

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 13th day of January 2017

O.P.No.67/2015

Petitioner : M.R.Rajeev,
S/o Rahulan, Mavunkal,
Mulavukadu,
Ernakulam District.

Member, Ward No.3,
MulavukaduGrama Panchayat

(By Adv. S.P.Sohanlal)

Respondent : V.S.Anzar,
Member, Ward No.09,
MulavukaduGrama Panchayat.

(Exparte)

This petition having come up for hearing on the 6th day of **January 2017**, in the presence of Adv. **S.P.Sohanlal** for the petitioner and the respondent remained exparte, 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 MulavukaduGrama Panchayat and also for declaring him 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 were elected members of Mulavukadu Grama Panchayat in Ernakulam District in the election held in October 2010. Petitioner contested the election and was elected as the candidate of CPI(M) and the respondent as the candidate of CPI which is a part of CPI(M) led Left Democratic Front. There are 16 wards in Mulavukadu Grama Panchayat and out of which the UDF secured 8 seats and the LDF got 7 seats. The remaining one seat was won by an independent. After the election the independent member Shri. Dinakaran was elected as the President of the Panchayat with the support of LDF and Smt. Viji Shajan of LDF was elected as the Vice President.

3. Later no confidence motion was moved against them by the UDF with the support of the respondent and it was carried on 12.12.2014. Violating the direction of his party the respondent supported the no confidence motion along with the UDF members. Thereafter election to the posts of President and Vice President were scheduled to be held on 19.01.2015. Smt. Indira and Smt. Viji Shajan both from CPI(M) were decided to be the candidates for the Presidentship and Vice Presidentship respectively, by the LDF. Shri. Kumaran, the District Secretary of CPI

issued whip to the respondent directing him to vote infavour of the LDF candidates for the President and Vice President. The whip when tendered the respondent refused to acknowledge it and later it was served on him by affixture. Direction was given to him over phone also. Despite the direction of his party the respondent contested for the post of President as the UDF candidate against the LDF candidate and was elected as Panchayat President. The name of the respondent was proposed and seconded by the UDF members. The respondent contested for the post of President and was elected, disobeying the decision and direction of his party CPI. By doing so he committed defection and voluntarily abandoned his membership in the party. He violated the whip of his party. In the Vice President election also he cast his vote infavour of the UDF candidate violating the direction of his party. Hence the petitioner filed this petition for a declaration as above.

4. The respondent did not contest the Original Petition. Initially, though he appeared before the Commission through an Advocate he later abstained and remained exparte. He did not file any objection in this case.

5. On the side of the petitioner PWs 1 to 4 were examined and Exts. A1 to A5 were marked.

6. This petition, as stated above, is for a declaration that the respondent committed defection and hence he became disqualified to be the member

of MulavukaduGramapanchayat and also to contest the election to any local body for a period of six years. The petitioner and respondent were elected as members of MulavukaduGramapanchayat in the election held in October 2010. The petitioner contested and was elected as CPI(M) candidate and respondent as CPI candidate. Both the CPI(M) and CPI are constituents of LDF.

7. There are 16 wards in MulavukaduGramapanchayat. The LDF secured 7 seats and the UDF secured 8 seats. One seat was won by an independent. After election the independent member became the Panchayat President with the support of LDF members and the nominee of LDF was elected as the Vice President. Later no confidence motion was moved against the President and Vice President, by the UDF members and it was carried. The respondent supported the no confidence motion violating the direction of his party. Thereafter election of the new President and Vice President was scheduled to be held on 19.01.2015. The LDF nominated Smt.Indira and Smt.VijiShajan both the CPI(M) party as the candidates for the posts of President and Vice President respectively. Direction was issued to all the LDF members to vote in favour of the above LDF candidates. The District Secretary of CPI issued whip to the respondent directing him to vote in favour of Smt.Indira and Smt.VijiShajan.

8. According to PW1 the whip when tendered, the respondent refused to acknowledge the same. Thereafter it was served by affixture. PWs3 and 4 are the witnesses for the affixture. PW2 is the then District Secretary of CPI. He is the competent person to issue whip to the respondent and he has clearly stated about the issuance of whips in this case. Ext.A1 is the whip issued to the respondent. It is also stated by PW2 that he has given direction to the respondent in the matter over phone also. It is stated that the respondent himself contested for the post of President with the support of UDF members and became the Panchayat President, defying the decision and direction of his political party CPI. In the election for the post of Vice President also he supported the candidate of UDF, violating the direction of his party. The respondent acted against the interest of his party and his conduct would amount to defection and voluntary giving up of his membership in the political party, PWs1 and 2 further stated.

9. As against the evidence of PWs1 to 4 there is nothing from the side of the respondent. The petition averments are proved through the unchallenged testimonies of PWs1 to 4 and Exts.A1 to A5. There is nothing to think otherwise. The case put forward by the petitioner is clearly established in this case. The respondent has committed defection and he has given up his membership in the party which elected him as Panchayat member, as provided under Section 3(1)(a) of the Act and

therefore he became disqualified to be the member of Mulavukadu Grama Panchayat.

In the result, the petition is allowed and the respondent is declared as disqualified for being member of Mulavukad Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the respondent is further declared as disqualified from 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 no order as to costs.

Pronounced before the Commission on this the 13th day of January 2017

Sd/-
V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

PW1	:	Shri.M.R.Rajeev
PW2	:	Shri.E.A.Kumaran
PW3	:	Shri.E.D.Shibu
PW4	:	Shri.V.C.Prasannan

Documents produced on the side of the petitioner

A1	:	Whip issued by Shri.E.A.Kumaran, Secretary, CPI, Ernakulam District Council dated
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06.01.2015

- A2 : Copy of the whip affixed on Shri.V.S.Ansar's House dated 06.01.2015
- A3 : Copy of the minutes of the meeting for the election of President in Mulavukadu Grama Panchayat dated 19.01.2015
- A4 : True Copy of the minutes of the meeting to elect the Vice President, Mulavukadu Grama Panchayat held on 19.01.2015
- A5 : Copy of the Register showing the party affiliation of the members of the Mulavukadu Grama Panchayat

Sd/-

V.BHASKARAN
STATE ELECTION COMMISSIONER