

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Tuesday, the 24th day of January 2017

O.P.No.01/2016

Petitioner : James Joseph,
S/o Joseph, Patharamchira,
Thrikkodithanam.P.O.,
Changanasserry, Kottayam District.
Member, Ward No.17,
Thrikkodithanam Grama Panchayat

**(By Adv. Hashim Babu.M. &
Sajitha.S)**

Respondent : Thomas Zavier @ Motti Mullassery,
S/o Zavier, Mullassery house,
Thrikkodithanam P.O.
Changanassery, Kottayam District.

Member, Ward No.01,
Thrikkodithanam Grama Panchayat.

(By Adv. Sasthamangalam R. Jayachandran Nair)

This petition having come up for hearing on the **17th day of January 2017**, in the presence of Advs. **Hashim Babu.M. & Sajitha.S** for the petitioner and Adv. **Sasthamangalam R. Jayachandran Nair** 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 Thrikkodithanam Grama Panchayat and also for declaring him 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 Thrikkodithanam Grama Panchayat in the local body election held in November 2015 and they were elected as the candidates of Kerala Congress(M), a part of United Democratic Front. There are 20 wards in Thrikkodithanam Grama Panchayat and out of which the UDF consisting Indian National Congress and Kerala Congress (M) secured 7 seats - Indian National Congress 4 seats and 3 seats by Kerala Congress (M). The LDF got 10 seats - 8 seats by CPI(M) and 2 seats by CPI. The BJP secured the remaining 3 seats. As the LDF got majority it decided to form the board. The President and Vice President of the Panchayat were elected from LDF. The Standing Committee members were elected on 30.11.2015 and all the elected members of Kerala Congress (M) voted in the election as per the decision of the parliamentary party. Election to the office of the Chairman of the Standing Committees of the Panchayat was notified to be held on

03.12.2015. As per the understanding in the UDF the Chairmanship of the Health and Education Standing Committee was allotted to the Kerala Congress (M). The petitioner was decided to be the Chairman candidate of the said Standing Committee by the parliamentary party of the Kerala Congress (M) with the approval of the District Committee. The total strength of the Standing Committee is four. The petitioner and respondent are the members representing the Kerala Congress(M) in the Health and Education Standing Committee. The other two members are from LDF. The respondent was intimated by his party about the decision to elect the petitioner as the Chairman of the Standing Committee and he had the sufficient knowledge about the decision of the party.

3. In the election on 03.12.2015 the petitioner was proposed as the Chairman candidate on behalf of the Kerala Congress(M) and the LDF proposed the name of Smt. SuvarnaKumari. Though the respondent has aduty to vote in favour of the petitioner he chose to abstain from voting with a view to help the rival LDF candidate. The petitioner has got only one vote and the LDF candidate has got both the votes of LDF members. The LDF candidate hencebecame the Chairman with the silent support of the respondent, the Kerala Congress (M) member. The respondent abstained from voting defying the decision of his party Kerala Congress (M) and allied with the LDF candidate and defeated his own party nominee in the election.

It is a clear case of political defection. The respondent by moving hand in hand with LDF to defeat his own party nominee and betrayed the party and electorate. He has acted against the interest of his party for his personal gain. The respondent has voluntarily abandoned his membership from the Kerala Congress(M) which fielded him as a candidate in the Panchayat election. The respondent being a candidate supported by the political party Kerala Congress (M) cannot override the decision or policy of the party and act according to his whims and fancies. The Kerala Congress(M) and the parliamentary party have decided to support and vote in favour of the petitioner as Chairman of the Health and Education Standing Committee. But the respondent acted against the decision. By the above conduct he voluntarily abandoned and gave up his membership in the party. The petitioner thus seeks a declaration as prayed for.

4. The respondent filed counter statement contending as below,- The petition is not maintainable. It is true that the UDF decided to allot the Chairmanship of the Health and Education Standing Committee to Kerala Congress(M). It is not correct to say that the petitioner's name was approved for Chairmanship of the Health and Education Standing Committee. No parliamentary party meeting was held for that. It was unofficially decided by the members of the District Committee of the party to approve the name of the respondent for the Chairmanship of the Health and Education Standing Committee. But the petitioner arbitrarily took a decision to contest to the post

of Chairmanship and he himself nominated his name on behalf of the Kerala Congress(M). No decision was taken by Kerala Congress(M) to elect the petitioner as the Chairman of the Standing Committee. No decision was intimated also, to the respondent. The petitioner submitted his nomination without the support of the parliamentary party or District Committee of Kerala Congress(M). The respondent abstained from voting in the election of the Chairman as no decision was taken by his party. The respondent never supported the LDF candidate and he did not act against the interest of the Kerala Congress(M) and he is still active in the party. Even if the respondent cast his vote in favour of the petitioner there will be a tie and the Chairmanship could be decided only by toss. It was the petitioner who acted against the interest of the party. The petitioner has filed this petition on an experimental basis with intent to defame the respondent. The petitioner is not entitled to get any relief in the petition and hence the petition is to be dismissed.

5. The evidence in this case consists of the oral testimonies of PWs1 to 3, RW1 and Exts.A1 to A9 and B1 to B4.

6. Both sides were heard.

7.The following points arise for consideration;

(1)Whether the petition is maintainable?

(2)Whether the respondent has committed defection as contemplated under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?

(3) Whether the respondent has voluntarily given up his membership from the Kerala Congress (M) as alleged?

(4) Reliefs and costs?

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

9. The petitioner and respondent are elected members of Thrikkodithanam Grama Panchayat in the election held in 2015. Both of them contested and were elected as candidates of Kerala Congress (M). The petitioner and respondent were later elected as members of Health and Education Standing Committee as representatives of Kerala Congress (M) and United Democratic Front. The total strength of Health and Education Standing Committee is four. Two members each were elected from UDF and LDF. When the election to the post of the Chairman of the Health and Education Standing Committee was held on 03.12.2015, it is stated that the petitioner's name was proposed for the post from the side of his party as per the decision of his party Kerala Congress (M) and Smt. Suvarna Kumari was proposed from the side of the Left Democratic Front. According to PW1, the

petitioner the respondent willfully abstained from voting with the sole object of helping the LDF candidate to win and defeating his party nominee. Because of his abstention the petitioner got only one vote and LDF got two votes and hence the LDF candidate was declared elected. The respondent abstained from voting defying the decision of his party. He has acted against the interest of his party and he became disloyal to his party. Thus according to the petitioner the respondent committed defection inviting disqualification.

10. According to the respondent he did not commit any defection as alleged. There was no decision from his party to vote infavour of the petitioner and hence his abstention is inconsequential. Among other things the respondent has a contention that this petition is not maintainable.

11. Though it is contended that the respondent in his counter statement that this petition is not maintainable, there is nothing from his side to show that this petition is not maintainable. As per Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, if a member of a 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 or by a person or authority authorized by the party in this behalf votes or abstains from voting, in an election to the post of President, Vice President, Standing Committee Chairman or on a no confidence motion moved against them, he shall become subject to disqualification for being a member of that local authority.

12. It may be noted that this 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.

13. It can be seen from the pleadings and evidence in this case that there arises a question as to whether the respondent became disqualified for being member of Thrikkodithanam Grama Panchayat as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. This petition is filed by a member of the same Panchayat of which the respondent also is a member and this petition is filed within the time prescribed under Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. It may be noted except stating that the petition is not maintainable there is no material from the side of the respondent that the petition is not maintainable. 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(1)(a) of the Act, this petition is held to be maintainable. The point is answered accordingly.

14. POINT No.2 to 4:Case of the petitioner is that the respondent committed defection and hence he is disqualified to be the member of Thrikkodithanam Grama Panchayat. The respondent's abstaining from voting in the election to the post of Health and Education Standing Committee held on 03.12.2015 defying the decision of his party is stated to be the reason for filing this petition.

15. As stated above the petitioner and respondent are elected members of Thrikkodithanam Grama Panchayat and admittedly both of them were elected as candidates of Kerala Congress(M). The petitioner produced Exts.A1 to A3 to show that the respondent contested and was elected to the Panchayat as a candidate of Kerala Congress(M). As it is a matter of admission that the respondent was elected as a candidate of Kerala Congress(M) Exts.A1 to A3 required no discussion.

16. There are 20 wards in Thrikkodithanam Grama Panchayat and out of which the UDF consisting Indian National Congress and Kerala Congress (M) secured 7 seats - Indian National Congress 4 seats and 3 seats by Kerala Congress (M). The LDF got 10 seats – 8 seats by CPI(M) and 2 seats by CPI. The BJP secured the remaining 3 seats. As the LDF got majority it decided to form the board. According to PW1, the petitioner the UDF allotted the Chairmanship of the Health and Education Standing Committee to the Kerala Congress(M). As per that understanding the petitioner and respondent were elected as members of Health and Education Standing Committee from the

United Democratic Front. As the Chairmanship of Health and Education Standing Committee was allotted to Kerala Congress(M) by the UDF the party decided to nominate the petitioner as Chairman candidate. The decision, PW1 states, was taken to that effect by the parliamentary party meeting held on 15.11.2015. Ext.A7 is the minutes of the said meeting. The respondent was also a party to that meeting. The meeting for electing the Chairman of the Health and Education Standing Committee was held on 03.12.2015.

17. As stated above the total strength of the Health and Education Standing Committee is four-two members each from UDF and LDF. The petitioner and respondent are the two members from UDF. The petitioner from UDF and Smt.SuvarnaKumari from LDF were the candidates for the Chairmanship. As the respondent abstained from voting the petitioner got only one vote and the LDF candidate got two votes and she was declared elected as the Chairman. According to PW1 the respondent deliberately abstained from voting defying the decision of the party, with a view to help the LDF candidate and to defeat the petitioner, the candidate nominated by his party. He committed disloyalty to his party Kerala Congress(M) to which he belongs and he voluntarily gave up his membership in Kerala Congress(M).

18. Evidence of PWs2 and 3 is also on the similar lines of PW1. PW2 is another elected member of ThrikkodithanamGrama Panchayat from the

very same the Kerala Congress(M) party. Further he is the Vice President of the Kerala Congress(M) Kottayam District. PW3 is the ThrikkodithanamMandalam President of the Kerala Congress(M). Both PWs2 and 3 were also present in the parliamentary party meeting held on 15.11.2015 and they were signatories to Ext.A7 minutes. They also stated about the decision of their party and the parliamentary party regarding the candidature of the petitioner for the Chairmanship of the Health and Education Standing Committee.

19. Contention of the respondent, as stated above, is that the Kerala Congress(M) did not decide to nominate the petitioner as the candidate of the party for the Chairmanship of the Health and Education Standing Committee and hence his abstention can have no impact and it will not incur any disqualification. It is also his case that the party has unofficially decided to nominate the respondent as a candidate for the said post. According to RW1 he is even now continues to be a member of Kerala Congress(M) and he has not disobeyed any decision of the party.

20. It is a fact that the petitioner contested for the post of Chairman of the Health and Education Standing Committee in the election held on 03.12.2015 and admittedly the respondent abstained from voting in the election. According to PWs 1 to 3 it was as per the decision of the Kerala Congress (M) party and its parliamentary party held on 15.11.2015 the petitioner contested the election for the post of the Chairman. It may be

noted that a parliamentary party meeting of the Kerala Congress (M) was held on 15.11.2015 and Ext.A7 is the minutes of the said meeting. Respondent as RW1 admitted that Parliamentary party was held on 15.11.2015 in the presence of the Mandalam President of the party including the party Chairman Shri.K.M.Mani. Contention of RW1 is that the said meeting was held only to elect the parliamentary party leader and Deputy leader and accordingly the petitioner was elected as parliamentary party leader and the respondent as the Deputy leader. No other agenda was there for the said meeting. But Ext.A7 would only belie the said contention of RW1. Ext.A7 minutes would show the decision of the parliamentary party meeting to nominate the petitioner as a candidate for the post of the Chairman of Health and Education Standing Committee. Argument of the learned counsel of the respondent is that the said decision was incorporated later and that originally the agenda of the meeting was not there in the minutes and it was added only later. It may be noted that Ext.A7 is in the handwriting of PW2, another elected member of the Panchayat from Kerala Congress (M). It is stated by PW2 that Ext.A7 is in his handwriting and both the items in the agenda were recorded in Ext.A7 then and there and not subsequently.

21. It may be noted that there were two items in the agenda. One is regarding the election of parliamentary party leader and the other which can be gathered is with regard to the posts and positions in the Panchayat committees. Even as

per the evidence of RW1 there was a decision to elect the parliamentary party leader. According to him even the said agenda was also included subsequently. It is in that background the evidence of PW2 relating to the agenda found in Ext.A7 is to be considered. RW1 has no case that item No.2 in the agenda alone was added subsequently.

22. It is to be stated that the entire business transpired in the said meeting was minuted in Ext.A7 and on verifying the entire minutes it can be seen that the entire minutes of the meeting on 15.11.2015 were recorded simultaneously without any break and there is nothing to show that the decision on item No.2 was recorded only later. The stand taken by the respondent that only a part of Ext.A7 can be accepted is not acceptable in the light of the evidence in this case. I do not find anything to doubt the genuineness of Ext.A7 minutes. From the evidence of PWs1 to 3 and Ext.A7 minutes it can be seen that the parliamentary party meeting held on 15.11.2015 has decided to nominate the petitioner as the candidate for the post of the Chairman of Health and Education Standing Committee. The argument of the learned counsel that the decision on item No.2 in the agenda in Ext.A7 was incorporated later is without any basis and hence it is only to be ignored. As per the decision of the party the petitioner contested for the post of the Chairmanship of the above committee and the respondent disobeyed the said decision of the party and abstained from voting in the

election held on 03.12.2015 which facilitated the victory of rival party candidate and the defeat of his own party nominee.

23. It may be noted that 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 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.

24. As there was no issuance of written direction or whip in this case by the person competent to issue, the second part of Section 3(1)(a) of the act is not attracted in this case. The learned counsel for the petitioner conceded the said fact and submitted that the petitioner's case is based on the first part of Section 3(1)(a) of the Act. According to the petitioner, the respondent voluntarily gave up his membership in his party Kerala Congress (M) by abstaining from voting in the election of the Chairman of the above Standing Committee defying the decision of his party facilitating the defeat of the nominee of his own party and the victory of the rival party candidate. By doing so he acted against the interest of his party, the counsel submits.

25. 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 AIR (1993) SCC 412*” 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.”

26. 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.”

27. A member belonging to a political party has to be loyal to his/her party and the moment he/her becomes disloyal he/she would become subject to disqualification on the ground of voluntarily giving up his/her membership from the party. The conduct of the respondent in abstaining from voting in the election for the Chairmanship of the Health and Education Standing Committee and thereby defeating the candidate nominated by his own party by his abstention, disobeying the decision of his party would clearly demonstrate that he became disloyal to the party which elected him as a member of the Thrikkodithanam Grama Panchayat. His above acts would amount to defection inviting disqualification as alleged 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.

28. From the available evidence and the circumstances emanating there from it can be safely concluded that the respondent has committed defection and he has voluntarily given up his membership from the party which elected him as member, as provided by Section 3(1)(a) of the Act and therefore he became subject to disqualification for being member of Thrikkodithanam Grama Panchayat. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being member of Thrikkodithanam Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the respondent is also 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 24th day of January 2017

Sd/-
V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Shri.James Joseph
- PW2 : Shri.Siby Joseph, Member
- PW3 : Shri.ThomasDevassy, Mandalam President

Witnesses examined on the side of the respondent

- RW1 : Shri.Thomas Zavier

Documents produced on the side of the petitioner

- A1 : Copy of the nomination, filed by Shri.Thomas
- A2 : Declaration in form No.2 filed by Shri.Thomas
Zavier, Thrikkodithanam Grama Panchayat
- A3 : Copy of the register showing the party affiliation of
the members of Thrikkodithanam Grama Panchayat
- A4 : Copy of the minutes of the meeting to elect the
President, Thrikkodithanam Grama Panchayat held
on 19.11.2015 at 11am
- A5 : Copy of the minutes of the meeting to elect the Vice
President, Thrikkodithanam Grama Panchayat held
on 19.11.2015 at 2pm
- A6 : Copy of the minutes of the meeting to elect the
members of Standing Committee, Thrikkodithanam
Grama Panchayat held on 30.11.2015 at 11am
- A7 : Minutes Book of Kerala Congress(M)
Parliamentary party meeting, Thrikkodithanam

Grama Panchayat

- A8 : Copy of the minutes of the meeting to elect the Chairman, Standing Committee for Development, Thrikkodithanam Grama Panchayat held on 03.12.2015
- A9 : Copy of the ballot used in the election to the post of Chairman, Standing Committee for Development,

Document produced on the side of the respondents

- B1 : Ballot paper in form No.1: Election to Standing Committee (Health and Education given to Shri.Thomas Xavier)
- B2 : Ballot paper in form No.1: Election to Standing Committee (Health and Education given to Shri.James Joseph)
- B3 : Ballot paper in form No.1: Election to Standing Committee (Development Shri.M.K.Raju)
- B4 : Ballot paper in form No.1: Election to Standing Committee (Health and Education Shri.M.K.Raju)

Sd/-

V.BHASKARAN
STATE ELECTION COMMISSIONER

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