

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

**PRESENT: SHRI.K.SASIDHARAN NAIR, STATE ELECTION COMMISSIONER**

**Saturday, the 20<sup>th</sup> day of June 2015**

**O.P.Nos.14/2014, 15/2014, 16/2014, 17/2014, 18/2014 AND 19/2014**

**O.P.No.14/2014**

Petitioner : C.H.Asharaf,  
S/o Ali, Changarapan Veedu,  
Tharuvana P.O., Wayanad District.  
Member, Ward No.15,  
Vellamunda Grama Panchayat.  
PIN : 670 645.

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

Respondent : P.Muhammed,  
Member, Ward No.05,  
Vellamunda Grama Panchayat,  
Wayanad District.

**(By Adv.Kallambalam S.Sreekumar)**

**O.P.No.15/2014**

Petitioner : C.H.Asharaf,  
S/o Ali, Changarapan Veedu,  
Tharuvana P.O., Wayanad District.  
Member, Ward No.15,  
Vellamunda Grama Panchayat.  
PIN : 670 645.

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

Respondent : Koiramma Kalathil,  
Member, Ward No.01,  
Vellamunda Grama Panchayat,  
Wayanad District.  
PIN: 670 731.

**(By Adv.Kallambalam S.Sreekumar)**

**O.P.No.16/2014**

Petitioner : C.H.Asharaf,  
S/o Ali, Changarapan Veedu,  
Tharuvana P.O., Wayanad District.  
Member, Ward No.15,  
Vellamunda Grama Panchayat.  
PIN : 670 645.

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

Respondent : Sharadha Achappan,  
Member, Ward No.09,  
Vellamunda Grama Panchayat,  
Wayanad District.  
PIN : 670 645.

**(By Adv.Kallambalam S.Sreekumar)**

**O.P.No.17/2014**

Petitioner : C.H.Asharaf,  
S/o Ali, Changarapan Veedu,  
Tharuvana P.O., Wayanad District.  
Member, Ward No.15,  
Vellamunda Grama Panchayat.  
PIN : 670 645.

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

Respondent : Sulekha Kenickakeezhatta,  
Member, Ward No.03,  
Vellamunda Grama Panchayat,  
Wayanad District.  
PIN : 670 731.

**(By Adv.Kallambalam S.Sreekumar)**

**O.P.18/2014**

Petitioner : T.K.Mamootty,  
S/o Moideen, Sneha Manzil,  
Kottarakunnu P.O., Vellamunda,  
Wayanad District, PIN 670 731.

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

Respondent : Leela Bhaskaran,  
Member, Ward No.11,  
Vellamunda Grama Panchayat,  
Wayanad District, PIN: 670 645.

**(By Adv.Kallambalam S.Sreekumar)**

**O.P.19/2014**

Petitioner : T.K.Mamootty,  
S/o Moideen, Sneha Manzil,  
Kottarakunnu P.O., Vellamunda,  
Wayanad District, PIN 670 731

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

Respondent : Gracy Benny,  
Member, Ward No.02,  
Vellamunda Grama Panchayat,  
Wayanad District, PIN: 670 731.

**(By Adv.Kallambalam S.Sreekumar)**

These petitions, having come up for hearing on the **21<sup>st</sup>** day of **April 2015**, in the presence of Advs. **Hashim Babu & Sajitha.S** for the petitioner and Adv. **Kallambalam S.Sreekumar** for the respondents and having stood over for consideration to this day, the Commission passed the following.

## **COMMON ORDER**

These are petitions filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respective respondents have become subject to disqualification for being members of Vellamunda Grama Panchayat on the ground of defection. Since common questions of law and facts arise for consideration in all these cases, they have been taken up together and O.P.No.14/2014 is treated as the main case.

2. O.P.Nos. 14/2014 to 17/2014 are filed by a common petitioner and O.P.Nos.18/2014 and 19/2014 are filed by another common petitioner. Common facts are alleged in these cases which are in short as follows,- The petitioner and respondents in O.P.Nos 14/2014 to 16/2014 had contested the election in various wards of Vellamunda Grama Panchayat as candidates of Indian Union Muslim League in the election held in October 2010 and were elected as members. The respondent in O.P.No.17/2014 contested and won the election with the support of Muslim League. The petitioner in O.P.No.18/2014 and the respondent therein were elected as members belonging to Indian National Congress and the

respondent in O.P.No.19/2014 was elected as member belonging to Kerala Congress (M). Muslim League contested the election under UDF coalition of which the other partners are Indian National Congress and Kerala Congress (M). Muslim League secured 9 seats including the respondent in O.P.No.17/2014 who had won the election with the support of Muslim League. Congress party secured 4 seats and Kerala Congress (M) one seat. Under the LDF coalition, CPI(M) secured 5 seats and LDF independents, 2 seats. Thus the UDF secured 14 wards out of 21 wards and decided to form the board Sri.P.A.Ali Haji belonging to Muslim League was elected as President and Smt.Sheema Suresh belonging to Indian National Congress was elected as Vice President. After the election the respondent in O.P.No.14/2014 raised claim for the post of President for a term and after discussion among the Muslim League leaders., it was formally agreed to give a term to him. In the meantime the respondent in O.P.No.14/2014 along with the other respondents entered into an unholy tie up with the LDF members and as sequel to the same, the LDF members moved no confidence motions against the president and Vice President. The above motions were tabled for discussion on 18.02.2014. The respondent in O.P.No.14/2014 approached in the state leaders of the Muslim League and they were caused to mistakenly believe that there was an agreement to elect him as President after 2 ½ years. Believing the same, state leadership directed Sri.P.A.Ali Haji to resign. But Sri.P.A.Ali

Haji has convinced the leadership of Muslim League that there was no such agreement and the party directed the members to maintain status quo. However Sri.P.A.Ali Haji resigned from the post of President with the concurrence of state leadership of Muslim League on 18.02.2014 and so the no confidence motion against him did not come up for discussion. But the no confidence motion moved against the Vice president was carried with the support of all the respondents and the LDF members. Thereafter the election to the post of President and Vice President was scheduled on 14.03.2014. The UDF parliamentary party meeting was convened on 06.03.2014 and in that meeting it was decided that the authorized persons of the respective political parties in the UDF should issue direction to their members to vote in favour of the persons decided as President and Vice President by the respective political parties. Since the respondent in O.P.No.14/2014 was instrumental in moving the no confidence motion against the Vice President belonging to Congress party, that party was not willing to elect the respondent in O.P.14/2014 as President and so after detailed discussion Sri.Chaliyadan Mammu belonging to Muslim League was decided as the candidate for the post of President. The Indian National Congress decided Smt.Sheema Suresh as the Vice President candidate. The District President of Muslim League who is a competent person to issue direction served whip to all the Muslim League members and the DCC President issued direction to its

members and the Kerala Congress (M) District President issued direction to its sole member, directing them to elect Shri.Chaliyadan Mammu as President and Smt.Sheena Suresh as Vice President. Copy of the whip was communicated to the Secretary also. In the election held to the post of President on 14.03.2014, the name of Sri.Chaliyadan Mammu was proposed and seconded by UDF members. However the name of the respondent in O.P.No.14/2014 was proposed by the respondent in O.P.No.19/2014 and supported by the respondent in O.P.No.17/2014. Thus the respondent in O.P.No.14/2014 contested against the official candidate Sri.Chaliyadan Mammu and with the support of all respondents and the LDF members, he was elected as President. In the election to the post of Vice President, the respondent in O.P.No.18/2014 contested against the official candidate Smt.Sheema Suresh and with the support of all the respondents and LDF members, she was elected as Vice President. These respondents had acted against the directions and decisions of their respective political parties. They were fully aware of the whip issued by the District President of their respective political parties who were the persons competent to issue such directions. The respondents moved hands in glove with the LDF members and they contested against the official candidates of their own political parties by disobeying the directions of such political parties. The above respondents have become disloyal to the political parties to which they belong by involving in anti party activities

and by aligning with the LDF members. The respondents supported the no confidence motion moved against the Vice President along with the LDF members and their conduct of ousting the Vice President belonging to their own party or coalition by disobeying the decisions and directions of their political party is nothing but disloyalty. Again by contesting and voting against the official candidates to the post of President and Vice President and getting elected with the support of LDF members and that too by disobeying the directions and decisions of their respective political parties. The above conduct would constitute defection by voluntarily giving up their membership from the respective political party and also by violating the direction issued by the person competent to issue such directions. Therefore the respondents are liable to be disqualified and hence these petitions.

3. The respondents in O.P.Nos.14/2014 to 16/2014, 18/2014 and 19/2014 have filed objections raising common contentions which are in short as follows,- The petitions are not maintainable either in law or on facts. The allegations regarding party affiliations raised in the petitions are not denied. At the election the District President of the political party had allotted symbol to the candidates of that party. Out of the 21 wards, Indian Union Muslim League secured majority and the LDF got only seven seats. After election the parliamentary party of Indian Union Muslim League decided the respondent in O.P.No.14/2014

as the candidate for the post of President. During this time Sri.P.A.Aali Haji requested to get a chance to become the President for a term of two years and as the respondent in O.P.No.14/2014 was very busy on certain family issues, he allowed Sri.Aali Haji to become the President for a term of two years. However Sri.Aali Haji tried to continue as President with the support some other members. The Indian Union Muslim League had given several directions to him to resign from the post of President. Moreover several allegations including corruption, nepotism etc were raised against him. Then the LDF members moved no confidence motions against the President and Vice President. Immediately thereafter the Indian Union Muslim League leadership directed Sri.Ali Haji to resign from the post of President and the Congress party directed the Vice President to resign from that post. But both of them were not willing to obey such directions. Even though the no confidence motions were moved by LDF members it was supported by Muslim League and Kerala Congress (M) for the reason stated above. The said decision was taken to protect the image of the political party in the District. The allegation that the respondents had entered into a tie up with the LDF members is totally false. In the election to the post of President, the parliamentary party of Muslim League decided the respondent in O.P.No.14/2014 as President. The allegation that the Congress parliamentary party was against electing this respondent is totally false. In the election held on

14.03.2014, the name of the respondent in O.P.14/2014 was proposed and seconded by UDF members. The respondent in O.P.No.18/2014 was elected as Vice President as decided by the Congress party and UDF. The respondents have never disobeyed any direction of their respective political parties. The allegation that Sri.Chaliyadan Mammu was the official candidate of Muslim League to the post of President and Smt.Sheema Suresh was the official candidate for the post of Vice President is totally false. They have never aligned with the LDF as alleged. The respondent in O.P.No.14/2014 contested to the post of President with the consent of his party. The Indian National Congress had never decided to elect Smt.Sheema Suresh as Vice President. The respondent in O.P.No.18/2014 was the official candidate of Congress party and UDF for the post of Vice President. The allegation that the District President of Muslim League had given direction to elect Sri.Chaliyadan Mammu as President and Smt.Sheema Suresh as Vice President to the respondents in O.P.Nos.14/2014 to 16/2014 is totally false. The allegation that the DCC President had given direction to the respondent in O.P.No.18/2014 to elect Sri.Chaliyadan Mammu and Smt.Sheema Suresh as President and Vice President respectively and the allegation that the District President of Kerala Congress (M) had given direction to the respondent in O.P.No.19/2014 to elect the above persons as President and Vice President are totally false. On the other hand the respondent in O.P.No.14/2014 was decided

as the candidate for the post of President as Smt.Sheema Suresh was decided as the candidate for Vice President by the respective political parties as well as the UDF. The respondents have never committed any defection as alleged. They have never voluntarily given up their membership from their political parties or defied any directions issued by the persons competent to issue whip as alleged.

4. The respondent in O.P.No.17/2014 would contend that she had contested the election as an independent candidate without the support of any political party or coalition, that she was opposed by candidates belonging to UDF and LDF and she was elected as an independent member, that she was never set up or supported by Indian Union Muslim League, that after she was elected the Indian Union Muslim League who secured majority seats requested her support and thus she supported Indian Union Muslim League, that she was not belonging to Indian Union Muslim League or any other political party and so Indian Union Muslim League has no write to give any direction to her to vote as directed by that party. That Indian Union Muslim League has never given any direction to her and that she was not bound to comply with any direction issued by that party, that the petitions are without bonafides and they are only to be dismissed.

5. The evidence consists of the oral depositions of PWs1 to 5, RWs1 to 5 and Exts.P1 to P22 Series, R1 to R6 and X1 Series.

6. Both sides were heard.

7. The following points arise for consideration.

- (i) Whether the petitions are not maintainable?
- (ii) Whether the respondent in O.P. No.17/2014 had contested the election as an independent candidate?
- (iii) Whether the respondent in O.P.No.17/2014 is bound to obey the direction issued by the Indian Union Muslim League, as alleged?
- (iv) Whether the respondents had supported the no confidence motion moved against the Vice President Smt.Sheema Suresh by disobeying the decision and direction of their respective political parties?
- (v) Whether Sri.Chaliyadan Mammu was the official candidate of Muslim League and Smt.Sheema Suresh in the election held on 14.03.2014 as alleged?
- (vi) Whether the respondents have defied the direction issued by competent persons in respect of the election to the post of President and Vice President?
- (vii) Reliefs to costs?

8. **ISSUE No.(i)** : These are petitions filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act'. Section 4(1) of the Act states that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act, a member of that local authority or the political party concerned or a person authorized by it in this behalf can file a petition before the State Election Commission for decision. Section 3(1)(a) of the Act deals with disqualification on the ground of defection in respect of the members belonging to political party

admittedly the respondents are members belonging to Muslim League, Indian National Congress and Kerala Congress (M). O.P.Nos.14/2014 to 17/2014 are filed by a member belonging to Muslim League and O.P Nos.18/2014 and 19/2014 are filed by a Congress member of the same Panchayat of which the respondents are also members. Section 3(1)(a) of the 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 he, contrary to any direction issued by the party or by a person authorized by it in this behalf, votes or abstains from voting, in an election to the post of President, Vice President etc., or on a no confidence motion, he shall be disqualified for being a member of that local authority. The petitioners have categorically alleged that the respondents have voluntarily abandoned their membership from their party for having supported the no confidence motion moved against the Vice President and contesting and voting against the official candidates of Muslim League and Indian National Congress in the election to the post of President and Vice President by defying the direction issued by the respective political parties. The above allegations are denied by the respondents. So a question arises as to whether the respondents have committed defection as provided by under Section 3(1)(a) of the Act. The petitioners are entitled to file the petitions as they are members of the same local authority. The petitioners are seen to have been filed within the period prescribed

under Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. Since competent persons have filed the petitions and as a question arises as to whether the respondents have become subject to disqualification for being members of Vellamunda Grama Panchayat and as the petitions are filed within the time limit prescribed by the Rule mentioned above, I find that the petitioners are maintainable. The point is answered accordingly.

9. **POINT Nos.(ii) AND (iii):** The definite case of the common petitioner in O.P.Nos.14/2014 to 17/2014 is that the respondents in O.P.Nos.14/2014 to 16/2014 had contested the election in various wards of Vellamunda Grama Panchayat as candidates of Muslim League and the respondent in O.P.No.17/2014 had contested the election as an independent candidate with the support of Muslim League and so all the above respondents are bound to obey the decisions and directions of the Muslim League. The respondent in O.P.No17/2014 would deny the above allegation and contend that she was neither set up nor supported by Muslim League in her election as a member of Vellamunda Grama Panchayat and so she was not bound to obey the decision and direction of that party. The petitioner as PW1 has deposed that the above respondent was supported by Muslim League during election and the copy of the register maintained by the Secretary of the Panchayat showing the political affiliation has been marked through him as Ext.P1. In cross-examination PW1

has categorically stated that the Indian National League was a partner of UDF coalition. It was suggested to PW1 that a candidate by name Smt.Aasiya Moosa had contested as a candidate of Indian National League to which PW1 had pleaded ignorance. In cross-examination the certified copy of the nomination paper submitted by Smt.Aasiya Moosa was shown to PW1 and he had admitted the same and it has been marked as Ext.R1. The copy of the nomination paper submitted by the respondent in O.P.No.17/2014 also was shown to PW1 which he admitted and marked as Ext.R2. It was suggested to PW1 that after election the members of the Muslim League had filled up the declaration of the respondent in O.P.No.17/2014 and it was wrongly shown in that declaration that the respondent was a member belonging to Kerala State Muslim League which PW1 denied. PW2 the District President of Muslim League has deposed that the respondent in O.P.No.17/2014 was an independent candidate supported by Muslim League and so he had issued direction in respect of voting on the no confidence motion and in the election to the post of President and Vice President. In cross-examination PW2 has deposed that there was no candidate belonging to UDF to contest against the respondent in O.P.No.17/2014.

10. The respondent as RW1 has deposed that Smt.Aasiya Moosa was the candidate of Indian Union Muslim League and the certified copy of the nomination of Smt.Aasiya Moosa has been marked as Ext.R4. RW1 has further

deposed that she was not supported by any political party in her election and she had contested the same as a complete independent candidate. The copy of the nomination paper submitted by her has been marked as Ext.R5. In Ext.R5 it is stated that she had contested the election as an independent candidate. Ext.R6 is the copy of the expenditure statement. RW1 has also deposed that as she was elected as an independent member, the Muslim League has no right to give any direction to her and she was not bound to obey the direction of that party. The learned counsel for the petitioner would argue that the respondent in O.P.No.17/2014 was an independent candidate having the support of Muslim League and Ext.P1 is relied on to support of the same. The petitioner would categorically allege in Para-1 of his petition that the respondent had contested the election as an independent candidate of Muslim League and it is also stated that the ward from which this respondent was elected as allotted to Muslim League in the UDF coalition and the respondent was allowed to contest as an independent candidate with the support of Muslim League. In Ext.P1 it is stated that the respondent had contested the election as a candidate of Kerala State Muslim League. It is significant to notice that in Ext.P1 it is not stated that the respondent was an independent candidate having the support of Muslim League. What is stated therein is that she was a candidate of Muslim League. So as per Ext.P1 the respondent in O.P.No.17/2014 was a candidate of Muslim League

whereas even the petitioner does not have a case that she contested the election as an official candidate of Muslim League. Ext.R5 is the copy of the nomination paper submitted by the respondent in O.P.No.17/2014 wherein it is clearly stated that she was a complete independent candidate. Column No.10 of Ext.R5 is regarding the political affiliation of the candidate and it is under this column that she stated that she is an independent candidate. Ext.R4 is the copy of the nomination paper submitted by one Aasiya Moosa and against column No.10 it is stated that she is a candidate of Indian National League. PW1 has categorically admitted at page 15 of his deposition that Indian National League was a partner of UDF coalition in the said election. In cross-examination of the respondent as RW1 it was suggested that after submission of the nomination paper, the Muslim League had withdrawn Smt.Aasiya Moosa and accepted this respondent as their official candidate which RW1 denied. Apart from the oral evidence of PWs1 and 2 and Ext.P1 there is no evidence to show that this respondent had contested the election with the support of Muslim League. It is an admitted fact that a candidate belonging to UDF coalition by name Smt.Aasiya Moosa had contested the election and this respondent had defeated her and became a member. The version that after submission of the nomination paper Muslim League had withdrawn Smt.Aasiya Moosa and gave support to this respondent cannot be believed. Moreover Muslim League cannot withdraw that candidate because she

was the official candidate of Indian National League. Only a candidate either set up by political party or having the support of a political party in election is bound to obey the decision and direction of that party. Ext.P1 cannot be relied on as an acceptable record to show that the respondent was having the support of Muslim League during election. The statement in Ext.P1 that this respondent was a candidate of Muslim League is totally false. The petitioner does not have such a case. In the explanation to Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, for short the “Act”, it is stated that for the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party by which he was set up as a candidate for the election. In the explanation to Section 2(ii) of the Act it is stated that a member who stood as candidate in an election with the support of one of the political party or coalition shall be deemed to be a member included in that political party or coalition. Since Ext.P1, even on the face of it, is unacceptable, it cannot be relied on as a record to support the case of the petitioner. Sub-rule 3 of Rule 5 of the Kerala Local Authorities (Disqualification of Defected Members) Rules is relevant in this context and it reads as follows,-

*“(3) For the purpose of disposing a petition under sub-rule(1), the State Election Commission may, if it deems necessary, examine the veracity of the declaration filed by*

*the member concerned under sub rule (2) of Rule 3 or may also examine as to whether the member belongs to a political party or to a coalition or is an independent member not included in a political party or a coalition, and the decision that the commission may take on the basis of such examination in the matter shall be final.”*

11. In the light of the above Rule, this commission is competent to consider the correctness or veracity of Ext.P1. On a careful examination of all relevant facts, it is clearly found that this respondent had contested the election as an independent candidate without support from any political parties. Of course after election, she had given support to Muslim League and it may be based on that reason that the statement in Ext.P1 has been recorded. Since this respondent was an independent candidate as shown in Ext.R5 and as one Aasiya Moosa was a candidate of Indian National League which was a partner of UDF coalition, and the version of PW1 that after submission of nomination the Muslim League had withdrawn Smt.Aasiya Moosa and accepted this respondent as a candidate of Muslim League is unbelievable and not supported by pleading, I find that this respondent had contested the election as an independent candidate and she was not having support from any political parties or coalition in her election as a member. Therefore this respondent was not bound to obey the decision or

direction of any political party or coalition and so it cannot be held that she has committed defection. The points are answered accordingly.

12. **POINT Nos.(iv to vii):** I have already found, while considering point Nos.2 and 3 that the respondent in O.P.No.17/2014 was an independent candidate in the election in ward No.3 of Vellamunda Grama Panchayat and so she was not bound to obey the decision and direction of any political party. So the main question to be considered is whether the other respondents have committed defection or not. Since common questions of law and facts arise for consideration in all these points, they are taken up together for brevity and convenience. Certain facts are not in dispute. PW1 is the common petitioner in O.P.Nos.14/2014 to 16/2014. They had contested the election as candidates of Muslim League and the respondent in O.P.No.18/2014 had contested the election as a candidate of Indian National Congress and the respondent in O.P.No.19/2014 was elected as a member belonging to Kerala Congress (M). The above political parties are partners of UDF coalition. The Muslim League secured 8 seats and Congress party secured 4 seats and Kerala Congress (M), one seat. The remaining seats were won by LDF out of which 5 seats were won by CPI(M) and 2 seats by LDF independents. After the election Sri.P.A.Aali Haji belonging to Muslim League was elected as President and Smt.Sheema Suresh belonging to Indian National Congress was elected as Vice President. No confidence motions

were moved against the President and Vice President by LDF members and just before taking up the motion against the President, he resigned and the motion moved against the Vice President was discussed and all these respondents voted in favour of the said motion along with LDF members and thus the Vice President was ousted from that post. In the subsequent election to the post of President and Vice President, Sri.Chaliyadan Mammu was stated to have been the official candidate of Muslim League and Smt.Sheema Suresh was stated to be the official candidate of Congress party and against them the respondents in O.P.Nos.14/2014 and O.P.No.18/2014 had contested and were elected as President and Vice President respectively with the support of all these respondents and the LDF members. The petitioner would allege that the respondents by supporting the no confidence motion moved against the Vice President and as well as by contesting against the official candidates of UDF coalition and defeating the official candidates with the support of LDF members by violating the decision and direction of their respective political parties would constitute defection.

13. The petitioner as PW1 has deposed that the LDF members had moved no confidence motion against the President and Vice President and they are marked as Exts.P2 series and P3 series and the minutes of the meeting convened for discussing the no confidence motion against the Vice President is marked as

Ext.P4. According to PW1 the decision of the respective political parties in the UDF coalition was not to support the no confidence motions whereas these respondents had voted in favour of the motion along with LDF members and thus it was carried. PW1 has further deposed that the election to the post of President and Vice President were scheduled on 14.03.2014 and the UDF convened its parliamentary party meeting on 06.03.2014 and the Muslim League convened its parliamentary party meeting on 07.03.2014 and decided Sri.Chaliyadan Mammu as the candidate for the post of President and it was also decided to support the candidate by the Congress party for the post of Vice President. Exts.P5 and P6 are the notices given by the Returning Officer in respect of the said election. PW1 has further deposed that the District President of Muslim League had issued direction to the respondent in O.P.No.14/2014 to vote in favour of Sri.Chaliyadan Mammu and Smt.Sheema Suresh for the post of President and Vice President and it was sent by registered post and as this respondent had declined to receive the same, it was returned as unclaimed and that postal cover is marked as Ext.P7. PW1 has also deposed that the direction in writing issued by the District Muslim League President to this respondent was affixed in front of his house and its copy is marked as Exts.P7 and P8 series are the photographs showing such affixture. PW1 has also deposed that copy of the whip was served to the Secretary of the Panchayat and it is marked as P9(a) and its receipt, Ext.P9. The whip issued to

the respondent in O.P.Nos. 15/2014 and 16/2014 were served to them and Exts.P10 series and P11 series are receipts, and the postal acknowledgments evidencing receipts of such postal articles. PW1 has also deposed that the respondent in O.P.No.14/2014 had contested against the official candidate as proposed by the Respondent in O.P.No.19/2014 and seconded by the respondent in O.P.No.17/2014 and with the support of these respondents and LDF members he defeated the official candidate. It is also stated by PW1 that the votes of the respondents in O.P.Nos.15/2014 and 17/2014 had purposely made their votes invalid. Ext.P14 is the copy of the minutes in respect of the election to the post of President. PW1 would further depose that the respondent in O.P.No.18/2014 contested against the official candidate in the election to the post of Vice President as proposed by the respondent in O.P.No.17/2014 seconded by the respondents in O.P.No.19/2014 and with the votes of these respondents and LDF members, she was elected as Vice President. Ext.P15 is the copy of the minutes of that election. Even though PW1 has been cross-examined at length, nothing has been brought out to discredit his testimony. Of course it was suggested that the respondent in O.P.No.14/2014 was decided by the state leadership of Muslim League to be the President after a term of 2 ½ years to which PW1 pleaded ignorance. PW1 has admitted in cross-examination that the State General Secretary of Muslim League had directed Sri.Aali Haji the then President to

resign from the post and thereupon he had resigned from that post. PW1 has also admitted that in the same letter the State leadership had reiterated its decision to elect the respondent in O.P.No.14/2014 as President. However according to PW1 after resignation by the then President, Sri.Chaliyadan Mammu was decided as the candidate by the party. It was suggested to PW1 that the respondent in O.P.No.14/2014 had contested for the post of President as decided by the state leadership which PW1 denied.

14. PW2 is the Wayanad District President of Muslim League. He has deposed that the LDF had moved no confidence motions against the President and Vice President and he had issued direction to the members of Muslim League to oppose said motion. However PW2 is seen to have mistakenly deposed that the no confidence motion was discussed on 14.03.2014 and the subsequent versions given by him regarding the whip issued by him to the party members and other facts happened to be in relation to the said no confidence motion. The learned counsel for the petitioner also appears to have been under a mistaken notion regarding Exts.P7 onwards while examining PW2. As a matter of fact the meeting held on 14.03.2014 was the election to the post of President and Vice President and the records referred to by PW2 also are relating to such elections. However PW2 has categorically stated that the respondent in O.P.No.14/2014 became the President without the consent of the Muslim League and in that

election the official candidate of the party was Sri.Chaliyadan Mammu and that the conduct of the respondents in O.P.Nos.14/2014 to 16/2014 have caused serious damage to the party. In cross-examination PW2 has stated that Sri.P.A.Aali Haji was elected as President for the first term of 2 ½ years and there was a direction from the party to elect the respondent in O.P.No.14/2014 as President for the next term. PW2 has also stated that the State President of Muslim League had decided in the meeting held on 05.07.2014 that Sri.P.A.Aali Haji should resign from the post of President and the respondent in O.P.No.14/2014 should be elected to that post and the copy of that decision is marked as Ext.R3. PW2 has not been seriously cross-examined probably for the reason that he did not give oral evidence in relation to the whip issued by him in for election to the post of President and Vice President or regarding the service of such whip and he deposed regarding the records under a misconception that they are in respect of the no confidence motion.

15. The respondent in O.P.No.14/2014 is examined as RW4. He has deposed that there was an agreement to share the post of President and Vice President in two equal terms and that after 2 ½ years the then President Sri.Aali Haji did not resign and the State President of Muslim League, in the meeting held on 05.07.2014, directed Sri.Aali Haji to resign from the post and to elect him as the President. RW1 has further deposed that since the President refused to obey

the direction given by the state leadership, the LDF moved no confidence motion against the President and Vice President and before it came up for discussion, Sri.Aali Haji resigned and thereafter in the President election held on 14.03.2014 RW4 contested as per the decision of the Muslim League and the other respondents also supported him to become the President. In cross-examination RW4 has deposed that the Muslim League did not decide to move a no confidence motion against Sri.Aali Haji. It is also admitted that it is for the Congress party to decide who should be its Vice President candidate. RW4 has further admitted that the no confidence motion against the Vice President was moved by the LDF and that he along with other respondents had supported the same. It is further admitted by RW4 that the District President is the competent person to decide who should be the candidate to the post of President. He has also admitted that Ext.P7(a) is the whip issued by the District President and that Exts.P8 series photographs are relating to his house. According to him these photographs were taken later.

16. On an evaluation of the evidence tendered by PWs 1 and 2 and RW4 along with Ext.R3 it appears that after the General Election the state leadership of Muslim League had decided that post of President should be shared in equal terms by Sri. Aali Haji and the respondent in O.P.No.14/2014 and as Sri.Aali Haji did not resign after the said term the state leadership had reiterated that

decision and directed Sri.Aali Haji to resign from the post to pave way for this respondent to become the President. It also appears that there was rift in the Muslim League regarding on the above issues and taking advantage of the above situation the LDF moved no confidence motions against the President and Vice President. Since Sri.Aali Haji resigned immediately before taking up the motion against the President, it was not discussed. However the no confidence motion against the Vice President was taken up for discussion and the respondents had supported that motion along with the LDF members and thus the Vice President was ousted. On a careful appreciation of the entire evidence it is further seen that in respect of the no confidence motion against the Vice President the stand of all the parties in the UDF was not to support the same. Even the respondents do not have a case that the respective political parties had directed them to support the said motion. The said motion was carried admittedly with the support of LDF members. Only with the support of these respondents the said motion moved by the LDF was carried or otherwise it would have been defeated. Even though it is found that the decision of the District leadership in not allowing the respondent in O.P.No.14/2014 to become the President did not go in line with the decision of the state leadership, the fact that even the state leadership did not permit these respondents to vote in favour of the no confidence motion moved against the Vice President cannot be overlooked.

17. The election to the post of President and Vice President was scheduled on 14.03.2014. The definite case of the petitioner is that Sri.Chaliyadan Mammu was decided as the official candidate for the post of President and Smt.Sheema Suresh was decided as the Vice President candidate and that the respondent in O.P.Nos. 14/2014 and 18/2014 had contested against such official candidates and defeated the said official candidates with the help of LDF members by violating the decision and direction of the respective political parties. PW3 is the petitioner in O.P.Nos. 18/2014 and 19/2014. He has deposed that he was elected as a member belonging to Congress party and the respondent in O.P.No.18/2014 also was elected as a member belonging to Congress party. He would further depose that the respondent in O.P.No.19/2014 was the sole member belonging to Kerala Congress (M) and that out of the total number of 21 members in the Panchayat, Muslim League had secured 9 seats, Congress party, 4 seats, Kerala Congress(M), one seat and LDF 7 seats and after election, Sri.P.A.Aali Haji belonging to Muslim League and Smt.Sheema Suresh belonging to Congress party were elected as President and Vice President respectively. He would further depose that no confidence motions were moved by LDF members against the President and Vice President and before taking up the motion against President on 18.02.2014, the then President resigned and the no confidence motion against Vice President was discussed and carried with the support of these

respondents and the LDF members Ext.P16 is the minutes of the no confidence motion. In the subsequent election to the post of President and Vice President scheduled on 14.03.2014, the UDF parliamentary party met on 6.03.2014 and took a decision that the UDF members will support the candidates selected by the respective parties for the post of President and Vice President. The Congress parliamentary party meeting held on 07.03.2014 to support Sri.Chaliyadan Mammu who was decided by the Muslim League for the post of President and Smt.Sheema Suresh was decided as the candidate for the post of Vice President and thereupon the DCC President read out the whip in this regard in the said meeting and copy of the same was given to the Secretary of the Panchayat which is marked as Exts. P17(a). PW3 would further depose that whip was issued by the DCC President to the respondent in O.P.No.18/2014 by registered post and it was returned as refused and the same is marked as Ext.P18. PW3 would also depose that the DCC President had served the whip to all the other Congress members also and Ext.P19 is the record relating to the acceptance of the same. Ext.P20 is stated to be the reply given by the Secretary to a member clarifying that the whip issued by the DCC President was published by him as requested by the member. PW3 would further depose that the District President of Kerala Congress (M) had sent the whip to the respondent in O.P.No.19/2014 and it was returned as unclaimed and the same is marked as Ext.P21. The copy of the whip

was given to the daughter of the respondent which is marked as Ext.P21(a). It is also stated that copy of the whip was affixed in front of his house and Ext.P22 is the record of the same. Exts.P22 and P23 are the copies of the direction issued by the DCC President and the District President of Kerala Congress (M) given to the Secretary of the Panchayat. According to PW3 the respondent in O.P.No.14/2014 contested against the official candidate of Muslim League to the post of President and with the support of the respondents and the LDF members he was elected as President by defeating the official candidate and the respondent in O.P.No.18/2014 had contested against the official candidate of Congress party in the election to the post of Vice President and she also was elected with the support of all the respondents and LDF members and that they had violated the whip issued by the competent persons in contesting and voting in the election to the above posts and thereby they have voluntarily abandoned their membership from the party and committed defection. Even though PW3 was cross-examined at length, nothing has been brought out to discredit his testimony. It was suggested to PW3 that there was an agreement to share the post of President and Vice President for equal terms of 2 ½ years and there was also an agreement to elect the respondent in O.P.No.18/2014 as Vice President after the first term and that respondent had supported the no confidence motion and subsequently contested for the post of Vice President due to violation of that agreement and it

was not by disobeying any direction issued by the party. The above suggestion has been denied by PW3.

18. PW4 is the Wayanad DCC President. He has deposed that the respondent in O.P.No.18/2014 was elected as a member belonging to Congress party in the official symbol of that party as recommended by the then DCC President and after election the UDF secured majority and Sri.Aali Haji belonging to Muslim League was elected as President and Smt.Sheema Suresh belonging to Congress party was elected as Vice President. He has further stated that no confidence motions were moved against the President and Vice President by LDF members and whip was given to all the Congress members by him directing them to vote against the said motion and the respondent in O.P.No.18/2014 by violating that direction voted in favour of the motion moved against the Vice President and in the subsequent election to the post of President and Vice President scheduled on 14.03.2014. He had issued direction to this respondent to vote in favour of Sri.Chaliyadan Mammu who was decided as the President candidate by the Muslim League and also directed to vote in favour of Smt.Sheema Suresh belonging to Congress party for the post of Vice President and the directions sent by registered post to the respondent in O.P.No.18/2014 was returned as refused which was identified as Ext.P18 and that the respondent by violating his direction contested against the official candidate for the post of

Vice President and all the respondents voted in her favour along with LDF members and that respondent became Vice President by disobeying the direction and aligning with LDF members and she also voted in favour of the respondent in O.P.No.14/2014 who contested against the official candidate for the post of President by violating the direction and decision of the party and thereby she has committed defection. The evidence of PW4 remains unshaken despite a lengthy cross-examination. It was suggested to PW4 that the KPCC had not given authority to him to recommend symbol of the Congress party to the candidates of that party in the election to the Panchayat which PW4 denied. It was also suggested to PW4 that there was an agreement to share the post of Vice President and the respondent in O.P.No.18/2014 was decided for that post after 2 ½ years and since Smt.Sheema Suresh did not resign the no confidence motion moved against her was supported by that respondent and the said suggestion was denied by PW4. PW4 would further depose that the decision of the Congress party was to defeat the no confidence motion moved against Smt.Sheema Suresh. PW4 has deposed in cross-examination that after passing the no confidence motion, the respondent in O.P.No.18/2014 was not expelled from the parties.

19. The respondent in O.P.No.18/2014 has been examined as RW3. She has admitted that she was elected as a member belonging to Congress party and in the said selection UDF secured 14 seats and there was an agreement to share

the post of President for 2 ½ years, the first term having been allotted to Sri.Aali Haji and the second term to the respondent in O.P.No.14/2014 and the first term of 2 ½ years for the post of Vice President was allotted to Smt.Sheema Suresh and the next term was to be given to RW3. She would further depose that the then President and Vice President did not comply with that agreement and after 2 ½ years no confidence motions were moved against the President and Vice President and she supported that motion on the basis of the non performance of the agreement and in the subsequent election to the post of President and Vice President the UDF decided Sri.P.Muhammed the respondent in O.P.No.14/2014 as the candidate for the post of President and she was proposed by the Kerala Congress(M) member for the post of Vice President as decided by UDF and that she did not contest against any official candidate for the post of Vice President and that she has not committed defection. To the definite question put to RW3 in cross-examination as to whether the party had given any direction to her to contest for the post of Vice President, her answer is that she contested for that post based on the first decision of the UDF to elect her as Vice President for the second term. She has categorically admitted in cross-examination that her party did not give any direction her to contest for the post of Vice President. She has further admitted that it is the District Congress Committee which is deciding who should become the President and Vice President and she has also admitted

that since the post of President was set apart to Muslim League it was their leadership to decide their candidates for that post. According to RW3 she did not know who was the official candidate decided by Muslim League for the post of President. She has also admitted that the respondent in O.P.No.14/2014 was not decided as a candidate for the post of President by the Muslim League and or that the Congress party had not directed her to vote in his favour. According to RW3 she had only hearsay information regarding the sharing of the post of Vice President. He has also admitted in cross-examination that the respondents and LDF members supported the no confidence motion moved against the Vice President and that there was no direction from the party to support that motion. He identified Ext.P7(a) as the letter given by the Wayanad DCC President. He has also admitted that Ext.P18 contains her address and there is endorsement returned as refused. RW3 has categorically admitted that Smt.Sheema Suresh was the official candidate of the Congress party for the post of Vice President and that all the UDF members except the respondents had voted in favour of Smt.Sheema Suresh.

20. PW5 is the Wayanad District President of Kerala Congress (M). He has deposed that the respondent in O.P.No.19/2014 was elected as a member belonging to Kerala Congress (M) and he had recommended the symbol of Kerala Congress (M) to that respondent while contesting in the election. PW5

has further deposed that in the no confidence motion moved against the Vice President, he directed the said respondent over phone to defeat the said motion and the respondent disobeyed his direction. PW5 would also depose that in the subsequent election to the post of President and Vice President scheduled on 14.03.2014, he directed the respondent in O.P.No.19/2014 to vote in favour of Sri.Chaliyadan Mammu who was decided by the Muslim League to the post of President and Smt.Sheema Suresh who was decided by the Congress party to the post of Vice President and the said direction is identified as Ext.P21 series. He would further depose that the copy of the whip was received by the daughter of that respondent on her behalf which is contained in Ext.P21 series. According to PW5 copy of the whip was served to the Secretary of the Panchayat also evidenced by Ext.P22 series. PW5 has stated that the respondent in O.P.No.19/2014 had violated the direction issued by him and supported the no confidence motion as well as voted in favour of Smt.Sheema Suresh against party decision and thereby she has committed defection. It was suggested to PW5 that there was an agreement to share the post of President and Vice President for a term of 2 ½ years which he denied. Even though PW5 has been cross-examined at length, nothing has been brought out to discredit his testimony. It was suggested that Ext.P21 was not issued as decided by Kerala Congress (M) party which he denied.

21. RW2 is the respondent in O.P.No.19/2014. She has deposed that she contested in the General Election as a candidate of Kerala Congress (M) and she was the sole member elected from that party. According to RW2 there was an agreement to share the post of President and Vice President for a term of 2 ½ years each and the first term for the post of President was given to Sri.Aali Haji and the next term was to be given to the respondent in O.P.No.14/2014 and regarding Vice President, the first term of 2 ½ years was allotted to Smt.Sheema Suresh and the next term was to be given to the respondent in O.P.No.18/2014 and since that agreement was not complied with, she supported the no confidence motion brought by LDF. According to RW2 the State leadership of Muslim League had decided the respondent in O.P.No.14/2014 to the post of President and gave Ext.R3 letter and accordingly she proposed the name of that respondent in the election to the post of President. She would also depose that she proposed the name of Sri.P.Muhammed to the post of President and supported Smt.Leela Bhaskaran to the post of Vice President as per the decision of UDF as well as her party and so she has not committed any defection. In cross-examination RW2 has deposed that she supported the no confidence motion and subsequently supported Sri.P.Muhammed and Smt.Leela Bhaskaran for the post of President and Vice President respectively for not implementing the agreement regarding sharing of term for such posts. She has also deposed that as per Ext.P9, the

official candidate for the post of President was Sri.Chaliyadan Mammu and the official candidate for the post of Vice President was Smt.Sheema Suresh. She has also stated that the name and signature appearing in Ext.P21(a) is similar to the handwriting and signature of her daughter, Animol.

22. The Vellamunda City Muslim League President has been examined as RW5. He has deposed that there was an agreement to share the post of President between Sri.Aali Haji and Sri.P.Muhammed in equal terms and Sri.Aali Haji did not resign after 2 ½ years and he sent complaint to the Muslim League leadership and the minutes of Muslim League committee has been marked as Ext.X1 and the minutes regarding of the committee meeting on 16.03.2014 has been marked as Ext.X1(a). According to him Sri.P.Muhammed was elected as President as per the decision of the Muslim League. In cross-examination he has stated that except Sri.Muhammed Haji nobody had contested for the post of President. From the evidence of RW5 it appears that he is not acquainted with the affairs of this Panchayat and his evidence is not of any use to decide these cases.

23. On an evaluation of the entire evidence on record, the following facts emerge; 8 candidates belonging to Muslim League and 4 candidates belonging to Congress party and one candidate belonging to Kerala Congress (M) were elected as members under UDF coalition and thus out of 21 members the UDF secured

13 seats. The post of President was allotted to Muslim League and Vice President was allotted to Congress party. There was an agreement to share the post of President in equal terms and the first term was given to Sri.Aali Haji and the next term was allotted to the respondent in O.P.No.14/2014. However Sri.Aali Haji did not resign as decided by the Muslim leadership. So there was rift in the Muslim League and the state leadership took a decision that Sri.Aali Haji should resign and the respondent in O.P.No.14/2014 should be elected as President. But the subsequent events show that the said decision was not agreeable to the district leadership and thereupon a group under the leadership of the respondent in O.P.No.14/2014 aligned with the LDF members and as a result the LDF members moved no confidence motions against the then President and Vice President and it was tabled for discussion on 17.03.2014. Before that motion was taken for discussion, Sri.Aali Haji resigned. But the no confidence motions moved against the Vice President was carried with the support of all these respondents and LDF members. As a matter of fact it is found from the evidence that there was no agreement to share the post of Vice President between Smt.Sheema Suresh and the respondent in O.P.No.18/2014 and it is also found that the decision of the Congress party which was conveyed to all the other partners of UDF was to defeat the no confidence motion moved against Smt.Sheema Suresh. But on account of group rivalry these respondents

supported the no confidence motion moved against Smt.Sheema Suresh which was against the decision and direction of their respective political parties. Subsequently in the election to the post of President and Vice President Sri.Chaliyadan Mammu and Smt.Sheema Suresh were the official candidates of Muslim League and Congress party respectively and that decision was informed all the partners of UDF. The Wayanad District President of Muslim League who is the person competent to recommend symbol to the candidates of that party had given direction to the respondents in O.P.Nos.14/2014, 15/2014 and 16/2014 to vote in favour of Sri.Chaliyadan Mammu and Smt.Sheema Suresh in the election to the post of President and Vice President respectively and the said directions sent to the respondent in O.P.No.14/2014 was returned as unclaimed evidenced by Ext.P7. It is clearly seen from this postal cover that intimation was given to that respondent on 10.03.2014 and 11.03.2014. It is also found that the whip to this respondent was served by affixture and Ext.P8 series are admittedly photographs showing such affixture. The respondents in O.P.No.15/2014 and 16/2014 had accepted the directions sent by the District President of Muslim League in respect of the election to the post of President and Vice President evidenced by Ext.P11(a) and P10(a) respectively. But the respondents in O.P.Nos.14/2014 to 16/2014 had not only defied the said direction but also supported the respondent in O.P.No.14/2014 who contested against the official

candidate for the post of President and the respondent in O.P.No.18/2014 who contested for the post of Vice President. Even though the state leadership had originally took a decision to elect the respondent in O.P.No.14/2014 as President, they also did not support that respondent in respect of the no confidence motion and also in respect of election to the post of President held on 14.03.2014. Whatever that be, the direction of the District President of Muslim League, who was the person competent to issue such direction, to vote in favour of Sri.Chaliyadan Mammu and Smt.Sheema Suresh for the post of President and Vice President respectively was disobeyed by these respondents. There is no contention that PW3 was not competent to issue direction to these respondents. Moreover as per Section 2 clause (iv a) of the Act as PW3 had recommended symbol to these respondents for contesting at the time of General Election, he is the person competent to issue direction. The said clause reads as follows,-

*“(iva) 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 symbol to the candidates of the said political party for contesting in the election, for exercising the vote favorably or unfavorably or to abstain from voting.”*

24. The fact that the said direction to these respondents were sent by registered post with acknowledgment due is proved beyond any doubt and as the respondent in O.P.Nos.15/2014 and 16/2014 had accepted the same and the respondent in O.P.No.14/2014 did not claim the postal article there is deemed service as provided by General Clauses Act and therefore these respondents were bound to follow the direction issued by the District President of Muslim League. There is no legal justification for the action taken by these respondents in respect of the no confidence motion against the Vice President and subsequent election to the post of Vice President and it is clearly admitted that Smt.Sheema Suresh was the official candidate of Congress party for the post of Vice President and PW3 had given direction to these respondents to vote in her favour. It is clearly found that the above respondents has aligned with LDF members and wanted to overthrow the board of the UDF and thus removed the Vice President also from that post. The respondent in O.P.No.18/2014 supported the no confidence motion moved against the Vice President by the LDF against the decision and direction of her party. She has categorically admitted that she contested against Smt.Sheema Suresh who was the official candidate of Congress party and it was by violating the direction issued by her party. The fact that the DCC President had sent the whip to the respondent by registered post is clear from Ext.P18 and as that postal article was returned as refused it is deemed to have been accepted.

This respondents O.P.Nos 14/2014 to 16/2014, 18/2014 and 19/2014 had aligned with LDF members and wanted to remove Smt.Sheema Suresh from the post of Vice President and also wanted to elect the respondent in O.P.18/2014 to that post and it was for that purpose that they disobeyed the direction issued by the party. The respondent in O.P.No.19/2014 also supported the no confidence motion and subsequently proposed the name of the respondent in O.P.No.14/2014 for the post of President and supported him as well as the respondent in O.P.No.18/2014 to the post of President and Vice President respectively by disobeying the direction of her party. PW5 had sent the whip by registered post to her evidenced by Ext.P21 and that was returned as unclaimed. The copies of the whip sent by PWs 2,4, and 5 had given to the Secretary of the Panchayat also as seen from the records.

25. Whether the conduct of the respondents in O.P. Nos.14/2014 to 16/2014, 18/2014 and 19/2014 in having supported the no confidence motions moved against Smt.Sheema Suresh the then Vice President and voted against the official candidates of Muslim League and Congress party in the election to the post of President and Vice President by disobeying the directions of the respective political parties and aligning with LDF members would constitute defection deserves consideration. Section 3 of the Act deals with defection and

Section 3(1)(a) of the same is in relation to defection among the members of political parties which reads as follows,-

**“3. Disqualification on ground of Defection,-**

*1)Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act.*

*(a) “if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorized by it in this behalf in the manner prescribed, votes or abstains from voting.*

*(i)in a meeting of Municipality, in an election of its Chairperson, Deputy Chairperson, a member of standing committee or the Chairman of a standing committee; or*

*(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee;, or the Chairman of the Standing Committee; or*

*in an voting on a no-confidence motion against any one of them  
except a member of a Standing Committee.*

*he shall be disqualified for being a member of that local*

26. It is clearly found from the evidence on record that PWs 2,4 and 5 are the competent person to issue direction to their members in a Panchayat regarding voting as mentioned in Section 3(1)(a) of the Act. It is also found that such directions were sent to the above respondents and the copies of such directions were given to the Secretary of the Panchayat also which is in compliance of Section 3(2) of the Act. As per Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, a direction in writing is to be sent either by registered post with acknowledgment due or served directly on receiving acknowledgment or served by affixture. In these cases, the direction were sent by registered post and there is deemed service of all such registered articles.

27. 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 an elected member or a group of members of a political party takes a different stand

from that of the political party as such and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. The **Kerala Local Authorities (Prohibition of defection) Act**, derived its source from the *10<sup>th</sup> schedule to the Constitution of India*. While considering the Constitutional validity of 10<sup>th</sup> 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 incurse 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.”*

In ***Jancy Chandy Vs. Jose Puthenkala (2006 (4) KLT 116)*** the Division Bench of the Hon'ble High Court has held as follows:-

*“Politics without principle is one of the seven capital sins to be deprecated, according to the Father of our Nation, Mahatma Gandhi. Political defection is one of the grave vices in that group. In the statement of objects and reasons for the Fifty – second Amendment to the Constitution introducing Tenth Schedule in order to prevent frequent political defects, it is stated as follows:-*

*“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 is settled law that if a member was instrumental in voting and carrying the no confidence motion against his own party member without the decision or direction of the party, it is to be concluded that the member had voluntarily given up his membership of the political party to which he belonged. This position is clarified in the decision in **Biju R.S. Vs. Kerala State Election Commission (2009(3) KLT 29)** and at **Para 17** it has been held as follows,-

*“17. Under the Act, a member can be disqualified if he has voluntarily given up the membership of the political party to which he belongs or acts in defiance of a whip/direction issued by the political party. Disqualification for voluntarily giving up the membership of one’s party is not dependant on the violation of the whip. The intention of the Act is that the member who has violated the whip or has abandoned the membership of the political party to which he belongs shall be disqualified. It is not necessary to hold that the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his*

*political party. The grounds for disqualification are distinct and are not interlinked. Therefore even if this Court were to hold that the petitioner before the Commission has not proved that PW2 has issued and served on the writ petitioners a direction regarding the voting on the no confidence motions that there tabled on 14.05.2008, the Commission was justified in holding that the petitioners have voluntarily abandoned their membership in the Indian National Congress.”*

The above decision has been confirmed by the Division Bench of the Hon’ble High Court in Writ Appeal No.795/2009.

28. It cannot also be doubted 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 and decisions of that political party, it is noting but disloyalty and the moment one becomes disloyal by this conduct to the political party it could be construed that he has voluntarily given up his membership as provided by Section 3(1)(a) of the Act. In **Muhammed Kunhi.B. Vs. K.Abdulla (2010 (4) KLT 736)** this position has been clarified at **Para 24** as follows,-

*“ 24. The conduct of the members being important, going by the decision of the Apex Court in Ravi S.Naik’s case, the conduct of*

*the petitioners herein in signing the no confidence motion along with the members of the BJP, voting in favour of the no confidence motion against the 1<sup>st</sup> respondent, a member of the very same political party and the then Vice President who belonged to the UDF and voting against the candidates of the UDF in the subsequent election and the conduct of the petitioner in WP (C) No.28051/2010 in contesting and getting elected as President against the nominee of the UDF, will squarely attract the vice of disqualification and are sufficient to imply that they have voluntarily given up membership of the political party which set them up as candidates in the election.”*

29. In the celebrated decision in **V.V.Varghese V. Kerala State Election Commission (2009 (3) KLT 1)** it has been held at Para 9 as follows,-

*“9. The law, as it stands now, is unambiguously clear that one has to be loyal to his political party. The situation would be different if the political party itself, taking note of such strange realities, permits the elected members to cast conscience vote. In such situations the whip itself is for decision by the individual concerned according to his conscience. The Oxford dictionary defines conscience to mean “the part of your mind that tells you*

*whether your actions are right or wrong”. In the absence of a specific whip for conscience vote, an elected member, under law, is entitled and liable to cast only a conscious vote, being aware of the consequences of his decision, in terms of Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 on disqualification on the ground of defection on account of voluntarily giving up membership in the political party. Conscience vote is hence a matter of express whip in the absence of which an elected member is bound by the policies of his political party and he can cast only a conscious vote. That is nothing but an expected expression of his obligation to the political party and responsiveness to the people, by doing things carefully and correctly and if not the conduct would amount to betrayal of the political conscience which is impermissible under law. According to Harry S.Truman “Democracy is based on the conviction that man has the moral and intellectual capacity, as well as the inalienable right, to govern himself with reason and justice”. The reason and justice are the two mandates of the conscious vote under Section 3 of the Act. There is no case that*

*the political party in which they belonged had given them the whip to vote according to conscience.”*

30. In this context the decision of the **Division Bench in W.A.No.661/2015 dated 10.03.2015** also is relevant and at **Para 19** it has been held as follows,-

*“19. On facts, when it is an admitted position that 1<sup>st</sup> petitioner stood as a candidate against the official candidate of Congress party while being a member of the same political party and obtained the support of LDF members is a situation which can clearly be termed as disloyal to the political party and therefore the Commission was justified in arriving at such a conclusion. Having regard to the overall factual situation arising in the case and the law that has been applied to the factual situation, we do not find any error in the order passed by the Commission.”*

The above decisions are squarely applicable to these cases.

31. The learned counsel for the respondents would rely on the decision in **K.M.Joseph V Babychan Mulangassery (2015(1)KHC 111)** to canvas for the position that these respondents are not liable for defection. In the above

decision it has been held that simply because a group of members belonging to a political party has moved and supported a no confidence motion against the President of their own party will not amount to defection. The Hon'ble High Court has come to such a conclusion on account of the reason that the persons alleged to have committed defection did not align with the members of the rival political parties in that case. It is settled by a catena of decisions that the basic question to be decided in a case of defection coming under the Act is whether the conduct of the respondents was disloyal to their respective political parties and if it is to be concluded that they had acted against the decision and direction of their political parties that would be sufficient to constitute disloyalty to the party. I have already found that the conduct of the above respondents in having aligned with the members of the rival political party and ousting the Vice President and defeating the official candidates of Muslim League and becoming the President and Vice President with the support of LDF members would constitute disloyalty to their respective political parties. So the above decision is applicable to the facts of these cases. In the cases on hand, except in O.P.No.17/2014, the respondents are found to have voluntarily given up their membership from the party by the conduct of having supported the no confidence motion moved against Smt.Sheema Suresh belonging to Congress party and in contesting against the official candidates of Muslim League and

Congress party in the election to the post of President and Vice President respective and defeating the official candidates of their political parties. Not only by disobeying the direction of the competent person but also aligning with LDF members and thus they are liable under both limbs coming under Section 3(1)(a) of the Act and so they are found to have become subject to disqualification for being members of Vellamunda Grama Panchayat. The points are answered accordingly.

In the result, O.P.No.17/2014 is dismissed and O.P.Nos. 14/2014 to 16/2014 and O.P.Nos. 18/2014 and 19/2014 are allowed and the respondents in those cases are declared as disqualified for being members of Vellamunda Grama Panchayat 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.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 20<sup>th</sup> day of June 2015

Sd/-  
**K.SASIDHARAN NAIR,**  
**STATE ELECTION COMMISSIONER**

**APPENDIX**

**Witnesses examined on the side of the petitioner**

- PW1 : Sri.C.H.Asharaf, Chankarappan Veedu,  
Tharuvana P.O., Wayanad District.
- PW2 : Sri.P.P.A.Kharim, Mukkil Peedika, Meppadi P.O.
- PW3 : Sri.T.K.Mamootty, Sneha Manzil, Kottarakunnu P.O.,  
Vellamunda.
- PW4 : Sri.K.L.Poulose, Kannukkaran Veedu, Pulpally P.O.,  
Wayanad District
- PW5 : Sri.K.J.Devassia, Stamp Vendor, Sulthan Bathery P.O.

**Witnesses examined on the side of the respondent**

- RW1 : Smt.Sulekha Kenichal Keezhatta, Kenickal Keezhatta,  
Vellamunda P.O.
- RW2 : Smt.Gracy Benny, Pullamkannapullil House,  
Vellamunda P.O., Wayanad District.
- RW3 : Smt.Sheela Bhaskaran, Kavummuttam, Karakkamala.
- RW4 : Sri.Muhammed, Vellamunda, Wayanad District
- RW5 : Sri.Usman, Oravingal Veedu, Vellamunda P.O.

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

- P1 : Copy of the register showing the political  
affiliation of the members of Vellamunda  
Grama Panchayat

- P2 : Notice issued by the Secretary Mananthavady Block Panchayat dated 10.02.2014 to Sri.P.A.Aali Haji, President, Vellamunda Grama Panchayat
- P2(a) : Copy of the notice to no confidence motion against Sri.P.A.Aali Haji, President, Vellamunda Grama Panchayat
- P3 : Notice issued by the Secretary Mananthavady Block Panchayat dated 10.02.2014 to Smt.Sheema Suresh, Vice President, Vellamunda Grama Panchayat
- P3(a) : Copy of the notice to no confidence motion against Smt.Sheema Suresh, Vice President, Vellamunda Grama Panchayat
- P4 : Copy of the minutes of the meeting dated 18.02.2014, Vellamunda Grama Panchayat
- P5 : Registered letter No.A/520/14 dated 05.03.2014 of R.O.Vellamunda Grama Panchayat
- P6 : Registered letter No.A/520/14 dated 05.03.2014 of R.O.Vellamunda Grama Panchayat
- P7 : Returned registered letter to Sri.P.Muhammed
- P7(a) : Copy of the whip issued by Sri.P.P.A.Kharim, President, IUML dated 07.03.2014
- P8 : Photographs
- P9 : Copy of the front office receipt No.6860898 dated 12.03.2014 of Vellamunda Grama Panchayat
- P9(a) : Copy of the whip issued by Sri.P.P.A.Kharim, President, IUML, addressed to Returning Officer, Vellamunda Grama Panchayat

- P10 : Postal receipts
- P10(a) : Acknowledgment card
- P11 : Postal receipt
- P11(a) : Acknowledgment card
- P12 : Returned registered letter addressed to Smt.Sualikha Kenickal
- P12(a) : Postal receipt dated 02.03.2014
- P13 : Copy of the whip issued by Sri.P.P.A.Kharim, President, IUML, addressed to Sulaikha Kenickal, Member, Vellamunda Grama Panchayat
- P14 : Copy of the Minutes of the meeting dated 14.03.2014 Vellamunda Grama Panchayat
- P15 : Copy of the Minutes of the meeting dated 14.03.2014 Vellamunda Grama Panchayat
- P16 : Copy of the Minutes of the meeting dated 18.02.2014 Vellamunda Grama Panchayat
- P17 : Copy of the front office receipt No.6860899 dated 12.03.2014 of Vellamunda Grama Panchayat
- P17(a) : Copy of the whip issued by Sri.K.L.Poulose, President, Wayanad DC addressed to Smt.Leela Bhaskaran
- P18 : Returned registered letter addressed to Smt.Leela Bhaskaran, Member, Vellamunda Grama Panchayat
- P19 : Copy of the whip issued Sri..K.Mammootty, Congress Parliamentary party, Vellamunda Grama Panchayat addressed to Returning Officer, Mananthavady Block Panchayat Secretary

- P20 : Letter No.A5.2398/2014 dated 18/03/2014 Vellamunda Grama Panchayat
- P21 : Returned registered letter addressed to Smt.Gracy Benny, Member, Vellamunda Grama Panchayat
- P21(a) : Copy of the whip issued by K.J.Devasia, District President, Wayanad District Committee dated 06.03.2014 to Smt.Gracy Benny, Member, Vellamunda Grama Panchayat
- P22 : Copy of the front office receipt No.6860900 dated 12.03.2014 of Vellamunda Grama Panchayat
- P22(a) : Copy of the whip issued by K.J.Devasia, District President, Wayanad District Committee dated 06.03.2014 to Smt.Gracy Benny, Member, Vellamunda Grama Panchayat

**Document produced on the side of the respondent**

- R1 : Copy of the declaration in Form No.2 submitted by Smt.Muruda Asiya Moosa
- R2 : Copy of the declaration in Form No.2 submitted by Smt.Kenickal Keezhatta Sulaikha
- R3 : Letter dated 09.02.2014 of Sri.K.P.A.Majeed, General Secretary, Indian Union Muslim League, Kerala State Committee
- R4 : Copy of the nomination in Form No.2 submitted by Smt.Muruda Asiya Moosa
- R5 : Copy of the nomination in Form No.2 submitted by Smt.Kenickal Keezhatta Sulaikha

R6 : Election expenditure of Smt.Kenickal Keezhatta Sulaikha,  
Vellamunda Grama Panchayat

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

X1 : Minutes book of the meeting of Vellamunda  
Grama Panchayat

X1(a) : Minutes of the meeting held on 08.10.2013

Sd/-  
K.SASIDHARAN NAIR,  
STATE ELECTION COMMISSIONER

//True Copy//



