

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

PRESENT: SHRI.K.SASIDHARAN NAIR, STATE ELECTION COMMISSIONER

Tuesday, the 30th day of June 2015

O.P.Nos.96/2013, 97/2013, 98/2013, 99/2013 AND 100/2013

O.P.No.96/2013

Petitioner : M.P.Veerendra Kumar,
S/o Padmaprabha Gowdar,
V.J.Lane, A-28, Vellayambalam,
Sasthamangalam P.O.,
Thiruvananthapuram-10
President,
Socialist Janata (Democaratic) Party.

Respondent : (By Adv. Ratheesh Kumar V.S.)
Chenthamara.K,
President,
Chittoor Block Panchayat,
Palakkad District.

(By Adv.Vinod.S)

O.P.No.97/2013

Petitioner : M.P.Veerendra Kumar,
S/o Padmaprabha Gowdar,
V.J.Lane, A-28, Vellayambalam,
Sasthamangalam P.O.,
Thiruvananthapuram-10
President,
Socialist Janata (Democaratic) Party.

(By Adv. Ratheesh Kumar V.S.)

Respondent : Santhini,
Vice President,
Chittoor Block Panchayat,
Palakkad District.

(By Adv.Gopinathan Nair)

O.P.No.98/2013

Petitioner : M.P.Veerendra Kumar,
S/o Padmaprabha Gowdar,
V.J.Lane, A-28, Vellayambalam,
Sasthamangalam P.O.,
Thiruvananthapuram-10
President,
Socialist Janata (Democaratic) Party.

(By Adv. Ratheesh Kumar V.S.))

Respondent : Suresh Babu.M.,
S/o Mani, Valavupalam, Chittoor P.O.,
Chittoor Block Panchayat,
Palakkad District, PIN 678 101.

(By Adv.Saifudeen.M)

O.P.No.99/2013

Petitioner : M.P.Veerendra Kumar,
S/o Padmaprabha Gowdar,
V.J.Lane, A-28, Vellayambalam,
Sasthamangalam P.O.,
Thiruvananthapuram-10
President,
Socialist Janata (Democaratic) Party.

(By Adv. Ratheesh Kumar V.S.)

Respondent : A.Peter Babu,
S/o Arogya Swamy, Babu Nivas,
Elippara, Kozhippara. P.O.,
Chittoor Block Panchayat,
Palakkad District, Pin. 678 577

(By Adv.Kallambalam S.Sreekumar)

O.P.No.100/2013

Petitioner : M.P.Veerendra Kumar,
S/o Padmaprabha Gowdar,
V.J.Lane, A-28, Vellayambalam,
Sasthamangalam P.O.,
Thiruvananthapuram-10
President,
Socialist Janata (Democaratic) Party.

(By Adv. Ratheesh Kumar V.S.)

Respondent : Maragadam.K,
S/o Krishnaswamy,
Karuppathurai Kadu,
Meenakshipuram P.O.
Chittoor Block Panchayat,
Palakkad District. Pin.678 533.

(By Adv.Muruka Das.V)

These petitions, having come up for hearing on the **24th** day of **March 2015**, in the presence of Adv. **Ratheesh Kumar V.S** for the petitioner and Adv. **Vinod.S, G.Gopinathan Nair, Saifudeen.M, Kallambalam S.Sreekumar and Muruka Das.V** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These are petitions filed under Sections 3 and 4 of the Kerala Local Authorities (Prohibition of Defection) Act r/w Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules for declaring that the respective respondents have become subject to disqualification for being members of Chittoor Block Panchayat on the ground of defection. Since common questions of law and facts arise for consideration in all these cases, they have been taken up together and O.P.No.96/2013 is treated as the main case.

2. Common allegations are raised by the petitioner in all these case which are, in short, as follows,- The petitioner and respondents are members of Socialist Janata (Democratic) party, for short SJ(D). The petitioner is the President of the SJ(D) and he is the person competent to recommend symbol to the candidates of SJ(D) party who are contesting in elections. Accordingly he recommended symbol to all these respondents while they contested as candidates of SJ(D) party in various wards of Chittoor Block Panchayat. The SJ(D) was a partner of UDF coalition and that coalition secured absolute majority in the Panchayat. While so on 19.11.2011, the respondents moved a no confidence motion against the then President and with the support of LDF members it was carried. Now the respondent in O.P.No.96/2013 is the President of the Block Panchayat. Sri.Gopalaswamy, a member belonging to Indian National Congress

filed O.P.Nos.150/2011 to 154/2011 against these respondents before this Commission and these petitions were dismissed for the sole reason that the petitioner therein was not competent to issue directions or whip to the respondents as he was not a member of the party to which the respondents belonged. However the respondents supported the no confidence motion without the consent or knowledge of the petitioner herein. On 04.09.2013, the petitioner who is the leader of the SJ(D) party issued a letter by registered post to the respondent in O.P.No.96/2013 directing him to resign from the post of President and that was based on the decision of the state committee held on 29.08.2013. The said direction was given after ever so many oral directions to the said respondent which he did not positively respond. The respondent after accepting the direction gave a reply on 18.09.2013 raising false contentions. He did not comply with the directions given by the petitioner. On 16.10.2013, the petitioner issued another whip to all the respondents directing them to vote in favour of the no confidence motion moved against the President which was tabled for discussion on 24.10.2013. But to the utter dismay of the petitioner and other leaders, the respondents voted against the no confidence motion. The respondents had violated the direction and the whip issued by the petitioner. The conduct of the respondents in having violated the direction issued by the petitioner would attract the provision contained in the Kerala Local Authorities

(Prohibition of Defection) Act. The acts and conducts of the respondents are against the interest of the SJ(D) party and it amounts to voluntarily giving up their membership of the SJ(D) party. So the respondents have incurred disqualification under the provisions of the Act and they are liable to be disqualified for being members of Chittoor Block Panchayat. Hence these petitions.

3. The respondents have filed objections raising common contentions which are in short as follows,- The petitions are not maintainable either in law or on facts. The present petitions are filed as an experimental measure on an attempt to oust the respondents from the Panchayat through crooked means. It is true that the respondents are members belonging to SJ(D) party. The allegation that the state President of SJ(D) had recommended symbol to the respondents is not true. There is no provision in the byelaws of the party enabling the state President to recommend symbol to a candidate contesting in the Panchayat election. The District President of SJ(D) had given the symbol to these respondents to contest in the election. After General Election the SJ(D) party decided to elect a Congress member as President of the Panchayat and whip was given to all these respondents by the District President of SJ(D) to elect him as President. In obedience of the said direction, the respondents voted in favour of the Congress candidate and he was elected. But the then President was causing

severe damage to SJ(D) party. The Palakkad District Committee of SJ(D) discussed the issue in detail and a political decision was taken and directed the Parliamentary party of SJ(D) Chittoor Block Panchayat to move a no confidence motion against the then President. The SJ(D) members signed the no confidence motion in obedience to the decision taken by the party and they supported the said motion based on party decision. The petitions filed against the respondents alleging defection were dismissed on the ground that there was no political decision to oppose the said no confidence motion. Thereafter the Palakkad District Committee and the parliamentary party of SJ(D) has directed the respondent in O.P.No.96/2013 to contest to the post of President and thus he was elected as such. Thereafter the members belonging to Congress party submitted a no confidence motion against the President. The allegation that the petitioner issued whip to the respondent in O.P.No.96/2013 to resign from the post of President is not correct. Even though such a notice was received he sent a proper reply to the same. The no confidence motion moved against the respondent in O.P.No.96/2013 was politically motivated and intended to damage the party. The SJ(D) discussed the said matter in all fractions and unanimously decided to oppose the said no confidence motion and the District Committee President of SJ(D) as well as the parliamentary party leader of the SJ(D) issued directions to the respondents to oppose the said no confidence motion. In the meantime the

petitioner without any legal basis sent letters to the respondents to support the said no confidence motion. The said matter was discussed in all the party fractions of Palakkad District and the political decision taken was to oppose the said motion and that decision was informed to the state committee for approval. The respondents have acted only as per the directions of the party and parliamentary party and they have never violated the directions of the party. So they are not liable to be disqualified for being members of Chittoor Block Panchayat. There is no cause of action for filing these petitions. The respondents have never voluntarily abandoned their membership from the party and they have not acted against the interest of the party. So the petitions are only to be dismissed.

4. The evidence consists of the oral depositions of PWs1 to 3 and RWs1 to 6 and Exts.P1 to P28, R1, R2 and X1 Series to X4.

5. Both sides were heard.

6. The following points arise for consideration.

- (i) Whether the petitions are not maintainable?
- (ii) Whether the petitioner is the competent person to issue whip to the members of Chittoor Block Panchayat belonging to SJ(D) party as alleged?
- (iii) Whether the whip given by the petitioner to the respondents to vote in favour of the no confidence motion moved against the respondent in O.P.No.96/2013 is binding on the respondents?

- (iv) Whether the respondents, in having not complied with the direction issued by the petitioner in respect of voting on the no confidence motion, have voluntarily given up their membership from the SJ(D) party?
- (v) Whether the respondents have become subject to disqualification for being members of Chittoor Block Panchayat?
- (vi) Reliefs and costs?

7. **ISSUE No.(i)** : The petitioner is admittedly the State President of SJ(D) party. The respondents were elected as members belonging to SJ(D) party in the General Election held in 2010 from various wards of Chittoor Block Panchayat. The petitioner would allege that the respondent in O.P.No.96/2013 was directed to resign from the post of President repeatedly and when the no confidence motion moved against that respondent by the Congress members. The petitioner directed all the respondents to vote in favour of the said motion and the respondents have violated the said direction and defeated the said motion by aligning with LDF members and so they are stated to have voluntarily given up their membership from the party. The respondents would contend that the petitions are not maintainable. It is also contended that the petitioner has no right to issue whip to the respondents and the District President alone is the competent person to issue such direction to them and that the direction given by the District President was obeyed by them and so they have not committed defection. These petitions are filed under Section 4(1) of the Kerala Local Authorities (Prohibition

of Defection) Act, for short the 'Act'. Section 4(1) of the Act states that if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act, a member of that local authority or the political party concerned or a person authorized by it in this behalf can file a petition before the State Election Commission for decision. The petitioner is admittedly the State President of the SJ(D) party and therefore he is competent to file the petitions. Section 4(1) of the Act, states that if any question arises as to whether a member has become subject to disqualification under the provisions of this Act, such a petition can be filed. Section 3(1) of the Act deals with disqualification on the ground of defection and Section 3(1)(a) relates to defection committed by members of political parties. Section 3(1)(a) of the Act states that if a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if he, contrary to any direction issued by the party or by a person authorized by it in this behalf, votes or abstains from voting, in an election to the post of President, Vice President, Standing Committee Chairman or member of a Panchayat or on a no confidence motion, he shall be disqualified for being a member of that local authority. The pleadings in these cases would reveal that a question arises as to whether the respondents have become subject to disqualification for being members of Chittoor Block Panchayat. So the petitions filed u/s 4(1) of the Act

are maintainable. As per Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules such a petition is to be filed within 15 days from the date on which the member is deemed to have become subject to disqualification. These petitions are found to have been filed well within the time prescribed under Rule 4A(2) of the Rules. No other contentions are raised challenging the maintainability of these petitions. Therefore I find that the petitions are maintainable. The point is answered accordingly.

8. POINT No.(ii): Cretan facts are not in dispute. The petitioner is the State President of SJ(D) party. The respondents have admitted this fact in their objections and evidence. The respondents were elected as members belonging to SJ(D) party in the General Election held in October 2010 from various wards of Chittoor Block Panchayat. Exts.P8, P13,P17, P21 and P25 are the declarations submitted by the respondents as provided by Rule 3(2) of the Kerala local Authorities (Disqualification of Defected Membes) Rules and in these declarations they have affirmed that they were elected as members belonging to SJ(D) party n the General Election held in 2010 of Chittoor Block Panchayat. It is also stated in these records that the SJ(D) and Indian National Congress are the political parties in the UDF coalition. Ext.P9 is the copy of the register maintained by the Block Secretary under Rule 3(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. This also would

reveal that these respondents are belonging to SJ(D) party under UDF coalition. Ext.X1 is the original register maintained by the Secretary of the Block Panchayat under the above provision of which Ext.P9 is the copy. The respondents have categorically admitted that they had contested the election in various wards of Chittoor Block Panchayat as candidates of SJ(D) party and were elected as members.

9. The petitioner has given evidence as PW1. His chief-examination is by way of an affidavit wherein he has reiterated all the allegations contained in these petitions and it is not necessary to repeat the same all over again. The petitioner has clearly deposed that he is the President of the SJ(D) party and he is the person competent to recommend symbol for the members of the SJ(D) party. He would also depose that he had recommended symbol to all these respondents while contesting in the election from various wards of Chittoor Block Panchayat. Exts.P10, P14, P18, P22 and P26 are the copies of the letters given by the petitioner to the Returning Officer of the Block Panchayat recommending the symbol of SJ(D) party to these respondents respectively. In these records the petitioner has recommended the symbol '**Tree**' which is stated to be the symbol of SJ(D) to these respondents. The learned counsel for the respondents had raised serious objections in marking these documents and their objections were overruled and these records were marked. However the originals of these records

also were produced through PW3 who is the Returning Officer of Chittoor Block Panchayat and they are marked as Ext.X2 series. These original records prove beyond any doubt that the petitioner had recommended the symbol ‘Tree’ to these respondents in their election to Chittoor Block Panchayat and under this symbol that the respondents had contested the election and became members. The fact that the petitioner is the President of SJ(D) party and that the recommendation of the symbol is given to the Returning Officer in such capacity also is revealed from these records.

10. The learned counsel for the respondent would argue that the petitioner has failed to prove that he is the person competent to recommend symbol to the candidates of SJ(D) party contesting in the election to the local bodies and the bylaws containing such a provision has not been produced by the petitioner before this Commission. Ext.P28 is stated to be the constitution of the SJ(D) party. However in this record there is nothing to show that the State President is the person competent to recommend symbol to the candidates contesting in local bodies. The learned counsel for the respondents would also argue that Ext.P28 is not the constitution of the SJ(D) party produced before the Election Commission of India and so it cannot be relied on as a piece of record to support the case of the petitioner. Of course the petitioner has failed to produce the constitution of SJ(D) party which was submitted before the Election Commission of India and

Ext.P28 does not appear to be the constitution approved by the Election Commission of India. However these aspects dwindle in to insignificance in these cases for the simple reason that the petitioner who is admittedly the State President of SJ(D) had actually recommended the symbol of SJ(D) party to these respondents while they had contested in various wards of Chittoor Block Panchayat in the election held in October 2010. The respondents have taken a contention that it was the District President of SJ(D) party who was authorized by the party to recommend symbol to its candidates and accordingly the then Palakkad District President of SJ(D) had recommended symbol to them in the election held in October 2010. The Palakkad District President of SJ(D) has been examined as RW3. He has deposed that Sri.Thajudeen was the District President during the period when these respondents had contested in the election to Chittoor Block Panchayat and RW3 was then the District Secretary of SJ(D). In cross-examination, to the suggestive question as to whether the person who is competent to recommend symbol to the candidates is the person competent to issue whip, RW3 has pleaded ignorance, but he has added that in his party the symbol is usually recommended by the District President. To another question as to whether the petitioner had recommended symbol to these respondents while contesting in the election, his answer is that it was the District President who had recommended symbol to these respondents. The contention of these respondents

that the SJ(D) party had authorized the District President to recommend symbol to the candidates is not proved in evidence. Unless the party had authorized the District President, he cannot recommend symbol. But that is not the case with the state President. There is no need for any authorization to him to recommend symbol to the candidates. The absence of any clause in the Constitution of the party in this behalf is not of any consequence. The other contention of the respondents that the then District President had recommended symbol of the party to these respondents also stands not only proved but also has been disproved by way of Exts.X2 series. The respondents in O.P.Nos.96/2013 and 98/2013 have been examined as RWs1 and 2. They have stated that the then District President of SJ(D) had recommended symbol to them while contesting in the General Election to Chottoor Block Panchayat. But to the suggestive question put to RW1 that Ext.P10 shows that the petitioner had recommended symbol to him, his answer is that he does not clearly know of this record. RW2 also has deposed that the then District President had recommended symbol to him while contesting in the election. On the face of Ext.X2 series, the contention and evidence of the respondents that the then President had recommended symbol to them while contesting in the election is found to be absolutely false.

11. From Ext.X2 series it is clearly found that the petitioner had recommended symbol to these respondents while they contested in the General

Election to Chittoor Block Panchayat held in October 2010. The petitioner is admittedly the State President of the SJ(D) party. As per Section 3(1) (a) of the Act a direction, which is usually referred to as whip in the common parlance, is to be issued to a member belonging to political party by such political party to which the member belongs or by a person or authority authorized by it in this behalf in the manner prescribed. In this context the definition of “direction in writing” brought into this Act as per the amendment Act 6 of 2013 is relevant and it reads as follows,-

“(iva) 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 symbol to the candidates of the said political party for contesting in the election, for exercising the vote favorably or unfavorably or to abstain from voting.”

12. So as per this clause the person who is authorized to recommend symbol to the candidates of a political party is the person competent to issue direction to such member. It is significant notice that as per Section 3(1) (a) of the Act it is clearly stated that such a direction given by the party or by a person by it authorized in this behalf. The petitioner who is the State President of SJ(D)

party is found to have recommended symbol to these respondents and as such his version that he is the person competent to recommend symbol to these candidates of his party can only be accepted as true. The fact that he had recommended symbol to these respondents way back in 2010 cannot be over looked. Since the petitioner is the State President of the SJ(D) party it is not necessary to provide in the constitution of the party regarding his competency to recommend symbol to the candidates of this party. Since the petitioner had recommended symbol to these respondents while they had contested in the election from various wards of Chittoor Block Panchayat, I find that the petitioner is the person who is competent to issue 'direction in writing' to these respondents for exercising the vote favourably or unfavourably or to abstain from voting. The point is answered according.

13. **POINT Nos.(iii) to (vi):** The petitioner has categorically stated that he had directed the respondent in O.P.No.96/2013 to resign from the post of President. The petitioner as PW1 has deposed that after repeated oral direction in this behalf he had issued the original of Ext.P1 directing this respondent to resign from the post of President. In Ext.P1 it is stated that the petitioner had become the President with the help of the members of the rival political party and so he should resign from that post. It is also stated in Ext.P1 that the State Committee of SJ(D) Party met on 29.08.2013 had decided that the respondent in

O.P.No.96/2013 should resign from the post of President and the committee had authorized petitioner to issue this letter. The respondent in O.P.No.96/2013 as RW1 has categorically admitted that the petitioner had received the original of Ext.P1 and his explanation is that it was sent by the petitioner under the influence of the Congress party. RW1 would further depose in chief examination itself that immediately on receipt of the said letter, the SJ(D) parliamentary party convened on 11.09.2011 had discussed about the same and decided that the respondent need not resign and that was approved by the Niyojakamandalam committee and also by the Palakkad District Committee of SJ(D). RW1 in his deposition has stated that the Palakkad District Committee after discussion has decided that there was no circumstances warranting resignation from the post of President by this respondent. Ext.P2 is the reply given to Ext.P1 by the respondent in O.P.No.96/2013. RW1 has denied the allegations contained Ext.P1 and stated that such a letter was sent without bonafides. Subsequently the members belonging to Congress party had moved a no confidence motion against the respondent in O.P.No.96/2013. The petitioner as PW1 has deposed that he had issued whip to all the respondents directing them to vote in favour of the said no confidence motion. Exts.P3, P11, P15, P19 and P23 are the directions in writing given to these respondents respectively directing them to vote in favour of the no confidence motion moved against the respondent in O.P.No.96/2013 which was

tabled for discussion on 24.10.2013. These whips were served to the respondents by registered post. Ext.P4,P12,P16, P20 and P24 are the postal acknowledgments of the same. Even otherwise the respondents have admitted receipt of the said whips sent by the petitioner. Copy of the whip was given to the Secretary of the Block Panchayat also evidenced by Ext.P5 and Ex.t.P6 is the postal acknowledgment of the same. However the contention of the respondents is that the SJ(D) parliamentary party had decided unanimously to oppose the no confidence motion and it was informed to the Niyojakamandalam Committee and the Palakkad District Committee of SJ(D) and the said both committees had decided to oppose the no confidence motion moved against the respondent in O.P.No.96/2013. The respondent in O.P.No.96/2013 as RW1 has deposed that the petitioner had sent letter to support the no confidence motion moved by the Congress members against him. According to the respondents they had opposed the no confidence motion based on the decision of the Niyojakamandalam Committee and Palakkad District Committee of SJ(D) party and also on the basis of the direction in writing given by the then Palakkad District President of SJ(D). RW3 the Palakkad District President of SJ(D) has deposed that he is the person competent to issue direction to the members of the Block Panchayat belonging to his party and accordingly he had given Ext.X3 whip to the respondent and they had acknowledged the same by way of endorsing on its backside and that the

respondents had only complied with his direction. I have already held that the petitioner is the competent person to issue whip to the respondents and that SJ(D) does not have any authority to issue direction in writing to the respondents. RW3 has not produced any record authorizing him to issue direction in writing by the SJ(D) party to its members of Chittoor Block Panchayat. In the absence of any such authorization by the party, RW3 is found to have no competence to issue whip to these respondents in respect of voting on the no confidence motion moved against the respondent in O.P.No.96/2013. On the other hand it is clearly found that the petitioner had served whip to all these respondents directing them to vote in favour of the no confidence motion moved by the Congress members against the respondent in O.P.No.96/2013. Ext.P7 is the copy of the minutes of the meeting which discussed the no confidence motion and it is found that these respondents had opposed the said motion and it was defeated with the support of LDF members. Of course it is seen that the Palakkad District Committee as well as the Niyojakamandalam Committee of SJ(D) party was supporting the stand of these respondents and they had decided to oppose the said no confidence motion moved against RW1. The parliamentary party of SJ(D) of Chittoor Block Panchayat also had unanimously decided to oppose the no confidence motion and it is clear from Ext.R2 also. The fact that the Palakkad District Committee of SJ(D) had decided to oppose such no confidence motion is clear from Ext.X4

which is the minutes of that committee during the relevant period. However the petitioner being the state President of SJ(D) and who had recommended symbol to these respondents had issued direction in writing to these respondents to vote in favour of the no confidence motion moved against the respondent in O.P.No.96/2013 and after accepting the same these respondents had defied that direction and voted against the said motion.

14. On a re-appreciation of the entire evidence and facts the following facts emerge; The respondents had contested the election from various wards of Chittoor Block Panchayat as candidates of SJ(D) party and were elected as members. The petitioner in his capacity of the State President of SJ(D) party had recommended symbol to these respondents while contesting in the election. The Socialist Janata (Democratic) had contested in the General Election under UDF coalition of which the other partner was Indian National Congress. The UDF coalition secured majority and thereupon as per the decision of the UDF, a Congress member was elected as the President. The LDF members moved a no confidence motion against the then President and with the support these respondents that motion was carried. Subsequently the respondent in O.P.No.96/2013 was elected as President with the support of all the respondents and LDF members. Petitions were filed by a Congress member for disqualifying these respondents and those petitions were dismissed on the ground that the

parliamentary party leader of UDF who had issued whip to these respondents had no competence to issue such whip to them. Subsequently the petitioner issued direction to the respondent in O.P.No.96/2013 to resign from the post of President. He did not resign and sent a reply. Thereafter a no confidence motion against that respondent was moved by the Congress members. The petition in his capacity as the State President of the SJ(D) and the person who had recommended symbol to them while contesting in the election had issued whip directing them to vote in favour of the no confidence motion. But the respondents by defying the said direction voted in favour of the no confidence motion and with the help of LDF members the said motion was defeated. In the above context, the petitioner has filed these petitions seeking their disqualification as provided by Section 3(1)(a) r/w Section 4(1) of the Act.

15. Whether the conduct of the respondents in having defied the direction in writing issued by the State President of SJ(D) party in respect of voting on the no confidence motion would attract defection deserves consideration. Section 3(1)(a) of the Act deals with defection by members of belonging to political parties and it reads as follows,-

“3. Disqualification on ground of Defection,-

1)Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act,

1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act.

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

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

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

he shall be disqualified for being a member of that local

16. Section 3(1)(a) consists of two limbs. The first limb is attracted when a member belonging to a political party voluntarily gives up his membership from such party and second limb is attracted when such member contrary to the

direction issued by the party or a person authorized by it in this behalf votes or abstains from voting in an election to the President, Vice President, member of the Standing Committee or Chairman or on a no confidence motion. I have already found that the petitioner who was competent to issue whip had given “direction in writing” directing them to vote in favour of no confidence motion moved against RW1 and that the respondents had voted contrary to that direction. Copy of that direction was given to the Secretary of the Block Panchayat as provided by Section 4(2) of the Local Authorities (Disqualification of Defected Members) Rules. The said direction has been sent by post and it was accepted by the respondent and so there is compliance of sub rule(2) of Rule 4 of the above Rules. Sub-rule (1) of Rule4 deals with the manner in which a political party or coalition gives any direction to its members. Since all the members belonging to SJ(D) party in the Block Panchayat had defied the direction issued by the State President, the requirements under sub rule (1) of Rule 4 that the contents of the whip should be read over by the member elected by members belonging to the said political party to the said members could not have been followed. However strict compliance of the above Rule is not called in these cases as the ground taken is mainly voluntarily giving up their membership from the party.

17. 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 an elected member or a group of 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 considering the Constitutional validity of 10th schedule the *Apex Court in Kihoto Hollohan Vs.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 incurse 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."

In ***Jancy Chandy Vs. Jose Puthenkala (2006 (4) KLT 116)*** the Division Bench of the Hon'ble High Court has held as follows:-

“Politics without principle is one of the seven capital sins to be deprecated, according to the Father of our Nation, Mahatma Gandhi. Political defection is one of the grave vices in that group. In the statement of objects and reasons for the Fifty – second Amendment to the Constitution introducing Tenth Schedule in order to prevent frequent political defects, it is stated as follows:-

“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”.

18. In this context the decision in **Faisal P.A.V. K.Abdullakunhi (2008 (3)KLT 534)** is relevant. The facts of the case in the above decision are quite similar to the facts of these cases. In that case, the Kasaragode District Secretary of Muslim League directed the President of the Panchayat belonging to his own party to resign from the post of President and he disobeyed that direction and continued as President and subsequently a no confidence motion was moved against him and the District President gave whip to him to vote in favour of the said motion which he defied and the Hon’ble High Court, in the above set of facts, held at Paras 11 and 12 as follows,-

“11. Thus it can be seen that it was taking not of the conduct of the petitioner spanning over a period of time that the Commission has inferred that the petitioner had voluntarily given up his membership in Muslim League, the political party to which he belonged. In Shajahan V.Chathannoor Grama Panchayat and Others, after referring to the Apex Court’s judgment in Ravi S.Naik V.Union of India and Others, a Division Bench of this Court held that a person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. It was also held that even in the absence of a formal resignation, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

12. In my view, the law laid down in the aforesaid judgment applies in full force to the facts of this case also. In the judgment in WA 2351/2005, a Division Bench of this Court upheld the judgment of the learned judge that by accepting the nomination by members of the rival coalition,

the appellant therein had voluntarily abandoned membership of his political party. Since the words 'voluntarily giving up membership of his political party' is not to be equated with ceasing to be a member of his party by resignation, from the conduct of the petitioner if an inference can be drawn that he has voluntarily given up his membership of his political party, he is liable to be disqualified. From the facts noticed by the 2nd respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation."

19. In the case on hand also the direction to the respondent in O.P.No.96/2013 to resign from the post of President was flouted by him. He along with other respondents defied the direction issued by the petitioner to vote in favour of the no confidence motion and the said no confidence motion was defeated by these respondents with the help and support of the LDF members.

This would definitely indicate that these respondents had become disloyal to the political party of which the State President is the petitioner. Of course the Palakkad District Committee also was supporting these respondents. But that does not in any way justify the conduct of the respondents in defying the direction issued by the State President of the party. As long as a member continues in a political party, he should obey the direction issued by that party. Moreover, as long as a member of a Panchayat belonging to a political party continues as such member, he is bound to obey the directions of that party. But these respondents are found to have become disloyal to the SJ(D) party by defying the directions issued by that party in respect of resigning from the post of Presidentship as well as voting on the no confidence motion against the direction of the party. So the respondents are found to have become subject to disqualification for being members of Chittoor Block Panchayat as provided by Section 3(1)(a) of the Act. The Points are answered accordingly.

In the result, the petitions are allowed and the respondents are declared as disqualified for being members of Chittoor Block Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and they are also declared as disqualified for contesting as candidates in an

election to any local authorities for a period of 6 years from this date, as provided by Section 4(3) of the Act.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 30th day of June 2015

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Sri.M.P.Veerendra Kumar, Managing Director,
Mathubhoomi, Puliarmala, Kalpetta
- PW2 : Sri.M.S.Thomas, Secretary, Chittoor Block Panchayat
- PW3 : Sri.Vipinlal, District Labour Officer, Palakkad

Witnesses examined on the side of the respondent

- RW1 : Sri.Chenthamara, Erattuchalla, Chittoor
- RW2 : Sri.Suresh Babu.M, Valavupalam, Chittoor
- RW3 : Sri.K.R.Gopinath, Kozhiparamb, Vadakkanthara P.O.,
Palakkad
- RW4 : Sri.Suresh.K., Plachimada, Kannimari P.O.,
Chittoor, Palakkad
- RW5 : Smt.Nisha Premkumar, Pathayappura, Parakkalam,
Vilayodi, Chittoor

RW6 : Shri.T.K.Padmanabhnunni, Thottungal House,
Ambattukolumb, Vandithavalam P.O.,
Palakkad District.

Documents produced on the side of the petitioner

- P1 : Copy of the letter issued by Sri.M.P.Veerendra Kumar,
President, Socialist Janata (Democratic) held on
04.09.2014 addressed to Shri.K.Chenthamara,
President, Chittoor Block Panchayat
- P2 : Copy of the reply letter dated 18.09.2013
of Sri.K.Chenthamara
- P3 : Copy of the whip issued by Sri.M.P.Veerendra Kumar,
President, SJ(D) dated 16.10.2013 to
Sri.K.Chenthamara, President,
Chittoor Block Panchayat
- P4 : Acknowledgment card addressed to Sri.K.Chenthamara
- P5 : Copy of the whip issued by Sri.M.P.Veerendra Kumar,
President, SJ(D) dated 16.10.2013 to the Secretary,
Chittoor Block Panchayat
- P6 : Acknowledgment card addressed to Secretary,
Chittoor Block Panchayat
- P7 : Copy of the minutes of the meeting of
Chittoor Block Panchayat
- P8 : Copy of the declaration in Form No.2 submitted by
Sri.K.Chenthamara
- P9 : Copy of the register showing the political
affiliation of the members of Chittoor Block Panchayat

- P10 : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting Symbol to Sri.K.Chenthamara
- P11 : Copy of the whip dated 16.10.2013 issued by Sri.M.P.Veerendra Kumar, President, SJ(D), addressed to Smt.Santhini.S., Chittoor Block Panchayat
- P12 : Acknowledgment card addressed to Smt.Santhini.S
- P13 : Copy of the declaration in Form No.2 submitted by Smt.Santhini.S
- P14 : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting Symbol to Smt.Santhini.S
- P15 : Copy of the whip dated 16.10.2013 issued by Sri.M.P.Veerendra Kumar, President, SJ(D), addressed to Sri.Suresh Babu., Chittoor Block Panchayat
- P16 : Acknowledgment card addressed to Sri.Suresh Babu
- P17 : Copy of the declaration in Form No.2 submitted by Sri.M.Suresh Babu
- P18 : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting symbol to Sri.M.Suresh Babu
- P19 : Copy of the whip dated 16.10.2013 issued by Sri.M.P.Veerendra Kumar, President, SJ(D), addressed to Sri.A.Peter Babu., Chittoor Block Panchayat
- P20 : Acknowledgment card addressed to Sri.A.Peter Babu
- P21 : Copy of the declaration in Form No.2 submitted by Sri.A.Peter Babu

- P22 : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting symbol to Sri.Peter Babu
- P23 : Copy of the whip dated 16.10.2013 issued by Sri.M.P.Veerendra Kumar, President, SJ(D), addressed to Smt.Marakatham.K, Chittoor Block Panchayat
- P24 : Acknowledgment card addressed to Smt.Marakatham.K
- P25 : Copy of the declaration in Form No.2 submitted by Smt.K.Marakatham
- P26 : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting symbol to Smt.Marakatham
- P27 : Copy of the registered letter No.56/9/2010/PPS-I/734 dated 15.03.2010 of Election Commission of India addressed to the President, SJ(D)
- P27(a) : Copy of the registered letter No.56/9/2010/PPS-I/PPS-II/734 dated 18.05.2010 of Election Commission of India addressed to the President, SJ(D)
- P28 : Constitution of Socialist Janata (Democratic)

Document produced on the side of the respondent

- R1 : Copy of the whip issued by Sri.K.R.Gopinath, District President, SJD, Palakkad District Committee held on 22.10.2013
- R2 : Minutes book of the meeting SJ(D), Chittoor Block Panchayat
- R2(a) : Page No.31 of Ext.R2
- R2(b) : Page No.33 of Ext.R2

Documents produced on the side of the witnesses:

- X1 : Register showing the political affiliation of the members of Chittoor Block Panchayat
- X2 : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting symbol to Sri.Chenthamara
- X2(a) : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting symbol to Sri.A.Peter Babu
- X2(b) : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting symbol to Sri.M.Suresh Babu
- X2(c) : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting symbol to Smt.Santhini
- X2(d) : Copy of the letter dated 01.10.2010 of Sri.M.P.Veerenda Kumar, President for allotting symbol to Smt.Marakatham Krishnaswamy
- X3 : Copy of the whip issued by Sri.K.R.Gopinath, District President, SJD, Palakkad District Committee held on 22.10.2013
- X4 : Minutes book of the meeting SJ(D) Palakkad District Committee
- X4(a) : Page No.55 of Ext.X4
- X4(b) : Page No.59 of Ext.X4

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER