued to the respondent which contain the acknowledgment of the receipt of the whips by her. Whip was sent to the respondent by registered post also and the respondent received the same. Ext.A6 is the postal acknowledgment card for the receipt of the same. Copy of the whip was given to the Panchayat Secretary also and Exts. A7 and A8 are the receipts for that. Case of PW1, the petitioner is that the respondent disobeyed the direction of her party and deliberately abstained from the meeting on 01.12.2016 with a view to defeat the motion. By doing so the respondent committed defection, PW1 further states.

17. Case of the respondent is that she did not do any act of defection. Her absence in the meeting on 01.12.2016 was not deliberate. She was not doing well on that day and that was why she could not attend the meeting on 01.12.2016. Regarding the illness the evidence of RW1 in her chief affidavit is that she was laid up in her house due to physical ailments. Except the said statement there is nothing in the chief affidavit

regarding her illness. The details of her illness and what was the treatment given to her are not there in the chief affidavit. Similar is the case in her objection statement. What is stated in the objection statement is that she was not well and laid up in her home. Except that statement there is nothing in the objection statement regarding her alleged illness. In the cross-examination her evidence is that she could not attend the meeting on 01.12.2016 due to bleeding and that she was under the treatment of Dr.Nicy Thomas of Primary Health Centre, Koodaranji. No such things we find in the objection statement or in her chief affidavit. It is also stated by RW1 that O.P.ticket issued from the hospital and prescriptions are there for the treatment. But nothing of that sort is produced by her. She has not taken any steps to examine the doctor also and there is no explanation for that. At one stage it is stated by her that she did not go to the Primary Health Centre and doctor and it was her husband who went to the doctor and brought medicines to her. This is the type of evidence that has been adduced by the respondent in this case to prove her case of illness. The attitude of the petitioner, it seems, is that a mere statement “not well and laid up” is sufficient in a case like this to justify her absence. That cannot be accepted. When she says that there was inability for her to attend the meeting on account of illness she must take the responsibility to prove it by adducing believable evidence. That is wanting in this case.

18. Argument of the learned counsel for the petitioner is that the respondent was not suffering from any illness disabling her from attending the meeting on 01.12.2016 and the case of the alleged illness is put forward only with a view to escape from the liability under Section 3 of the Act. To the counsel there was no inability for the respondent to participate in the meeting on 01.12.2016. The evidence and circumstances in this case tempt me also to think on that lines. Except the interested oral version of RW1 there is absolutely no evidence from the respondent's side to support the case of her alleged illness. No medical evidence is produced to support her case of illness. The doctor who allegedly treated her is also not examined in this case. There is no satisfactory and believable evidence in this case to support the case of illness put forward by the respondent. Her absence is not so the innocent as projected by her. From the available evidence it is not possible to say that the abstention of the respondent in the meeting on 01.12.2016 was not deliberate. The alleged illness is put forward only to make out a defence in this case as submitted by the learned counsel for the petitioner.

19. It is a fact that the respondent did not attend the meeting on 01.12.2016 the date on which the above no confidence motion was tabled for discussion. Admittedly whips were issued to her by the District President of KC(M) who is competent to issue whip to her, directing her to support the no confidence motion against the President and Vice

President. There is no dispute over that now. RW1 admitted the issuance of the whips and the receipt of the same by her. PW3 is the District President of KC(M). He gave evidence supporting the case of PW1. It is stated by him that he has issued whips to the respondent directing her to attend the meeting on 01.12.2016 and to support the no confidence motion against the President and Vice President. According to him Ext.A4 is the copy of the whip. Anyway RW1 has no dispute over those aspects and the authority of the PW3 as the District President of the KC(M) to issue the whip. It is admitted by RW1 that she has received the whips issued by the District President and that she was aware of the decision of her party. It is also admitted by her that the decision of her party was to support the no confidence motion. The evidence of PW2 and Ext.X1(a) minutes also would show the decision of the party to support the no confidence motion. Ext.X1(a) is the minutes of the meeting of the Kerala Congress ThiruvambadiMandalam Committee held on 24.11.2016. The respondent attended the said meeting. PW2 is the Secretary of the Kerala Congress, Kozhikode District Committee. As it is admitted by RW1 that the decision of her party was to support the no confidence motion a detailed discussion on Ext.X1(a) and the evidence of PW2 is not required in this case.

20. It may be noted that the respondent did not act as directed by her party. Instead of participating and voting in favour of the no

confidence motion she abstained from the meeting. Reason put forward for her abstention is illness. Regarding her illness it is already discussed above. The respondent failed to establish that she was suffering from any illness disabling her to attend the meeting on 01.12.2016. Her abstention is not at all justifiable and therefore she cannot escape from the liability under Section 3 of the Act.

21. It is also a contention of the respondent that the District President and her party later changed the stand on the no confidence motion after the issuance whips to her and decided not to support the motion. According to RW1 such an information was given to her by KC(M) Mandalam President Helen Francis. But there is absolutely nothing from her side to support the said contention. At least the respondent could have examined the said Helen Francis. Further, PW3 the District President who issued the whip to her has no such case. He has clearly stated about the stand of the party and there was no change regarding the stand of the party other than the one in the whips issued to the respondent. It is further to be noted that the respondent has no such case when PW3 was cross-examined. Not an even a suggestion was put to PW3 regarding the alleged change of party's stand after the issuance of the whip. The contention of the respondent in that regard under the abovecircumstances is only to be ignored. The respondent is bound to

obey the whip issued to her in this case and admittedly she did not obey the same.

22. Section 3(1)(a) of the Act contemplates two situations to disqualify a person on the ground of defection. One is voluntarily giving up membership from the political party and the other, voting in a meeting in violation of a written direction of the political party or coalition. Though both the grounds are distinct and different, a particular cause of action may include factual aspects which may blend together to form the basis of the two situations. It is found above that the respondent disobeyed and violated the whip issued to her by the District President of her party who is competent to issue the whip. It may further be noted that the respondent has taken a different stand from that of her political party and acted against the interest of the political party. Such a conduct on her part is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party the inevitable inference is that he has voluntarily given up his membership of the party as held in the decision reported in **2015 (3) KHC 968 (Lizy Valsalan V. Suja Salim and another)**

23. The object sought to be achieved by the Act is to prohibit defection among members of the Local Authorities and to provide disqualification for the defecting members. What is ultimately sought to be prevented is the evil of the political defection motivated by lure of

office or other similar considerations which endanger the foundations of our democracy. It is settled law that if a member or a group of elected members of a 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 has voluntarily given up his membership. The **Kerala Local Authorities (Prohibition of defection) Act**, derived its source from the *10th schedule to the Constitution of India*. While upholding the Constitutional validity of 10th schedule, the **Apex Court in *KihotoHollohanVs.Zachillhu (1992) Supp.2 SCC 651***” observed as follows:-

“A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party.If a member while remaining a member of the political party which had set him up as a candidate at the election votes or

abstains from voting contrary to any 'direction' issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, he incurs disqualification. A political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political party's declared politics 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 survival.To vote against the party is disloyalty. To join with others in abstention or voting with other side smacks of conspiracy."

24. A member belonging to a political party has to be loyal to his party and the moment he becomes disloyal he would become subject to disqualification on the ground of voluntarily giving up his membership

from the party. The conduct of the respondent in abstaining from attending the above meeting on 01.12.2016 defying the direction of her party would clearly demonstrate that she became disloyal to the party which elected her as a member of KoodaranjiGrama Panchayat. The above acts would amount to defection inviting disqualification and the case put forward by the petitioner against the respondent is clearly established. According to the Father of Nation Mahatma Gandhi politics without principle is one of the grave vices in that group. The menace of defection is, certainly, to be curbed. The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it.

25. From the available evidence and the circumstances emanating therefrom it can be safely concluded that the respondent has committed defection and she has voluntarily given up her membership of the party which elected her as member, as provided by Section 3(1)(a) of the Act and therefore she became subject to disqualification for being a member of KoodaranjiGrama Panchayat. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being member of KoodaranjiGrama Panchayat as provided by Section 3(1)(a) of the Kerala Local

Authorities (Prohibition of Defection) Act. The respondent is further declared as disqualified for contesting as a candidate in an election to any local authorities for a period of 6 years from this date, as provided by Section 4(3) of the Act.

Considering the circumstances of the case the parties are directed to bear their respective costs.

Pronounced before the Commission on this the 10th day of January 2018

Sd/-
V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

PW1	:	Shri.GijiKattakayam
PW2	:	Shri.George
PW3	:	Shri.John

Witnesses examined on the side of the respondent

RW1	:	Smt.GracyKeelath
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Documents produced on the side of the petitioner

A1	:	Copy of the Declaration in Form No.2 submitted by Smt.GracyKeelath to KoodaranjiGrama Panchayat held on 18.11.2015
A2	:	Copy of the Register showing the party affiliation of the member Smt. GracyKeelathofKoodaranjiGrama Panchayat

- A3 : Copy of the notice of no confidence motion against the President of Koodaranji Grama Panchayat
- A4 : Copy of the whip issued by the District President of Kerala Congress (M) Kozhikode District Committee to Smt. Gracy Keelath dated 25.11.2016 in respect of the No Confidence Motion against the President
- A5 : Copy of the whip issued by the President of Kerala Congress (M) Kozhikode to Smt. Gracy Keelath dated 25.11.2016 in respect of the No Confidence Motion against the Vice President
- A6 : Postal Acknowledgment of Smt. Gracy Keelath
- A7 : Front office receipt showing inward No.4254 dated 29.11.2016, Koodaranji Grama Panchayat
- A8 : Front office receipt showing inward No.4255 dated 29.11.2016, Koodaranji Grama Panchayat
- A9 : Copy of the minutes of the meeting of no confidence motion against the President, Koodaranji Grama Panchayat dated 01.12.2016
- A10 : Copy of the minutes of the meeting of no confidence motion against the Vice President, Koodaranji Grama Panchayat dated 01.12.2016

Documents produced on the side of the witness

- X1 : Minutes book of Kerala Congress (M) Thiruvambadi Mandalam Committee

X1(a) : Minutes of the meeting of Kerala
Congress (M)ThiruvambadiMandalam
Committee dated 24.11.2016

Sd/-
V.BHASKARAN
STATE ELECTION COMMISSIONER

//True Copy//

