

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

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

**Wednesday, the 12<sup>th</sup> day of September 2018**

**O.P.Nos.16/2017, 17/2017, 18/2018&19/2017**

**O.P.No.16/2017**

Petitioner : P.T.Raju,  
S/o Thankappan,  
Puthukulath,  
RanniPerunadu, Koonankara P.O.,  
Pathanamthitta District.  
Member, Ward No.12,  
RanniPerunaduGrama Panchayat.

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

Respondent : C.R.Mohanan,  
S/o Raghavan, Llaha Estate,  
Llaha P.O., Pathanamthitta District.  
Member, Ward No.03,  
RanniPerunaduGrama Panchayat.

**(By Adv. T.S.Saji)**

**O.P.No.17/2017**

Petitioner : P.T.Raju,  
S/o Thankappan,  
Puthukulath,  
RanniPerunadu, Koonankara P.O.,  
Pathanamthitta District.  
Member, Ward No.12,  
RanniPerunaduGrama Panchayat.

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

Respondent : UshakumariRadhakrishnan,  
W/o Radhakrishnan,  
IndhuSadanam, Naranamthodu,  
Mukottuthara, Thalapally P.O.,  
Pathanamthitta District.  
Member, Ward No.07,  
RanniPerunaduGrama Panchayat.

**(By Adv. T.S.Saji)**

**O.P.No.18/2017**

Petitioner : P.T.Raju,  
S/o Thankappan,  
Puthukulath,  
RanniPerunadu, Koonankara P.O.,  
Pathanamthitta District.  
Member, Ward No.12,  
RanniPerunaduGrama Panchayat.

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

Respondent : L.V.Mathew,  
S/o Varghese, Neduvelil,  
Mullakayam, Mukkothura,  
Thallapally P.O.,  
Pathanamthitta District, PIN: 686 510.  
Member, Ward No.08,  
RanniPerunaduGrama Panchayat.

**(By Adv. T.S.Saji)**

**O.P.No.19/2017**

Petitioner : P.T.Raju,  
S/o Thankappan,  
Puthukulath,  
RanniPerunadu, Koonankara P.O.,  
Pathanamthitta District.  
Member, Ward No.12,  
RanniPerunaduGrama Panchayat.

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

Respondent : RajanVettikkal,  
S/o John, Attaththodu, Nillakkal,  
Pamba, Thriveni P.O.,  
Pathanamthitta District.  
Member, Ward No.09,  
RanniPerunaduGrama Panchayat.

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

These petitions having come up for hearing on the 7<sup>th</sup> day of **September 2018**, in the presence of **Adv.Sajitha.S** for the petitioner and Adv. **T.S.Saji** 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 became disqualified to continue as members of RanniPerunaduGrama Panchayat and also for declaring them as disqualified to contest as candidates in any election of the local body for a period of six years.

2. As the questions of law and facts involved in these petitions are common, they were tried together treating O.P.No.16/2017 as the main case. The Petitioner in all the petitions is one and the same person.

3. Common case of the petitioner in all the petitions in brief is as below:- The Petitioner and respondents are elected members of RanniPerunaduGramma Panchayat in Pathanamthitta District in the election held in November 2015. Petitioner was elected from ward No.12 as an independent candidate supported by United Democratic Front (UDF). The respondents in O.P.Nos. 16/2017 to 19/2017 were elected as the candidates of Indian National Congress (INC) from ward Nos.3,7,8 and 9 respectively. There are 15 wards (seats) in RanniPerunaduGramma Panchayat and out of that the Congress led UDF got 12 seats (INC-11 and KC(M)-1) and CPM led LDF got 3 seats. As the UDF got majority it formed the Panchayat board. The elections to the posts of the President and Vice President were held on 19.11.2015. Smt.BeenaSaji and V.K.Vasudevan both from Indian National Congress were elected as President and Vice President respectively. Later the respondents started to move along with the members of the rival front LDF causing disturbance to their party Indian National Congress.

4. The respondents with a view to unseat Shri.V.K.Vasudevan from the post of Vice President moved a no confidence motion against the Vice President with the support and connivance of the LDF members. The motion was tabled on 20.03.2017 for discussion. The District President of Indian National Congress issued whip to all the elected members of Indian National Congress including the respondents, to vote against the no confidence motion

and the direction was served on them directly. But the respondents violated the specific direction of the party. They supported the motion along with LDF members and the motion was carried. The respondents colluded with the rival Left Democratic Front and acted against the interest of their own party. By doing so they voluntarily abandoned their membership from Indian National Congress. To act against the party and voting against the will of the party is disloyalty. Their above conduct amounts to defection and thereby they incurred disqualification as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner hence seeks a declaration to that effect.

5. The respondents filed statement of objections raising common contentions which in brief are as below,- These petitions are not maintainable. The petitioner was the local leader of the CPI(M) till the local body elections held in 2010. Thereafter he joined in CPI and became the local committee Secretary of CPI. During the local body election of 2015 the LDF did not allot any seat for him to contest as LDF candidate from RanniPerunaduGrama Panchayat. Then he contested as an independent candidate with the support of UDF from ward No.12 and was elected. It is true that the respondents contested and were elected as the candidates of Indian National Congress as stated in the petition. The candidature of Shri.V.K.Vasudevan as the Vice President in election held on 19.11.2015 was a matter of dispute. Majority of the members of the Congress parliamentary party of RanniPerunaduGrama

Panchayat were against his candidature. But Shri.V.K.Vasudevan by show of force and by threatening the leadership managed to become the Vice President. He threatened the DCC President that he would make a split in the Congress Parliamentary party and he would become the Vice President with the support of CPI(M) members. An agreement was arrived at for sharing the tenure of the office of the Vice President for the first three years by Shri.V.K.Vasudevan and the remaining two years by Shri.N.V.Mathew.

6. The respondents are active members of Indian National Congress and the allegation that they are now in the LDF camp is false. It is not correct to say that the respondents moved no confidence motion against their Vice President with the connivance of Left Democratic Front. The No confidence motion was not moved by the LDF. There was no direction from Indian National Congress to the INC members to defeat the no confidence motion. It is not correct to say that the meeting of parliamentary of the Indian National Congress was held on 15.03.2017 and decided to defeat the motion. There was no notice about such a meeting. Shri.V.K.Vasudevan is a person involved in several Criminal cases. Even the Panchayat President and staff of the Panchayat had to file criminal cases against him. Though the respondents and other members reported the misdeeds of Shri.V.K.Vasudevan to the Congress leadership and to replace him no effective steps was taken by the leadership. Later the respondents and Kerala Congress (M) member Shri.JijuSreedhar moved the no confidence motion against the Vice President

Shri.V.K.Vasudevan on 08.03.2017 and the motion was tabled on 20.03.2017. There was no whip from the DCC President with regard to voting on no confidence motion and hence the respondents were free to vote in favour of the motion. The respondents voted in favour of the motion and it was carried.

7. The averments that the respondents moved the motion in collusion with the LDF members are not correct. As there was no whip to the respondents the question of violating the same does not arise. Even after the removal of Shri.V.K.Vasudevan from the post of Vice President the Congress led UDF continues to be in power in the Panchayat. After the removal of Shri.V.K.Vasudevan from the post of Vice President Shri.JijuSreedhar from Kerala Congress (M), a constituent of UDF was elected as the Vice President. It is true that three members of CPI(M) supported the no confidence motion and voted in favour of Shri.JijuSreedhar. But that will not come within the purview of defection especially when no whip was issued by the DCC President. The CPI(M) party had their own reason to move against Shri.V.K.Vasudevan. The respondents did not commit any act of defection and they did not give up their membership from Indian Nation Congress. There is no merit in the petition. The petitioner is not entitled to get any reliefs in these petitions and the same are only to be dismissed.

8. The evidence in these cases consists of the oral testimonies of PWs1to 5, RWs1 to 9 and Exts.A1 to A10 andB1 to B26.

9. Both sides were heard.

10. The following points arise for consideration;

- (1) Whether the petitions are maintainable?
- (2) Whether the respondents have disobeyed the decision and direction of their party as alleged?
- (3) Whether the respondents have committed defection as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (4) Whether the respondents have voluntarily given up their membership in Indian National Congress as alleged?
- (5) Whether the petitioner is entitled to the declaration prayed for?
- (6) Reliefs and costs?

11. **POINT No.(1)**: The petitioner and respondents are elected members of RanniPerunaduGrama Panchayat in the election held in November 2015. The petitioner contested and was elected as an independent candidate with the support of United Democratic Front (UDF) and the respondents as the candidates of Indian National Congress (INC). As congress led UDF got 12 seats out of the total 15 the UDF formed the Panchayat board. The Congress nominees Smt.BeenaSaji and Shri.V.K.Vasudevan were elected as the President and the Vice President respectively of RanniPerunaduGrama Panchayat. While so the respondents moved a no confidence motion against the Shri.V.K.Vasudevan, a nominee of their own party and it was carried on 20.03.2017. According to the petitioner the respondents moved the no



confidence motion against the Vice President without the permission of their party. Though the DCC President, Pathanamthitta issued whip to them directing them to vote against the motion and to defeat the motion they colluded with the members of rival LDF and voted in favour of the motion violating the direction of their party. By doing so, according to the petitioner, the respondents committed defection incurring disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondents denied the allegations. According to them they have not committed any act of defection and they did not abandon their membership in Indian National Congress. It is also their contention that these petitions are not maintainable. Though such a contention is raised there is nothing from their side to show that these petitions are not maintainable.

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. Ongoing through the contentions of the parties it can be seen that a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Kerala Local Authorities

(Prohibition of Defection) Act. Admittedly the petitioner is a member of the local authority in which the respondents are also members. The petitioner being a member of the local authority he is entitled to file these petitions as per law. 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 Kerala Local Authorities (Prohibition of Defection) Act, these petitions are held to be maintainable. Point is answered accordingly.

**14. POINT Nos.2 to 6:** Case of the petitioner is that the respondents committed defection by acting against the interest of their political parties and also by defying the direction of their party and thereby they incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. As stated above, the petitioner and respondents are elected members of RanniPerunaduGrama Panchayat in the election held in November 2015. The petitioner was elected as an independent candidate with the support of United Democratic Front (UDF) and the respondents were elected as the candidates of Indian National Congress (INC). Ext.A1 also would show the said fact. Ext.A1 is the copy of the register showing the party affiliation of the elected members of RanniPerunaduGrama Panchayat. Admittedly the respondents were elected as the candidates of Indian national Congress and there is no dispute over that. As there is no dispute over the party affiliation of the parties Ext.A1 requires no discussion.

15. It is stated that the Indian National Congress contested the local body election in RanniPerunaduGrama Panchayat as part of a political coalition by name United Democratic Front (UDF) and Kerala Congress (M) [KC(M)] is the other constituent of UDF. There are 15 wards (seats) in RanniPerunaduGrama Panchayat and out of which the Indian National Congress led UDF won 12 seats—11 seats by INC and one by KC(M). The CPM led LDF got 3 seats. As the Congress led UDF got majority it formed the Panchayat board. As stated above, the Indian National Congress nominees Smt. Beena Saji and Shri. V.K. Vasudevan were elected as the President and Vice President of the Panchayat respectively. Later, it is stated, there occurred some disputes in Indian National Congress over the conduct and functioning of Shri. V.K. Vasudevan as the Vice President of Panchayat. The respondents moved a no confidence motion against the Vice President. The motion was tabled for discussion on 20.03.2017 and it was carried as the members of LDF voted in favour of the motion. According to PW1 the petitioner, the respondents moved the no confidence motion against their own Vice President without the knowledge and consent of their party, in collusion with the members of the rival parties. A meeting of the Congress parliamentary party was held on 15.03.2017 to discuss the matter and it was decided to defeat the motion. Ext.A2(a) is the minutes of the said meeting. Ext.A2 is the minutes book of the meeting of Congress Mandalam Committee, Perunadu. The DCC President, Pathanamthitta District issued whips to all the

elected members of Indian National Congress in RanniPerunaduGrama Panchayat directing them to vote against the motion. Exts.A3 to A6 are the copies of the whips issued to the respondents. According to PW1 the whips were served on the respondents directly and they acknowledged the receipt of the whips in the respective copies Exts.A3 to A6. But the respondents, PW1 states, did not obey the direction of the party and they voted infavour of the motion defying the direction of the party. The respondents moved the motion against their own party nominee colluding with the rival front LDF and carried the same with their support. The respondents took a different stand from that of their party and committed disloyalty to the party to which they belong. They ousted their own party nominee from the post of the Vice President by voting in favour of the motion with the support of the members of the rival parties and facilitated the victory of the member of another political party as the Vice President. By the above conduct the respondents committed defection and thereby incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, it is further contended.

16. PWs2 to 5 are the other witnesses examined on the side of the petitioner. PW2 is the DCC President, Pathanamthitta District. According to him he has issued whips to all the elected members of Indian National Congress in RanniPerunaduGrama Panchayat directing them to vote against the no confidence motion. To him Exts.A3 to A6 are the copies of the whips issued to the respondents in O.P.16/2017 to 19/2017 respectively. PW2

entrusted the whips to PW3 Shri.T.K.Saju, the Vice President of the DCCPathanamthittafor serving the whips to the members. Though the respondents accepted the whips they acted against the direction of the party. They violated the whips. The respondents voted infavour of the no confidence motion and acted against the interest of the party, PW2 further states. PW3 is the Vice President of the DCC Pathanamthitta District. According to him the whips to the respondents and other elected members were entrusted to him for service and all the respondents except Smt.UshakumariRadhakrishnan, the respondent in O.P.17/2017 came to his house and accepted the whips and put their signatures in the copies of the whips. As Smt.UshakumariRadhakrishnanwas in the hospital she could not come to his house and hence he entrusted the whip to the office bearers of the Youth Congress Committee to serve on her and the same was served also. PW4 is the present Secretary of Youth Congress Committee RanniMandalam. According to him he went to the house of Smt.UshakumariRadhakrishnan and served the whip to her and she put her signature in Ext.A4 copy for the receipt of the whip. PW5 is the Secretary of RanniPerunaduGrama Panchayat. According to her Exts.B1 and B2 are the true photo copies of the attendance register of the Panchayat members and the signatures of the Panchayat members are therein Exts.B1 and B2.

17. Case of the respondents, as stated above, is that they did not do any act of defection inviting any disqualification. There was no whip from their

party and therefore violation of the same does not arise. According to them they did not abandon their membership in Indian National Congress and they continue to be the members of Indian National Congress. It was due to the criminal and illegal activities of Shri.V.K.Vasudevan they moved a no confidence motion against him and the said act is not against the party. RWs 1 to 9 are the witnesses examined on the side of the respondents. RWs 1 to 4 are the respondents in O.P.16/2017 to 19/2017 respectively. RW5 was the DCC President, Pathanamthitta District during 2007 to 2017 February. According to him the respondents did not abandon their membership from Indian National Congress and they continue to be the members of Indian National Congress. RW6 is the General Secretary of Congress RanniPerunadu Committee. He justifies the move of no confidence motion and support the case of the respondents. RW7 is said to be the election agent of Smt.UshakumariRadhakrishnan, the respondent in O.P.17/2017 and a resident of ward No.7. According to him the no confidence motion was moved as per the consent of the Indian National Congress workers of ward No.7. RW8 is the resident of ward No.8 and the election agent of Shri.N.V.Mathew, the respondent in O.P.18/2017. His evidence is that the no confidence motion was against Shri.V.K.Vasudevan and not against the Indian National Congress. According to him it is the DCC President who is to issue direction to the members of Indian National Congress to move no confidence motion and the

DCC President did not issue any such direction in this case to move no confidence motion.

18. RW9 is the Secretary of RanniPerunaduGramma Panchayat. Before becoming the Secretary she worked there as Junior Superintendent from 16.05.2015 to 09.09.2015 and as Assistant Secretary from 10.09.2015 to 10.06.2017. Her evidence is that there were instances of indecent behavior on the part of Shri.V.K.Vasudevan towards the staff members. When RW9 refused to carry out the illegal direction of the Vice President Shri.V.K.Vasudevan he abused her and threatened her. She has filed criminal case against Shri.V.K.Vasudevan and according to her Ext.B26 is the copy of the complaint in that matter. Ext.B22 is the copy of the FIR registered in the case and Ext.B22(a) is the copy of the final report. It is further stated by RW9 that she along with other staff members filed a complaint against Shri.V.K.Vasudevan before the Deputy Director of Panchayat and Ext.B15 is the copy of the said complaint. It is to be stated here that this is a case filed under Section 4 of the Act and the question to be considered in these cases is whether the respondents committed defection and incurred disqualification as provided under Section 3(1)(a) of the Act. The criminal complaints if any against the Shri.V.K.Vasudevan have nothing to do with this case and the remedy for the same is elsewhere. His alleged criminal acts are not at all germane in this case.

19. Submission of the learned counsel for the petitioner is that the respondents moved a no confidence motion against the Vice President Shri.V.K.Vasudevan, a nominee of their own party and they ousted him from the post of Vice President with the support of the members of rival front LDF. They moved the motion without the consent of their party and voted infavour of the motion defying the direction of PW2 the DCC President. By doing so they committed defection inviting disqualification as provided under Section 3(1)(a) of the Act, the counsel further submits. As against that the contention of the learned counsel for the respondents is that there was no whip or direction from the party to vote against the motion and hence the violation of the same does not arise. Further, moving a no confidence motion against their own party nominee and voting in favour of the motion will not amount to defection. It is only a desertion of the leader and not the party. The respondents moved the motion of their own and they did not collude with the members of rival parties. The respondents did not do any act inviting disqualification under Section 3(1)(a) of the Act. They did not abandon their membership in Indian National Congress and they continue as the members of Indian National Congress, the counsel further submits.

20. Now let us examine whether the respondents have committed acts of defection envisaged under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The Kerala Local Authorities (Prohibition of Defection) Act was enacted to prohibit defection among members of local



authorities in the state and to provide for disqualification of the defecting members of the local authorities. Section 3 of the Act deals with disqualification on the ground of defection and it reads as below:-

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

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

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

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

*(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing*

*Committee; or the Chairman of the Standing Committee;*

*or*

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

*(b) If an independent member belong to any coalition with draws form such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorized by the coalition in its behalf in the manner prescribed votes or abstains from voting,-*

*(i) In a meeting of a municipality, in an election of its President, Vice President, a member of Standing Committee or the Chairman of the Standing Committee or*

*(ii) in a meeting of a Panchayat in an election of its President/Vice President, a member of his standing committee or the Chairman of the Standing Committee or in a voting on a no confidence motion against any one of them except a member of a Standing Committee.*

*(c) if an independent member not belonging to any coalition, joins any political party or coalition, he shall*

*be disqualified for being a member of that local authority.*

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

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

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

*Explanation,- For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any*

*such party, by which he was set up or given support as a candidate for the election*

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

22. To attract the section there must be a proper whip the whip should be communicated and there must be violation of the whip. It is true that a whip was issued by PW2, the DCC President to the elected members of Indian National Congress directing them to vote against the no confidence motion. Exts.A3 to A6 are the copies of the whips allegedly issued to the respondents. PW2 is the DCC President and he is the competent person to issue the whips to the respondents and other elected members of Indian National Congress. Respondents have no dispute over that. Whether the whips were properly served on the respondents is the question to be considered then. According to

the petitioner Exts.A3 to A6 are the copies of the whips issued to the respondents and the whips were served on them directly and their respective signatures were therein Exts.A3 to A6. To prove that the whips were served on the respondents directly the petitioner has examined PWs 3 and 4. Evidence of PW3 is that all the elected members of Indian National Congress except the respondent in O.P.17/2017 Smt.UshakumariRadhakrishnan, came to his house and accepted the whip directly and they put their signatures in the copies of their respective whips. According to him the whip issued to Smt. UshakumariRadhakrishnan was entrusted to PW4 for service. PW4 stated that it was he who went to the house of Smt.UshakumariRadhakrishnan and served the whip on her and she put her signature in the copy of the whip.

23. Exts.A3 to A6 are said to be the copies of the whips served on the respondents. But when we compare the alleged signatures of the respondents found in Exts.A3 to A6 with the admitted signatures of the respondents in Ext.A2 minutes book, Exts.B1 and B2 copies of the attendance register, their depositions and in their vakkalathit can be seen that the alleged signatures found in Exts.A3 to A6 have no semblance or similarity with the admitted signatures. So no reliance can be placed on the evidence of PWs 3 and 4 regarding the service of whips. There is no convincing and believable evidence to show that the whips were served on the respondents. As per Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules 2000 the whip/direction can be served by three modes-directly, by sending by

registered post or by affixture. Admittedly the whip was not sent by registered post or service was effected by affixture. According to the petitioner the whip was served on the respondents directly. While issuing directly the person who gives it shall obtain a receipt from the member. Regarding Exts.A3 to A6 receipts I have already commented above. As the whip was not properly served on the respondents as contemplated under Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules it cannot be said that there is violation of whip. So the second limb Section 3(1)(a) of the Act is not attracted in these cases. Of course, that is not the case with regard to the first limb.

24. It is the settled law that the disqualification for voluntarily giving up the membership of the political party to which he belongs is not dependent on any violation of the whip. It is not necessary to hold that the member has violated the whip in order to conclude that he has voluntarily given up the membership of the political party to which he belongs. The grounds for disqualification under the first and second limbs of Section 3(1) (a) of the Act are distinct and are not interlinked as held in the decisions reported in **2009(2)KHC 839 (Biju R.S. and others V Kerala State Election Commission and others)** and **2015 KHC 454 (Suryaprakash and others V. State Election Commission, Thiruvananthapuram and others)**.

25. It is a fact that the respondents were elected as members of Indian National Congress and they are bound by the decision of their party. They must

be loyal to the party and cannot act against the interest of their party. The respondents moved a no confidence motion against the Vice President, a nominee of their own party and admittedly it was moved not on the basis of any decision of Indian National Congress or the parliamentary party of Indian National Congress. The respondents moved the motion on their own party and admittedly it was carried with the support of the members of the rival parties. Ext.A9 minutes of the meeting also would show the said fact. It is true that there is no evidence to show that the whip issued by the DCC President was not served on the respondents. But it cannot be said that the respondents were not aware of the whips in these cases. It is in evidence that there was a meeting in the office of PerunaduMandalam Congress Committee on 15.03.2017. Evidence of PW1 and Ext.A2 minutes book would show the said fact. RW1 the respondent in O.P.16/2017 also admitted the said fact. In cross-examination RW1 admitted the said meeting on 15.03.2017 held in the office of PerunaduMandalam Congress Committee. It is also admitted by him that all the elected members of Indian National Congress of RanniPerunaduGrama Panchayat except the respondents attended in that meeting. So the respondents cannot now contend that there was no such meeting and that there was no decision of the party regarding the stand to be taken on the no confidence motion. The party has taken a decision to defeat the motion by voting against the motion. Ext.A2(a) would show the said fact. Ext.A2(a) is the minutes of the above meeting held on 15.03.2017. As per the decision in Ext.A2(a) all the

elected members of Indian National Congress were directed to vote against the no confidence motion and they were further directed to collect the whips issued by DCC President from the house of PW3,Saju. RW1 has no case there was no such decision in that meeting. When it was suggested to RW1 at the time of evidence that the decision taken in the meeting held on 15.03.2017 was to defeat the no confidence motion he did not deny it. The respondents cannot simply ignore Ext.A2 by saying that Ext.A2 is cooked up for the purpose of this case. It is admitted by RW2 that she has attended the parliamentary party meeting held on 21.06.2016 and 01.02.2017 as shown in Ext.A2 and her signatures are therein Ext.A2 on the respective dates. Ext.A2(b) is the minutes of the meeting held on 01.02.2017. RW3 also admitted that he has attended the meeting on 01.02.2017 and his signature is there in Ext.A2(b).

26. It may be noted that the Indian National Congress has eleven members in RanniPerunaduGrama Panchayat and the majority of Indian National Congress members ie., seven members voted against the no confidence motion. That also would indicate that the decision of the party was to defeat the motion moved by the respondents. It has come in evidence that copy of the whip was given to the Secretary, RanniPerunadGrama Panchayat as stipulated in Rule 4(2). Exts.A7 and A8 are the copies of the same. They contain the signature of the Secretary and official seal of the Panchayat. I do not find anything in this case to doubt the genuinity of Exts. A7 and A8. Further, it is in evidence that the respondents earlier filed complaints before the



DCC President and other party leaders against Shri.V.K.Vasudevan and requested to remove him from Vice Presidentship. But the party did not consider their request and the party was not prepared to remove him from the Vice Presidentship. It was on account of that the respondents moved a no confidence motion against Shri.V.K.Vasudevan. The respondents were very well aware even at the time of moving the motion that their party will not support them and the decision of the party was to retain Shri.V.K.Vasudevan as Vice President. That is also a circumstance to be considered in this case.

27. It is to be stated that the respondents are responsible elected members of RanniPerunaduGramma Panchayat and they cannot act according to their whims and fancies. They are bound by the decision of their party. Acting against the interest of the party is nothing but disloyalty. The respondents were very well aware of the decision of the party to defeat the motion. But they chose to vote infavour of the motion along with the members of rival parties and the motion was carried with the support of the rival parties. It may also be noted that after the motion was carried fresh election for the post of Vice President was held and the Congress fielded the very same Shri.V.K.Vasudevan as the candidate for the post. The respondents and the rival LDF front nominated Shri.JijuSreedhar of Kerala Congress (M) as a candidate against Shri.V.K.Vasudevan. Admittedly the respondents voted infavour of Shri.JijuSreedhar along with the members of rival LDF and ensured the victory of JijuSreedhar and the defeat of their own party nominee. The

respondents acted against the interest of their party and on account of that the party has lost the Vice Presidentship of the Panchayat. The respondents act of moving the motion and voting infavour of the motion along with the rival parties is to be considered along with their subsequent conduct in the Vice President election. The plea of innocence that they were not aware of the decision of the party and that was why they voted infavour of the motion cannot be accepted in the light of the above evidence and circumstances as submitted by the learned counsel for the petitioner.

28. Relying on the decision reported in **2015(1) KHC 111 (Joseph K.M. V.BabychanMulangasseri and others)** It is contended by the learned counsel for the respondents that an act of member expressing no confidence in the leader of the political party would not amount to floor closing or political disloyalty. Defection is deserting the political party and not deserting the leader of that political party. The respondents lost faith in Shri.V.K.Vasudevan and hence moved a no confidence motion to oust him from the post of Vice President. Their said act is not against their party and hence disqualification under Section 3(1)(a) of the Act is not attracted in these cases, the counsel further submits.

29. It is true that mere moving a no confidence motion against the leader of the party is not an act of deserting the political party as held in the above decision. But the facts in that case and of these cases are different and the said decision will not in any way help the respondents. In that case the respondents

therein who belong to Indian National Congress moved a no confidence motion against the Panchayat President who is their own party nomination and it was carried only with the support of the members of the Congress led United Democratic Front, a political coalition. Majority of the Congress and UDF members were in favour of the motion. That is not the case here. The no confidence motion in that case was carried not with the support of the members of the rival Left Democratic Front. The respondents therein did not receive any support of the rival parties. It was in that circumstance the Hon'ble High Court made the above observation that an act of expressing no confidence motion on the leader of the political party (the Panchayat President in that case) would not amount to voluntarily giving up his membership of that political party. Here the case is different. The majority of the Indian National Congress members in these cases voted against the no confidence motion and the motion moved by the respondents was carried with the support of the members of rival parties. The respondents who are four in number were very well aware that their no confidence motion would not be carried without the support of the rival LDF members and the support of the members of the LDF for the no confidence motion at the time of voting would only show that even at the time of moving the motion itself there was collusion between the respondents and the Left Democratic Front. In the reported decision referred to above the majority of the UDF members moved the motion and it was carried with the support of UDF members only and not with the support of the rival parties. Here the

motion was carried with the support of the rival LDF and majority of INC/UDF members voted against the motion. The decision referred to above is hence not at all applicable to these cases.

30. It is also the contention of the learned counsel for the respondents that the respondents did not abandon their membership in the party and they continue to be the members of Indian National Congress even now. To support that contention they have produced Exts.B10, B12, B13, B21, B23 and 24. Exts.B10, B13, B21 and B23 are the receipts issued to the respondents respectively for admitting them as members of Indian National Congress. Who issued those receipts is not known and nobody has put signatures in Exts.B10, B13, B21, and B23 as issuing person. Exts.B12 and B24 are the letters of the DCC President Pathanamthitta District addressed to all the elected members of the local bodies in Pathanamthitta District to attend the meeting on 27.06.2017. According to the respondents Exts.B12 is the notice sent to the respondent in O.P.17/2017 in Ext.B12(a) cover and Ext.B24 is the notice sent to the respondent in O.P.19/2017 in Ext.B24(a) cover. Ext.B12(a) will not show that it has any connection with Ext.B12 or the DCC Pathanamthitta. Similarly Ext.B24(a) will not show that it has any connection with Ext.B24 or the DCC Pathanamthitta. Further, Exts.B12 and B24 are the letters of the DCC President Pathanamthitta to all the elected representatives and they will not show that the same were addressed to the above respondents. Exts.B12(a) and B24(a) will not show that the same were sent from the DCC office. There is nothing to

show that Ext.B12 was sent in Ext.B12(a) cover and Ext.B24 was sent in Ext.B24(a) cover. Anyway even assuming that such receipts and letters were issued from the DCC office accepting them as members of Indian National Congress that will not save the respondents in these cases. Subsequent change of heart and remorseful conduct of the member or the reconciliatory attitude of the political party cannot repair or undo the damage caused by the disloyal conduct leading to the disqualification as held in the decision reported in **2009 (3) KHC 42 (Varghese V.V. and another V. Kerala State Election Commission and Another)** The question of commission of defection is to be adjudged based on the defined conduct of the member on the relevant date. The respondents have already incurred disqualification in these cases and their subsequent remorseful act or the reconciliatory attitude of the party will not save them from the mischief of Section 3(1)(a) of the Act.

31. The object sought to be achieved by the Act is to prohibit defection among members of the Local Authorities and to provide disqualification for the defecting members. What is ultimately sought to be prevented is the evil of the political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. It is settled law that if a member or a group of elected members of a political party takes a different stand from that of the political party as such and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the

inevitable inference is that he has voluntarily given up his membership. The **Kerala Local Authorities (Prohibition of defection) Act**, derived its source from the *10<sup>th</sup> schedule to the Constitution of India*. While upholding the Constitutional validity of 10<sup>th</sup> schedule, the *Apex Court in KihotoHollohanVs.Zachillhu (1992) Supp.2 SCC 651*” observed as follows:-

*“A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. .... ..If a member while remaining a member of the political party which had set him up as a candidate at the election votes or abstains from voting contrary to any ‘direction’ issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, he incurs disqualification. .... A political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political party’s declared politics will not only embarrass its public image and*

*popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance-nay indeed its survival. ....To vote against the party is disloyalty. To join with others in abstention or voting with other side smacks of conspiracy.”*

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

“Since the words voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by resignation, from the conduct of the petitioner if an inference can be drawn that he has voluntarily given up his membership of his political party, he is liable to be disqualified. From the facts noticed by the second respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation.”

33. 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 moving no confidence motion and carrying the same with the support of rival parties would clearly demonstrate that they became disloyal to the political party which elected them as members of RanniPerunaduGramam Panchayat. The above acts would amount to defection inviting disqualification and the case put forward by the petitioner against the respondents is clearly established. I do not find in these cases to take a different view. According to the Father of Nation Mahatma Gandhi politics without principle is one of the grave vices in that group. The menace of defection, certainly, is 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.

34. From the available evidence and the circumstances emanating there from it can be safely concluded that the respondents have committed defection and they have voluntarily given up their membership from the party which elected them as members, as provided by under Section 3(1) (a) of the Kerala Local Authorities (Prohibition of defection) Act and therefore they became subject to disqualification for being members of RanniPerunaduGramam Panchayat. Points are answered accordingly.

In the result, the petitions are allowed and the respondents are declared as disqualified for being members of RanniPerunaduGramam Panchayat as



provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of defection) Act and the respondents are further declared as disqualified for contesting as candidates in an election to any local authorities for a period of 6 years from this date, as provided by Section 4(3) of the Act.

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

Pronounced before the Commission on this the 12<sup>th</sup> day of September 2018

Sd/-

**V.BHASKARAN,**  
**STATE ELECTION COMMISSIONER**

**APPENDIX**

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

PW1 : Smt.Raju.P.T  
 PW2 : Shri.Babu George  
 PW3 : Shri.T.K.Saju  
 PW4 : Shri.Prasanth  
 PW5 : Smt.Sudhakumari

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

RW1 : Shri. C.R.Mohanan  
 RW2 : Smt.UshakumariRadhakrishnan  
 RW3 : Shri.N.V.Mathew  
 RW4 : Shri.Rajan V.R  
 RW5 : Shri.P.Mohanraj  
 RW6 : Shri.Reji Thomas  
 RW7 : Shri.K.J.Chacko

RW8 : Shri.K.J.Joseph  
 RW9 : Smt.Sudha.S

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

A1 : Copy of the register showing the party affiliation of the members of RanniPerunadGrama Panchayat

A2 : Minutes book of Congress Mandalam Committee meetingPerunadGrama Panchayat

A2(a) : Minutes of the meeting held on 15.03.2017

A2(b) : Minutes of the Parliamentary party meeting held on 01.02.2017

A3 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.C.R.Mohanan, RanniPerunaduGrama Panchayat

A4 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Smt.Ushakumari Radhakrishnan, RanniPerunaduGrama Panchayat

A5 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.N.V.Mathew, Ranni PerunaduGrama Panchayat

A6 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.V.Rajan, Ranni PerunaduGrama Panchayat

A7 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to theSecretary, Ranni PerunaduGrama Panchayat

A8 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to theSecretary, Ranni PerunaduGrama Panchayat

A9 : Copy of the minutes of the meetings convened for the discussion of no confidence motion against

Shri.V.K.Vasudevan, Vice President, RanniPerunadu Grama Panchayat held on 20.03.2017

A10 : Copy of the letter issued by Shri.Babu George, DCC President Pathanamthia dated 20.03.2017

**Document Produced on the side of the respondents**

B1 : Copy of the attendance register of members of Ranni PerunadGrama Panchayat dated 12.11.2015

B2 : Copy of the attendance register of members of Ranni PerunadGrama Panchayat dated 04.07.2015

B3 : Copy of the Judgment WP(c) No.8952 of 2017(T) dated 16.03.2017 of the Hon'ble High Court of Kerala

B4 : Copy of the order in CMP No.242/2017 dated 27.01.2017 of the Sessions Judge, Pathanamthitta

B5 : Copy of the report submitted by Shri.C.R.Mohanan, Welfare Standing Committee Chairman to Shri.Babu George, DCC President, Pathanamthitta dated 04.02.2017

B6 : Copy of the letter issued by Shri.Babu George, DCC President, Pathanamthitta dated 20.06.2017

B7 : Copy of the notice submitted by the members of RanniPerunadGrama Panchayat to the Secretary, Ranni Block Panchayat

B8 : Copy of the no confidence motion against Shri.V.K.Vasudevan, Viice President, Ranni PerunaduGrama Panchayat

B9 : Copy of the final report submitted before the Judicial 1<sup>st</sup> Class Magistrate Court, Ranni

B9(a) : Copy of the FIR dated 03.08.2016 submitted before the Judicial 1<sup>st</sup> Class Magistrate Court, Ranni

- B10 : Copy of the receipt of membership No.700045dated 15.05.2017
- B11 : Copy of the letter issued by Smt.Ushakumari Radhakrishnan, Welfare Standing Committee Chairpperson, PerunadGrama Panchayat to the DCC President, Pathanamthitta dated 04.02.2017
- B12 : Copy of the letter issued by Shri.Babu George, DCC President, Pathanamthitta dated 20.06.2017
- B12(a) : Postal cover addressed to Smt.Ushakumari Radhakrishnan
- B13 : Copy of the receipt of membership No.6321451 dated 15.05.2017
- B14 : Copy of the reply under Right to Information Act furnished by the Junior Superintendent of Panchayat Assistant Director office to Smt.Ushakumari Radhakrishnan, Welfare Standing Committee Chairperson, RanniPerunaduGrama Panchayat
- B15 : Copy of the complaint filed by Panchayat Employees
- B16 : Copy of the letter No.A.V.S.4279/16 dated 09.08.2016
- B17 : Copy of the letter No.PAUI/225/2016 dated 06.09.2016
- B18 : Copy of the letter No.AVS-4278.2016 dated 15.03.2017
- B19 : Front office receipt showing inward No.3048 dated 16.06.2017, RanniPerunadGrama Panchayat
- B20 : Copy of the Panchayat committee meeting dated 30.12.2016, RanniPerunadGrama Panchayat
- B21 : Copy of the receipt of membership No.5778928 dated

22.05.2017

- B22 : Copy of the FIR No.916 dated 29.07.2016 Perunad Police Station
- B22(a) : Copy of the final report (Charge sheet) submitted before the Judicial 1<sup>st</sup> Class Magistrate Court, Ranni
- B23 : Copy of the receipt of membership No.5778755 dated 22.05.2015
- B24 : Copy of the letter issued by Shri.Babu George, DCC President, Pathanamthitta dated 20.06.2017
- B24(a) : Postal cover addressed to Shri.RajanVettikkal
- B25 : Copy of the FIR dated 20.03.2017, PambaPolice Station
- B26 : Copy of the complaint filed by Smt.Sudha.S addressed to the Sub Inspector of Police, RanniPerunad

Sd/-

**V.BHASKARAN**  
**STATE ELECTION COMMISSIONER**

//True Copy//