

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

**PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER**

**Tuesday, the 30<sup>th</sup> day of January 2018**

**O.P.No.16/2016**

Petitioner : JalajaKumari,  
C.Kuttan Nair,  
Janani (PuthuvelVeedu),  
Keezharoor.P.O.,  
Andoorkonam,  
Thiruvananthapuram District,  
PIN: 698 554.  
Member, Ward No.08,  
Pothencode Block Panchayat

**(By Adv. S.Sajitha)**

Respondent : Jolly Pathrose.L.,  
W/o Jayapalan, J.J.Cottage,  
Thumba, Pallithura.P.O.,  
Thiruvananthapuram District.  
Member, Ward No.12,  
Pothencode Block Panchayat

**(Adv. Adv.KallambalamS.Sreekumar)**

This petition having come up for hearing on the 19<sup>th</sup> day of **January 2018**, in the presence of Adv. **S.Sajitha** for the petitioner and **Adv.KallambalamS.Sreekumar** 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 Pothencode Block Panchayat and 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 Pothencode Block Panchayat, in the local body election held in November 2015 and they were elected as the candidates of Indian National Congress (INC). There are 13 wards in Pothencode Block Panchayat and out of which the Indian National Congress got 7 seats. The CPI(M) led Left Democratic Front (LDF) got the remaining 6 seats. As the Indian National Congress got majority it decided to form the Panchayat board. The election to the post of the President and Vice President was held on 01.12.2015 and the petitioner was elected as the President. Advocate Althaf of Indian National Congress was elected as the Vice President. Later the LDF moved a no confidence motion against the President and Vice President and the motion was tabled for discussion on 07.11.2016. The parliamentary party meeting of Indian National Congress was held at DCC office on 04.11.2016 and it was decided to defeat the motion. The then DCC President Shri.KarakulamKrishnapillai issued

direction to all the elected members of Indian National Congress to abstain from voting and to see that the position of the petitioner as the President and Shri. Althaf as the Vice President is protected. The whip issued in that regard by the DCC President was sent to the respondent by registered post in her personal address and also in her official address. But the respondent refused to accept the postal article. She was aware of the contents of the whip. Copy of the whip was given to the Secretary of Pothencode Block Panchayat and also to the Returning Officer. But contrary to the direction of her party the respondent participated in the meeting and voted in favour of the no confidence motion and the motion was carried. The respondent colluded with the rival Left Democratic Front and supported the motion defying the direction of her political party. The respondent along with the LDF outseated the President and Vice President of her own political party. She acted in violation of the whip issued by her party and by her conduct she has voluntarily abandoned her membership from Indian National Congress and thereby committed defection. The respondent is disqualified to continue as a member of Pothencode Block Panchayat and to contest the election for a period of 6 years. The petitioner seeks a declaration to that effect.

3. The respondent filed counter statement contending as below. The petition is not maintainable. The petitioner has filed this petition by way of an experiment, making false averments with intent to oust to the respondent

from the Block Panchayat. It is true that the respondent is an elected member of Indian National Congress in Pothencode Block Panchayat and she contested the election as the President candidate. At the time of election to the post of President and Vice President the leaders of the party decided to elect the respondent as the President. But the said decision was jeopardized by some Congress persons with vested interest. Hence the respondent filed petitions before the DCC President and KPCC President. This original petition is filed as a counter blast to the said petition. The Congress party never decided to elect the petitioner as the President.

4. The respondent never acted anything against the then President and Vice President of Pothencode Block Panchayat. But the President and Vice President were an utter failure. There were several allegations against them. No parliamentary party meeting was held as alleged in the petition for the stand to be taken with regard to the no confidence motion. The petitioner did not receive any notice regarding the alleged parliamentary party meeting on 04.11.2016. The respondent attended the meeting convened on 07.11.2016 for discussing the no confidence motion and no direction was received by the respondent restraining her from attending the said meeting. No whip was read out in the meeting and no copy of the whip was furnished to the Secretary of Pothencode Block Panchayat. There was no valid whip in this case. The respondent did not do any act of defection. She continues to

be a member of Indian National Congress. Respondent did not violate the direction of her party or its authorised functionary. The petition is without any merit and hence it is only to be dismissed with costs.

5. The evidence in this case consists of the oral testimonies of PWs1 to3, RWs1to 8 and Exts.A1to A19,B1,B2,B3,X1and X2(b).

6. Both sides were heard.

7.The following points arise for consideration;

- (1) Whether the petition is maintainable?
- (2) Whether the respondent has disobeyed the decision and direction of the Indian National Congress as alleged?
- (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 respondent has voluntarily given up her membership from the party as alleged?
- (5) Whether the petitioner is entitled to the declaration prayed for?
- (6) 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 Pothencode Block 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 Pothencode BlockPanchayat and they contested and were elected as the candidates of Indian National Congress (INC).According to the petitioner the respondent committed defection by supporting the no confidence motion moved by the rival Left Democratic Front against the President and Vice President, the nominees of the petitioner's own party, defying the direction of her political party and thereby she incurred disqualification as provided under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent denied the allegation and among other things it is also her contention that the above petition is not maintainable. Though such a contention is raised in her objection statement there is absolutely nothing on her side to show 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 her 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 she is entitled to file this petition as per law. 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.

12. **POINT Nos.2 to 6:** As stated above, the petitioner and respondent are elected members of Pothencode Block Panchayat in the election held in November 2015. They contested the election and were elected as the candidates of Indian National Congress (INC). As there is no dispute regarding the party affiliation of the petitioner and respondent Exts. A3 to A5 require no discussion. Exts.A3 and A4 are copies of the declarations given by the petitioner and respondent declaring their party affiliation. They admitted that they contested and were elected as the candidates of INC, Ext.A5 is the copy of the relevant entry related to the respondent in the register showing the party affiliation of the members of

Pothencode Block Panchayat. Ext.A5 also would show that the respondent was elected as the candidate of Indian National Congress.

13. There are 13 wards in Pothencode Block Panchayat and INC secured 7 seats in that. The LDF got the remaining 6 seats. As the INC/UDF got majority it decided to form the Panchayat board. Election to the post of President and Vice President was held on 01.12.2015 and the petitioner was elected as the President and Shri.Althaf of Indian National Congress as the Vice President. Exts.A1 and A2 are the copies of the minutes of the said election proceedings. All the elected members of Indian National Congress including the respondent participated in the election on 01.12.2015 and voted in favour of the petitioner and Shri.Althaf. Later, the opposition front LDF moved a no confidence motion against the President and Vice President and the motion was tabled for discussion on 07.11.2016.

14. According to PW1, the petitioner her party decided to defeat the motion and the DCC President issued whips to all the elected members of Indian National Congress directing them to abstain from the above meeting on 07.11.2016. Ext.A10 is the copy of the said whip. The whip, it is stated, was sent to the respondent in her home address and also in her official address. Exts.A11 and A12 are the postal receipts for that. The respondent refused to accept the whip sent by post and Exts.A13 and A14 are the returned postal articles. The postal endorsements in Exts.A13 and A14 would show that the addressee refused to accept the same and hence they



were returned to the sender. The respondent was very much aware of the contents of the whip. The copy of the whip was furnished to the Block Panchayat Secretary and the Returning Officer and Ext.A15 is the copy of the same. The respondent disobeyed the whip issued by the DCC President and she participated in the meeting on 07.11.2016 and supported the no confidence motion defying the direction of her party. She committed disloyalty to her party Indian National Congress and by her above conduct she voluntarily gave up her membership from the party, PW1 further contends.

15. PW2 is the then DCC President, Thiruvananthapuram and PW3 Shri.Althafis another elected member of Pothencode Block Panchayat. He was the Vice President also. Both PW2 and PW3 gave evidence supporting the case of the petitioner. It is stated by PW2 that he has issued whips to all the elected members of Indian National Congress in Pothencode Block Panchayat including the respondent, directing them to keep off the meeting on 07.11.2016 convened for discussing the no confidence motion and Ext.A10 is the copy of the whip. But the respondent disobeyed the whip and by defying the whip she supported the no confidence motion moved by the opposition front LDF. Both PWs2 and 3 stated that a parliamentary party meeting of the Indian National Congress members was held on 04.11.2016 under the presidentship of PW2 to decide the stand to be taken by the party with regard to the no confidence motion and it was decided not participate in

the meeting on 07.11.2016. Ext.A9 is the copy of the minutes of the said meeting. The original minutes book was later produced and made available in the file. Though notice was given to the respondent she did not attend the meeting on 04.11.2015, it is further stated.

16. Contention of the respondent is that she participated in the meeting on 07.11.2015 and supported the no confidence motion as there was no whip or direction from her party. In the absence of any whip the question of violating the same does not arise. Thus according to her she did not commit any act of defection incurring disqualification under Section 3(1)(a) of the Act as alleged.

17. The Kerala Local Authorities (Prohibition of Defection) Act was enacted to prohibit defection among members of local authorities in the state and to provide for disqualification of the defecting members of the local authorities. Section 3 of the Act deals with disqualification on the ground of defection and it reads as below:-

**“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.

(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 authorized by it in this behalf in the manner prescribed, votes or abstains from voting.

(i) in a meeting of 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 an voting on a no-confidence motion against any one of them except a member of a Standing Committee.

(b) If an independent member belong to any coalition with draws form 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

authorized 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 his 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.

he shall be disqualified for being a member of that local authority.”

(2) The direction in writing issued for the purpose of clauses (a) and (b) of sub-section (1) shall be given to the members concerned in the manner as may be prescribed and copy of such direction in writing shall be given to the Secretary of the Local Self Government Institution concerned.

(3) Where any dispute arises regarding the direction issued under this section between the political party or coalition concerned and the member authorized in this behalf as prescribed under sub-section (2), the direction in writing issued in this regard by the person authorized by the political party from time to time to recommend the symbol of the political party concerned for contesting in election shall be deemed to be valid

Explanation,- For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was '[set up or given support]' as a candidate for the election.

18. Section 3(1)(a) of the Act has two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership of such political party and second limb comes in to play when such member violates or disobeys the direction issued by the political party or a person authorized by it in this behalf. As per clause (iva) of Section 2, a direction in writing means a direction in writing signed with date, issued to a member belonging to or having the support of a political party, by the person authorized by the political party from time to time to recommend the symbol

of the said party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting.

19. Argument of the learned counsel for the respondent is that there was no proper whip in this case to be obeyed by the respondent and hence she attended the meeting on 07.11.2016. The party later condoned the mistake if any on her side and she was taken back in Indian National Congress party. Though the leaders of the party directed the petitioner in this case to withdraw the case the petitioner did not need to it, the counsel further contends.

20. It is a fact that the respondent participated in the meeting on 07.11.2016 convened for discussing the no confidence motion moved by the rival front LDF and she voted in favour of the same. Exts.A16 and A17 minutes would show the said fact. Ext.A16 is the copy of the minutes of the proceedings in respect of the no confidence motion against the President and Ext.A17 is in respect of the Vice President. There is no dispute over that. According to RW1 she supported the motion as there was no whip or direction from her party. If there was whip from her party, her attending the above meeting on 07.11.2016 and voting infavour of no confidence motion, even according to her, would amount to violation of whip. Though the contention of the respondent is that there was no whip the evidence in this case would showonly otherwise.

21. PW2 is the DCC President , Thiruvananthapuram during the relevant time. It is clearly stated by him that a parliamentary party meeting of Indian National Congress members was convened on 04.11.2015 under his presidentship and he directed the members to abstain from the meeting on 07.11.2016 and to defeat the motion. Ext.A9 is the copy of the minutes of that meeting. Though notice was issued to the respondent, it is stated, she did not attend the meeting on 04.11.2016. It is further stated by him that he has issued whip to all the elected members of Indian National Congress directing them not to attend the meeting on 07.11.2016 with a view to defeat the motion and Ext.A10 is the copy of the whip.

22. It is in evidence that the whip issued to the respondent was sent by registered post both in her home address and official address. Exts.A11 and A12 postal receipts would show the said fact. The respondent did not accept the whip and Exts.A13 and A14 are the returned postal articles. The postal endorsements on Exts.A13 and A14 would show that the respondent refused to accept the same and hence they were returned to the sender. It may be noted that the address shown in both Exts.A13 and A14 is the correct address of the respondent with Pin code. If a letter is sent by post in that address the respondent would get it and the same can be seen from the postal covers attached to Exts.B1 and B2. Exts.B1 and B2 are produced by the respondent to show that she is even now considered as a Congress member by her party and she is getting communications from her

party.Ext.B1 is a general circular issued by the then KPCC President dated 23.02.2017 and it is not addressed to the respondent. Ext.B2 is not a letter issued by her party. RW1 claims that the same were sent to her in the postal covers produced along with them. Anyway it is admitted by the respondent that the address shown in those covers are the correct address of the respondent. It may be noted that the very same address is thereon Exts.A13 and A14. Further, on the cover produced along with Ext.B1 there is no Pin code and even without showing the Pin code the respondent would get the letters sent by post can be seen from the cover attached to Ext.B1. In Exts.A13 and A14 Pin code was also there. So the contention that no whip was sent to her by post and she was not aware of the whip cannot be accepted. The whip in this case was sent to the respondent in her correct address and postal endorsements on them would show that she refused to accept the same. Therefore, the whip sent to the respondent is to be taken as served on her.

23. It is also in evidence that the Returning Officer informed the members about the whips issued by PW2 DCC President and also the District Secretary of CPI(M) party from the meeting hall on 07.11.2016 before beginning the meeting. Ext.A16 minutes would show the said fact. So in that way also the respondent cannot contend that there was no whip and that she was not aware of the whip issued by PW2.



24. Further, the respondent's own witness RW4 stated about the issuance of whip to the respondent by PW2, the then DCC President and this case is filed against the respondent for violating the whip. RW4 is the present DCC President, Thiruvananthapuram. The respondent examined him as her witness to tell that the expulsion of the respondent from the party due to the incident in this case was cancelled and she was taken back in Congress party as per settlement. It is further stated by RW4 that Ext.A10 is the whip issued by PW2 the then DCC President and the respondent is bound by the whip issued by PW2. He has admitted the meeting of the parliamentary party of Indian National Congress members and Ext.A9 is the copy of the minutes of that meeting. It is also stated by RW4 that the respondent has violated Ext.A10 and this case is filed for such violation of the whip.

25. The other witnesses examined on the side of the respondent are RW2, 3 and 5 to 8. RW2 is said to be the President of Indian National Congress KadinamkulamMandalam Committee. It is admitted by him that no confidence motion in this case was moved by the LDF members and that the whip issued by the DCC President is binding on the INC members. RW3 is a CPI(M) member in Pothencode Block Panchayat and the present Vice President of the Block Panchayat elected after the no confidence motion was carried. Anyway he cannot say anything regarding the issuance of the whip byPW2 in this case. Further his evidence would show that except the respondent no other member from Congress party attended the meeting on

07.11.2016 and voted in favour of the no confidence motion. RW5 is the District President of INTUC, Thiruvananthapuram District. What for he is examined in this case is not known. He did not say anything supporting the respondent and he has nothing to do with the issue involved in this case. RW6 is the President of INC Mangalapuram BlockCommittee. His evidence also would show that the decision of Indian National Congress party was not to attend the meeting on 07.11.2016 and the respondent took a different stand from that of her party Indian National Congress.

26. RW7 is one of the Secretaries of DCC, Thiruvananthapuram. According to him the dispute between the members of the Block Panchayat was settled and following that the respondent was readmitted in the party. To show that he has produced Ext.B3 minutes. After the settlement direction was given to the petitioner to withdraw this case. He was examined to speak about the alleged settlement. But PW1 has no such case. Anyway even according to him the then DCC President issued Ext.A10 whip and the respondent is bound to obey the said whip. RW8 is the office Secretary of Thiruvananthapuram DCC office. He produced the minutes of the meeting of the DCC for the period from 08.08.2016 to 04.11.2017 and it was marked as Ext.X2. According to him no meeting of the DCC was held between 14.10.2016 and 07.11.2016 and that no decision was taken regarding Pothencode Block Panchayat by the DCC. But his evidence and Ext.X2 can have no role to play in this case in the light of the evidence of PW2 the then DCC President and

RW4 the present DCC President and Exts.A9 and A10. PW2 and RW4 admitted Ext.A9 meeting of the parliamentary party of Indian National Congress members and issuance of Ext.A10 whip. The respondent is bound by Ext.A10 whip issued by PW2. Further, no sanctity can be given to Ext.X2 minutes. Certain minutes of the meeting were later typed in separate sheets and affixed on the hand written minutes. What for the same is done is not known and there is no explanation for that. Anyway, as stated above, Ext.X2 has no role in this case in the light of Exts.A9 and A10 and the evidence of PW2 and RW4.

27. It is also in evidence that RW1 is against the petitioner becoming the Block Panchayat President. According to RW1 she is the senior most elected member and she contested the election as a President candidate. After election some party men with vested interest acted against her and the petitioner was elected as the President. The respondent was not happy with that. It may further be noted that much before the meeting on 07.11.2016 the respondent started moving with the members of the opposition party. On 25.10.2016 when the general committee of Pothencode Block Panchayat was held under the presidentship of the petitioner the respondent walked out from the meeting along with LDF member referring the no confidence motion to be moved against the petitioner and Vice President Shri.Althaf. Ext.A6 copy of the minutes of the meeting on 25.10.2016 would show the said fact. It is further to be noted that after the no confidence motion was carried, fresh election for the

post of the President and Vice President was held and the petitioner became the President of the Block Panchayat with the support of the opposition party LDF. The act of the respondent in refusing to accept the whip and voting in favour of the no confidence motion on 07.11.2016 are to be viewed in that background also. From the evidence and circumstances in this case it can be seen that a proper whip was issued to the respondent with regard to the stand to be taken in the matter of no confidence motion and she was very well aware of the whip. But she chose to violate the whip of her party.

28. The respondent is a responsible elected member and she cannot act according to her whims and fancies and that too against the direction of her own party in the matter of no confidence motion moved by the opposition party against her own party nominees. Acting against the interest of the party is nothing but disloyalty. By supporting the no confidence motion moved by the opposition party, defying the direction of her party the respondent voluntarily gave up her membership from the party.

29. 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 *10<sup>th</sup> schedule to the Constitution of India*. While upholding the Constitutional validity of 10<sup>th</sup> 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.”

30. In the decision reported in 2008 (3) KHC 267 in (Faisal P.A. Vs. K.A.AbdullaKunhi) it was held as follows,-

“Since the words voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by resignation, from the conduct of the petitioner if an inference can be drawn that he has voluntarily given up his membership of his political party, he is liable to be disqualified. From the facts noticed by the second

respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation.”

31. 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 participating in the meeting on 07.11.2016 and supporting the no confidence motion moved by rival parties against the President and Vice President of her own party, defying the direction of her party and colluding with the rival LDF members would clearly demonstrate that she became disloyal to the party which elected her as a member. Her above acts would amount to defection inviting disqualification as alleged and the case put forward by the petitioner against the respondent is clearly established. Any freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it. No doubt politics is an art but the beauty of the art is lost when no value is attached to the art.

32. It is the submission of the learned counsel for the respondent that the leaders of the Congress party later intervened in the matter and settled the disputes in this case and the respondent is now readmitted in the party. Her party has already condoned her mistakes if any and hence the question of disqualifying her does not arise, the counsel further submits. It may be noted that the respondent had already violated the whip of the party and voted in favour of the no confidence motion moved by the rival political parties on 07.11.2016 and by the said conduct she had already incurred the disqualification of voluntarily giving up the membership in her political party. As she had already incurred the disqualification the subsequent change of heart or remorseful conduct of the respondent or the reconciliatory attitude of the political party cannot repair or undo the damage caused by the disloyal conduct leading to the disqualification. So the alleged settlement and subsequent remorseful conduct of the respondent will not help the respondent in this case. The evidence and circumstances in this case would clearly show that the petitioner has made out a case against the respondent under both the limbs of Section 3(1)(a) of the Act.

33. Under the above facts and circumstances I will have to necessarily hold and I hold that the respondent has committed defection and she has voluntarily given up her membership from 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 Pothencode Block Panchayat. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being member of Pothencode Block 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 30<sup>th</sup> day of January 2018

Sd/-  
V.BHASKARAN,  
STATE ELECTION COMMISSIONER

### APPENDIX

#### Witnesses examined on the side of the petitioner

PW1	:	Smt.JalajaKumari
PW2	:	Shri.KarakulamKrishnapillai
PW3	:	Shri.Althaf.M

#### Witnesses examined on the side of the respondent

RW1	:	Smt.JollyPathrose
RW2	:	Shri.Thankachan
RW3	:	Shri.Yazar

- RW4 : Shri.Sanal Kumar, DCC President,  
Thiruvananthapuram
- RW5 : Shri.V.R.Pratapan, INTUC, District  
President, Thiruvananthapuram
- RW6 : Shri.H.P.Shaji, President,  
Mangalapuram Block of INC(I)
- RW7 : Shri.AnadJayan, DCC General Secretary,  
Thiruvananthapuram
- RW8 : Shri.RajendranNair.B

**Documents produced on the side of the petitioner**

- A1 : Copy of the minutes of the meeting to elect  
President of Pothencode Block Panchayat  
dated 01.12.2015
- A2 : Copy of the minutes of the meeting to elect  
Vice-President of Pothencode Block  
Panchayat dated 01.12.2015
- A3 : Copy of the Declaration in Form No.2 filed  
bySmt.JalajaKumari, member, Pothencode  
Block Panchayat dated 12.11.2015
- A4 : Copy of the Declaration in Form No.2 filed  
bySmt.JollyPathrose, member, Pothencode  
Block Panchayat
- A5 : Copy of the register showing the party  
affiliation of the members of Pothencode  
Block Panchayat
- A6 : Copy of the minutes book of General  
Committee of Pothencode Block Panchayat  
held on 25.10.2016
- A7 : Notice No.E4/3889/2016/TDP dated

26.10.2016 regarding the no confidence motion against the President of Pothencode Block Panchayat

- A8 : Notice No.E4/3889/2016/TDP dated 26.10.2016 regarding the no confidence motion against the Vice-President of Pothencode Block Panchayat
- A9 : Copy of the minutesbook of Indian National Congress Parliamentary party meeting, Pothencode Block Panchayat held on 04.11.2016
- A10 : Copy of the whip dated 31.10.2016
- A11 : Postal receipt dated 02.11.2016
- A12 : Postal receipt dated 31.10.2016
- A13 : Registered cover with AD(undelivered)
- A14 : Registered cover with AD(undelivered)
- A15 : Copy of the letter issued by the President, DCC(I), Thiruvananthapuram addressed to the Secretary of District Panchayat dated 31.10.2016
- A16 : Copy of the minutes to discuss the no confidence motion against the President of Pothencode Block Panchayat dated 07.11.2016
- A17 : Copy of the minutes to discuss the no confidence motion against the President of Pothencode Block Panchayat dated 07.11.2016
- A18 : The whip issued by the President, DCC(I) Thiruvananthapuram addressed to Smt.Jalajakumari dated 31.10.2016

A19 : Registered postal cover addressed to  
Smt. JalajaKumari

**Documents produced on the side of the respondent:**

B1 : Circular No.5/2017 dated 23.02.2017 issued  
byShri.V.M.Sudheeran, K.P.C.C. President

B2 : Intimation from Rajiv Gandhi Institute of  
Development Studies to discuss Kerala  
Budget issued by Shri.RameshChennithala  
dated28.02.2017

B3 : True copy of the meeting minutes of  
Pothencode Block Panchayat held on  
24.10.2017

**Documents produced on the side of the witness**

X1 : Meeting minutes book of Mangalapuram  
BlockCongress Committee from 16.12.2013  
to 22.02.2017

X2 : Meeting minutes book of  
Thiruvananthapuram DCC from 08.08.2016  
to 04.11.2017

X2(a) : Minutes of the meeting of DCC from  
Thiruvananthapuram dated 14.10.2016

X2(b) : Minutes of the meeting of DCC  
Thiruvananthapuram dated 07.11.2016

Sd/-

V.BHASKARAN

**STATE ELECTION COMMISSIONER**

//True Copy//

