

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 9th day of June 2017

O.P.No.83/2015

Petitioner : E.C.Mohammed,
S/o Ali Kunju,
Residing at Elavanchall House,
Koduvally, PIN – 673 572,
Kozhikode District.
Councillor, Ward No.29,
Koduvally Municipality.

(By Adv. KallambalamS.Sreekumar)

Respondent : VimalaHaridasan,
Residing at Koodakkuzhiyil
Veedu, Manipuram,
Koduvally-673 572,
Kozhikode District.
Councillor, Ward No.12,
Koduvally Municipality.

(By

Adv.HashimBabu&Sajitha.S)

This petition having come up for hearing on the 30th day of **May2017**,
in the presence of **Adv.KallambalamS.Sreekumar** for the petitioner and
Adv.HashimBabu&Sajitha.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 Councillor of Koduvally 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 Koduvally Municipality in the election held in November 2015. Petitioner contested the election and was elected as the candidate of National Secular Conference (NSC) supported by Left Democratic Front (LDF). The respondent contested and was elected as an independent candidate from ward No.12 without the support of any political party or front. Initially the respondent filed nomination stating that she was a candidate of Indian Union Muslim League(IUML), a constituent of United Democratic Front (UDF). But her candidature was not admitted by the United Democratic Front. The Indian National Congress (INC), a constituent of UDF decided to contest and fielded Smt.Razeena as the candidate in ward No.12 and the official symbol 'PALM' was allotted to her.As the candidature of the respondent was not admitted by the UDF the respondent contested the election as an independent candidate. There were four candidates in ward No.12. In the election the respondent was declared

elected. After being elected her as an independent candidate without the support of any political party she joined in UDF. While taking oath on 11.11.2015 she declared that she was joining in UDF and decided to become part of the UDF. The respondent contested the election and solicited votes as an independent candidate against the UDF candidate and she defeated the UDF candidate in the election. It was thereafter she joined in UDF. The act of the respondent is against the interest of the voters in the ward. By her joining in United Democratic Front she committed defection and hence she is disqualified to continue as a Councillor of Koduvally Municipality as per Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act. She voluntarily abandoned the independent status and joined in a political front. She is hence liable to be disqualified to contest the election for a period of six years. This petition is for a declaration to that effect.

3. The respondent filed counter statement contending as below. The petition is not maintainable. Respondent contested the election as an independent candidate with the support of Indian Union Muslim League (IUML) from ward No.12. There was dispute regarding the seat between Indian Union Muslim League (IUML) and Indian National Congress. The respondent filed nomination on behalf of Indian Union Muslim League and Smt.Razeena submitted nomination as a candidate of Indian National Congress. Finally as instructed by the UDF leaders the Indian National

Congress has decided to support Indian Union Muslim League and to freeze the candidature of Smt.Razeena. In the election all UDF workers supported the respondent and she found victory. She has got 390 votes out of the total polled votes of 773. Smt.Razeena who withdrew from the election field got only 56 votes. It is true that there was inter-se dispute in UDF regarding the allotment of ward No.12 and Smt.Razeena was allotted the said seat with the official symbol of the Indian national Congress. But later her candidature was frozen. As the time for withdrawal has elapsed the name and symbol were printed in ballot paper. Smt.Razeena did not contest in the election. The candidature of the respondent was accepted by the UDF. The respondent contested as an independent with the support of Indian Union Muslim League and UDF. The petition is nothing but an abuse of process of law. There is no merit in the petition and hence it is only to be dismissed.

4. The evidence in this case consists of the oral testimonies of PWs1 to 5, RW1 and RW2 and Exts.A1 to A9, B1 and X1 to X4(b).

5. Both sides were heard.

6.The following points arise for consideration;

- (1) Whether the petition is maintainable?
- (2) Whether the respondent was elected as an independent member without the support of any political party or political front as alleged?
- (3) Whether the respondent has committed defection as contemplated under Section 3 of the Kerala Local

Authorities (Prohibition of Defection) Act as alleged?

(4) Whether the petitioner is entitled to the declaration prayed for

(5) Reliefs and costs?

7. **POINT No.(1)**: As stated above, this is a petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks a declaration that the respondent committed defection and hence she became disqualified to be the Councillor of Koduvally Municipality and also to contest the election to any local body for a period of six years.

8. The petitioner and respondent are elected Councillors of Koduvally Municipality in the election held in November, 2015. The petitioner was elected as a candidate of National Secular Conference and the respondent was elected as an independent member. According to the petitioner the respondent, after being elected as an independent member, joined in UDF coalition incurring disqualification under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act. By joining in United Democratic Front the respondent committed defection and thereby became disqualified to be the Councillor of Koduvally Municipality, it is further contended. As against that the contention of the respondent is that she has not committed any act of defection and she denied all allegations. It is also her case that this original petition is not maintainable.

9. It may be noted this 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. Filing of such petition is regulated by Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules.

Rule 4A reads as below,-“ (1).If any subject arises as to whether a member of a local authority has become subject to disqualification by the act, a member of that local authority or a member authorized to give directions to that member as per sub-rule (1) of Rule 4 may file a petition before the State Election Commission to decide the matter.”

10. The petitioner herein being a member of the local authority is certainly 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 under Section 3(1)(c) 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 5:** The petitioner and respondent are elected Councillors of Koduvally Municipality. PW1, the petitioner was elected from ward No.29 and the respondent from ward No.12. According to the petitioner, the respondent contested the election and was elected as an independent candidate without the support of any political party or front. Both UDF and LDF fielded their candidates against the respondent in ward No.12 and it was after defeating them in the election the respondent became the Councillor of ward No.12. The respondent after being elected as an independent Councillor, joined in United Democratic Front. She gave a declaration to the Koduvally Municipal Secretary stating that she was elected as a UDF Councillor. By joining in UDF, PW1 states, the respondent committed defection inviting disqualification as provided under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act and thereby she abandoned her independent status.

12. Contention of the respondent is that she contested the election as an independent candidate with the support of Indian Union Muslim League and UDF. Though the Indian National Congress fielded its candidate Smt. Razeena the Indian National Congress and United Democratic Front later decided to freeze her candidature and treated the respondent as the candidate of UDF. As she is elected with the support of Indian Union Muslim League and UDF the respondent is a UDF Councillor and hence according to her, the question of the alleged disqualification does not arise.

13. The question now to be considered in the light of the above contentions then is whether the respondent is an independent Councillor elected without the support of any political or front or with the support of Indian Union Muslim League and UDF. It is a matter of admission that the Indian National Congress (INC), Indian Union Muslim League (IUML) and Socialist Janata Dal (SJD) are constituents of the UDF coalition and they contested the election in Koduvally Municipality as United Democratic Front.

14. It is stated by PW1 that one RazeenaShamsudeen of the Indian National Congress was the candidate of United Democratic Front in ward No.12 of Koduvally Municipality and the respondent as an independent candidate. There were four candidates in ward No.12. Besides SmtRazeena and the respondent Smt.Shiny of LDF Smt.Assiaof SDPI are the other two candidates. In the election the respondent found victory defeating the Congress led UDF candidate Smt.Razeena and LDF candidate. But after being elected as Councillor the respondent joined in UDF, she gave a declaration to that effect to the Secretary, Koduvally Municipality. Ext.A8 is the copy of the said declaration given by the respondent. The respondent who was elected as an independent candidate committed defection by joining in UDF and her above act warrants disqualification, PW1 further states.

15. PW4 is the President of Kozhikode District Congress Committee and he gave evidence supporting the case of the petitioner. It is stated by

him that Indian National Congress contested the local body election in Koduvally Municipality as part of United Democratic Front. Indian Union Muslim League(IUML), Kerala Congress (M) (KCM) and Socialist Janata Dal (SJD) are also part of United Democratic Front. It was PW4 who recommended the official symbol of Indian National Congress to the candidates of Indian National Congress in Kozhikode District. The UDF committee allotted 10 seats in Koduvally Municipality to the Indian National Congress including ward No.12. Smt.RazeenaShamsudeen was the candidate of Indian National Congress and United Democratic Front in ward No.12. PW4 has issued a letter to that effect to the President of KoduvallyMandalam Congress Committee. He has issued such letters in respect of all the ten candidates of Indian National Congress in Koduvally Municipality. PW4 recommended the official symbol of Indian National Congress to the said Razeena. To him there was no other candidate for UDF in ward No.12 except Razeena.

16. PW2 is the Secretary of Koduvally Municipality and he was examined to speak about Ext.X1 declaration given by the respondent to the Secretary after her election as Councillor, showing her party affiliation. There is no dispute over Ext.X1. Admittedly the respondent gave such a declaration stating that she was elected as IUML/UDF candidate. PW3 is the Returning Officer of ward Nos.1 to 18 of Koduvally Municipality. He produced Ext.X3 file containing the nomination papers of the candidates

including of ward No.12 and Ext.X4 file relating to the election returns. Ext.X3(a) is the nomination paper of Smt.Razeena in ward No.12 and Ext.X3(b) is the nomination paper of the respondent. Ext.X4(a) is the election return of the respondent. Ext.X4(b) is the election declaration Form No.25A relating to the respondent. In both Exts.X4(a) and X4(b) respondent was shown as independent.

17. PW5 is a voter in ward No.12 of Koduvally Municipality. According to him the Congress nominee Smt.Razeena was the candidate of United Democratic Front in ward No.12. To him the respondent contested the election as an independent candidate without the support of any political party or front and she campaigned and solicited votes from the voters as an independent candidate.

18. The respondent was examined as RW1. It is stated by her that she contested the election and was elected from ward No.12 as UDF candidate. As she contested and was elected as UDF candidate the question of alleged defection does not arise. It is admitted by her that after her election she gave Ext.X1 declaration showing her as UDF Councillor. Ext.B1 is stated to be a campaign notice published by her during electioneering requesting votes and there she is shown as independent candidate with the support of Indian Union Muslim League. Nowhere in Ext.B1 she is shown as a UDF candidate.

19. RW2 is the Vice Chairman of Koduvally Municipality and he contested and was elected as Indian Union Muslim League candidate.

According to him the respondent contested and was elected as a UDF candidate.

20. It is a fact that the Indian National Congress and Indian Union Muslim League are part of the political front United Democratic Front and they contested the election as UDF at the state level and also in Koduvally Municipality. RW1 and RW2 admitted the said fact. The UDF committee divided the total 36 seats in Koduvally Municipality among the constituents of United Democratic Front. Admittedly 10 seats including ward No.12 were allotted to Indian National Congress. It is also a matter of admission that Smt.Razeena was the Congress candidate in Ward No.12 and official symbol of the Indian National Congress was allotted to her. RW1 admitted the said fact. So there cannot be two candidates for UDF in ward No.12 of Koduvally Municipality as submitted by the petitioner's counsel.

21. Contention of the respondent is that there was some dispute in UDF over the candidate in ward No.12. According to RW1 the leader of Indian Union Muslim League Shri AbdulHaji asked her to file nomination as IUML independent and accordingly she filed nomination paper as IUML independent. Later the UDF, it is stated, settled the dispute and the respondent was approved as the UDF candidate in Ward No.12. As the time for withdrawal of candidate was over by that time the United Democratic Front, RW1 states, decided to freeze the candidate of Indian National Congress candidate, Smt.Razeena. But except the above oral version of

RW1 there is no other evidence to support the said version of RW1. If really the United Democratic Front approved the candidature of the respondent and decided to freeze the candidature of Indian National Congress nominee. Smt.Razeena there would be records for that. There will be minutes of the UDF committee meeting on that aspect and notices also must have been issued and circulated informing the said fact to the voters. No such things we find in this case.

22. It is stated by PW4 the DCC President that Indian Union Muslim League leader Shri.Razak Master and Adv.Sankaran were the Chairman and Convenor of the Kozhikode District UDF Committee during the election in 2015. The respondent has no case that they asked her to file nomination paper as UDF candidate. The respondent could have examined them to prove the alleged of decision of UDF and freezing of the candidate of Smt.Razeena if actually there was any such decision. She did not take any steps in that direction. Further, Ext.A9 would only show the hollowness of the above contention of the respondent. Ext.A9 is the list of UDF candidates in Koduvally Municipality approved by the UDF committee. RW2 admitted the said fact in his evidence.As per Ext.A9 the Indian National Congress nomine Smt.Razeena was the UDF candidate in ward No.12 of Koduvally Municipality. If really the respondent was the UDF candidate as claimed by her, her name would have been there in Ext.A9 in the place of Smt.Razeena as the UDF candidate in ward No.12. But her name is not there and it will

only show that the UDF candidate in ward No.12 was Smt.Razeena and not the respondent.

23. Submission of the learned counsel for the respondent is that initially there was some confusion regarding the candidate in ward No.12. Though Smt.Razeema of INC filed nomination as INC candidate the UDF later decided to withdraw her nomination and to support the candidature of the respondent. As the time for withdrawal was over by that time Razeena could not withdraw her nomination paper. The UDF then decided to freeze the candidature of Razeena. In the election the respondent got 390 votes and Razeena got only 56 votes out of 773 votes polled. According to the counsel the meagre votes polled in favour of Razeena is the result of the freezing of her candidature by the UDF and the support given by the UDF to the respondent. But there is no evidence from the respondent's side to show that the United Democratic Front has taken any such decision to treat the respondent as UDF candidate and to freeze the candidature of Smt.Razeena. Such a decision is to be taken by the UDF committee including the representative of INC. PW4 Kozhikode DCC President has clearly stated that there was no such decision and according to him Razeena was the UDF candidate in ward No.12.Ext.A9 also would show the said fact. So the above contention of the learned counsel is only to be ignored and I do so.

24. It is a fact that the Indian National Congress and Indian Union Muslim League are part of United Democratic Front and they contested the election as UDF in Koduvally Municipality. Admittedly ward No.12 was allotted to Indian National Congress and Smt.Razeena was the candidate of Indian National Congress. When the UDF allotted ward No.12 to Indian National Congress to contest, the Indian Union Muslim League or other constituent of UDF cannot and will not field another candidate against the INC/UDF candidate so long as it is a constituent of UDF. Further Ext.A9 which is admitted by RW2 would clearly show that Smt.Razeena was the approved candidate of UDF in ward No.12. So the claim of the respondent that she was the candidate of the United Democratic Front cannot be accepted and it is only to be rejected.

25. In the light of the above facts and circumstances it is to be taken that the respondent contested the election as an independent candidate without the support of UDF. Probably, she might have taken advantage of the factionalism if any in the UDF. But that will not make her a UDF Councillor as claimed by her. She can be considered only as an independent member without the support of any political coalition or coalition.

26. It is a matter of admission that the respondent gave a declaration to the Municipal Secretary declaring her as United Democratic front Councillor. As per Section 3(1)(c) of the Kerala Local Authorities

(Prohibition of Defection) Act, if an independent member not belonging to any coalition, joins any political party or coalition, he/she shall be disqualified for being a member of that local authority. The Kerala Local Authorities (Prohibition of Defection) Act, 1999 was enacted to prohibit defection among the members of local authority in the state and to provide for disqualification of the defecting members of the local authorities. The provisions under the 10th schedule of the constitution and under the Kerala Local Authorities (Prohibition of Defection) Act are intended to curb the evil of unprincipled and unethical political defection.

27. From the available evidence and the circumstances emanating therefrom it can be safely concluded that the respondent has committed defection as provided under Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act and therefore she became subject to disqualification for being a Councillor of Koduvally Municipality. Points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being a Councillor of Koduvally Municipality as provided by Section 3(1)(c) of the Kerala Local Authorities (Prohibition of Defection) Act. The respondent is further declared as disqualified for contesting as 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 June 2017

Sd/-
V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Shri.E.C.Mohammed
- PW2 : Shri.B.Babu Prasad, Municipal Secretary,
Koduvally Municipality
- PW3 : Shri.Gireesh, Returning Officer,
Koduvally Municipality
- PW4 : Shri.K.C.Abu
- PW5 : Shri.MuhammedVapha Ulla

Witnesses examined on the side of the respondent

- RW1 : Smt.VimalaHaridasan
- RW2 : Shri.A.P.Majeed

Documents produced on the side of the petitioner

- A1 : Letter dated 22.10.2015 issued by
Shri.K.C.Abu, President, DCC
Kozhikode
- A2 : True copy of the nomination of
Smt.Shiny to ward No.12 of Koduvally
Municipality dated 13.10.2015

- A3 : True copy of the nomination of Smt. VimalaHaridasan to ward No.12 of Koduvally Municipality dated 14.10.2015
- A4 : True copy of the nomination of Smt. Razeena to ward No.12 of Koduvally Municipality 14.10.2015
- A5 : True copy of the nomination of Smt. Asiya to ward No.12 of Koduvally Municipality 14.10.2015
- A6 : True copy of the Declaration of Election Result in Form No.25(a) in ward No.12, Koduvally Municipality
- A7 : True copy of the Election Return dated 07.11.2015 of the Returning Officer, Koduvally Municipality
- A8 : True copy of the declaration in Form No.2 filed by Smt.VimalaHaridasan
- A9 : Copy of the list of United Democratic Front candidates in Koduvally Municipality dated 14.10.2015

Documents Produced on the side of the respondent

- B1 : Election campaign notice of Smt.VimalaHaridasan

Documents produced on the side of the Court witnesses

- X1 : Declaration in Form No.2 filed by Smt.VimalaHaridasan
- X2 : Copy of the whip issued by the President, DCC Kozhikode
- X3 : File containing the nominations and associated documents of all the

contestants from 1 to 18 wards of
Koduvally Municipality

- X3(a) : Nomination in Form No.2 furnished by
Smt.Raseena, candidate of ward No.12 of
Koduvally Municipality
- X3(b) : Nomination in Form No.2 furnished by
Smt.VimalaHaridasan, candidate of ward
No.12 of Koduvally Municipality
- X4 : File containing the declaration of election
result and other documents
- X4(a) : Election Return in Form No.27 of
Koduvally Municipality
- X4(b) : Declaration of Election result in Form
No.25(a) of Smt.VimalaHaridasan,
Koduvally Municipality

Sd/-

V.BHASKARAN

STATE ELECTION COMMISSIONER

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