

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Wednesday, the 21st day of December 2016

O.P.Nos.123/2014, 124/2014, 125/2014&126/2014

O.P.No.123/2014

Petitioner : KassimKunnath,
S/o Ibrahim, Kunnath House,
Ariyoor P.O., Mannarcadu College,
Palakkad District, PIN :678 583.
Member, Ward No.10,
KottappadamGrama Panchayat

(By Advs.M.HashimBabu&Carolyn Joy Fletcher)

Respondent : Maleriyath Nisha,
Maleriyath, KacheriParambu P.O.,
Alanallur, Mannarcaud College,
Palakkadu District, PIN 678 601
Member, Ward No.20,
KottappadamGrama Panchayat

(By Adv. KallambalamS.Sreekumar)

O.P.No.124/2014

Petitioner : KassimKunnath,
S/o Ibrahim, Kunnath House,
Ariyoor P.O., Mannarcadu College,
Palakkad District, PIN :678 583.
Member, Ward No.10,
KottappadamGrama Panchayat

(By Advs.M.HashimBabu&Carolyn Joy Fletcher)

Respondent : ThekkanAsmaBeevi,
W/o Karim, Thekkan House,
Kombam, Kodakkadu P.O.
Mannarcaud College,
Palakkadu District, PIN 678 583
Member, Ward No.12,
KottappadamGrama Panchayat

(By Adv. KallambalamS.Sreekumar)

O.P.No.125/2014

Petitioner : KassimKunnath,
S/o Ibrahim, Kunnath House,
Ariyoor P.O., Mannarcadu College,
Palakkad District, PIN :678 583.
Member, Ward No.10,
KottappadamGrama Panchayat

(By Advs.M.HashimBabu&Carolyn Joy Fletcher)

Respondent : Koomancheeri Muhammed Basheer,
Koomancheeri,KacheriParambu P.O.,
Alanallur, Mannarcaud College,
Palakkadu District, PIN 678 601
Member, Ward No.04,
KottappadamGrama Panchayat

(By Adv. KallambalamS.Sreekumar)

O.P.No.126/2014

Petitioner : KassimKunnath,
S/o Ibrahim, Kunnath House,
Ariyoor P.O., Mannarcadu College,
Palakkad District, PIN :678 583.
Member, Ward No.10,
KottappadamGrama Panchayat

(By Advs.M.HashimBabu&Carolyn Joy Fletcher)

Respondent : KunthippadathSabira,
KunthippadathVeedu,
Kottappadam P.O.,Mannarcadu
College,Palakkadu District, PIN 678 583
Member, Ward No.16,
KottappadamGrama Panchayat

(By Adv. KallambalamS.Sreekumar

These petitions having come up for hearing on the 20th day of December 2016, in the presence of Advs. **M.HashimBabu&Carolyn Joy Fletcher** for the petitioner and Adv.**KallambalamS.Sreekumar** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These petitions are filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have committed defection and hence disqualified to continue as members of KottappadamGrama Panchayat and also for declaring them as disqualified to contest as candidates in any election of the local body for a period of six years from the date of the order.

2. As the questions of law and facts involved in all the petitions are common, they were taken up together treating O.P.No.123/2014 as the main case.

3. Petitioner in all the petitions is one and the same.

4. Common case of the petitioner in all the petitions in brief is as below:-

Petitioner and respondents were elected members of KottappadamGramaPanchayat

in the election held in October 2010. Petitioner and the respondent in O.P.No.126/2014 were elected as candidate of Indian Union Muslim League which is a constituent of the political coalition United Democratic Front. Respondents in O.P.Nos.123/2014, 124/2014 and 125/2014 were elected as independents supported by Indian Union Muslim League party. There are 22 wards in Kottappadam Grama Panchayat and out of which the UDF secured 14 seats. The Indian Union Muslim League alone secured 7 seats, 3 seats by the independents supported by Indian Union Muslim League and 4 seats by Indian National Congress. The CPI(M) secured 7 seats and the remaining one seat was won by an independent.

5. As the United Democratic Front got majority it decided to form the Panchayat board. The post of the Panchayat President was allotted to Indian Union Muslim League and of the Vice President to Indian National Congress. Accordingly the respondent in O.P.No.124/2014 ThekkanAsmaBeevi was elected as President with the support of the UDF including the respondents. ManachithodiUmmer from Indian National Congress was elected as Vice President. As Smt.ThekkanAsmaBeevi was later found to be inefficient and there were allegations of corruption the Indian Union Muslim League leaders intervened and after discussion it was decided to direct Smt.ThekkanAsmaBeevi to resign from the post. When she refused to resign, the parliamentary party decided to move no confidence motion against her. The motion was tabled for discussion on 25.09.2014. The President of Indian Union Muslim League and DCC issued direction to all the

members to support the motion and whips were issued. The District President of Indian Union Muslim League issued the whips on 16.09.2014 directing the members including the respondents to support the no confidence motion. The copy of the whip was communicated to the Panchayat Secretary also. The respondents refused to accept the whips. But they were aware of the contents therein. The no confidence motion moved against the President Smt.ThekkanAsmaBeevi could not be taken for consideration for want of quorum on 25.09.2014. Only 10 members from UDF including the Indian Union Muslim League members attended the meeting. The respondents deliberately abstained from the meeting with a view to defeat the no confidence motion defying the direction of the party and it was done with the support of LDF. The respondents disobeyed and defied the direction of the party and they acted against the interest of their party. The above acts of the respondents would show that the respondents have withdrawn their affiliation from Indian Union Muslim League which supported them in the General Election. They have abandoned their association with Indian Union Muslim League and joined the rival LDF. Acting against the direction of the party is disloyalty. The respondents are disqualified to continue as members of KottappadamGrama Panchayat and contest the election for a period of six years. Hence the petitioner filed the petition for a declaration to that effect.

6. The respondents filed statement of objections raising common contentions which in brief are as below,- The petitions are not maintainable. The petitioner filed the petitions making false allegations. Respondents in O.P.Nos.123/2014,

124/2014 and 125/2014 were elected as independents without the support of any political party. The respondent in O.P.No.126/2014 was elected as a candidate of Indian Union Muslim League and the petition against her is filed without the knowledge of the Indian Union Muslim League leadership. Respondents in O.P.Nos.123/2014, 124/2014 and 125/2014 did not give any declaration that they were elected as Indian Union Muslim League members. They are total independent members without the support of any political party or front. It is true that the respondents supported Smt.ThekkanAsmaBeevi and Shri.Ummer and voted them then contested for the Presidentship and Vice Presidentship. The allegation that Smt.ThekkanAsmaBeevi was an utter failure as President of the Panchayat is totally untrue. The allegations against her are false. There was no decision of the parliamentary party to move no confidence motion against the President. Smt.ThekkanAsmaBeevi was elected as an independent candidate and nobody has any authority to issue direction against her or ask her to resign. The District President of Indian Union Muslim League did not give any direction to the respondents regarding the no confidence motion. The respondents had not intention to oust Smt.ThekkanAsmaBeevi from the Presidentship and they have every right to take any decision in the matter. The respondents never colluded with any political party or members as alleged.

7. The respondent in O.P.No.126/2014 did not abandon her membership from Indian Union Muslim League at any point of time. The respondent Smt.Sabira was in hospital on 25.09.2014 due to illness and the said fact was informed to her

party leaders. The respondent Smt.Sabira did not receive any notice from the parliamentary party of UDF. No parliamentary party meeting of UDF was convened before the moving of the no confidence motion. The respondent in O.P.No.126/2014 Smt.Sabira did not disobey any direction of her party Indian Union Muslim League and she did not give up her membership in Indian Union Muslim League. The respondents did not commit any defection as alleged. The respondents hence pray for dismissal of the petition.

8. The evidence in these cases consists of the oral testimonies of PWs1, 2, RWs1 and 2 and Exts.P1 to P8 and X1 to X5.

9. Both sides were heard.

10.The following points arise for consideration;

(1) Whether the petitions are maintainable?

(2) Whether the respondents have disobeyed the decision and direction of the Indian Union Muslim League party as alleged?

(3) Whether the respondent in O.P.Nos.123/2014, 124/2014 and 125/2014 were elected as independents without the support of any political parties?

(4) Whether the respondents have committed defection as provided by Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?

(5) Whether the respondents have voluntarily given up their membership from Indian Union Muslim League or withdrawn from the front as alleged?

(6)Reliefs and costs?

11. **POINT No.(1)**: These petitions are filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks declaration that the respondents have committed defection and hence they became disqualified to be the members of Kottappadam Grama Panchayat and also from contesting as candidates in any election to local body for a period of six years.

12. The petitioner and respondents were elected members of Kottappadam Grama Panchayat in the election held in October 2010. The petitioner and respondent in O.P.No.126/2014 were elected as candidates of Indian Union Muslim League and respondents in O.P.Nos.123/2014, 124/2014 and 125/2014 were elected as independents supported by Indian Union Muslim League. There are 22 wards in Kottappadam Grama Panchayat and out of which the UDF secured 14 seats. The IUML alone has 7 seats 3 seats by independents supported by Indian Union Muslim League and 4 seats by Congress. CPI(M) secured 7 seats and the remaining one seat went to an independent. As the UDF got majority it formed the board and the Indian Union Muslim League independent Smt. Thekkan Asma Beevi, the respondent in O.P.No.124/2014 was elected as the Panchayat President. Later dispute arose and there was allegation of inefficiency and corruption against her. The Indian Union Muslim League decided to direct the Panchayat President Smt. Asma Beevi to resign from the Presidentship and issued a letter to her to that effect. Ext.X1 is a copy of the said letter issued by the President of Indian Union Muslim League, Palakkad District Committee. Smt. Asma Beevi was not prepared to resign even after Ext.X1 letter. Thereafter, it is stated that a no confidence motion

signed by ten UDF members was moved and it was tabled for discussion on 25.09.2014. According to PW1 whip was issued to all the elected members of Indian Union Muslim League and Congress by the District President of Indian Union Muslim League and Congress party respectively directing them to support the motion. The respondents in collusion with the LDF members abstained from the meeting with intent to defeat the motion. The no confidence motion hence could not be taken up for discussion for want of quorum. Exts.P7 and P8 are the copies of the minutes of the meeting held on 25.09.2014 to discuss the no confidence motion. According to the petitioner the respondents committed defection and they have withdrawn their affiliation with Indian Union Muslim League which supported them in the General Election, by absenting in the above meeting along with rival LDF members, defying the decision of their party Indian Union Muslim League.

13. Respondents deny the allegations. According to them the respondents in O.P. Nos. 123/2014, 124/2014 and 125/2014 contested and were elected as independent candidates without the support of any political parties. No whip was given to them by anybody and the Indian Union Muslim League President had no authority to issue any whip to them. The respondent in O.P.No.126/2014 could not attend the meeting on 25.09.2014 on account of her illness and as she was admitted in hospital. To them the respondents did not do any act inviting any disqualification as alleged. It is also their contention that the above petitions are not maintainable.

14. The respondents though contended in their counter statements that the petitions are not maintainable there is nothing from their side to show that the above petitions are not maintainable.

15. 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 or on a no confidence motion moved against them, he shall become subject to disqualification for being a member of that local authority.

16. 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.

17. From the pleadings and evidence adduced in this case it can be seen that there arises a question as to whether the respondents became disqualified for being members of Kottappadam Grama Panchayat as provided by Section 3(1)(a) of the Act. These petitions are filed by a member of the same Panchayat of which the respondents also are members and these petitions are filed within the time

prescribed under Rule 4(A)(2) of the Kerala Local Authorities (Disqualification of Defected Members Rules. Except stating that these petitions are not maintainable there is no material from the side of the respondents to show that these petitions are not maintainable. As these petitions are filed by a competent person within the time limit and a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Act these petitions are held to be maintainable. The point is answered accordingly.

18. POINT Nos.2 to 6: Case of the petitioner is that the respondents committed defection and hence they are to be disqualified to continue as members of KottappadamGrama Panchayat and also from contesting as candidates in the election to the local bodies for a period of six years. The petitioner and respondents, as stated above, were elected members of KottappadamGrama Panchayat. Admittedly the petitioner and respondents in O.P.No.126/2014 were elected as candidates of Indian Union Muslim League. According to PW1 the respondents in O.P.Nos.123/2014 to 125/2014 contested and were elected as independents with the support of Indian Union Muslim League party. Exts.P1 series are the copies of the declarations given by them after they were elected as members of KottappadamGrama Panchayat. Ext.P2 is the copy of the register showing the party affiliation of the elected members. It is stated in Exts.P1 series and P2 that respondents in O.P.Nos.123/2014 to 125/2014 were elected as independents with the support of Indian Union Muslim League. There is no dispute over the party

affiliation of Smt.Sabira, the respondent in O.P.No.126/2014 and admittedly she was elected as Indian Union Muslim League candidate.

19. As the United Democratic Front got majority it decided to form the Panchayat board and the respondent in O.P.No.124/2014 Smt.AsmaBeevi became the Panchayat President as the nominee of Indian Union Muslim League and the Congress nominee Shri.Ummer was elected as Vice President.Later dispute arose and according to the petitioner Smt.AsmaBeevi aforesaid as President was a failure. There was allegation of corruption also against her. The Indian Union Muslim League party leadership intervened and asked Smt.AsmaBeevi to resign from the Presidentship as per Ext.X1 letter issued by PW2 Indian Union Muslim League Palakkad District President. Despite Ext.X1 letter Smt.AsmaBeevi did not resign. Thereafter Ext.P3 notice of no confidence motion signed by ten UDF members against the President Smt.AsmaBeevi was given and it was tabled for discussion on 25.09.2014.

20. It is stated by PW1that whips were issued to the elected members of Indian Union Muslim League and independents supported by Indian Union Muslim League by the District President of Indian Union Muslim League andto the Indian National Congress members by the DCC President. Copy of the whip was given to the KottappadamGramma Panchayat Secretary also. Ext.P4 is the copy of the said whip issued by the Palakkad Indian Union Muslim League District President Committee. Whip was sent to the respondents by registered post. Ext.P6 are the postal receipts before that. The whips sent by registered post to respondents in

O.P.Nos.123/2014 to 125/2014 returned unserved as they did not claim the same despite intimations. Exts.P5 series are the returned registered letters. According to the petitioner the respondents deliberately got the same returned. When the meeting for discussing the no confidence motion was held on 25.09.2014 the respondents abstained from attending the meeting along with the rival LDF members with a view to defeat the motion. As the respondents abstained along with the LDF members the motion could not be discussed as there was no quorum. According to PW1 the respondents deliberately abstained from attending the meeting with a view to defeat the motion, defying the decision and direction of Indian Union Muslim League party and they voluntarily abandoned their association with Indian Union Muslim League and joined the rival LDF.

21. PW2 is the Palakkad District President of Indian Union Muslim League and he gave evidence in support of the petitioner's case. According to him the Indian Union Muslim League contested the local body election in Kottappadam Grama Panchayat as part of UDF and the party secured ten seats in the election held in October 2010. Among the ten elected members, seven candidates contested under the official symbol of Indian Union Muslim League and three candidates contested as independents with the support of Indian Union Muslim League. Respondents in O.P.Nos.123/2014 to 125/2014 are the said three elected members. It is also stated by him that he was issued whips to the respondents and other elected members of Indian Union Muslim League directly and also by registered post directing them to support the no confidence motion moved against

the respondent. Smt.AsmaBeevi. Ext.X5 is the office copy of the whip. The whip sent to the respondent in O.P.No.126/2014 was served on her. Respondents in O.P.Nos.123/2014 to 125/2014 did not claim the whips sent by registered post and same were got returned by them. The respondents did not obey the direction and deliberately abstained from attending the meeting held for discussing the no confidence motion. They, according to PW2, acted against the decision and direction of the party. The no confidence motion hence they could not be carried on account of the acts of the disloyalty on the part of the respondents, PW2 further states.

22. Case of the respondents as stated above is that they did not do any acts inviting the disqualification. No whip was issued to the respondents in O.P.Nos.123/2014 to 125/2014 and PW2 has no authority also, to issue any whip to them as they were elected as independents without the support of Indian Union Muslim League or any political party. The respondent in O.P.No.126/2014 was examined as RW1 and the respondent in O.P.No.125/2014 was examined as RW2. It is further contended by them that the respondent in O.P.No.126/2014 could not attend the meeting on 25.09.2014 and participate in the discussion for no confidence motion as she was hospitalized due to illness.

23. Contention of the petitioner as noticed above is that the respondents in O.P.Nos.123/2014 to 125/2014 were elected with the support of Indian Union Muslim League and they were Indian Union Muslim League independents. As against that the contention of respondents is that they were elected as independents

without the support of Indian Union Muslim League or any political party and hence they were within their right to take any decision of their choice and they were not bound by any direction of any party. To them the alleged whip issued was not binding on them. But except the oral version of RW2 there is no evidence to support the said contention of the respondents.

24. It may be noted that Exts. P1 series are the copies of declarations given by the respondents to the Secretary of Kottappadam Grama Panchayat after their election. Both RWs 1 and 2 admitted the said fact. Ext.P2 is the copy of the register showing the party affiliation of the elected members. Exts.P1 and P2 would show that respondents in O.P.Nos.123/2014 to 125/2014 were elected as independents with the support of Indian Union Muslim League party and the respondents in O.P.No.126/2014 as Indian Union Muslim League candidate. RW2 has a contention that he has only put his signature in Ext.P1(b) declaration and other entries therein were not in his handwriting. But the respondents have no case that Exts.P1 series are forged ones. RW2 has no complaint against the above records kept in the Panchayat and his contention in the counter statement regarding that is also to that effect. His contention in the counter statement is that the records of the Panchayat would show that he was elected as an independent without the support of any political party. But the records kept in the Panchayat show otherwise. He has no case that Exts.P1 series and P2 are forged ones. Further in the cross-examination RW1 has clearly admitted that the respondents in O.P.Nos.123/2014 to 125/2014 contested and they were elected as independents with the support of Indian Union

Muslim League. Evidence of RW1, the witness on the side of respondents itself would clearly show that the respondents in O.P.Nos.123/2014 to 125/2014 were elected as Indian Union Muslim League independents. It may also be noted that Indian Union Muslim League or UDF had no separate candidates against the respondents in O.P.Nos.123/2014 to 125/2014. The contention of the respondents that they were elected as independents without the support of Indian Union Muslim League or any other political party, under the above circumstances cannot be accepted. Ext.P1 series, P2 and the evidence of PW1, PW2 and RW1 would show that the respondents in O.P.Nos.123/2014 to 125/2014 were elected as independents with the support of Indian Union Muslim League.

25. Now let us verify whether the respondents committed any acts of defection envisaged under Section 3 (1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. 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.

26. It is found above that the respondents in O.P.Nos.123/2014 to 125/2014 were elected to Kottappadam Grama Panchayat as independents with the support of Indian Union Muslim League. It may be noted that an independent candidate who contests the election with the support of a political party is deemed to be a member of that party. Explanation to Section 2(ii) of the Kerala Local Authorities (Prohibition of Defection) Act is to that effect. As per Section 2(ii) of the Act, "coalition" means a coalition made between more than one political party or between more than one political party and one or more independent or between one political party and one or more than one independent or between more than one independent for the purpose of contesting in any election of a local authority. Explanation:- a member who stood as a candidate in an election with the support of anyone of the political parties or coalition shall be deemed to be a member included in that political party or coalition. So in view of the explanation to the section an independent member who stood as a candidate in the election with the support of a political party shall be deemed to be a member included in that political party. It is found above that the respondents in O.P.Nos.123/2014 to 125/2014 contested the election with the support of the Indian Union Muslim League party and hence the respondents in O.P.Nos.123/2014 to 125/2014 are to be treated as deemed members of Indian Union Muslim League party then. The Indian Union Muslim League or UDF had no separate candidates against the respondents in O.P.Nos.123/2014 to 125/2014.

27. It is a fact that a no confidence motion was moved against the Panchayat President Smt.AsmaBeevi, the respondent in O.P.No.124/2014 and admittedly the respondents did not attend the meeting convened for discussing the no confidence motion. The no confidence motion could not be carried for want of quorum. It is in evidence that whips were issued to the elected members of Indian Union Muslim League including the respondents directing them to support the no confidence motion. PW2, the Palakkad District President of Indian Union Muslim League who is competent to issue the whip has clearly stated about the issuance of the whips to the respondents. Exts.P6 series postal receipts would show that the same were sent to the respondents by registered post on 16.09.2014 ie., sufficiently early before the no confidence motion on 25.09.2014. The whip issued to RW1, the respondent in O.P.No.126/2014 was admittedly served on her. Other respondents did not claim the registered post despite the postal intimation to them. Exts.P5 series are the returned and unclaimed registered letters. The respondents have no case that the whips were sent not in their correct address. It is well settled that once a notice has been sent by registered post with acknowledgment due in correct address it must be presumed that the service has been made effective. There is nothing to rebut the presumption in these cases. It may be noted that a copy of the whip was given to the Secretary of KottappadamGrama Panchayat, also.

28. The respondents were very well aware of the existence of the whip much prior to the meeting for discussing no confidence motion. Admittedly the respondents did not attend the meeting and they abstained along with the rival LDF

members with a view to defeat the motion, defying the decision and direction of their party. It is contended that the respondent in O.P.No.126/2014Smt.Sabira could not attend the meeting on 25.09.2014 as she was hospitalized in Moulana Hospital, Perinthalmanna due to illness. According to her she informed the said fact to the Indian Union Muslim League leaders including the parliamentary party leader. But to substantiate the said contention there is absolutely nothing on her side except her oral version. If really she was hospitalised and was suffering from illness as claimed by her there will be treatment records for that. Nothing of that sort is coming forth in these cases. There is nothing in evidence to show her alleged inability to attend the meeting on 25.09.2014. In the absence of any believable evidence in that regard the above contention of RW1 cannot be accepted.

29. Argument of the learned counsel for the respondents is that the respondents in O.P.Nos.123/2014 to 125/2014 were elected as independents and hence they were not bound by the whip issued by PW2. It is found above that the respondents in O.P.Nos.123/2014 to 125/2014 were elected as independents with the support of Indian Union Muslim League and they were deemed members of Indian Union Muslim League in view of the explanation to Section 2(ii) of the Act. As they were deemed members of Indian Union Muslim League they were bound by the direction of Indian Union Muslim League. So the above contention of the learned counsel that they were not bound by the direction of PW2 is not sustainable. They are bound by the decision of the Indian Union Muslim League party.

30. 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.”

31. 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.”

32. 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 abstaining from the above meeting on 25.09.2014 by the respondents along with the rival LDF members to facilitate the defeat of no confidence motion moved by their own party would clearly demonstrate that they became disloyal to the party which elected them as members. Their above acts would amount to defection inviting disqualification and the case put forward by the petitioner is clearly established in these cases. I do not find anything in these cases to take a different view. 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.

33. From the available evidence and the circumstances emanating there from it can be safely concluded that the respondents have committed defection and they have voluntarily given up their membership from the party which elected them as members as provided by Section 3(1)(a) of the Act and therefore they became

subject to disqualification for being members of Kottappadam Grama Panchayat.

Points are answered accordingly.

In the result, the petitions are allowed and the respondents are declared as disqualified for being members of Kottappadam Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the respondents are also declared as disqualified for contesting as candidates 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 21st day of December 2016

Sd/-

V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Shri.KassimKunnath
PW2 : Sri.CAMA Karim, President, IUML,
Palakkad District President

Witnesses examined on the side of the respondent

RW1 : Smt. Sabira (respondent in O.P.No.126/2014)
RW2 : Shri. Muhammed Basheer
(respondent in O.P,No.125/2014)

Documents produced on the side of the petitioner

- P1 : Copy of the declaration in Form No. 2 filed by Smt.Maleriyath Nisha
- P1(a) : Copy of the declaration in Form No. 2 filed by Smt.ThekkanAsmaBeevi
- P1(b) : Copy of the declaration in Form No. 2 filed by Shri.Koomancheeri Muhammed Basheer
- P1(c) : Copy of the declaration in Form No. 2 filed by Smt.KunthippadathSabira
- P2 : Copy of the register showing the party affiliation of the members of KottappadamGrama Panchayat
- P3 : Notice to no confidence motion against the President, KottappadamGrama Panchayat signed by 10 members of KottappadamGrama Panchayat
- P4 : Copy of the whip issued by the President IUML District Committee, Palakkad addressed to the Secretary, KottappadamGrama Panchayat
- P5 : Returned registered letter addressed to Smt.Maleriyath Nisha
- P5(a) : Returned registered letter addressed to Smt.Maleriyath Nisha
- P5(b) : Unclaimed registered letter addressed to Smt.ThekkanAsmaBeevi
- P5(c) : Unclaimed registered letter addressed to Smt.ThekkanAsmaBeevi
- P5(d) : Returned registered letter addressed to Shri.Koomancheeri Muhammed Basheer

- P6 : Receipts of the registered letters dated 16.09.2014
- P7 : Copy of the minutes of meeting of Kottappadam Grama Panchayat to discuss the no confidence motion against the President held on 25.09.2014
- P8 : Copy of attendance of the meeting to discuss the no confidence motion against the President, Kottappadam Grama Panchayat held on 25.09.2014

Documents Produced on the side of the witnesses

- X1 : Letter dated 26.04.2014 of the President, IUML District Committee, Palakkad addressed to Smt.ThekkanAsmaBeevi
- X2 : Acknowledgment addressed to Smt.ThekkanAsmaBeevi
- X3 : Acknowledgment addressed to Shri.KalladiAboobaker
- X4 : Acknowledgment addressed to the Secretary, Kottappadam Grama Panchayat
- X5 : Whip issued by the President, IUML District Committee Palakkad, addressed to Smt.ThekkanAsmaBeevi

Sd/-

V.BHASKARAN
STATE ELECTION COMMISSIONER

//True Copy//