

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Wednesday, the 7th day of August 2019

O.P.No.23/2017

Petitioner : R.Jayakumar,
S/o K.R.C.Panicker,
Jayavihar, Kizhakkummury,
Kavumbhagam.P.O.,
Thiruvalla-689 102.

Councillor, Ward No.26,
Thiruvalla Municipality

(By Adv. G.K.Sudheer)

Respondent : Krishnakumari.A.P.,
Mylamoottil House, Thymala,
Manjadi, Thiruvalla – 689 105.
Councillor, Ward No.15,
Thiruvalla Municipality

**(By Advs. Cherunniyoor P.Sasidharan Nair
and Ajithkumar.S)**

This petition having come up for hearing on the 19th day of **July 2019**, in the presence of Adv. **G.K.Sudheer** for the petitioner and **Advs.Cherunniyoor P.Sasidharan Nair & Ajith Kumar.S** for the respondent and having stood over for consideration to this day, the Commission passed the following.

ORDER

This is a petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent committed defection and hence disqualified to continue as member of Thiruvalla Municipality and also for declaring her as disqualified to contest as candidate in any election to the local body for a period of six years.

2. The petitioner's case in brief is as below:- The petitioner and respondent are elected Councillors of Thiruvalla Municipality in the election held in November 2015. They contested and were elected as the candidates of Indian National Congress (INC). There are 39 wards (seats) in Thiruvalla Municipality. The INC contested the election as part of a political coalition by name United Democratic Front (UDF). KC(M) and RSP(B) are the other constituents in the UDF in Thiruvalla Municipality. Out of 39 seats the UDF got 22 seats-INC-11, KC(M)-10, RSP(B)-1. The CPI(M) secured 9 seats, the BJP got 4 seats and the SDPI has secured one seat. The remaining 3 seats were won by independent candidates. As the UDF got majority it formed the Municipal Council.

3. An understanding was there among the constituents of UDF regarding the sharing of Chairmanship and Deputy Chairmanship. As per that the nominee of Indian National Congress would get the Chairmanship for the first 30 months and remaining 30 months to the nominee of KC(M). On that basis

Shri.K.V.Varghese from Indian National Congress was elected as the Chairman of the Municipality and Smt.Aleyamma Thomas of the Kerala Congress (M) was elected as the Deputy Chairperson. It was also decided by the party that Shri.K.V.Varghese would remain as the Chairman for a period of 15 months from the date of assuming charge and thereafter he should resign from the post as per the understanding in the party to enable the petitioner to become the Chairman. It was on the basis of the decisions of the party Shri.K.V.Varghese was elected as the Chairman of Thiruvalla Municipality.

4. The term determined for Shri.K.V.Varghese to hold the post of Chairman was till 18.02.2017. But he did not resign from the post despite the direction of the party and he continued further. The DCC President convened a meeting of the Councillors of the municipality and in the meeting it was decided to issue direction to Shri.K.V.Varghese to resign from the post on or before 31.03.2017. But even after that Shri.K.V.Varghese did not resign and he continued in the post of Chairman. Thereafter the party decided to move a no confidence motion against the Chairman Shri.K.V.Varghese. As per the directions of the party 14 Councillors of UDF moved a no confidence motion against the Chairman and it was tabled on 18.04.2017 for discussion. The DCC President issued specific direction in writing to all the elected Councillors of Indian National Congress including the respondent directing them to vote in favour of the motion. The direction was sent to the Councillors

by registered post. The whip was served on them directly also. The respondent and two others refused to accept the same when tendered directly. The whip was served on the respondent by affixture also by affixing the whip at the residence of the respondent. But the respondent did not obey the whip and violating the whip she abstained from attending the meeting held on 18.04.2017. She deliberately abstained from attending the meeting colluding with the rival parties with a view to defeat the no confidence motion. The motion would not be carried due to the deceitful behavior of the respondent and two other Councillors of Indian National Congress. The reason stated by the respondent for her absence is false. The respondent was fully aware of the whip and the decision of the party regarding the no confidence motion against the Chairman. But she defied the direction of her party. She has acted against the interest of the party. By doing so the respondent has voluntarily abandoned her membership from the party. Her above conduct amounts to defection and thereby she 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 respondent filed counter statement contending as below. The petition is not maintainable. There was a rift in Indian National Congress of Pathanamthitta District Unit and this petition is the product of the rift and groupisam. It is true that the respondent was elected as a candidate of Indian

National Congress and in the election the UDF got 22 seats as stated in the petition. The petitioner cooked up a false story with a view to disqualify the respondent. The respondent was not aware of the agreement and understanding regarding the sharing of Chairmanship among the members of Indian National Congress. There was no such decision in the party. Initially the petitioner raised a claim for Chairmanship. But most of the members did not support the petitioner.

6. In the meanwhile new DCC President was appointed in Pathanamthitta District. The petitioner made series of mis-representations to the newly appointed DCC President and on that basis the DCC President issued direction to Shri.K.V.Varghese to resign from the post of Chairman. The said direction was against the circular issued by Kerala Pradesh Congress Committee and as per that circular when a nominee from Indian National Congress is elected as the Chairman it is for the entire period of five years. The respondent could not attend the meeting on 18.04.2017 due to medical reasons. She was admitted in Pushpagiri Medical College Hospital on 13.04.2017 and was discharged on 17.04.2017 with a reference to Medical College Hospital, Kottayam. But due to her medical conditions she was admitted in Bharath Hospital, Thiruvalla. The petitioner was very well aware of the said fact and he suppressed the same in the petition. There was no decision in the party to move the no confidence motion against the Chairman

as alleged. As the respondent was hospitalized she did not receive the whip sent by registered post. Respondent has never acted in tune with the rival parties. The absence of the respondent was on medical grounds. She has submitted leave application to the Secretary before the notice of no confidence motion. The respondent was not in a condition to attend the meeting. Her absence was not intentional. She has not given up her membership from Indian National Congress and she continues to be an active member of Indian National Congress. There is no merit in the petition and hence it is only to be dismissed.

7. The evidence in this case consists of the oral testimonies of PWs1 to4, RW1to RW3 and Exts.A1to A69, B1 to B3 and X1 to X4.

8. Both sides were heard.

9.The following points arise for consideration;

- (1) Whether the original petition is maintainable?
- (2) Whether the absence of respondent in the meeting held on 18.04.2017 is justifiable?
- (3) Whether the respondent has committed defection as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (4) Whether the respondent has voluntarily given up her membership from Indian National Congress as alleged?
- (5)Whether the petitioner is entitled to the declaration prayed for?

(6) Reliefs and costs?

10. **POINT No.(1)** The petitioner and respondent are elected Councillors of Thiruvalla Municipality in the election held in November 2015. In the election the Indian National Congress (INC) led United Democratic Front (UDF) got majority and it formed the Municipal Council. Shri.K.V.Varghese from Indian National Congress was elected as the Chairman and Smt.Aleyamma Thomas of the Kerala Congress (M) was elected as the Deputy Chairperson. According to the petitioner Shri.K.V.Varghese was to resign from the Chairmanship on 18.02.2017 as per the decision of the party. But he did not comply the direction of the party. Thereafter the party directed him to resign from the post on or before 31.03.2017. But he disobeyed that direction also and he continued in the post. Thereafter, it is stated, the party decided to move a no confidence motion against the Chairman Shri.K.V.Varghese and notice of motion was given on 05.04.2017. The motion was tabled on 18.04.2017 for discussion. Though the DCC President Pathanamthitta issued whip to the respondent directing her to vote in favour of the motion she did not obey the direction. She deliberately abstained from attending the meeting with a view to defeat the motion. By doing so, the respondent committed defection incurring disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, the petitioner further contends. The respondent denied the allegations.

According to her she did not commit any act of defection and she did not abandon her membership from INC. It is also her contention that the petition is not maintainable.

11. It may be noted that the original petition is filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. As per Section 4(1) of the Act, if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it in this behalf may file a petition before the State Election Commission for decision.

12. Ongoing through the contentions of the parties it can be seen that a question arises as to whether the respondent has 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 Councillor of the local authority in which the respondent is also a Councillor. The petitioner being a Councillor of the local authority, is entitled to file this petition as per law. As this petition is filed by a competent person within the time limit and a question arises as to whether the respondent has become subject to disqualification as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, this petition is held to be maintainable. Point is answered accordingly.

13. POINT Nos.2 to 6: Case of the petitioner is that the respondent committed defection by acting against the interest of her political party and also by defying the direction of her party and thereby incurred disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. Along with the above O.P.23/2017 five other original petitions (O.P.20/2017, 21/2017, 22/2017, 24/2017 and 25/2017) were also filed. While the above cases were being tried jointly the petitioners in O.P. 20/2017,21/2017 22/2017, 24/2017 and 25/2017 backed out from the cases after the examination of PWs 1 and 2 and marking certain documents. The petitioners in those petitions did not proceed with the said cases and the same were dismissed as not pressed. The above O.P.23/2017 alone survives now for consideration. As this original petition was treated as the main case the documents relating to other cases were also happened to be marked in this case initially. The exhibits relevant in this case are Exts.A1 to A6, A8, A11, A12, A31, A34, A56, A58 and A69, B1 to B3 and X1 to X4.

14. The petitioner and respondent, as stated above, are elected Councillors of Thiruvalla Municipality. They contested and were elected as the candidates of Indian National Congress (INC) and there is no dispute over that. There are 39 wards (seats) in Thiruvalla Municipality and out of that the Indian National Congress led UDF got 22 seats. As the UDF got majority it formed the Municipal Council. According to the petitioner there was an understanding among the constituents of UDF to share the posts of Chairman

and Deputy Chairman of the Municipality and as per that the Chairmanship first would go to the nominee of Indian National Congress for 30 months and thereafter to the nominee of KC(M) party. Shri.K.V.Varghese was decided to be the nominee of Indian National Congress for the post of Chairman and accordingly he became the Chairman.

15. As per the decision in the parliamentary party meeting of Indian National Congress, it is stated, Shri.K.V.Varghese was to hold the office of the Chairman for the first fifteen months and thereafter he should resign from the post to elect the petitioner in his place for the remaining 15 months. According to PW1 an agreement was executed to that effect by Shri.K.V.Varghese infavour of the then DCC President and Ext.A1 is the said agreement. As per that agreement Shri.K.V.Varghese had timein the post of Chairman only up to 18.02.2017 and he was to resign on or before 18.02.2017. But he did not resign from the post as per Ext.A1 and he continued further. A notice was issued to Shri.K.V.Varghese on 20.02.2017by the DCC President directing him to resign from the post and Ext.A2 is the copy of the said notice. Despite the said notice Shri.K.V.Varghese did not care to step down form the post of Chairman. Later a meeting of the parliamentary party was convened on 20.03.2017 to discuss the issue, in the presence of DCC President and Shri.K.V.Varghese was given time till 31.03.2017 to resign from the post. Ext.A5 is the minutes of the said meeting. Shri.K.V.Varghese and the respondent were present in

that meeting. But Shri.K.V.Varghese did not comply that direction also. As he defied the direction of the party the DCC President, it is stated, issued a letter dated 01.04.2017 to the petitioner authorizing him to take steps to move a no confidence motion against the Chairman Shri.K.V.Varghese. Ext.A6 is the said letter. Accordingly notice of no confidence motion was given to the authorized officer, Regional Joint Director, Urban Affairs Department, Kollam. The authorized officer convened the meeting of the Councillors to discuss the motion on 18.04.2017 and notice was issued to the Councillors. Ext.A8 and the annexures would show the said fact. Ext.A8 is the notice issued by the Regional Joint Director to the petitioner intimating the date of meeting as 18.04.2017.

16. The DCC President issued whips to all the elected Councillors of Indian National Congress directing them to vote infavour of the motion. Ext.A11 is the copy of the whip issued to the respondent. The whip was sent to the respondent by speed post and Ext.A12 is the postal receipt for that. It is further stated by PW1 that the whip was served on the respondent by affixture also by affixing at the residence of the respondent in the presence of witnesses. Ext.A31 is said to be the photo taken at the time of affixing the whip. Case of the petitioner is that the respondent disobeyed the direction of her party and deliberately abstained from attending the above meeting on 18.04.2017 colluding with the members of rival parties with a view to defeat the motion and thereby she committed defection.

17. PW2 is the petitioner in the connected O.P.Nos.20/2017, 21/2017 and 22/2017 which were dismissed as not pressed. The respondents in those cases were members of KC(M) and the evidence of PW2 has no role to play in this case. PWs 3 and 4 are the other witnesses examined on the side of the petitioner. PW3 is the President of Thiruvalla Block Congress Committee and PW4 is the DCC President, Pathanamthitta District. PWs 3 and 4 stated about the execution of Ext.A1 agreement by Shri.K.V.Varghese and his refusal to resign as per the terms of Ext.A1 despite directions of the party. As Shri.K.V.Varghese disobeyed the direction of the party several times to resign from the post of Chairman, it is stated by PW4 that he directed the petitioner to move a no confidence motion against the Chairman Shri.K.V.Varghese as per Ext.A6 letter. Accordingly a no confidence motion was moved against Shri.K.V.Varghese. PW4 the DCC President has clearly stated about the issuance of whips in this case directing them to vote infavour of the no confidence motion. To him Ext.A11 is the copy of the whip issued to the respondent. Both PWs 3 and 4 stated that the respondent violated the whip and deliberately abstained from attending the meeting on 18.04.2017 with a view to defeat the motion. By doing so the respondent acted against the interest of the party, PWs 3 and 4 further state.

18. Case of RW1 is that she did not receive any direction from the party regarding the stand to be taken in the no confidence motion and that her absence on 18.04.2017 was not willful. According to her, her absence on

18.04.2017 was on account of her illness and hospitalization. It is stated by RW1 that she was admitted in Pushpagiri Medical College Hospital, Thiruvalla on 13.04.2017 and was discharged on 17.04.2017 and thereafter admitted in Bharath Hospital, Thiruvalla. To her she did not do any act of defection incurring disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act.

19. RWs2 and 3 are the other witnesses examined on the side of the respondent. RW2 is a doctor working in Pushpagiri Medical College Hospital, Thiruvalla and Ext.X2 is the treatment records produced in this case. RW3 is the Secretary, Thiruvalla Municipality and he has produced Ext.X3 file relating to the leave application of the respondent. Regarding the evidence of RWs2 and 3 I shall discuss a little later.

20. Submission of the learned counsel for the petitioner is that the respondent colluded with the rival parties and disobeyed the direction of PW4, the DCC President and thereby committed defection. By doing so she acted against the interest of her political party and acting against the interest of her political party alone is sufficient to hold that the respondent has voluntarily given up her membership from the party and hence she is disqualified to continue as a Councillor of Thiruvalla Municipality. Contention of the learned counsel for the respondent on the other hand is that no whip was served on the respondent directing her to vote infavour of the no confidence motion. The respondent could not attend the meeting on 18.04.2017 only on

account of her illness and hospitalization. Her absence on 18.04.2017 was not deliberate and hence the question of invoking Section 3(1)(a) of the Act does not arise in this case, the counsel further contends.

21. 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. Section 3(1)(a) is the provision relevant in this case and it reads as below:- 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 a 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 authority.

22. Section 3(1)(a) of the Act has two parts. The first part is attracted when a member belonging to any political party voluntarily gives up his membership of such political party and second part 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.

23. Indisputably, the respondent was elected as the candidate of Indian National Congress and she is bound by the decision of her party. PW4 is the DCC President of Pathanamthitta District and he is the competent person to issue whip to her. The respondent has no dispute over that aspect. Her contention is that she did not violate any direction of the party. According to her no whip was served on her and she was not aware of the whip issued by PW4. But the evidence of PWs1, 3 and 4 and Exts.A11, A12, A31 and A69 would show otherwise. PW4 is the DCC President who issued the whip. Ext.A11 is the copy of the whip issued to the respondent directing her to attend the meeting on 18.04.2017 and to vote infavour of the no confidence motion. He has clearly stated above the issuance of Ext.A11 whip in this case.

24. It is in evidence that the whip was sent to the respondent by speed post. Ext.A12 is the postal receipt for that. Ext.A12 would show that the whip was sent to the respondent on 11.04.2017. According to PW4 the

respondent did not receive the postal cover and got the same returned. Ext.A69 is the returned postal cover. The details of Ext.A12 receipt are thereon Ext.A69 also. Ext.A69 would show that it was sent to the respondent in her correct address and the postal endorsement on it would show that the respondent did not claim the postal cover despite intimation to her. The respondent has no case that address shown in Ext.A69 is not of her address. Exts.A12 and A69 would show that the whip was sent to the respondent by registered post in her correct address sufficiently early and she refused to accept the same. Therefore under the above circumstances she cannot contend that no whip was issued and served on her. Further, it is evidence that the whip was served on the respondent by affixture also. Evidence of PW1 and Ext.A31 photo would reveal the said fact. According to PW1 he went to the house of the respondent with witnesses and affixed the whip on the wall of the respondent's house. Ext.A31 is the photo taken by him at the time of affixing the whip. There was no specific cross-examination on that aspect and there was not even a suggestion to PW1 regarding Ext.A31 photo and that no whip was affixed on the house of the respondent. Copy of the whip was given to the Secretary of the Municipality also. Ext.A13 and the endorsement of the Secretary with seal on it would show the said fact. I do not find anything in this case to disbelieve the evidence of PW1 and PW4 and Exts.A12, A31 and A69. So the contention of the respondent that no whip was issued and served on her and that she was not aware of the whip issued in

this case cannot be accepted. The respondent was very well aware of the whip and direction of her party to vote infavour of the no confidence motion. Admittedly the respondent did not attend the meeting on 18.04.2017 and vote infavour of the motion as per the direction of her party.

25. The next question to be considered is whether the absence of the respondent in the meeting on 18.04.2017 is justifiable. Case of RW1 is that she could not attend the meeting on 18.04.2017 on account of her illness. What was her illness is not seen stated anywhere in the objection statement or in her chief affidavit. At the time of cross-examination it is stated by RW1 that she went to hospital for treatment for urinary infection and back pain. According to her she was admitted in Pushpagiri Medical College Hospital, Thiruvalla on 13.04.2017 and discharged on 17.04.2017. The respondent relies on the evidence of RW2 and Exts.B3 and X2 case records in support of her case of illness. Ext.B3 is the discharge summary given to the respondent from Pushpagiri Hospital and Ext.X2 is the case records. RW2 is the Senior Assistant Professor working in the Department of Medicine of Pushpagiri Medical College Hospital, Thiruvalla. According to RW2 doctor the respondent was admitted in the hospital on 13.04.2017 for back pain and discharged on 17.04.2017 at her request. Except back pain she had no other illness when he examined her. Evidence of RW2 doctor would show that the respondent was not suffering from any serious illness which would disable her from attending the meeting on 18.04.2017. It is also stated by RW2 that the

respondent came to him by walking and at the time discharging also she had no problem for walking. The medicines given to her also are ordinary pain killers as per the evidence of RW2 doctor.

26. It is further to be noted that the meeting in question was on 18.04.2017. It may be noted that the respondent was discharged from the hospital on 17.04.2017. Evidence of RW2 doctor is that the respondent was not having any complications disabling her from attending the meeting on 18.04.2017. Still she did not come to attend the meeting on 18.04.2017. RW1 has a contention that she was referred to Medical College Hospital, Kottayam from the Pushpagiri Medical College Hospital after discharging from there. There after she went to Bharath Hospital, Kottayan and was treated there on 18.04.2017. According to RW1 on 18.04.2017 she was in Bharath Hospital. But there is absolutely no document to show that she was admitted in Bharath Hospital and treated there. RW1 admitted the said fact. If really the respondent was admitted in Bharath Hospital and treated there, there would be records in the hospital. She could have taken steps to produce those records and examined the doctor who allegedly treated her. But no such things we find in this case. The respondent did not take any steps in that direction. Further, from the evidence of RW2 itself it can be seen that she was not having any serious illness preventing her from attending the meeting on 18.04.2017. It may also be noted that the respondent did not go to any doctor or take any treatment for her illness of back pain before taking treatment from

Pushpagiri Hospital on 13.04.2017. RW1 admitted the said fact in her evidence. It is also admitted by her that she has attended the council meeting held just two days prior to her admission in Pushpagiri Medical College Hospital. She did not give any leave application also for exempting her from attending the said council meeting. It is also stated by RW1 that she did not inform her alleged inability to attend the meeting on 18.04.2017 to any of the leaders of her party or UDF. RW1 admitted the said fact in the cross-examination.

27. The learned counsel for the respondent has a contention that the respondent has applied for leave on 04.04.2017 for two months and the same was granted Ext.X3(a) is the said leave application and according to the counsel the proceedings of the meeting of Thiruvalla Municipal Council on 11.04.2017 found in Ext.X3 file would show that the leave was granted to her. As two months leave was granted to her no action is possible against the respondent for her absence on 18.04.2017, the counsel submits. It may be noted that the said leave was granted by the then Chairman Shri.K.V.Varghese referred to above and it was against him the no confidence motion in question was moved. Allegation is that it was to help him the respondent abstained from attending the meeting. That is also a circumstance to be noted in this case. Further, it may also be noted that the respondent applied for leave on 04.04.2017 and the leave was granted as per the proceedings of the council on 11.04.2017. But it is in evidence that even after

that she attended the meeting of the council even as per the evidence of RW1. Evidence of RW1 is that she attended the meeting of the Council held two days prior to 18.4.2017. Further, granting of leave for absencing the council meeting cannot be put forward as an excuse to discard the direction of her party. The meeting convened for discussing the no confidence motion is not the meeting of the Municipal Council. The exemption if any granted by the Municipal Chairman or Council has nothing to do with the meeting convened for discussing the motion of no confidence. Even assuming that the respondent was exempted from attending the council meeting she cannot escape from the liability in this case as it is not a council meeting. She is bound by the decision of her party.

28. Argument of the learned counsel for the petitioner is that the respondent was not suffering from any illness as alleged. To make out a defence in this case which she anticipated, the respondent might have got admitted in the hospital. Such a possibility cannot be ruled out in this case in the light of the evidence and circumstances in this case. It has become a practice now to somehow to make some medical records in cases like this to justify the willful abstention. That cannot be encouraged. There must be convincing and believable evidence to show that the respondent was really in such a condition which disabled her from attending the meeting. But the medical evidence in this case would show that the respondent was not having such difficulties. From the evidence and circumstances in this case it is not

possible to say that the abstention of the respondent in the meeting on 18.04.2017 was not deliberate. Her absence is not so innocent as projected by her.

29. The learned counsel for the respondent has a contention that the respondent in this case cannot be disqualified in view of the decision reported in **2015(1) KHC 111 (Joseph K.M V. Babychan Mulangasseri and others)** as the no confidence motion was moved by the members of Indian National Congress against their own party nominee. But how that decision is applicable in this case is not known and the counsel did not explain also. Here itself, it is to be stated that the said decision is not at all applicable to the facts of the case. Smt. Krishnakumari A.P.

30. 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 that is not the case here. In that case few members of Indian National Congress moved a no confidence motion against the President of the Panchayat, a nominee of their own party without the permission and support of their party. But here in this case the no confidence motion was moved as per the decision and direction of Indian National Congress party. So the said decision will not help the respondent in this case. Further, the respondent did not move any such no confidence motion against any leader of her party. She is sought to be disqualified in this case not for moving any no confidence motion against the party leader. She is sought to be disqualified

for violating the direction of the party and acting against the interest of the party. The decision referred to above is hence not applicable to this case and therefore the above contention of the counsel is only to be ignored.

31. It may be noted that the majority of Indian National Congress members voted infavour of no confidence motion. But the respondent did not care to attend the meeting and support the motion moved as per the direction of her party. It is in evidence that the respondent is infavour of the continuance of Shri.K.V.Varghese as Chairman and against the decision of the party to elect the petitioner as Chairman. The respondent's absence in the meeting on 18.04.2017 is to be viewed in that background also. The respondent is a responsible elected member of Indian National Congress in Thiruvalla Municipality and she cannot take a decision different from that of the party. She is bound by the direction of her party and disobedience and acting against the interest of the party is nothing but disloyalty. The no confidence motion in this case was moved by the members of Indian National Congress and UDF as per the decision of the party. The decision of the party to vote infavour of the no confidence motion was informed to the respondent as noticed above. It is a fact that the respondent did not comply that direction. She did not attend the meeting on 18.04.2017 and naturally she is to face the consequences.

32. It may also be noted that as per Section 3(1)(a) of the Act a member can be disqualified if he has voluntarily given up the membership of

the party to which he belongs or acts in defiance of a whip issued by that political party. 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)**, **2015 KHC 454 (Suryaprakash and others V. State Election Commission, Thiruvananthapuram and others)** **2015 KHC 7086 (Chenthamara K. and others V.Kerala State Election Commission, Thiruvananthapuram and others)** and **2018 (5) KHC 964 (Eruthavoor Chandranand another V. Kerala State Election Commission and others)**. From the conduct of a member an inference can be drawn that he has voluntarily given up his membership from his party. The abstention of the respondent noted above without justification is certainly in that category.

33. 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 as held in the decision reported in (1992) Supp.2 sec651(**Kihoto Hollohan Vs.Zachillhu**).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

34. A member belonging to a political party has to be loyal to his party and the moment he becomes disloyal he/she would become subject to disqualification on the ground of voluntarily giving up his/her membership from the party. It is found above that PW4 the DCC President issued whip to the respondent to attend the meeting on 18.04.2017 and to vote infavour of the no confidence motion and she was aware of the whip. But she chose to defy the direction and abstained from attending the meeting. It is found above that the reason stated for her absence is not believable. Her abstention was deliberate and it is not justifiable. The conduct of the respondent abstaining from attending the meeting on 18.04.2017 defying the direction of her party would clearly demonstrate that she became

disloyal to the party which elected her as a Councillor of Thiruvalla Municipality. The above act of the respondent would amount to defection inviting disqualification under both the limbs of Section 3(1)(a) of the Act as alleged and the case put forward by the petitioner against the respondent is clearly established. According to 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.

35. From the above facts and circumstances it can be seen that the respondent has committed defection and she has voluntarily given up her membership of the party which elected her as a Councillor, as provided by Section 3(1)(a) of the Act and therefore she became subject to disqualification for being a Councillor of Thiruvalla Municipality. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being Councillor of Thiruvalla Municipality as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent is further declared as disqualified for contesting as a candidate in an election to any local authorities for a period of 6 years from this date, as provided by Section 4(3) of the Act.

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

Pronounced before the Commission on this the 7th day of August 2019

Sd/-

**V.BHASKARAN,
STATE ELECTION COMMISSIONER**

APPENDIX

Witnesses examined on the side of the petitioner

PW1	:	Shri.Jayakumar.R
PW2	:	Shri.Cheriyen Polachirackal
PW3	:	Shri.Rajesh Chathankari
PW4	:	Shri.Babu George

Witness examined on the side of the respondent

RW1	:	Smt. Krishna Kumari.A.P.
RW2	:	Dr.Sunil Kumar
RW3	:	Shri.Biju.S, Secretary Thiruvalla Municipality

Documents produced on the side of the petitioner

A1	:	Copy of agreement dated 18.11.2015
A2	:	Copy of the notice issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.K.V.Varghese
A3	:	Copy of the postal receipt dated 25.02.2017
A4	:	Postal receipt dated 25.02.2017
A5	:	Minutes of the meeting of the Councillors of Thiruvalla Municipality held on 20.03.2017

- A6 : Letter dated 01.04.2017 issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.R.Jayakumar
- A7 : Receipt No.1066/2017 dated 05.04.2017 issued by Regional Joint Director, Kollam, to Cheriyan Polachirakkal
- A8 : Notice No.C.1066/2017 dated 07.04.2017 issued to R.Jayakumar
- A9 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.R.Jayakumar
- A10 : Postal receipt dated 11.04.2017
- A11 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Smt.Krishnakumari.A.P
- A12 : Postal receipt dated 11.04.2017
- A13 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Smt.Saramma Francis
- A14 : Postal receipt dated 11.04.2017
- A15 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.Alikunju
- A16 : Postal receipt dated 11.04.2017
- A17 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.Varghese K.V
- A18 : Postal receipt dated 11.04.2017
- A19 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to

Smt.Sreerenjini S.Pillai

- A20 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.John Simon
- A21 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Smt.Elsy George
- A22 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Shri.Anu George
- A23 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Smt. Suja Mathew
- A24 : Copy of the whip issued by Shri.Babu George, DCC President, Pathanamthitta to Smt.Reena Samuel
- A25 : Postal receipt dated 11.04.2017
- A26 : Postal receipt dated 11.04.2017
- A27 : Postal receipt dated 11.04.2017
- A28 : Postal receipt dated 11.04.2017
- A29 : Postal receipt dated 11.04.2017
- A30 : Postal receipt dated 11.04.2017
- A31 : Photograph
- A32 : Photograph
- A33 : Photograph
- A34 : Copy of the letter issued by the DCC President to the Regional Joint Director, Kollam received by the Secretary, Thiruvalla Municipality.
- A35 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Shri.Cheriyann Polachirackal

- A36 : Postal receipt dated 11.04.2017
- A37 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Shri.Jacob George
- A38 : Postal receipt dated 11.04.2017
- A39 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Smt.Reena Mathew Chalakuzhy
- A40 : Postal receipt dated 11.04.2017
- A41 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Smt.Aleyamma Thomas
- A42 : Postal receipt dated 11.04.2017
- A43 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Shri.Biju Lankagiri
- A44 : Postal receipt dated 11.04.2017
- A45 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Smt.Sheela Varghese
- A46 : Postal receipt dated 11.04.2017
- A47 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Shri.Thomas Jacob
- A48 : Postal receipt dated 11.04.2017
- A49 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Smt.Santhamma Mathew

- A50 : Postal receipt dated 11.04.2017
- A51 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Shri.Varghese P Varghese
- A52 : Postal receipt dated 11.04.2017
- A53 : Copy of the whip issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to Smt.Sherly Shaji
- A54 : Postal receipt dated 11.04.2017
- A55 : Copy of the letter issued by Shri.Victor T Thomas, KC(M) President, Pathanamthitta to the Secretary, Thiruvalla Municipality
- A56 : Letter No.G3/8359/17 dated 25.04.2017 issued by the Public Information Officer (GeneralandAccounts),Thiruvalla Municipality to Shri.Chериан Polachirackal (RTI reply)
- A57 : Copy of the letter issued by the President of KC(M), Pathanamthitta District to the Secretary, Thiruvalla Municipality
- A58 : Copy of the letter issued by Shri.Babu George,President of INC(I), Pathanamthitta District to the Secretary, Thiruvalla Municipality
- A59 : Copy of the whip issued by Shri.Alex Kannamala, President Janatha Dal (S) Pathanamthitta District to Shri.Shajikumar Narayanan informed to the Secretary, Thiruvalla Municipality
- A60 : Copy of the whip issued by the Secretary of CPI(M) Pathanamthitta District to Shri.Satheesh Vijayan

- A61 : Copy of the whip issued by the Secretary of CPI(M) Pathanamthitta District to Shri.M.V.Gopala Krishnan
- A62 : Copy of the whip issued by the Secretary of CPI(M) Pathanamthitta District to Shri.Aneesh Kumar
- A63 : Copy of the whip issued by the Secretary of CPI(M) Pathanamthitta District to Smt.Padmavathy Amma
- A64 : Copy of the whip issued by the Secretary of CPI(M) Pathanamthitta District to Smt.Arundhathi Rajesh
- A65 : Copy of the whip issued by the Secretary of CPI(M) Pathanamthitta District to Smt.Saranya. T.S
- A66 : Copy of the whip issued by the Secretary of CPI(M) Pathanamthitta District to Shri.C.Mathai
- A67 : Copy of the minutes of the meeting of ThiruvallaMunicipal Council held on 18.04.2017
- A68 : Copy of the report of the Regional Joint Director about the no confidence motion against Shri.K.V.Varghese
- A69 : Returned postal article

Documents produced on the side of the respondent

- B1 : Copy of the leave application submitted by Smt.Krishnakumari.A.P. to the Secretary, Thiruvalla Municipality
- B2 : Copy of the minutes of Thiruvalla Municipal Council

B3 : Discharge summary issued to
Smt.Krishnakumari.A.P. from Pushpagiri
Medical College hospital, Thiruvalla

Documents produced by the witnesses

X1 : Minutes book of Thiruvalla Block Congress
Committee

X1(a) : Minutes of the meeting of Thiruvalla
Congress parliamentary party held on
23.02.2017

X1(b) : Minutes of the meeting held on 16.03.2017

X2 : Copy of treatment records produced
from Pushpagiri Medical College Hospital,
Thiruvalla relating to
Smt.Krishnakumari A.P.

X3 : File relating to leave application of the
Councillors of Thiruvalla Municipality

X3(a) : Leave application of Smt.Krishnakumari.A.P.
dated 04.04.2017

X3(b) : Letter dated 07.04.2017 submitted by
R.Jayakumar to the Secretary, Thiruvalla
Municipality

X4 : Copy of the minutes of Thiruvalla Municipal
Council dated 11.04.2017

//True Copy//

Sd/-
V.BHASKARAN
STATE ELECTION COMMISSIONER