

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Wednesday, the 7th day of September 2016

O.P.Nos.127/2014, 128/2014, 129/2014,130/2014&131/2014

O.P.No.127/2014

Petitioners : 1. K.A.Poulose,
S/o K.P.Antony, Kachappilli House,
Musrath Nagar, House No.150 A,
Angamaly, PIN 683 872.
Councillor, Ward No.22
Angamaly Municipality.

2. Meera Avarachan,
W/o Avarachan.T.V., Thettayil House,
East Angadi, ACN 91, Angamaly –
683 572,
Councillor, Angamaly
Municipality.

(By Adv. Kallambalam S.Sreekumar)

Respondent : Elsy Antony,
Thettayil House,
Chempannoor, Angamaly South,
PIN 683 573.
Councillor, Ward No.28,
Angamaly Municipality,

(By Advs. Vasudevan Nair & K.B.Shaji)

O.P.No.128/2014

- Petitioners : 1. K.A.Poulose,
S/o K.P.Antony, Kachappilli House,
Musrath Nagar, House No.150 A,
Angamaly, PIN 683 872.
Councillor, Ward No.22
Angamaly Municipality.
2. Meera Avarachan,
W/o Avarachan.T.V., Thettayil House,
East Angadi, ACN 91, Angamaly –
683 572,
Councillor, Angamaly
Municipality.
- (By Adv. Kallambalam S.Sreekumar)**

- Respondent : C.K.Varghese,
Chennakkadan House,,
Chempannoor, Angamaly South,
PIN 683 573.
Councillor, Ward No.29,
Angamaly Municipality,

(By Advs. Vasudevan Nair & K.B.Shaji)

O.P.No.129/2014

- Petitioners : 1. K.A.Poulose,
S/o K.P.Antony, Kachappilli House,
Musrath Nagar, House No.150 A,
Angamaly, PIN 683 872.
Councillor, Ward No.22
Angamaly Municipality.
2. Meera Avarachan,
W/o Avarachan.T.V., Thettayil House,
East Angadi, ACN 91, Angamaly –
683 572,
Councillor, Angamaly
Municipality.
- (By Adv. Kallambalam S.Sreekumar)**

Respondent : Mary Syriac,
Palackappilly House,
Kavaraparambu, Angamaly South,
PIN 683 573.
Councillor, Ward No.19,
Angamaly Municipality,

(By Advs. Vasudevan Nair & K.B.Shaji)

O.P.No.130/2014

Petitioners : 1. K.A.Poulose,
S/o K.P.Antony, Kachappilli House,
Musrath Nagar, House No.150 A,
Angamaly, PIN 683 872.
Councillor, Ward No.22
Angamaly Municipality.

2. Meera Avarachan,
W/o Avarachan.T.V., Thettayil House,
East Angadi, ACN 91, Angamaly –
683 572,
Councillor, Angamaly
Municipality.

(By Adv. Kallambalam S.Sreekumar)

Respondent : Jaya Jibi,
C.K.Colony,
Chempannoor, Angamaly South,
PIN 683 573.
Councillor, Ward No.23,
Angamaly Municipality,

(By Advs. Vasudevan Nair & K.B.Shaji)

O.P.No.131/2014

Petitioners : 1. K.A.Poulose,
S/o K.P.Antony, Kachappilli House,
Musrath Nagar, House No.150 A,
Angamaly, PIN 683 872.
Councillor, Ward No.22
Angamaly Municipality.

2. Meera Avarachan,
W/o Avarachan.T.V., Thettayil House,
East Angadi, ACN 91, Angamaly –
683 572,
Councillor, Angamaly
Municipality.

(By Adv. Kallambalam S.Sreekumar)

Respondent : Wilson Mundadan,
Mundadan House,
Angamaly ,PIN 683 572.
Councillor, Ward No.09,
Angamaly Municipality,

(By Advs. Vasudevan Nair & K.B.Shaji)

These petitions having come up for hearing on the 26th day of August 2016, in the presence of Adv. **Kallambalam S. Sreekumar** for the petitioners and Advs. **B.Vasudevan Nair & K.B.Shaji** 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 Councillors of Angamaly Municipality and also for declaring them as disqualified to contest as Candidates in any election of the local authority for a period of six years from the date of the order.

2. As the questions of law and facts involved in these petitions are common, they were taken up together treating O.P.No.127/2014 as the main case. The petitioners in all the petitions are one and the same.

3. The petitioner's case in brief is as below:- The petitioners and respondents were elected Councillors of Angamaly Municipality in Ernakulam District in the election held in October 2010. The 1st petitioner was elected from ward No.22 as an independent candidate and the 2nd petitioner from ward No.18 as an Indian National Congress candidate. The respondents in O.P.Nos. 127/2014, 128/2014, 129/2014, 130/2014 and 131/2014 were elected as Indian National Congress/UDF candidates from ward Nos.28,29,19,23 and 9 respectively. The Indian National Congress contested under the political coalition United Democratic Front. There are 30 wards in Angamaly Municipality and out of which Indian National Congress got 16 seats, LDF secured 10 seats, one seat was won by an independent supported by Janata

Dal(S), and the remaining 3 Councillors are independents. As Congress led UDF got majority they decided to form the Municipal Committee. The respondent in O.P.No.128/2014 was elected as the Chairman and Smt. Mary Varghese as Vice Chairperson of the Angamaly Municipality. Both Chairman and Vice Chairperson were Indian National Congress Councillors. Dispute arose among the Indian National Congress Councillors later and a no confidence motion was moved against the Chairman and Vice Chairperson and it was supported by eight UDF Councillors and the no confidence motion was carried. Though original petitions were filed against the action of eight UDF Councillors before the Election Commission those petitions were not pursued as the party leaders intervened and settled the dispute. On the basis of the settlement the respondent in O.P.No.128/2014 Shri.C.K.Varghese and Smt. Mary Varghese were reelected as Chairman and Vice Chairperson respectively. The understanding then was that Shri.C.K.Varghese was to continue as Chairman till December 2013 and thereafter the 1st petitioner was to be elected as the Chairman. It was accepted and approved by all Indian National Congress Councillors of Angamaly Municipality. But the Respondent Sri.C.K.Varghese refused to step down from Chairmanship in December 2013 and tried to continue in violation of the direction given by the party. Thereafter the party decided to move no confidence motion against the Chairman. As the majority of the Councillors signed the no confidence motion Shri.C.K.Varghese resigned from the post of Chairman. Election of the new Chairman was decided to be

held on 20.10.2014. The Congress led UDF decided to elect the 1st petitioner as the Chairman of Angamaly Municipality. The DCC President of Ernakulam District who is the authorized person to give direction to the Councillors of Indian National Congress issued whip to the respondents to vote and elect the 1st petitioner as the Chairman. But in the meeting held on 20.10.2014 the Respondent in O.P.No.128/2014 Shri.C.K.Varghese nominated another Councillor Shri.Wilson Mundadan (Respondent in O.P.131/2014) as the Chairman Candidate. The LDF nominated Shri.Benny Mutholi as their Chairman candidate. Thereafter Shri.Wilson Mundadan was eliminated in the election due to the deficiency of votes. Thereafter all the respondents supported the LDF candidate Shri.Benny Mutholidefying the direction of the party and with the support of LDF Councillors Shri.Benny Mutholi was elected as the Chairman of the Municipality. The respondents abandoned their party and voted the rival candidate in the Chairman election. They deliberately voted twice against the candidate nominated by their party. Voting against the candidate nominated by their party amounts to defection and hence they are disqualified to continue as Councillors of Angamaly Municipality. The acts and conduct of the respondents amounts to voluntarily giving up their membership of their political party and thereby they are disqualified to contest the election for a period of 6 years. Hence these petitions.

4. The respondents filed statement of objections raising common contentions which in brief are as below,- The petitions are not maintainable. It

is admitted that petitioners and respondents are elected Councillors of Angamaly Municipality and the 2nd petitioner and respondents in O.P.Nos.127/2014, 128/2014, 129/2014 and 130/2014 contested the election as Indian National Congress candidates. Respondent in O.P.No.131/2014 contested the election as an independent candidate. In the election to the post of Chairman and Vice Chairman the respondents in O.P.Nos.127/2014 to 130/2014 acted only as per the direction of the party. As the respondent in O.P.131/2014 is an independent Councillor the direction of the Indian National Congress is not binding on him. It is true that a no confidence motion was moved against the Chairman and Vice Chairperson earlier and later the matter was settled with the intervention of the party leaders. Following that petitions filed earlier by Shri.C.K.Varghese against eight UDF Councillors before the Election Commission were withdrawn. It is not correct to say that Shri.C.K.Varghese was allowed to continue as Chairman only up to December 2013. There was no such decision and to elect the 1st petitioner as Chairman thereafter. The 1st petitioner is not a Councillor from the Indian National Congress. He is an independent Councillor. It is true that election of new Chairman of Angamaly Municipality was held on 20.10.2014. There was no direction to vote in favour of the 1st petitioner as he was not a Councillor from Indian National Congress. It is true that Shri.Benny Mutholi was elected as the Chairman of Angamaly Municipality. The act of the respondents will not amount to defection as

alleged. The petitioners are not entitled to any reliefs in the petition. Hence the petitions are to be dismissed.

5. The evidence in these cases consists of the oral testimonies of PWs1 to 3, RWs1 to 3 and Exts.X1 to X10, R1 and R2.

6. Both sides were heard.

7.The following points arise for consideration;

1. Whether the petitions are maintainable?
2. Whether the respondents have disobeyed the decision and direction of Indian National Congress as alleged?
3. Whether the direction of the Indian National Congress is finding on the respondent in O.P.No.131/2014 as alleged?
4. Whether the respondents have committed defection as alleged?
5. Whether the respondents have voluntarily given up their membership from the Indian National Congress as alleged?
6. Reliefs and costs?

8. **POINT No.(1)**: The petitioners filed these petitions alleging that the respondents have committed defection and hence they became disqualified to continue as Councillors of Angamaly Municipality and to contest the election for a period of six years. The petitioners and respondents were elected Councillors of Angamaly Municipality in the election held in October 2010. Admittedly the 2nd petitioner and respondents in O.P.Nos.127/2014, 128/2014, 129/2014 and 130/2014 contested and were elected as candidates of Indian National Congress. The 1st petitioner is an independent Councillor. According

to the petitioners the respondent in O.P.No.131/2014 though elected as an independent candidate he later became a UDF Councillor after the election and started working with UDF.

9. There are 30 wards in Angamaly Municipality and the Congress secured 16 seats out of that. The LDF got 10 seats and the remaining 4 seats were won by independent candidates including an independent supported by Janata Dal (S). The Indian National Congress formed the Municipal committee as they secured majority. The respondent in O.P.128/2014 Shri.C.K.Varghese and Smt.MaryVarghese were elected as Chairman and Vice Chairperson respectively and both of them were Indian National Congress Councillors. Later dispute arose among the Congress Councillors and no confidence motion was moved against the Chairman and Vice Chairperson and it was carried. The leaders later intervened and the disputes were settled. As per the settlement the respondent Shri.C.K.Varghese and Smt.Mary Varghese were reelected as Chairman and Vice Chairperson respectively. According to the petitioners the respondent Shri. C.K.Varghese was allowed to continue as Chairman till December 2013 as per the terms of settlement and approved by other Councillors and thereafter the 1st petitioner was to be elected as Municipal Chairman. But Shri.C.K.Varghese refused to step down and violated the agreement and direction of the party. Consequently no confidence motion was again moved. As the majority of the Councillors signed the motion Shri.C.K.Varghese resigned from the post of Chairman.

10. The election of the new Chairman was decided to be held on 20.10.2014. The Indian National Congress and UDF, it is stated, decided to nominate the 1st petitioner as the Chairman and whip was issued to all Indian National Congress/United Democratic Front Councillors to vote and elect the 1st petitioner as the Chairman. But in the election meeting on 20.10.2014 respondent Shri.C.K.Varghese nominated another Councillor Shri.Wilson Mundadan (the respondent in O.P.No.131/2014) as the Chairman candidate defying the direction of the party and the LDF nominated one Benny Mutholi. Later Shri.Wilson Mundadan was eliminated for want of sufficient votes. Thereafter the respondents, it is stated, supported the LDF candidate and cast their vote in favour of Shri.Benny Mutholi, the LDF candidate defying the direction of their party and the LDF candidate was elected as Chairman of Angamaly Municipality. According to the petitioners the respondent committed defection by supporting the rival LDF candidate in the Municipal Chairman election defying the direction of their party and hence they became disqualified.

11. The respondents denied the allegations and according to them they did not violate the direction of the party inviting disqualification. Among other things they contended that these petitions are not maintainable. But except stating so in their objection statements there is nothing from their side to show that these petitions are not maintainable. Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, states that 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. As the respondents supported and cast their votes in favour of rival LDF candidate Shri.Benny Mutholi in the Municipal Chairman Election on 20.10.2014 and got himelected with the support of LDF Councillors defying the direction issued to them by their party, Section 3(1)(a) of the Act is applicable to them.

12. It may be noted that these petitions are 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. 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 Councillors of Angamaly Municipality as provided by Section 3(1)(a) of the Act. These petitions are filed by Councillors of the same Municipality of which the respondents also are Councillors and they are filed within the time

prescribed under Rule 4(A)(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. It may be noted that except stating that these petitions are not maintainable there is no material 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.

14. POINT Nos.(2) to (6):The petitioners, as stated above, seek a declaration that the respondents are disqualified to be the members of Angamali Municipality and also from contesting as candidates in the election to local bodies for a period of six years. The respondents' acts supporting the candidate of rival front LDF and voting him in the Municipal Chairman election held on 20.10.2014 defying the direction of their political party are stated to be the reason for filing these petitions. According to the petitioners, the respondents committed disloyalty to their political party Indian National Congress/United Democratic Front to which they belonged and they voluntarily gave up their membership in the party. The respondents took a different stand from that of their political party Indian National Congress in the election of Municipal Chairman and disobeyed the whip issued by the Ernakulam DCC President who is competent to issue the same. Their above acts warrant disqualification, the petitioners contend.

15. There are 30 wards in Angamaly Municipality and out of which the Congress led UDF got 16 seats, while the Municipality was being run by the Congress led UDF vacancy of the post of Municipal Chairman arose consequent to the resignation of the then Chairman. The respondent in O.P.No.128/2014 Shri.C.K.Varghese, Indian National Congress was the Chairman then and due to infighting in the party he resigned from the post of Chairman. Thereafter election for the new Chairman was fixed to be held on 20.10.2014 and steps were taken in that direction.

16. According to PW1 the first petitioner, the respondents supported the rival LDF candidate Shri.Benny Mutholi in the Municipal Chairman election held on 20.10.2014 and got him elected, defying the whip issued by PW2 the Ernakulam DCC President to vote in favour of Congress led UDF candidate. Instead of casting their vote in favour of the candidate nominated by the party the respondents deliberately supported the candidate nominated by the rival LDF. They defied the direction of their party Indian National Congress and became subject to disqualification as per Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, PW1 further states.

17. PW2 is the President of Ernakulam DCC. He gave evidence supporting the case of the petitioners. It is stated by him that it was he who as Ernakulam DCC President recommended official symbol of the Congress party to the Congress candidates in Angamaly Municipality including the respondents, in O.P.Nos.127/2014, 128/2014, 129/2014 and 130/2014. The

respondents have no dispute over that. Though the respondent in O.P.No.131/2014 contested and was elected as an independent member, it is stated, he started working with Congress and later became a UDF Councillor. According to PW1 Exts.X1 and X2 minutes would show that the said fact. Ext.X1 is the minutes of Indian National Congress parliamentary party meeting held on different dates and it is stated that the respondent in O.P.No.131/2014 attended the meetings of the parliamentary party of Indian National Congress. Ext.X2 is the minutes of the meeting of Angamaly Mandalam Committee of the Indian National Congress. In that meeting also according to PW1 and PW2, Shri.Wilson Mundadan the respondent in O.P.No.131/2014 attended.

18. It is further stated by PW2 that whips were issued to respondents and other Congress Councillors directing them to vote in favour of the 1st petitioner and to elect him as the Chairman of the Angamaly Municipality in the election held on 20.10.2014. Ext.X3 is the copy of the whip. The whips were sent to the respondents by registered post and also by speed post. Ext.X4 series are the postal receipts for sending the whips to the respondents and others by way of registered post and speed post. According to PW2 the respondents deliberately got returned the whip sent by registered post and speed post. Exts.X5 series are the returned the postal covers sent by registered post. Ext.X6 series are the returned postal covers sent by speed post. Exts.X5 and X6 are in respect of Smt.Elsy Antony, the respondent in O.P No.127/2014 and the postal endorsements on them would show that she refused to receive the same.

Exts.X5(a) and X6(a) are in respect of Shri.C.K.Varghese the respondent in O.P128/2014. Shri.C.K.Varghese did not claim the postal articles despite the notice given to him and the fact of giving the intimation to him can be seen from the postal endorsements on them. Exts.X5(b) and X6(b) are in respect of Smt.Mary Zyriac the respondent in O.P.No.129/2014. The postal endorsements on them would show that she refused to receive the same. Exts.X5(c) and X6(c) are in respect of Smt.Jaya Jibi, the respondent in O.P.No.130/2014. They were returned with the endorsement 'not known'. It is to be stated here itself that she has no case that the address shown therein is not the address of her. Exts.X5(d) and X6(d) are in respect of Shri.Wilson Mundadan, the respondent in O.P.131/2014. He did not claim the postal cover despite intimation to him. Postal endorsements on Exts.X5(d) and X6(d) would show that the said fact. The respondents were well aware of the whips issued by PW2 and disobeying and defying the direction of the party the respondents supported the rival LDF candidate Shri.Benny Mutholi and elected him as the Chairman of Angamaly Municipality, PW2 further states.

19. The respondents admit that they did not cast their votes in favour of 1st petitioner in the Municipal Chairman election held on 20.10.2014 and that they supported Shri.Benny Mutholi, the LDF candidate in the election. According to them they are not bound to vote and elect the 1st petitioner in the Municipal Chairman election as he is an independent Councillor and not a Congress or UDF Councillor. It is also their case that there was no proper and

valid whip as alleged and that they did not violate the direction of the party. The question of disqualification hence does not arise. Contention of the respondent in O.P.No.131/2014, RW1 is that he contested and was elected as an independent candidate without the support of any political party. He is not attached to any political party or coalition. He is not a Councillor of Congress or UDF. PW2 has no authority to issue any whip to him and it is not binding on him, RW1 further contends.

20. Indisputably, the respondents in O.P.Nos.127/2014 to 130/2014 contested and were elected in the Angamaly Municipality election as candidates of Indian National Congress. It was PW2, the Ernakulam DCC President who recommended the party symbol for them to contest the election as Indian National Congress members. Admittedly, the DCC President is the competent person to allot the symbol and he is the competent person to issue the whip also, to the Indian National Congress Councillors. Ext.X3 is the copy of the whip. As per the whip the respondents were directed to vote and elect the 1st petitioner as the Chairman of Angamaly Municipality in the election held on 20.10.2014. The whips were sent by registered post and also by speed post. Exts.X4 series postal receipts and the evidence of PW2, Ernakulam DCC President would show that the whips were sent to the respondents in O.P.Nos. 127/2014 and 129/2014 to 131/2014 by registered post and speed post on 14.10.2014 and to the respondent in O.P.No.128/2014 on 15.10.2014 ie., sufficiently early before the Municipal Chairman election on 20.10.2014. The respondents have no case

that the whips were sent not in their correct address. It is admitted that Exts.X5 series and X6 series were sent in their correct address. In fact they refused to accept the whips sent by registered post and got the same returned. Exts.X5 (series) and X6(series) are the returned postal covers and the endorsements on them would show that they got the same returned. Further, it is well settled that once the notice has been sent by registered post with acknowledgement due in correct address it must be presumed that the service has been made effective. There is nothing to rebut the said presumption in these cases. Moreover it is in evidence that the respondents were very well aware of the whips issued to them and they refused to accept the whips sent by post.

21. As stated above, the respondents in O.P.Nos.127/2014 to 130/2014 were admittedly elected as Congress candidates. They are responsible elected Councillors of Angamaly Municipality and they cannot act according to their whims and fancies and that too against their own party direction in the Municipal Chairman election. They are bound by the decision of their party and disobedience and acting against the interest of the party is nothing but disloyalty. The decision of the party to vote and elect the 1st petitioner as the Municipal Chairman in the election held on 20.10.2014 was intimated to the respondents and they were directed to act as per the direction of the party by issuing whips to them by PW2 the Ernakulam DCC President. But they did not vote and elected the 1st petitioner. Instead they disobeyed and defied the direction of the party and supported the rival LDF candidate Shri.Benny

Mutholi in the election and cast their votes in his favour and defeated the candidate nominated by their party.

22. The learned counsel for the respondents has a contention that RW2, the respondent in O.P.No.128/2014 was expelled from Indian National Congress much prior to the Municipal Chairman election on 20.10.2014 and as he was not a Councillor of Indian National Congress on 20.10.2014 he is not bound by the direction if any of PW2 or the Indian National Congress. But it is to be stated that such a contention is not sustainable. Even assuming that RW2 was expelled from Indian National Congress he continues to be a Councillor elected by the Indian National Congress. He did not resign his Councillorship. As he was elected as a Congress candidate he is bound by the direction of Indian National Congress till the expiry of his Councillorship in the Angamaly Municipality. He cannot take a decision different from that of his party when the party issued a direction to that effect. RW2 is also conscious of that and his evidence is to that effect. It is admitted by RW2 in cross-examination that he continues to be a Congress Councillor in Angamaly Municipality and he is bound to obey the direction of his party and PW2.

23. It is settled law that if a person belonging to a political party that had set up him as a candidate gets elected as a member and thereafter joins another political party or front for whatever reason either because of expulsion from the party or otherwise he voluntarily gives up his membership of the political party and incurs disqualification. The respondent in O.P.No.128/2014 stood as a

Congress candidate and he was elected as a Congress Councillor and he continues to be so. If the contention of the respondent is accepted it will defeat the very purpose for which the 10th schedule of the Constitution was incorporated and would fail to suppress the mischief ie., breach of faith of the electorate. Merely for the reason that the person is expelled from the political party he does not cease to be a member of the political party that had set him up as a candidate for the election unless he resigns by voluntarily giving up his membership or joins another party. A member elected or nominated by a political party continues to be under its control even after his or her expulsion. An expelled member cannot escape from the rigour of law which was intended to curb the evil of defection which has polluted our democratic polity as held in the decision reported in **1996 KHC 704(G.Viswanathan V.Speaker of Tamilnadu Legislative Assembly and another)**. Under the above circumstances the above contention of the learned counsel is only to be turned down and I do so.

24. 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.

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 Kihoto Hollohan Vs.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."

26. In the decision reported in 2008 (3) KHC 267 in (Faisal P.A. Vs. K.A.Abdulla Kunhi) 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 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 respondents in O.P.Nos. 127/2014 to 130/2014 in refusing to vote in favour of the candidate nominated by their party in the Municipal Chairman election on 20.10.2014 colluding with the LDF members and the supporting the rival LDF candidate and electing him as Municipal Chairman defying the direction of their party would clearly demonstrate that they became disloyal to the party which elected them as Councillors. Their above acts would amount to defection inviting disqualification and the case put forward by the petitioners against the respondents in O.P.Nos. 127/2014 to

130/2014 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. It may be noted that the case of the respondent in O.P.No.131/2014 who is examined as RW1 is different from that of other respondents. Admittedly RW1 contested the election and was elected as Councillor in Angamaly Municipality as a complete independent. Both LDF and UDF put candidates against him and he won the election defeating both the candidates of UDF and LDF. So he was a complete independent Councillor without allegiance to any political party or coalition. Ext.X8 would show the said fact. Ext.X8 is the copy of the register showing the party affiliation of the elected Councillors, maintained in Angamaly Municipality. Serial No.9 in Ext.X8 is in respect of the respondent in O.P.No.131/2014 and it will show that he was elected as a complete independent and he has no affiliation to any political party or coalition. In O.P.No.131/2014 it is stated by the petitioners that the respondent was elected as independent with the support of Indian National Congress and UDF. But the evidence available in this case is otherwise. Ext.X8 also would belie the above statement in the petition. Further it is in evidence that the UDF and LDF had their own candidates against RW1 in ward

No.9 from where he contested in the Municipal election in 2010. In cross-examination it is admitted by PW1, the 1st petitioner that RW1 was elected as a complete independent. Then when he joined in Indian National Congress party and UDF and became a UDF Councillor is not known. It is not stated in the petition also. According to PW2 the Ernakulam DCC President RW1 was elected as independent Councillor and later he started cooperating with Indian National Congress. It is further stated by him that RW1 attended the Indian National Congress parliamentary party meeting and Angamaly Mandalam Committee meeting of the party and Exts.X1 and X2 minutes would show that RW1 attended the meetings and put his signatures. Ext.X1 is stated to be the minute's book of Indian National Congress parliamentary party meeting and Ext.X2 is the minutes of Indian National Congress Angamaly Mandalam Committee meeting. But RW1 denied his attendance in Exts.X1 and X2 meetings and his signatures therein. The petitioners did not take any steps to prove the signature of RW1 therein. According to RW1 he attended two or three meetings of Congress/UDF as a special invitee and he did not attend the parliamentary party meeting of Indian National Congress.

29. As stated above RW1 was elected as a complete independent Councillor. The petitioners have no case that RW1 joined in Congress and he is a Congress Councillor. The evidence of PW2 is that after the election RW1 started co-operating with Indian National Congress. That alleged co-operation cannot be a ground to say that he has joined in Congress and became a

Congress/UDF Councillor. There is no believable evidence to show that he has become a Congress/UDF Councillor. Even assuming that he has attended some meetings of Indian National Congress/UDF it cannot be said that he has become a Congress/UDF Councillor. As per Ext.X8 register he is an independent Councillor without affiliation to any political party. There is nothing to prove otherwise. As he is an independent Councillor he is not bound by the direction of Indian National Congress or PW2. PW2 cannot issue a whip to RW1 as he is not a Councillor from his party. The contention of the petitioners that RW1, the respondent in O.P.No.131/2014 has disobeyed the direction of PW2 and invited disqualification under the above circumstances is not sustainable. As RW1 is a complete independent Councillor he is not bound by the direction of Indian National Congress and there is no defection on his part as alleged.

30. It is found above that the respondents in O.P.Nos.127/2014 to 130/2014 have committed defection and that they have voluntarily given up their membership from their party in which they belong, as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and therefore they became disqualified to be the Councillors of Angamaly Municipality. As the respondent in O.P.No.131/2014 was elected as independent Councillor without affiliation to any political party he is not bound by the direction of Indian National Congress and his act of voting according to his conscience cannot be taken as defection and be challenged by the

petitioners. There is nothing to show that he has joined in any political party after he was elected as independent and committed defection inviting disqualification as alleged. Points are answered accordingly.

In the result, O.P.Nos. 127/2014, 128/2014, 129/2014 and 130/2014 are allowed and the respondents therein are declared as disqualified for being Councillors of Angamaly Municipality as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and they 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. O.P.No.131/2014 is dismissed.

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

Pronounced before the Commission on this the 7th day of September 2016

V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Sri.K.A.Poulose
PW2 : Sri.V.J. Poulose, DCC President, Ernakulam
PW3 : Shri.Vinu C.Kunjappan, Secretary,
Angamaly Municipality

Witnesses examined on the side of the respondent

RW1 : Sri.Wilson Mundadan
 RW2 : Sri.C.K.Varghese
 RW3 : Smt.Mary Zyriac

Document produced on the side of the respondents

R1 : Letter dated 05.06.2014 of the President DCC
 Ernakulam addressed to Sri.C.K.Varghese
 R2 : Notice to the meeting to discuss no confidence motion
 against Chairman , Angamaly Municipality

Documents produced on the side of the witnesses

X1 : Minutes Book of Indian National Congress
 Parliamentary Party
 X2 : Minutes Book of Indian National Congress Angamali
 Mandalam Committee
 X3 : Whip issued by the President DCC, Ernakulam on
 14.10.2014
 X4 : Receipt of the registered letter addressed to
 Shri. C.K.Varghese
 X4(a) : Receipt of the registered letter dated 15.10.2014
 addressed to Shri.C.K.VArghese
 X4(b) : A set of the receipts of the registered letters
 X4(c) : A set of the receipts of the registered letters
 X5 : Returned registered letter addressed to
 Smt.Elsy Antony
 X5(a) : Returned registered letter addressed to
 Shri.C.K.Varghese
 X5(b) : Returned registered letter addressed to

Smt.Mary Zyriac

- X5(c) : Returned registered letter addressed to Smt.Jaya Jibi
- X5(d) : Returned registered letter addressed to
Shri.Wilson Mundadon
- X6 : Returned registered letter addressed to
Smt.Elsy Antony
- X6(a) : Returned registered letter addressed to
Shri.C.K.Varghese
- X6(b) : Returned registered letter addressed to
Smt.Mary Zyriac
- X6(c) : Returned registered letter addressed to Smt.Jaya Jibi
- X6(d) : Returned registered letter addressed to
Shri.Wilson Mundadon
- X7 : Copy of the minutes of the meeting of Angamaly
Municipality, held on 12.11.2014 to elect standing
committee member
- X8 : Copy of the register showing the party affiliation of
the members of Angamaly Municipality
- X9 : Envelope containing Ballot Papers used in the election
to the post of Chairperson in 1st phase Angamaly
Municipality
- X10 : Envelope containing Ballot Papers used in the election
to the post of Chairperson in 2nd phase Angamaly
Municipality

V.BHASKARAN
STATE ELECTION COMMISSIONER