

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

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

Tuesday, the 22nd day of April 2014

O.P.No.02/2013

Petitioner : Susan Abraham,
D/o Abraham, Poyyanil Veedu,
Kozhenchery Taluk,
Pathanamthitta District.

(By Adv.George Abraham Pachayil)

Respondent :1. Sasikala Radhakrishnan,
Sivaganga Veedu, (Valiyakalayil),
Naranganam P.O. Kozhenchery Taluk,
Pathanamthitta District.

2. P.P.Mathai,
Palakkatharayil Veedu,
Thonniyamala Muriyil,
Thonniyamala P.O. Kozhrnchery Taluk,
Pathanamthitta District.

**(By Advs .Cherunniyoor P.Sasidharan Nair
& Kallambalam S.Sreekumar)**

These petitions having come up for hearing on the 21st day of March 2014, in the presence of Advocate **George Abraham Pachayail** for the petitioner and Advocates **Cherunniyoor P.Sasidharan Nair & Kallambalam**

S.Sreekumar for the respondents and having stood over for consideration to this day, the Commission passed the following.

ORDER

Petition filed under Section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondents have become subject to disqualification for being members of Naranganam Grama Panhayat.

2. The allegations contained in the original petition as amended, are in short, as follows:- The petitioner and respondents had contested the election in different wards of Naranganam Grama Panchayat as official candidates of Indian National Congress and were elected as members. After the election the parliamentary party of Indian National Congress was convened by the DCC President Sri.Mohan Raj on 07.10.2010 and in that meeting it was decided to elect 1st respondent as a President of the Panchayat for a term of two years and the petitioner was decided as the President for the next 1½ years and Smt.Sheeba Philip was decided as President for the remaining 1 ½ years. Accordingly 1st respondent was elected as the President of the Panchayat. The term of 1st respondent expired on 07.11.2012 and the Congress parliamentary party was convened on 09.11.2012 and it was decided that 1st respondent should resign from the post of President for electing the petitioner to that post. Accordingly 1st

respondent resigned from the post of President and the election to the post of President was scheduled to be held on 01.01.2013. The DCC President convened the Congress parliamentary party on 28.12.2012 so as to take a decision to direct all the Congress members to vote in favour of the petitioner in the election to the post of President. Since 1st respondent was out of station she was informed of the meeting over phone. 2nd respondent attended the meeting. But he left the meeting before completing the same. The decision taken in the meeting was read over to both of them over phone. Both respondents were fully aware of the parliamentary party meeting convened on 28.12.2012 and the decision taken in the meeting to elect the petitioner as President and it was also decided to issue whip to all the members of the Congress party to vote in favour of the petitioner in the said election. The DCC President issued direction to the respondents to vote in favour of the petitioner and as 2nd respondent had evaded acceptance of the direction and was not available in his house, he was contacted over phone and then he informed to hand over the direction to his wife and accordingly the said direction was handed over to his wife and proper receipt was obtained. On 31.01.2012 the Congress leaders went to the house of 1st respondent and tendered the direction and as she refused to receive it, the said direction was affixed in front of her house in the presence of witnesses. In the election meeting held on 01.01.2012, the respondents did not attend and thereby the petitioner was

defeated. Even though the Congress party had majority members, the petitioner who was its official candidate was defeated. The respondents have defied the direction and decision of the Congress party to vote in favour of the petitioner and they deliberately abstained from the election meeting and thus the Congress party lost rule in the Panchayat and thereby the respondents have voluntarily given up their membership from the Congress party. The action of the respondents have caused considerable loss and inconvenience to the party and there action would constitute defection as provided by Kerala Local Authorities (Prohibition of Defection) Act. Hence this petition.

3. The respondents 1 and 2 filed separate objections and also additional objections to the amended petition. Common contentions have been raised by the respondents which are in short as follows,- The petition is not maintainable either in law or on facts. It is true that the petitioner and respondents had contested the election as candidates of Indian National Congress and were elected as members. Out of the 14 wards in the Grama Panchayat, UDF secured only 6 seats. LDF secured 3 seats and BJP got 2 seats and 3 independent candidates also found victory. After election 1st respondent with the support of independent members was elected as the President of the Panchayat. It is true that 1st respondent resigned from the post of President as per the direction of her party. But during that time the independent members who had supported the UDF took

a stand against the UDF members and they were not willing to support the petitioner for her election as President. 1st respondent had never neglected to attend the UDF parliamentary party meeting. On 31.12.2012 1st respondent was admitted in Poyanil Hospital, Chemmanthur in Punalur due to severe illness. 2nd respondent was not aware of any parliamentary party meeting said to have been convened on 28.12.2012 and on that day while he was in the Orthodox Church, Thonniyamalla, he became ill and was taken to the Parumala St.Gregorios Cardio-Vascular Centre and was admitted there. Even though 1st respondent and the party workers tried to get a discharge from the hospital so as to attend the President election held on 01.01.2013, she was not discharged. As 2nd respondent was in the Hospital, he could not attend the election meeting. The allegation that due to the absence of the respondents, the petitioner did not succeed in the election is totally false. The independent members were against the petitioner and so she was unable to win the election even if these respondents had voted in her favour. The respondents have never done any act against the petitioner or against their political party. They have never acted against the interest of the party. The respondents have not committed any defection and there is no cause of action for this petitions. The allegation that the respondents have defied the direction of the party is totally false. The respondents have not committed defection and so the petition deserves only dismissal.

4. The 1st respondent filed an additional objections contending that she was not having any knowledge regarding the decision taken by the parliamentary party and the allegation that these respondents were expelled from party on account of defying the decision of the parliamentary party and political party is totally false.

5. The 2nd respondent filed an additional objections wherein all his contentions raised in his original objections have been repeated without any change and also without raising any additional contentions.

6. The evidence consists of the oral depositions of PWs1 to 5, RWs 1 to 3 and Exts.P1 to P14, R1 and R2, X1series and X2.

7. All parties were heard.

8. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondents were prevented by sufficient cause from attending the meeting held on 01.01.2013 for the election to the post of President?
- (iii) Whether the respondents have defied the direction and decision of the Congress party by absenting themselves from the meeting held on 01.01.2013 for the election to the post of President?
- (iv) Whether the respondents have become subject to disqualification for being members of Naranganam Grama Panchayat as alleged?

(v) Reliefs and costs?

9. **POINT No.(i)**: This petition has been filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondents have become subject to disqualification for being members of Naranganam Grama Panchayat. According to the petitioner the respondents, by defying the direction and decision of their political party had absented themselves from the election meeting held on 01.01.2013 to the post of President in which they were directed to participate and vote in favour of the petitioner and that they by their conduct of such deliberate abstention have committed defection as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, hereinafter referred to the 'Act'. The respondents would contend that the petition is not maintainable. According to them independent petitions should have been filed against the respondents on account of the reason that separate cause of action and allegations are raised against them. The petitioner as well as respondents had admittedly contested the election to Naranganam Grama Panchayat as candidates of Indian National Congress and were elected as members. The cause of action alleged against them is that they have absented themselves from the meeting convened for electing the President by disobeying the direction and decision of their political party. So a common cause of action is alleged against them. Even when independent petitions are filed against such

respondents belonging to some political party on the basis of a common cause of action such cases are being tried jointly. As per Section 5 of the Act every petition filed under Section 4 is to be disposed of by this Commission in accordance with the procedure as applicable while trying a suit under Code of Civil Procedure. As per Order 1 Rule 3 CPC all persons can be joined in one suit as defendants where any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist against such persons whether jointly, severally or in the alternative and if separate suits were brought against such persons, any common questions of law or facts would arise. In these cases, the right to relief arises out of the same act or transaction against both respondents and if separate proceedings were brought against these persons, common questions of law and facts would definitely arise. Even assuming that a joinder of several independents would embarrass or delay the trial, the Court can order separate trial as provided by sub-Rule 3A of Order 1 CPC. In this case there is no contention for the respondents that the joinder of these respondents would embarrass or delay the trial. Since common questions of law and facts arise for consideration in respect of both these respondents, the joinder of these respondents in a common petition is proper and legal.

10. As already pointed out the petitions are filed u/s 4(1) of the Act. Section 4(1) of the Act states that 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 can file a petition before the State Election Commission for decision. The present petition is filed by a member of the same local authority of which these respondents are members. So the petitioner is competent to file this petition. In the light of the rival claims raised by the parties, a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Act. As per Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules, a petition under the Act is to be filed within 15 days from the date on which the concerned member is deemed to have become subject to disqualification. In this case the date on which the election to the post of President was held in which the respondents had absented was on 01.01.2013. This petition has been filed on 09.01.2013. Therefore the petition is filed within the time prescribed under Rule 4A of the Rules. No other contentions are raised challenging the maintainability of the petition. In the light of the discussion held above, I hold that this petition is perfectly maintainable. The point is answered accordingly.

11. **POINT Nos.(ii) to (v):** Since common questions of law and facts arise for consideration in all these points, for brevity and convenience, they are discussed together. Certain facts are not in dispute. Out of the 14 wards of

Naranganam Grama Panchayat, the Congress party secured 5 seats and KCM found victory in 1 seat and thus UDF got 6 seats. The LDF secured 3 seats and the BJP found victory in 2 seats. The remaining 3 seats were won by complete independents. After the General Election 1st respondent became the President as decided by the Congress party and UDF with the support of the independents. It was decided by the party and UDF that the term of the 1st respondent will be for two years and the petitioner was decided as the President for the next 1½ years and one Sheeba Philip was decided as the President for the remaining 1½ years.

12. The petitioner as PW1 has given a consistent version in this regard. Ext.P2 is the minutes book of the meetings of UDF and Congress parliamentary party. The definite case of the petitioner is that the respondents after fully knowing the decision and direction of the Congress party and its parliamentary party to elect the petitioner as President in the meeting scheduled on 01.01.2013, they had deliberately absented themselves from that meeting and thus became disloyal to the Congress party and due to their action, the petitioner was defeated and thereby they had committed defection.

13. The Congress parliamentary party leader of this Panchayat has been examined as PW2. He has stated that Ext.P2 is the minutes book of the meetings of the Congress parliamentary party and UDF parliamentary party and that the minutes have been recorded by him. According to PW2 the Congress

parliamentary party meeting was convened by DCC President on 09.11.2010 and in that meeting PW2 was elected as the parliamentary party leader and 1st respondent was decided for the post of President for the first two years and the petitioner was decided for that post for the next 1½ years and Smt. Sheeba Philip was decided for the said post of President for the remaining period of 1½ years and the minutes of that meeting has been marked as Ext.P2(a). He would further depose that 1st respondent had agreed to this decision and executed an agreement in this behalf on a 100/- rupee stamp paper and handed over to the DCC President and this fact has been recorded in the minutes of the meeting held on 08.11.2010 which has been marked as Ext.P2(b). On a perusal of Exts.P2(a) and P2(b) it is clearly found that 1st respondent was decided for the President of the panchayat for the first two years and the petitioner was decided for that post for the next 1½ years and Smt.Sheeba Philip was decided for the said post for the remaining period of 1½ years. Ext.P2(a) is the Congress parliamentary party meeting held under the Chairmanship of the DCC President and Ext.P2(b) is the minutes of the UDF parliamentary party meeting of this Panchayat. The petitioner as well as both respondents had participated in both these meetings. So even at the inception, the fact that the petitioner would be the candidate for the post of President after the two years term earmarked for 1st respondent was cannot accepted by both respondents. The fact that 1st respondent had executed an

agreement in terms of the decisions taken in the parliamentary party meetings held on 07.11.2010 and 08.11.2010 is born out by decision No.5 of Ext.P2(b). PW2 has further deposed that 1st respondent did not resign from the post of President after her term of two years which ended on 07.11.2012 despite repeated demands by him and the DCC President and thereupon the DCC President summoned her to his office and gave an ultimatum and only thereafter she resigned from that post. Ext.P2(c) is the minutes of the parliamentary party meeting held on 09.11.2012 wherein 1st respondent was directed to resign before 15.11.2012. In Ext.P2(c) also, the decision to elect the petitioner as President for the next 1½ years has been reiterated. Ext.P2(c) is the minutes of the UDF parliamentary party meeting and both respondents had participated in that meeting. After the resignation of the 1st respondent as President, the election meeting was proposed to be held on 01.01.2013 evidenced by Ext.P1. PW2 has deposed that a meeting of the Congress members was convened by the DCC President at his office on 28.12.2012 and in that meeting 1st respondent did not participate and though 2nd respondent participated in that meeting he left before it concluded and Ext.P2(d) is the minutes of that meeting. 2nd respondent had affixed his signature in the minutes of the meeting held on 28.12.2012 as seen from Ext.P2(d). The challenge against his signature appearing in Ext.P2(d) is found to be without basis. Another meeting of the UDF parliamentary party was

held on 01.01.2013 in which PW2 had reported the details regarding service of the whip issued by the DCC President and it was also decided that if anybody is disobeying the direction of the DCC President, strict action would be taken against him. PW2 has deposed that the direction issued by the DCC President to vote in favour of the petitioner in the election to the post of President scheduled to be held on 01.01.2013 was received by all the members except these respondents on 28.12.2012 itself and 2nd respondent left the meeting without receiving that direction and 1st respondent did not participate in that meeting and so she could not be served in person. PW2 has further deposed that the whip issued to 1st respondent was taken to her home on 31.12.2012 and though she came out on hearing the calling bell, she shut the door and went inside and her whip was affixed in front of her house in the presence of witnesses and the photograph taken regarding such affixture has been marked as Ext.P6. Ext.P7 is the copy of that whip served by affixture. The whip issued to 2nd respondent was taken to his house and as he was not available PW2 called him over phone and requested to receive the whip and then 2nd respondent told him to give it to his wife and accordingly the whip issued to 2nd respondent was served to his wife and the receipt was obtained in the copy of that whip. The copy of said whip is marked as Ext.P4 and the receipt contained therein is marked as Ext.P4 (a). PW2 has further deposed that in the election to the post of President, both respondents

did not participate and so the petitioner was defeated. PW2 has also deposed that after the election meeting, the UDF parliamentary party meeting was held on 02.01.2013 and the communication received from DCC President stating that these respondents have been expelled from the party was read over and approved in that meeting and in that meeting it was decided to file a petition against them before this Commission. Even though PW2 has been cross-examined at length, nothing has been brought out to discredit his evidence. PW3 is stated to be a witness to the affixture of Ext.P7 in front of the house of 1st respondent. He has deposed that before the time of affixture he had seen 1st respondent coming out of her house and as she shut the door and went inside, the whip was affixed. However he stated that he had put his signature as a witness at some other place. So his evidence is not of much use to prove the affixture of the whip issued to 1st respondent.

14. PW5 is the Naranganam Congress Mandalam Committee President. He also is a witness Ext.P7. He has clearly deposed that the whip was affixed in front of the house of 1st respondent and photograph was taken regarding that affixture which has been identified as Ext.P6. He has also deposed that while PW2 served the whip of 2nd respondent to his wife, he was present along with PW2 and the photograph taken at that time has been identified as Ext.P5. He has further deposed that the decision of expelling the respondents from Congress

party for six years by the DCC President was handed over to him and it has been marked as Ext.P14.

15. PW4 is the DCC President. He has categorically deposed that 1st respondent was decided as the President of his Panchayat for the first two years and the petitioner was decided for that post for the next 1½ years and this has been recorded in the minutes of the parliamentary party meetings and that 1st respondent had also given an agreement in stamp paper in this behalf which has been made mentioned of in the minutes of the parliamentary party meeting held on 08.11.2010 and that decision has been separately marked as Ext.P2(h). PW4 has further deposed that consequent to the resignation of the 1st respondent as President, he had issued direction to elect the petitioner as President and Exts.P7 and P4 are stated to be whips issued to respondents 1 and 2 in this behalf. He has also deposed regarding the parliamentary party meeting convened by him at his office on 28.12.2012 in which 2nd respondent had participated and PW4 states that 2nd respondent left the meeting midway. PW4 has also deposed regarding the service of the direction issued by him. PW2 has further deposed that the respondents did not participate in the election meeting held on 01.01.2013 and that they had defied his direction and deliberately abstained from that meeting and so they have been expelled from the party for a period of 6 years and copy of that record has been given to the Secretary evidenced by Exts.P9 and P10 and

this decision was given to the newspapers by way of Ext.P12 press release and Exts.P13 and P13(a) are the Malayala Manorama and Deepika dailies containing the reports regarding the expulsions of these respondents from the Congress party.

16. The respondents would contend that the direction said to have been issued by the DCC President were not served to them and that they could not attend the election meeting held on 01.01.2013 as they were hospitalized on that day. The 2nd respondent has been examined as RW1 and the doctors who had treated these respondents are examined as RWs2 and RW3 and the medical records are marked as Exts. R1, R2, X1 and X2. RW1 has deposed that 1st respondent had resigned as President as per the direction of the DCC President. He has further deposed that as he became suddenly ill on 31.12.2012 while he had gone to Thonniyamala Orthodox Church, he was admitted in the Parumala St.Gregorios Cardio-Vascular Centre and since he was hospitalized on 01.01.2013, he could not participate in the election meeting held on 01.01.2013. 1st respondent has shied away from entering the witness box. However the doctor who is said to have treated her at Poyyanil Hospital, Punalur has been examined as RW2 and her medical records has been marked as Ext.X1 series.

17. From the evidence on record it is found that 1st respondent was decided by the Congress party for the post of President of the Panchayat for the

1st two years and the petitioner was decided for that post for the next 1½ years and Smt. Sheeba Philip was decided for the remaining term of 1½ years. Even though 1st respondent declined to resign from the post after expiry of her term of two years, on account of the compulsion and ultimatum from the DCC President she resigned as President on 04.12.2012. The meeting for electing the next President was held on 01.01.2013. Since the petitioner was already decided as the candidate for the post of President by the Congress party as well as the Congress and UDF parliamentary parties, there was no need to issue any direction to the respondents to vote in favour of the petitioner in the said election proposed to be held on 01.01.2013. However the DCC President convened the parliamentary party meeting on 28.12.2012 in which directions were given to the members to vote in favour of the petitioner in the election scheduled on 01.01.2013. The whip issued to 1st respondent was served by affixture and the whip of 2nd respondent was served to his wife as proved through the evidence of PWs 2 and 5 and Exts. P3 to P7. However the respondents, who were fully aware of the decision and direction of the Congress party to vote in favour of the petitioner in the election to the post of President proposed to be held on 01.01.2013, did not participate in that meeting. According to these respondents they were hospitalized on 01.01.2013 and so they could not attend the election meeting held on 01.01.2013. Whether the above contention of the respondents is

genuine deserves consideration. In the evidence of 2nd respondent as RW1 he states that he went to Thonniyamala Orthodox Church on 31.12.2012 and he became ill and was admitted in the Parumala St.Gregorios Cardio-Vascular Centre and so he could not attend the meeting held on 01.01.2013. RW3 is the doctor who had examined him at the said hospital and Exts.R1,R2 and X2 series and the medical records in respect of this respondent. RW3 has deposed that 2nd respondent was admitted in his hospital on 31.12.2012 and he was discharged on 01.01.2013. He has also deposed that the patient was complaining of chest discomfort, heaviness and sweating and so he was admitted in the hospital. In cross examination RW3 has deposed that 2nd respondent was not having any heart ailments or other illness and that he came to the hospital between 9pm and 10 pm on 31.12.2012. According to RW3, a patient who comes with a complaint of heart ailment should be kept under observation for 12 hours and if no heart disease is detected that person could be discharged Ext.R1 and R2 are stated to be the treatment files in respect of 2nd respondent. RW3 has further deposed that Cardiac Enzyme elevation test was conducted on 2nd respondent and it was noticed that he was not having any heart ailments. His reading for that test was 16-15 whereas the reading of a person having acute cardiac problem would be 30 or above. According to RW3 since 2nd respondent was not having any acute heart problem, he was discharge on 01.01.2013 with a direction to come for review

after two weeks. TMT and ECG tests conducted on 2nd respondent also were found to be negative. According to RW3 those tests were conducted only on 02.01.2013 when he came back after his discharge on 01.01.2013 and during his course of admission, no ECG was taken and on examination he was found to be normal even after the tests conducted on 02.01.2013. RW3 has also deposed that 2nd respondent had informed him that he was a BP patient. According to RW3 even when a person came with a pretended chest discomfort, such tests used to be conducted. To the suggestive question put to RW3 in cross-examination that as the patient was found to be not having any ailments, he could have been discharged after 12 hours observation his answer is that there was no acute emergency and the test confirmed that he was not having any heart attack. RW3 would further depose that since 2nd respondent was found to have accelerated hypertension he was admitted in the hospital and within 12 hours of observation he was found to be not having any heart ailments. From the evidence of RW3 and the medical records produced, it is found that 2nd respondent was not having any illness so as to take admission in a hospital and he had deliberately taken admission in the K.M Cherian Heart Foundation St.Gregorios Cardio Hospital, Parumala on a pretended chest discomfort for the purpose of absenting himself from attending the election meeting held on 01.01.2013. From his medical record the only disorder found in him was hypertension and even according to

RW3 he was already a BP patient and taking medicine for the same. 2nd respondent was fully normal in all respects on 31.12.2012 as well as on 01.01.2013 as seen from the evidence of RW3 and the medical records..

18. According to 1st respondent, she could not attend the election meeting held on 01.01.2013 as she was admitted in Poyyanil Hospital, Punalur. As already pointed out, she shied away from the witness box and did not offer her for cross-examination. However the doctor who treated her at the hospital has been examined as RW2 and the medical records have been marked as Exts.X1 and X2 series. So his evidence is of considerable importance to ascertain whether 1st respondent was prevented by sufficient cause from attending the election meeting held on 01.01.2013. RW2 has deposed that 1st respondent was admitted in the hospital on a complaint of chest pain on 31.12.2012 and she was discharged on 02.01.2013. The complaint stated by RW1 at the time of admission as seen from Ext.X1(a) is chest pain with sweating. RW2 has further deposed that he is only doctor having MBBS degree and there is no Cardiac Surgeon in that hospital. According to him RW1 came with a typical complaint of heart attack. He would further state that even though she came with a typical complaint of heart attack, there was no ECG variation and so she was kept under observation for 24 hours. According to RW2, all the tests conducted on 1st respondent were found to be normal. RW2 has admitted that from the time of

his examination of 1st respondent on 31.12.2012 at 12.40 pm, no abnormality was noted and there was nothing special. He has also admitted that the noting in Ext.X1 series would reveal that 1st respondent was normal from the date of admission till the time of discharged and he has repeated that no abnormality was noticed at any time. On a careful appreciation of the evidence of RW2 it is found that 1st respondent was ordered to be discharged on 01.01.2013 itself and at Page-9 of his deposition, he has admitted that he examined the patient at 10 am on 01.01.2013 and as there was nothing special she was advice for discharge on that day itself and there is also a noting that she was discharged at 2 pm on the same day and that portion of Ext.X1 series has been marked as X1(n). On a perusal of Ext.X1 series also, it is found that the date 01.01.2013 has been corrected as 02.01.2013 at several places and the evidence of RW2 also would support the same. In the light of the evidence tendered through RW2 and Exts.X1series it is clearly found that 1st respondent had taken admission in a hospital at Punalur on a pretended illness with a view to deliberately absent herself from the election meeting held on 01.01.2013 at Naranganam Grama Panchayat.

19. On an evaluation of the entire evidence the following facts emerge,-
1st respondent was elected as the President of the Grama Panchayat for the first term of 2 years and her term expired on 07.11.2012. But she did not resign from that post. Only after compulsion and ultimatum from the part of PW4 the DCC

President, she resigned as the president of the Panchayat on 04.12.2012 so as to pave way for the petitioner to become the President. It was already decided even before the election of the 1st respondent as President that after the said term of two years, the petitioner would be elected as President for 1 ½ years and the last 1 ½ years was set apart for Smt. Sheeba Philip. This sharing of the post of President for the above terms was admitted and acknowledged by both respondents as seen from Exts.P2 series and other evidence. So both respondents were fully aware that in the election to the post of President scheduled on 01.01.2013, the petitioner would be the official candidate of the Congress Party and UDF. There was not even any need to issue a direction to the members of Congress party and UDF to elect the petitioner as President in the election scheduled on 01.01.2013 as she was already decided as the candidate for that post. However the DCC President issued direction to all the Congress members to participate and vote in favour of the petitioner in the president election scheduled on 01.01.2013 and this was served to 1st respondent by affixture and 2nd respondent to his wife. The respondents disobeyed the decision and direction of the Congress party and deliberately absented themselves from the election meeting held on 01.01.2013. It is clearly found that these respondents were unwilling to elect the petitioner as President and they found out a way to absent themselves from the election meeting by taking admission in hospitals at far

away places on a pretended illness. The evidence adduced by the respondents would clearly show that it was only cases of malingering. The fact that the respondents took admission in the hospitals on pretended illness is clear from other circumstances also. 1st respondent was available in her house on 31.12.2012 as seen from the evidence of PWs 2, 3 and 5. The wife of 2nd respondent did not accompany him to the hospital on that day and the whip of 2nd respondent was received by her on 31.12.2012 evening. Admittedly these respondents did not inform the congress party leaders or other members of this Panchayat belonging to Congress party regarding their hospitalization. This would indicate that they wanted to keep their hospitalization a secret. The evidence would clearly show that they had taken admission in hospitals on pretended illness. If they had any genuine illness and were accordingly hospitalized, that would have been informed to the other members as well as their party leaders. Admittedly the respondents did not contact any other members or their party leaders either on 31.12.2012 or 01.01.2013. The evidence of PW4 shows that the whereabouts of these respondents were not known on those days. They were not even available over phone. All these facts and circumstances would clearly prove that they had taken admission in different hospitals at far away places with a view to absent themselves on the date of election to the post of President. They had absented themselves from the election meeting with a

view to see that the petitioner was defeated. The three independent members who supported 1st respondent were already prevailed upon by these respondents and they did not vote in favour of the petitioner. Even then, if these respondents had participated and voted in favour of the petitioner, she would have obtained six votes which the elected President secured and in such a case there would have been an election by draw of lots. The abstention of these respondents was deliberate and this was by disobeying the direction and decision of their party. Immediately after the election meeting, the DCC President, after obtaining the reports from the Block President and Mandalam President, expelled these respondents from the party and they are no more now in the Congress party. Now the LDF is ruling the Panchayat and these respondents had a considerable role in helping the LDF for getting the rule of this Panchayat. The respondents have disobeyed the direction and decision of the Congress party and deliberately abstained from attending the election meeting and thus they had become disloyal to the party in which they belonged. According to the petitioner, the above action of the respondents would constitute defection by voluntarily giving up their membership from the party.

20. The learned counsel for the respondents 1 and 2 would argue that no whip was served to the respondents in the manner as prescribed by Rule 4(1) of the Local Authorities (Disqualification of Defected Members) Rules. Of course

the procedure contemplated by Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Rules could not be complied with in this case for the simple reason that they were absent in the parliamentary party meeting held on 28.12.2012. As per Rule 4(1) of the Rules, the competent person to issue whip is the person competent to recommend symbol for the contesting candidates of his party and in respect of Congress party, the DCC President is the person competent to recommend symbol. So he is definitely entitled to issue direction to the members of the Panchayat belonging to Congress party. But Rule 4(1) further states that the whip should be in the letter head and under the seal of the person who is issuing the whip and the contents of the same should be read over by the member who is elected by majority for information to all the members. There is no clear evidence to prove that such a procedure was complied with in respect of the issuance of the whip in this case. But the fact that the present case is based on the first limb Section 3(1)(a) of the Act cannot be overlooked. Of course if the case is for disqualifying a member for violation of the whip alone, the procedure contemplated by Rule 4(1) of the Rules had to be followed. In the present case the allegation is that the respondents have voluntarily given up their membership from the party by not participating in the election meeting held on 01.01.2013 in disregard of the direction and decision of the Congress party. So the question to be considered is whether the action of the

respondents in having deliberately absented themselves from the election meeting held on 01.01.2012 against the decision and direction of the Congress party would constitute defection arises for consideration. Section **3(1)(a) of the Act** deals with disqualification in respect of members belonging to political parties on the ground of defection 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 authority.”

21. Section 3(1) (a) of the Act consists of two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership of such political party. The second limb is attracted when such member violates the direction issued by the political party or a person authorized by it in this behalf. As per clause **(iva) of Section 2 as inserted by Act 6 of 2013 which came into force on 17.01.12**, 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 political party for contesting in election, for exercising the vote favorably or unfavorably or to abstain from voting. It is also the settled position of law that a member belonging to any political party voluntarily gives up his membership if such member is disobeying the direction of the person authorized by the party to issue such direction.

22. The object sought to be achieved by the “Act” is to prohibit defection among members of the Local Authorities and 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 foundation 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 a 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 the 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 incurs the disqualification.....A political party functions on the strength of shared beliefs of its own 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."

23. It is the conduct of the member which determined whether he has given up his membership from the party. In **Faisal Vs. Abdulla Kunhi, 2008(3)KHC 267** it has been held as follows:-

"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 second 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.”

24. This position has been further clarified in **Dharmamani Vs. Parassala Block Panchayat (2009 (3) KLT 29)** wherein it has been held at **Para 17** as follows.-

“Under the Act, a member can be disqualified if he has voluntarily given up the membership of the political party to which he belongs or acts in defiance of a whip/direction issued by the political party. Disqualification for voluntarily giving up the membership of one’s party, is not dependent on the violation of the whip. The intention of the Act is that the member who has violated the whip or has abandoned the membership of the political party to which he belongs shall be disqualified. It is not necessary to hold that the

member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. The grounds for disqualification are distinct and are not interlinked”

In the decision by the Division Bench of the Hon’ble High Court in **W.A No.1774/2009** decided on **24.12.2009** it has been held at **Para – 9** as follows,-

“Keeping in view this pronouncements when we analyse the facts and circumstances of the present case, it is clear that acting in violation of the instructions of the political party alone is sufficient to hold that the appellant has voluntarily given up the membership from the party. This is nothing but giving up her membership voluntarily similarly, in respect of other members, though they pretended to attend the meeting, their abstinence from voting is nothing but betrayal of the collective decision of the political party to which they belonged. If one considers all these aspects in sequence and cumulative only inference that can be drawn is that the appellants had abandoned the party directions and decisions and thereby their conduct amounted to voluntary giving up the membership.”

25. From the settled position of law it is clearly found that a member who is defying the direction of the DCC President or disobeying the decision of the party in an election to the post of President of the Panchayat he becomes disloyal

to his party and thereby commits defection. In the case on hand, these respondents have deliberately disobeyed the decision and direction of the Congress party by absenting themselves in the election to the post of President held on 01.01.2013 and therefore they have become subject to disqualification as provided by the 1st limb of Section 3(1)(a) of the Act. Therefore they are liable to be disqualified for having voluntarily given up their membership from the party in which they belonged as provided by Section 3(1)(a) of the Act. The points are answered accordingly.

In the result, the petition is allowed and the respondents are declared as disqualified for being members of the Naranganam Grama 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 22nd day of April 2014

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER**

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Smt.Susan Abraham, Poyyanil Veedu, Naranganam P.O
- PW2 : Sri.Philip Anchani, Anchaniyil, Kadammanitta P.O.,
Pathanamthitta
- PW3 : Sri.Skaria K.M, Kuzhikkalayil, Naranganam P.O.
- PW4 : Sri.P.Mohan Raj, Manazhikeezhethil, Adoor,
Pathanamthitta
- PW5 : Sri.Ajimon, Ajibhavan, Naranganam P.O., Kozhenchery

Witnesses examined on the side of the respondent

- RW1 : Sri.P.P.Mathayi, Palakkatharayil, Thonniyamala.P.O.,
Pathanamthitta
- RW2 : Dr.Varghese Pothen, Chief Medical Officer, Poyyanil
Hospital, Punalur
- RW3 : Dr.K.G.Suresh, Kochuthoppil, Parumala P.O

Documents produced on the side of the petitioner

- P1 : Letter No.ICDS.A1.512/12 dated 20.12.2012 of the Child
Development Project Officer, Elanthoor
- P2 : Minutes Book of Congress Parliamentary Party,
Naranganam Grama Panchayat
- P2(a) : Minutes of the meeting of Congress Parliamentary Party
held on 08.11.2010
- P2 (b) : Decision No.5 is the meeting of Congress Parliamentary
Party held on 08.11.2010
- P2(c) : Minutes of the meeting of Congress Parliamentary Party
held on 09.11.2012
- P2(d) : Minutes of the meeting of Congress Parliamentary Party

held on 28.12.2012

- P2(e) : Minutes of the meeting of Congress Parliamentary Party held on 01.01.2013
- P2(f) : Minutes of the meeting of Congress Parliamentary Party held on 02.01.2013
- P2(g) : Minutes of the meeting of Congress Parliamentary Party held on 06.01.2013
- P2(h) : Minutes of the meeting of Congress Parliamentary Party held on 07.11.2010
- P3 : Copy of the letter dated 01.01.2013 of the President, DCC, Pathanamthitta
- P4 : Copy of the letter dated 27.12.2012 of the President, DCC, Pathanamthitta addressed to Sri.P.P.Mathai
- P4(a) : Copy of the letter dated 27.12.2012 of the President, DCC, Pathanamthitta addressed to Smt.Sheeba Philip
- P4 (b) : Copy of the letter dated 27.12.2012 of the President, DCC, Pathanamthitta addressed to Sri. Philip Anchani
- P4 (c) : Copy of the letter dated 27.12.2012 of the President, DCC, Pathanamthitta addressed to Smt.Susan Abraham
- P5 : Photograph showing the whip pasted in the wall of the home
- P6 : Photograph
- P7 : Copy of the letter dated 27.12.2012 of the President, DCC, Pathanamthitta addressed to Smt.Sasikala Radhakrishnan
- P8 : Copy of the letter dated 01.01.2012 of the President, DCC, Pathanamthitta addressed the Secretary, 25- Naranganam Grama Panchayat

- P9 : Copy of the letter dated 01.01.2013 of the President, DCC, Pathanamthitta addressed to the Secretary, Naranganam Grama Panchayat
- P10 : Copy of the letter dated 01.01.2013 of the President, DCC, Pathanamthitta addressed to the Secretary, Naranganam Grama Panchayat
- P11 : Copy of the letter dated 01.01.2013 of the President, DCC, Pathanamthitta addressed to Sri.K.Ajimon, President, Congress Mandalam Committee, Naranganam
- P12 : Copy of the letter for publication dated 01.01.2013 of the President, DCC, Pathanamthitta
- P13 : Malayala Manorama daily dated 02.01.2013
- P13 (a) : The news in P13 about Smt.Sasikala Radhakrishnan
- P13 (b) : Deepika daily dated 02.01.2013
- P14 : Letter dated 01.01.2013 of the President, DCC, Pathanamthitta addressed to Sri.K.Ajimon, President, Congress Mandalam Committee, Naranganam

Documents produced on the side of the Respondent

- R1 : Discharge summary of Sri.P.P.Mathayi from St.Gregorios Cardio-Vascular Centre
- R2 : Documents regarding the treatment of Sri.P.P.Mathayi

Document produced on the side of the witness

- X1 : Patient's Record File of Smt.Sasikala Radhakrishnan in Poyanil Hospital, Chemmanthur, Punalur
- X1(a) : O.P.Ticket No.44913 of Smt.Sasikala Radhakrishnan

- X1(b) : Patient Registration form of Smt.Sasikala Radhakrishnan
- X1(c) : Admission chart of Smt.Sasikala Radhakrishnan
- X1(d) : Doctor's order sheet
- X1(e) : Graphic (TPR) Chart of Smt.Sasikala Radhakrishnan
- X1(f) : Nurses record of Smt.Sasikala Radhakrishnan dated 02.01.2013
- X1(g) : Nurses record 2nd sheet
- X1(h) : Intake and output sheet, Poyyanil Hospital
- X1(i) : Laboratory result
- X1(j) : Consent to admit in ICU
- X1(k) : Correction in the date in X1(c)
- X1(l) : Correction in the date in X1(f)
- X1(m) : Correction in the date in X1(g)
- X1(n) : Correction in the particular in X1(g)
- X2 : Photocopy of the records of treatment of Sri.P.P.Mathayi in St.Gregorios Cardio-Vascular Centre

**K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.**