

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Tuesday, the 9th day of July 2019

O.P.No.71/2018

Petitioner : K.S.Ajith Kumar,
S/o Kochappi,
SaradaBhavan,Mundakkal,
Murukkumpuzha,
Thiruvananthapuram District.

Member, Ward No.17,
MangalapuramGrama Panchayat

(By Adv. KallambalamS.Sreekumar)

Respondent : M.Shanavas,
Vadakkevilakom,
Cherukayalkkara, Murukkumpuzha,
Thiruvananthapuram District 695 3012.

Member, Ward No.13,
MangalapuramGrama Panchayat

(By Adv. G.Rajeev)

This petition having come up for hearing on the 26th day of **June2019**, in the presence of Adv. **KallambalamS.Sreekumar** for the petitioner and **Adv.G.Rajeev** 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 MangalapuramGrama 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 are elected members of MangalapuramGrama Panchayat in the election held in November 2015. Both of them contested the election and were elected as the candidates of Indian National Congress (INC). There are 20 wards (seats) in MangalapuramGrama Panchayat and out of which the Left Democratic Front (LDF) secured 9 seats, Indian National Congress (INC) got 7 seats and Bharathiya Janata Party (BJP) and Revolutionary Socialist Party (RSP) got one seat each. The remaining two seats were won by the independents. The LDF with the support of one independent member Smt.SumaHarilal formed the Panchayat board. Shri.MangalapuramShafi was elected as the President and Smt.SumaHarilal was elected as the Vice President. Later, Shri.Shafi resigned from the post of President and election to elect new President was scheduled to be held on 13.06.2018. The parliamentary party meeting of the Indian National Congress was held on 11.06.2018 in the presence of District leaders and in the meeting it was

decided to nominate Smt.S.R.Kavitha an independent member for the post of the President. The DCC President issued whip to all the Indian National Congress members to attend the election meeting and to vote infavour of the Smt.S.R.Kavitha. The whip was served on the respondent directly and he has acknowledged the receipt of the same. The respondent was very well aware of the direction of his political party in the matter. But the respondent colluded with the rival front LDF and on 13.06.2018 he defied the direction of his party and purposefully made his vote invalid to help the candidate of the rival front LDF. The respondent is now in the LDF camp. He has acted against the interest of his party. He has voluntarily abandoned his membership from INC by making his vote invalid. To act against the party and working against the interest of the party is disloyalty. By defying the direction of the party and acting against the interest of his political party the respondent committed defection and thereby he incurred disqualification as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and the petitioner seeks a declaration to that effect.

3. The respondent filed counter statement contending as below.-The petition is not maintainable. The allegations that the respondent has violated the whip of his party and voluntarily abandoned his membership from INC are false. It is true that the respondent contested and was elected as the candidate of Indian National Congress. The respondent is still a member of Indian National

Congress and he has not given up his membership from the party. It is also true that a meeting of the Congress parliamentary party was convened on 11.06.2018 as stated in the petition. The respondent could not attend that meeting as he was apprehending arrest in a criminal case of assault. The absence of the respondent in the said meeting was only due to that. It is also true that the DCC President issued whips to all the elected INC members including the respondent directing them to vote infavour of Smt.S.R.Kavitha. The respondent received the whip and acted accordingly. The allegation that the respondent colluded with the LDF and deliberately made his vote invalid is false. By mistake he could not write his name on the reverse side of ballot paper. The respondent had no intention to invalidate his vote. He never violated the whip of his party. It is not correct to say that the respondent has acted against the interest of the party and voluntarily abandoned his membership from INC. The respondent did not do any act of defection. There is no merit in the petition and the petitioner is not entitled to get any relief in the petition and it is only to be dismissed

4. The evidence in this case consists of the oral testimonies of PW1, PW2, RW1 and Exts.A1, A1(a), A2, B1 to B11 and X1.

5. Both sides were heard.

6.The following points arise for consideration;

(1) Whether the petition is maintainable?

- (2) Whether the respondent has disobeyed the direction of his political party as alleged?
- (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 his membership from Indian National Congress as alleged?
- (5) Whether the petitioner is entitled to the declaration prayed for?
- (6) Reliefs and costs?

7. **POINT No.1:** The petitioner and respondent are elected members of Mangalapuram Grama Panchayat in the election held in November 2015 and both of them were elected as the candidates of Indian National Congress (INC). Out of the total 20 seats in Mangalapuram Grama Panchayat the Left Democratic Front (LDF) got 9 seats, Indian National Congress (INC) 7 seats and Bharathiya Janata Party (BJP) and Revolutionary Socialist Party (RSP) one seat each. The independents found victory in the remaining two seats. The LDF with the support of one independent member Smt. Suma Harilal formed the Panchayat board. Shri. Mangalapuram Shafi from LDF and Smt. Suma Harilal were elected as the President and Vice President respectively. Later Shri. Shafi resigned from the post of President and election to elect the new President was held on 13.06.2018. The nominee of Indian

National Congress was Smt.S.R.Kavitha an independent member and the DCC President issued whip to all the elected INC members directing them to vote infavour of Smt.S.R.Kavitha.

8. According to petitioner the respondent did not obey the direction. He colluded with the rival front LDF and deliberately made his vote invalid to help the LDF candidate to win. By doing so the respondent committed defection and incurred disqualification as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent denied the allegations. According to him he did not violate any whip of his party and his omission to subscribe his name in the ballot paper was not deliberate it is only a mistake. To him he did not commit any act of defection incurring disqualification. It is also his contention that the original petition is not maintainable. Though such contention is raised in the objection statement it is to be stated that there is absolutely nothing from his side to show that the petition is not maintainable.

9. 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.

10. 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 member of the local authority in which the respondent is also a member. The petitioner being a member 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.

11. **POINT Nos. 2 to 6:-** Case of the petitioner is that the respondent committed defection by acting against the interest of his political party and also by defying and disobeying the direction of his party and thereby incurred disqualification under Section 3(1)(a) of the Act. The petitioner and respondent, as stated above, are elected members of MangalapuramGrama Panchayat and they were elected as the candidates of Indian National Congress (INC). There is no dispute over those aspects. Out of the 20 seats (wards) in MangalapuramGrama Panchayat the Left Democratic Front got 9 seats and with the support of an independent member Smt.SumaHarilalit formed the Panchayat board. Shri.Shafi and Smt.SumaHarilal were elected as the President and Vice

President of the Mangalapuram Grama Panchayat. Shri.Shafi later resigned from the post of the President and fresh election was held on 13.06.2018. According to PW1 the petitioner, a meeting of the parliamentary party of Indian National Congress was held on 11.06.2018 and in the meeting it was decided to elect the independent member Smt.S.R.Kavita as the President. Ext.A1 is the minutes book of the Indian National Congress Parliamentary party meeting and Ext.A1(a) is the minutes of the meeting held on 11.06.2018. The respondent has no dispute over the said meeting and the decision therein. As decided in Ext.A1(a) meeting the DCC President, Thiruvananthapuram District issued whip to all the elected members of INC including the respondent directing them to vote infavour of Smt.S.R.Kavitha. The DCC President was examined as PW2 and he has clearly stated about the issuance of whip in this case. He has produced a copy of the whip and the same was marked as Ext.X1.

12. Contention of PW1 is that the respondent disobeyed the direction of the party and deliberately made his vote invalid to help the candidate of the rival front LDF. He made the vote invalid by not writing his name on the reverse side of the ballot paper as required under law. He has done so in the President election only to help the candidate of the rival front LDF and to defeat the nominee of his own party. Due to the above act of the respondent the Left Democratic Front candidate got elected as the President with the silent support of the respondent, it is further contended.

13. It is a matter of admission that the DCC President issued whips to all the elected INC members directing them to vote infavour of Smt.S.R.Kavitha in the President election held on 13.06.2018. RW1 admitted that he has received the whip issued by PW2 and he has produced the whip received by him. Ext.B1 is the said whip. It is also admitted by him that there was a meeting of the Indian National Congress Parliamentary party meeting on 11.06.2019 and in that meeting decision was taken by the party to field Smt.S.R.Kavitha as the candidate for the post of the President. Case of RW1 is that he has not violated the whip issued by his party and he cast his vote infavour of Smt.S.R.Kavitha as directed by PW2, DCC President. His vote was declared invalid as he omitted to write his name on the reverse side of the ballot paper. It was only a mistake and he had no intention to make his vote invalid. He did not do any act of defection inviting disqualification and he did not abandon his membership in Indian National Congress, RW1 further states. According to him he continues to be a member of Indian National Congress and in the recentLok Sabha election also he has actively participated in the election work and he worked for the victory of the Indian National Congress candidate in Attingal Constituency. He has produced Exts.B2 to B10 photos to show that he has participated in the election work for the party.

14. The short question to be considered in this case is whether the respondent has deliberately made his vote invalid and thereby committed defection. 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 relevant provision 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 an voting on a no-confidence motion against any one of them except a member of a Standing Committee, he shall be disqualified for being a member of that local authority.

15. 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.

16. To attract the second part there must be a proper whip and the whip should be communicated and there must be violation of the whip. Admittedly the District President of the Congress is the competent person to issue the whips to the elected members of Indian National Congress. PW2 is the DCC President, Thiruvananthapuram District and he has issued whip in this case. RW1 has no case that there was no whip in this case and he has not received the whip. He has admitted the receipt of the whip in this case. It is a fact that the respondent was directed to vote infavour of Smt.S.R.Kavitha in the President election held on 13.06.2018 by his party as per Ext.B1 whip. RW1 has no dispute over the whip issued in this case. His definite case is that he acted as per the whip and he has cast his vote in favour of Smt.S.R.Kavitha as per the whip. But his vote was declared invalid as he did not write his name on the reverse side of the ballot paper. According to the petitioner the respondent purposefully made his vote invalid to help the candidate of the rival party.

17. Section 153 of the Kerala Panchayat Raj Act deals with the election of the President and Vice President. As per sub Section 7(A) of Section 153 the election shall be by open ballot and the member voting shall, record in

writing his name and signature on the reverse side of the ballot paper. The manner of recording of votes is stated in Rule 9(3) of the Kerala Panchayat Raj (Election of President and Vice President) Rules. As per Rule 9(3) every member shall, immediately on receipt of the ballot paper put the mark 'X' on the ballot paper against the name of the candidate for whom the intends to vote and hand over the ballot paper to the Returning Officer after writing his name and signature on the reverse side of the ballot paper. As per Rule 10, a ballot paper which does not bear the name and signature of the member shall be rejected as invalid. Admittedly the respondent did not write his name on the reverse side of the ballot paper as required under Section 153(7A) of the Act and Rule 9(3) of the above Rules. As the respondent did not write his name on the ballot paper the same was rightly rejected as invalid by the Returning Officer as per Rule 10. The petitioner has not challenged the rejection of his vote or the validity of the election of the President before any forum as required under Section 153(14) of the Act. So he cannot now say that the rejection of his vote as invalid, is illegal.

18. When the statute provides the manner in which the things have to be done it should be done in that manner. As per Section 153(7A) and Rule 9(3) aforesaid the member voting should write his name on the reverse side of the ballot paper. Respondent did not write his name as required and hence his vote was declared invalid. Submission of the learned counsel for the respondent is that the respondent cast his vote infavour of Smt.S.R.Kavitha as

per Ext.B1 whip and by mistake only he omitted to write his name and it is not deliberate. That omission, according to the counsel, cannot be made use of against the respondent to disqualify him. Submission of the learned counsel for the petitioner on the other hand is that the respondent colluded with the rival front LDF and deliberately made his vote invalid to help the candidate of the rival party and to defeat the nominee of his own party. With the intention of creating a defence in the defection case which he expected to be filed against him he cast his vote against the name of Smt.S.R.Kavitha and thereafter purposefully made it invalid by not writing his name on the reverse side of the ballot paper as required by law. The respondent thus violated the whip of the party and acted against the interest of his party inviting disqualification under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, the counsel further submits. The evidence and circumstances in this case would only lend support to the said contention of the counsel. It is clearly stated by RW1, the respondent in cross-examination that he was aware of the procedure and the manner of voting in the President election and that his vote would become invalid if he failed to write his name on the reverse side of the ballot paper. Despite all these the respondent did not care to subscribe his name on the ballot paper as required.

19. Citing the decisions reported in 2005(4) KLT 361 (AhammedV.Antony) and 2009 KHC (5131) (SurendranV.Devidas) it is submitted by the learned counsel for the respondent that the omission to write

the name of the respondent on the reverse side of the ballot paper cannot be a ground to reject his vote. It is to be stated that the above decisions will not help the respondent in this case. The facts dealt in both the above decisions are different from the facts in this case. In *Ahammed V. Antony* the member has subscribed his name and signature on the ballot paper. But the same was on the facing page and not on the reverse side of the ballot paper. When the vote was rejected as invalid on that ground it was challenged then and there and it was held in that decision that there was substantial compliance of the provision as the ballot paper contained the name and signature of the member. Here in this case admittedly the respondent did not write his name anywhere in the ballot paper and he did not challenge the rejection of his vote before the competent forum then. So the said decision will not help the respondent in this case.

20. In *Surendran V. Devidas* the member put his signature on the reverse side of the ballot paper without writing his name. But his name was there in the signature. It was held in that decision that as the signature of the member disclosed the name and the name of the voter formed part of his signature the requirements under Section 153(7A) were satisfied. The respondent in this case has no case that his signature put in the ballot paper would disclose his name and his name forms part of his signature. It may be noted that the said decision was in a properly instituted election petition challenging the rejection of votes on the ground of none writing of the name

of the voter. But the respondent herein did not challenge the rejection of his vote then before any competent forum and the decision of the Returning Officer was accepted by him. His non challenging the decision of the Returning Officer before the competent forum also would only show that it was his intention to make his vote invalid. So the above decisions will not help the respondent in this case.

21. It may also be noted that on earlier occasions also there were elections to the post of President, Vice President and elections to the Standing Committees and he has correctly cast his vote in those elections. The present act of the respondent is to be viewed in that background also. His non writing of the name on the ballot paper is not so innocent as projected by the respondent. From the evidence and circumstances of the case it cannot be said that it is not deliberate and it is only a mistake. Further, if the above contention of the respondent is accepted, in all the cases the defecting members can adopt this method in voting and defeat the provisions of Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act. That should not happen.

22. The respondent is a responsible elected member of Indian National Congress in Mangalapuram Grama Panchayat. He is bound by the direction of his party and to act as per the direction of the party. Selective and farcical compliance as done by the respondent in this case is not compliance. It is his

duty to validly cast his vote infavour of the nominee of his party and his any act of helping the candidate of the rival party will be an act of disloyalty to his party. The act of the respondent in this case led to the victory of the candidate of the rival party and the defeat of the nominee of his own party. He cannot escape by simply saying that it was only a mistake. From the evidence and circumstances in this case it can be seen that the respondent deliberately made his vote invalid to help the candidate of the rival party. The acts of the respondent would only show that he has disobeyed the direction of his party. He has acted against the interest of his party and his conduct would show that he has voluntarily given up his membership from his party.

23. It is also be the contention of the learned counsel for the respondent that the respondent did not abandon his membership in the party and even now he is an active worker of the party. In the recently held Lok Sabha election the respondent was actively engaged in the election work by the party and he was actively working for the victory of the Indian National Congress candidate in AttingalLok Sabha Constituency. The respondent has produced Exts.B2 to B10 photos to support the above contentions. Exts.B2 to B10 photos would show that the respondent was affixing some posters of the Indian National Congress candidate in AttingalLok Sabha Constituency and according to the counsel that would show that the respondent did not abandon his membership from INC. First of all, it is to be stated that those photos are not properly proved in this case. When and under what circumstances those

photos were taken and who took those photos are not known. Further, even assuming that the respondent was actively engaged in the election work of the Indian National Congress candidate as claimed by the respondent that will not save the respondent in this case. 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) KHC42 (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 respondent has already incurred disqualification in this case and his subsequent remorseful act or the reconciliatory attitude of the party if any, will not save him from the mischief of Section 3(1)(a) of the Act.

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

party, the inevitable inference is that he has voluntarily given up his membership. The **Kerala Local Authorities (Prohibition of defection) Act**, derived its source from the *10th schedule to the Constitution of India*. While upholding the Constitutional validity of 10th schedule, the *Apex Court in 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.”

25. 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 respondent in making his vote invalid with a view to help the candidate of the rival party defying the direction of his party would clearly demonstrate that he became disloyal to the party which elected him as a member of Mangalapuram Grama Panchayat. The above acts 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. I do not find anything in this case to take a different view. 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.

26. From the above facts and circumstances it can be seen that the respondent has committed defection and he has voluntarily given up his membership of the party which elected him as member, as provided by Section 3(1)(a) of the Act and therefore he became subject to disqualification for being a member of Mangalapuram Grama Panchayat. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being member of Mangalapuram Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. 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 the parties are directed to bear their respective costs.

Pronounced before the Commission on this the 9th day of July 2019

Sd/-
V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Shri.K.S.Ajith Kumar
PW2 : Shri.NeyyattinkaraSanal

Witness examined on the side of the respondent

RW1 : Shri.Shanavas

Documents produced on the side of the petitioner

A1 : Minutes book of the Indian National Congress
Parliamentary party meeting

A1(a) : Minutes of the meeting held on 11.06.2018
MangalapuramGrama Panchayat

A2 : Copy of the letter of Returning Officer
to the Secretary, State Election Commission
regarding the President election held on
13.06.2018

Documents produced on the side of the respondent

B1 : Whip issued by the DCC President,
Thiruvananthapuram to Shri.Shanavas dated
11.06.2018

B2 : Photograph

B3 : Photograph

B4 : Photograph

B5 : Photograph

B6 : Photograph

B7 : Photograph

B8 : Photograph

B9 : Photograph

B10 : Photograph

B11 : Copy of FIR in Crime No.911/2018of

Mangalapuram Police Station

Document produced on the side of the witness

X1 : Copy of the whip issued by the DCC
President, Thiruvananthapuram to
Shri.Shanavas dated 11.06.2018

Sd/-

V.BHASKARAN

STATE ELECTION COMMISSIONER

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