

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

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

Friday, the 5th day of September 2014

O.P.Nos.102/2013, 103/2013,104/2014AND 105/2013

O.P.No.102/2013

Petitioner : Lissy Joseph,
W/o Joseph, Erayil House,
Adakkathode P.O., Kelakam-670 674,
Thalassery Taluk, Kannur District.

**(By Advs. Sasthamangalam
R.Jayakrishnan)**

Respondent : Mary Ulahannan,
W/o Ulahannan, Manimalakunnel House,
Kanichar P.O. Kelakam-670 674,
Thalassery Taluk, Kannur District.
(By Adv. A.Santhosh Kumar)

O.P.No.103/2013

Petitioner : Lissy Joseph,
W/o Joseph, Erayil House,
Adakkathode P.O., Kelakam-670 674,
Thalassery Taluk, Kannur District.

**(By Advs. Sasthamangalam
R.Jayakrishnan)**

Respondent : Stany Sebastian,
S/o Sebastian, Advocate, Kudakkachira
House, Manjalampuram, Kelakam P.O.
-670 674, Thalassery Taluk,
Kannur District.

(By Adv. A.Santhosh Kumar)

O.P.No.104/2013

Petitioner : Lissy Joseph,
W/o Joseph, Erayil House,
Adakkathode P.O., Kelakam-670 674,
Thalassery Taluk, Kannur District.

**(By Advs. Sasthamangalam
R.Jayakrishnan)**

Respondent : Saji Kumar Manali,
S/o Velutha Kunkan, Manali House,
Vellooni, Kelakam P.O. -670 674,
Thalassery Taluk, Kannur District.

(By Adv. A.Santhosh Kumar)

O.P.No.105/2013

Petitioner : Lissy Joseph,
W/o Joseph, Erayil House,
Adakkathode P.O., Kelakam-670 674,
Thalassery Taluk, Kannur District.

(By Advs. Sasthamangalam R.Jayakrishnan)

Respondent : Paily Vathiattu,
S/o Vakey, Vathiattu House,
Kelakam P.O.-670 674,
Thalassery Taluk, Kannur District.

(By Adv. A.Santhosh Kumar)

These petitions having come up for hearing on the 2nd day of August 2014, in the presence of Adv. **Sasthamangalam R.Jayakrishnan** for the

petitioner and Adv. **A.Santhosh Kumar** for the respondents and having stood over for consideration to this day, the Commission passed the following.

COMMON ORDER

These are petitions filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondents have become subject to disqualification for being members of Kelakam Grama Panchayat. Since the petitions are filed by a common petitioner and common questions of law and facts arise for consideration in all these petitions, they have been taken up together as per order on I.A No.27/2014 and O.P.No.102/2013 is treated as the main case;

2. Common allegations are raised by the petitioner in all these cases which are in short, as follows:- The petitioner and respondents are elected as members belonging to Congress party in the General Election held in October 2010. Out of the 13 wards, the Congress party alone secured 8 seats and the Indian Union Muslim League, which is a constituent of UDF, of which Congress party is the main partner, secured one seat. After the election the respondent in O.P.No.105/2013 was elected as President and the petitioner was elected as Vice President. Subsequently the President of the Panchayat changed his attitude and started an unholy association with CPI(M) members of the Panchayat and there were also allegations of misappropriation and corruption against him. Since there

was a deadlock in the administration of the Panchayat the UDF coalition parties timely advised the President of the Panchayat. Finally the respondent in O.P.No.105/2014 decided to resign and gave letter in this behalf to the Mandalam President of Congress party. However he did not keep his words and continued as the President of the Panchayat disobeying the political leadership. So 5 members of UDF moved a no confidence motion against the President with the concurrence of the UDF leadership and it was tabled for discussion on 13.11.2013. The Kannur District Congress committee President issued whip to all the Congress members directing them to vote in favour of the no confidence motion. The said whip was sent to the respondents by registered post and when the postman attempted to serve the directions, the respondents evaded the service and though intimations were given to the respondents well in advance, they collected the postal whips only after 13.11.2013. Since they evaded receipt of the whip, it was served by affixture on 12.11.2013 itself. The affixture was done by Sri.Sony Kattakkal in the presence of Sri.V.T.Joy and Sri.Johny Pambadiyil. The copy of the whip was served to the Secretary of the Kelakam Grama Panchayat and also the authorized officer. The respondents, in defiance of the whip given by the District Congress committee President, Kannur deliberately absented from attending the meeting on the no confidence motion and as only five members attended, the motion could not be taken up for discussion. Since the respondents

violated the whip given by the District Committee President, Kannur, by not attending the meeting convened for discussing the no confidence motion, they have committed defection and they were consequently expelled from the Congress party for six years. Thus the respondents are guilty of defection and so they are liable to be disqualified for being members of Kelakam Grama Panchahayt and they are also to be debarred from contesting in any election for the next six years. Hence these petitions.

3. Common contentions are raised by the respondents in their objections which are in short as follows,- The petitions are not maintainable either in law or on facts. In the General Election to Kelakam Grama Panchayat eight persons belonging to Congress party, one member belonging to Indian Union Muslim League, 3 members belonging to CPI(M), and one LDF independent found victory and after election the respondent in O.P.No.105/2013 belonging to Congress party was elected as President and the petitioner belonging to Congress party was elected as Vice President. The respondent in O.P.No.105/2013 was working as President for the benefit of the public and he was keeping interest of all wards equally and was hearing problems of the public and party workers patiently. The petitioner along with four members moved a no confidence motion against the President without the support of Congress leadership. There was no situation which warranted such a no confidence motion and it was never

discussed in the Congress party. The no confidence motion was signed by four Congress members and one member belonging to Indian Union Muslim League. No whip or direction was served to these respondents by the DCC President as alleged. The respondents never received or acknowledged any whip or direction and the DCC President never intimated the decision or stand of the political party in respect of the no confidence motion. No whip was communicated to the respondents as alleged. The Kannur District Congress Committee President or any person belonging to Congress party never read over the whip or direction to any members of the Congress party nor obtained receipts from any members or affixed the same in the presence of two witnesses as provided by law. The petitioner never read over the whip to the respondents as alleged. There was no deliberate intention by these respondents in not attending the meeting convened on 13.11.2013 and there was no direction from any corner to attend such a meeting. The respondents were never expelled from the party. On 28.10.2013 Adv. Stany Sebastian the respondent in O.P.No.103/13 was brutally manhandled by the political opponents and he was admitted in the hospital and the case was registered against the culprits. The said persons openly threatened other respondents also and they had to keep away from there. The respondents had never committed any defection and the petitions have been filed out of political

vengeance without any cause of action. Therefore the petitions deserve only dismissal.

4. The evidence consists of the oral depositions of PWs1 to 3, RWs1 and 2 and Exts.P1 to P16 and R1 and R2.

5. Both sides were heard

6. The following points arise for consideration;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the direction in writing issued by the Kannur DCC President directing the members of the Congress party to vote in favour of the no confidence motion moved against the respondent in O.P.No.105/2013 were served to the respondents?
- (iii) Whether the respondents have violated the whip issued by the competent person in respect of the no confidence motion moved against the President as alleged?
- (iv) Whether the respondents have become subject to disqualification for having violated the whip issued by the DCC President as alleged?
- (v) Reliefs and costs?

7. **POINT No.(i)**: These are petitions filed under Section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, (hereinafter referred to as 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 petitions are filed by a member of the same Grama Panchayat of which the respondents also are members. So he is competent to file the petition. According to the petitioner, the respondents have violated the direction issued by the DCC President, Kannur to vote infavour of the no confidence motion moved against the respondent in O.P.No.105/2013 and they by defying the said direction abstained from attending the meeting convened for discussing the said motion and thus committed defection. The respondents would contend that no such whip was served to them and that they have not committed any defection. As per Section 3(1) (a) of the Act, if a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction 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 on a no confidence motion against the President, Vice President or Standing Committee Chairman, he shall be disqualified for being a member of that local authority. In the light of the above provision of law, a question arises as to whether the respondents have become subject to disqualification for being members of Kelakam Grama Panchayat for the alleged defiance of the whip issued by the Kannur DCC President. As per Rule 4A of the

Kerala Local Authorities (Disqualification of Defected Members) Rules, whenever a question arises as to whether a member of the local authority has become subject to disqualification as provided by Section 4(1) of the Act, any member of the local authority or the person competent to recommend symbol to the candidates of the political party in which the concerned member belongs is competent to file petition before the State Election Commission for decision. As Rule 4A(2) of the Rules, such a petition is to be filed within 15 days reckoned from the date on which the concerned member is said to have become disqualified. As per its proviso, a petition filed beyond such period can be entertained on sufficient grounds. These petitions have been filed within the period prescribed under Rule 4A(2) of the Rules. As already point out, since the petitioner is a member of the same Local Authority of which the respondents also are members and a question arises as to whether the respondents have become subject to disqualification as provided by Section 4(1) of the Act and as the petitions are filed within the period prescribed under Rule 4A(2) of the Rules, I hold that these petitions are maintainable. The point is answered accordingly.

8. **POINT No.(ii)**: Certain facts are not in dispute. The petitioner and respondents are members of Kelakam Grama Panchayat. They contested the election held in October 2010 as candidates of Indian National Congress and after their election they had submitted declarations stating their political affiliations

based on which the Secretary of the Panchayat had prepared register showing such political affiliations and its copy is marked as Ext.P1. Ext.P1 is found to have been maintained as provided by Rule 3 of the Kerala Local Authorities (Disqualification of Defected Members) Rules and it is not under challenge. From Ext.P1 and also as admitted by both parties, I find that the petitioner and respondents were elected as members of Kelakam Grama Panchayat belonging to Congress party and after election they were bound by the decisions and directions of this party. The respondent in O.P.No.105/2013 was elected as President of the Panchayat and the petitioner was elected as Vice President.

9. According to the petitioner the President of the Panchayat started an unholy association with CPI(M) members and there was allegations of misappropriation and corruption and upon the advise of the UDF coalition parties, the President decided to resign and gave letter in this behalf to the Mandalam President. The respondents would admit that such a letter agreeing to resign from the post of President was given by the respondent in O.P.No.105/2013. This letter has been marked as Ext.P2. Ext.P2 letter is addressed to Kerala Congress Mandalam Committee President and it is stated that he will resign from the post of President and member of the Panchayat as and when the party directs him to do so. The petitioner has been examined as PW1 and the respondent in O.P.No.105/2013 is examined as RW1. He has deposed that such a letter was

given based on the decision of the Congress Mandalam Committee. According to the petitioner this respondent did not keep his words and continued as President disobeying the political leadership and so five members of the UDF moved a no confidence motion against him with the concurrence of the UDF leadership and that motion was tabled for discussion on 13.11.2013. The chief examination of PW1 is by way of an affidavit which is in terms of the allegations contained in the original petition. However the petitioner has produced a letter said to have been issued by the DCC President on 26.10.2013 directing the respondent in O.P.No.105/2013 to resign from the post of President and it has been marked as Ext.P3. The DCC President as PW3 has deposed that he had given such a letter to the said respondent directing him to resign from the post of President and as it was not obeyed, the petitioner and others brought a no confidence motion against him. In cross examination of PWs1 and 3, the respondents have vehemently challenged the correctness and veracity of Ext.P3 and it was suggested that no such letter was given by the DCC President to the said respondent. The respondent in O.P.No.105/2013 as RW1 has categorically deposed that Ext.P3 is subsequently created for the purpose of these cases. Either in the petition or in the chief affidavit of PW1, the petitioner does not have a case that the no confidence motion was moved in consequence of disobedience of the direction issued by the DCC President to the respondent in O.P.No.105/2013 to

resign from the post of President. So the attempt of the petitioner in producing Ext.P3 is purely an improvement in his evidence and it is not supported by any pleadings. On the other hand the definite case pleaded is that the respondent was not keeping to his assurance to resign from the post and so a no confidence motion was moved against him with the concurrence of the UDF leadership. It is not stated that the no confidence motion was moved in consequence of the disobedience of Ext.P3 letter given by the DCC President to the respondent in O.P.No.105/2013. PW3 has deposed that Ext.P3 was given to this respondent directly. He has further stated that no receipt regarding acceptance of Ext.P3 was given by the respondent. There is no evidence to prove that Ext.P3 letter was given to the respondent in O.P.105/2013. Even the petitioner did not have such a pleading in his petition. If Ext.P3 was in fact given to the respondent in O.P.No.105/2013 and thereafter a no confidence motion was moved against him on account of disobedience of that direction, the same would have been specifically stated by the petitioner. Since Ext.P3 and the evidence tried to be adduced in support of this document are without any pleadings and as there is no acceptable evidence to prove that such a letter was given to the respondent in O.P.No.105/2013, it cannot be relied on as a piece of material for considering the facts in issues in these cases.

10. The petitioner would allege that the no confidence motion moved against the five members of UDF was tabled for discussion on 13.11.2013 at 11 am. Ext.P4 is the copy of the no confidence motion moved against the President and it was received by the authorized officer on 28.10.2013. Ext.P5 is the notice issued by the authorized officer intimating the date, time and venue of the meeting for discussing the said motion and as per this notice, the said motion was tabled for discussion on 13.11.2013 at 11 am. The petitioner would allege that the Kannur District DCC President issued whip to all the Congress members to vote in favour of the no confidence motion and such a whip was sent to the respondents by registered post. It is further alleged that since the respondents evaded receipt of whip and collected the same only after 13.11.2013, the copy of whips were served by affixture also. Ext.P6 is the whip given by the DCC President to the petitioner. Ext.P7 series are the postal receipts regarding sending of the whip by registered post. From Ext.P7 series it is found that the said whip was sent to all the congress members on 09.11.2013. Ext.P8 series are the postal acknowledgments regarding the acceptance of the whip by the respondents. From Exts.P8 series, it is found that all the respondents have received the whip only on 15.11.2013. Ext.P9 series are the acknowledgments regarding acceptance of the whip by the three Congress members who were signatories to the no confidence motion along with the petitioner and as per these records it is

found that the registered whips were received by them on 11.11.2013. Copy of the whip was given to the Returning Officer as well as Secretary of the Panchayat evidenced by Exts.P10 and P11. Ext.P12 series are the postal receipts regarding sending of the whip to the Returning Officer as well as the Secretary of the Panchayat and Exts.P13 and P14 are the acknowledgments of the same. From these records it is found that they have received the copy of the whip on 11.11.2013 itself.

11. The petitioner has deposed that the respondents had purposely evaded receipt of the whip and so the same were served by affixture. The petitioner as PW1 has deposed that Shri.Sony Kattakal, Kelakam Mandalam Committee member had gone to the house of the respondent in O.P.No.103/2013 and affixed the whip in front of his house and that of the respondent in O.P.No.104/2013 in front of his house and that of the respondent in O.P.No.105/2013 in front of his house in the presence of Shri.V.T.Joy and Shri.Johny Pambadiyil and the whip of the respondent in O.P.No.104/2013 was served to him directly and that no receipt was given by him. The respondents have denied the service of whip by affixture or directly. RWs1 and 2 have deposed that no whip was served to them either directly or by affixture. The witness who is said to have accompanied Sri.Sony Kattakal has been examined as PW2. He has deposed that Shri.Sony Kattakal had affixed the whip of the respondents in O.P.Nos.102/2013 and

105/2013 in front of their houses and the whip of the respondent in O.P.No.103/2012 was affixed on his compound wall as his gate was locked and the whip of respondent in O.P.No.104/2013 was served directly. But no records are produced to prove that the whips of these respondents were either affixed in front of their houses or on the compound wall or given directly. The respondents would deny any such service by affixture. At the same time PWs1 and 2 have deposed that photographs were taken regarding affixture of the whip. But no photographs are produced before this Commission. In the absence of any record showing that the whips were served by affixture or directly, the oral evidence given by PWs 1 and 2 in this regard cannot be relied on. The manner in which the direction issued under sub rule (1) of Rule 4 is to be served is prescribed under Rule 4(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and it reads as follows,-

“While issuing a direction under sub-rule (1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixing it shall be done in the presence of at least two witnesses.”

12. So it is clearly mentioned in the above Rule that when the whip is served directly, the person who gives it shall obtain receipt. In the case on hand, admittedly no receipt was obtained from the respondent in O.P.No.104/2013. Regarding the whip said to have been served by affixture to other respondents, no acceptable evidence is forthcoming. Therefore I find that the whip issued by the DCC President was neither served directly nor by affixture.

13. The next question to be considered is whether the whip was given to the respondents by way of registered post. As already pointed out, the whips issued by the Kannur DCC President were sent to all the Congress members on 09.11.2013 itself by registered post as seen from Ext.P7 series. Except these respondents all other Congress members had received the whips on 11th or 12th of November 2013 itself as seen from Ext.P9 series. The copy of the whip sent to the Returning Officer and Secretary of the Panchayat on 09.11.2013 were received by them on 11.11.2013. But the respondents had admittedly collected the whip only on 15.11.2013 which was two days after the date on which the no confidence motion was tabled for discussion. The contention of the respondents is that they were never served with any whip on or before the date on which the motion was tabled for discussion and that they were not aware of any such direction till they received the postal articles. The petitioner as PW1 has deposed that the respondents had deliberately evaded receipt of the whip and that

intimations of the same were given to them well in advance. The DCC President as PW3 also has deposed that the respondents had purposely avoided receiving the whips in time. The respondent in O.P.No.105/2013 as RW1 has deposed that the whip said to have been issued by the DCC President was not received before the date on which the motion was tabled for discussion. RW1 has further deposed that they were keeping away from the houses on account of the threat and intimidation from the part of certain unruly elements who had attacked the respondent in O.P.No.103/2013 and they came back to their houses only after the date on which the motion was notified for discussion. The respondent in O.P.No.103/2013 as RW2 has deposed that he was attacked by certain person on 28.10.2013 on which date the no confidence motion was moved against the President and on apprehending further attack, he was keeping away from his house and only on 15.11.2013 he came to know of the intimation regarding the whip and thus collected the same from the post office. Ext.R1 is the copy of the FIR registered on the basis of the alleged attack on RW2 on 28.10.2013. He has also produced the postal cover along with the whip sent to him by the DCC President which are marked as Exts.R2 series. From Ext.R2(a) postal cover it is found that on 11.11.2013 his gate was locked and on 12.11.2013 his door was locked and intimation was given through the window of the house. The above postal intimation would clearly indicate that the respondent was staying away

from his house and that was the reason why the postal whip could not be served to him before the date on which the motion was tabled for discussion. Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules mandates only that if the whip is sent by registered post, it shall be done along with acknowledgment card. In the cases on hand, the whips addressed to the respondents were sent by registered post well in advance and it appears that the respondents were deliberately staying away from their houses for avoiding acceptance of such whips on or before 13.11.2013 and they conveniently collected the postal articles on 15.11.2013 so as to make it appear that the whips were received by them only after the date on which the motion was notified for discussion. On a careful appreciation of all facts and materials on record, the only possible conclusion that can be arrived at is that the respondents, after fully knowing that the whips were sent by the DCC President by registered post, had deliberately avoided acceptance of the same and they were fully aware of the whip issued by the DCC President regarding participation and voting on the no confidence motion. Therefore I find that the DCC President had issued the whip to the respondents directing them to participate in the meeting on the no confidence motion and to vote in favour of the said motion on 13.11.2013 and that the respondents were fully aware of the said whip issued by the DCC President. The points are answered accordingly.

14. **POINT Nos.(iii) to (v)**: The petitioner would allege at Para 7 of his petition as follows,-

“On 13.11.2013 at 11 am, the petitioner and other members who submitted the resolution of no confidence were present. The respondent and other members were absent. Since the presence of 5 members was not sufficient to convene the meeting, the Authorized Officer declared that the meeting cannot be conducted for want of quorum. Hence the meeting was dispersed. The absence of the respondent in the meeting that was notified to be conducted on 13.11.2013 at 11 am was deliberate and in violation of the whip given by the District Congress Committee President, Kannur. Hence the deliberate omission of the respondent to attend the meeting on 13.11.2013 at 11 am is nothing but defection actionable under law. In view of the defection of the respondent, she was consequently expelled from the Congress (I) party for a period of next 6 years. Thus the respondent is guilty of defection and hence liable to be disqualified in accordance with law. She is not entitled to continue as member of

Panchayat and she is liable to be debarred from contesting in elections for the next 6 years.”

15. In Para 9 of the petition it is stated that the cause of action for the petition arose on 13.11.2013 when the respondent refused to attend the meeting notified by the authorized officer, in violation of the whip given by the Kannur District Congress Committee and thereafter. So it is the alleged violation of the whip that is taken up as the ground for seeking disqualification of the respondents. In the above context whether the respondents have become subject to disqualification for the violation of the whip issued by the DCC President requires consideration. Section 3(1)(a) of the Act deals with disqualification on the ground of defection in respect of members belonging to a political party. The above Section reads as follows,-

“3.(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.”

16. Section 3(1)(a) of the Act consists of two limbs. The first limb is attracted when a member of a local authority belonging to any political party voluntarily gives up his membership from such political party. It is significant note that nowhere in the petitions, there is pleading that the respondents, who are members belonging to Congress party, have voluntarily given up their membership from that political party. It is settled law that the ground of voluntarily giving up membership from their political party is distinct and different from the second limb which deals with disqualification on the ground of violation of whip. The second limb under Section 3(1)(a) of the Act is attracted

when a member votes or abstains from voting in a meeting of the Municipality in an election to its Chairperson, Deputy Chairperson, a member of Standing Committee or the Chairman of the Standing Committee or in a meeting of a Panchayat in an election to its President, Vice President, a member of the Standing Committee or the Chairman of the Standing Committee or in a voting on a no confidence motion against anyone of them except a member of the Standing Committee, contrary to the direction 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. The definite case of the petitioner is that the respondents have abstained from the meeting convened for discussing the no confidence motion moved against the respondent in O.P.No.105/2013 by violating the whip issued by the DCC President. As already pointed out, the ground of voluntarily giving up their membership from the party has not been taken up in these petitions. In the absence of any pleadings or allegations in the petition regarding the aspect of voluntarily giving up membership from the party by the respondents, the first limb of Section 3(1)(a) does not arise for consideration. Of course the petitioner could have taken both grounds. But, since both these grounds are separate and not interlinked, without specifically taking up the ground of voluntarily giving up their membership from the party, whether the conduct of the respondents in having abstained from the discussion and voting on

the no confidence motion would constitute defection as provided by the first limb of Section 3(1)(a) of the Act deserves no consideration. So the only question to be considered is whether the respondents have violated whip issued by the competent person in respect of the discussion and voting on the no confidence motion and whether such action, if any, would constitute defection.

17. As per Section 3(1)(a) of the Act, the direction in writing is to be issued by the political party to which the member belongs or by a person or authority authorized by it in this behalf in the manner prescribed. In the cases on hand, the said direction in writing, which is commonly called as 'whip' was given by the DCC President. Direction in writing as defined in clause (iva) of Section 2 of the Act as amended by Act 6 of 2013, which came into force on 17.01.2012, 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 recommend the symbol of the said political party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting”

18. The learned counsel for the respondents would argue that there is no averment in the petitions that the DCC President is the person authorized by the Congress party to recommend symbol of the said political party to its candidates contesting in the election to local bodies and in the absence of such a pleading, it cannot be held that the direction in writing if any given by the DCC President would satisfy the requirement as provided by the above provision. Of course in these petitions there is no averment that the DCC President is the person authorized by the Congress party to recommend symbol to the candidates of that party for contesting in the election to local body. However the respondents do not have a contention that the DCC President was not competent to issue whip to them. But in the light of the challenge raised against the whip, the absence of such a contention does not absolve the requirement to plead and prove that the DCC President is the person authorized by the Congress party to recommend symbol of that party to its contesting candidates, especially in the light of clause (iva) of Section 2 of the Act. Therefore I find considerable force in the argument of the learned counsel for the respondents that the petitioner has failed to plead and prove that the DCC President was the person authorized by the Congress party to recommend symbol to the candidates of that party and as such he was competent to issue direction as provided by Section 3(1) (a) read with clause (iva) of Section 2 of the Act.

19. The learned counsel for the respondents would argue that the second limb of Section 3(1)(a) would be attracted only when violation of the direction in writing in the manner prescribed is proved and in these cases there is infraction of the procedure provided under Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. In this context Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules assumes importance and it reads as follows,-

“4.The manner in which a political party or coalition may give direction to its members,- (1) If a political party or coalition gives any direction in respect of the casting of vote in an election or in a voting as has been mentioned in clause (a) or clause (b) of Section3, it shall be in writing and such a direction be given,-

(i)in the case of a member belonging to a political party or a member considered as included therein, it shall be the person authorized from time to time to recommend the symbol belonging to the political party in order to contest the said member in the election. Provided, the above said direction shall be

in the letter head and seal of the political party and for the information of the members, the contents therein shall be read over by the member who shall be elected by the members belonging to the political party and the members considered as included in the political party jointly, based on majority from among themselves, and the direction so read shall be deemed to have given directly to the members. In any case, in the absence of the member elected by majority or if that member refuses, another member belonging to the same party shall read over the said direction.”

20. Here also the direction in writing is to be issued by the person authorized by the political party from time to time to recommend symbol belonging to such political party to its candidates contesting in the election. I have already found that the petitioner has failed to allege and prove that PW3 was the person authorized by the Congress party to recommend symbol to the candidates of that party while contesting in the election to the local bodies. Of course it is not a matter which can be taken judicial notice of and there should be sufficient pleadings and evidence. Secondly as per Rule 4(1) of the Rules, the

contents of the said direction should be read over by the member who shall be elected by the members belonging to the political party and the members considered as included in that political party, based on majority from among themselves, for their information. There is no allegation in the petition that the direction in writing issued by the DCC President was read over by the member elected from among the members of the parliamentary party by majority for information to its members. There is no mention in the petitions that a meeting of the parliamentary party of the congress party was convened at all or that the parliamentary party had elected a whip by majority from among their members or that such member or any other member had read over the contents of the whip for information to its members. PW1 also has not given any evidence in this regard. On the other hand PW1 at Page 7 of his deposition has admitted that in connection with issuance of Ext.P6 whip, the Congress parliamentary party was not convened and the contents of that whip was not read over to its members. The DCC President as PW3 also has admitted that the contents of Ext.P6 whip was not read over in any parliamentary party meeting and that no meeting of the parliamentary was convened by him for this purpose. So from the above evidence it is clearly found that there is infraction of the procedure contemplated by Rule 4(1) of the Rules. The contents of the direction in writing was admittedly not read over for information to the members of the Congress party by

any member who should have been elected by the members of Congress party for this purpose. Rule 4(1) has been provided in accordance with Section 3(1)(a) of the Act which states that the direction in writing issued by the political party should be in the manner prescribed. Since there is non compliance of the procedure in respect of giving the direction in writing to the members as provided by Rule 4(1) of the Rules, I find that the ground taken by the petitioner regarding violation of the whip cannot legally sustain. Since the petitioner has failed to take up the first limb of Section 3(1)(a) of the Act, the question of disloyalty on account of the conduct of the respondents in having abstained from the discussion and voting on the no confidence motion cannot be considered in these case. Suffice to say that the common petitioner has failed to prove that the direction in writing was given to the respondents by the competent person in the manner prescribed and therefore the petitions deserves only dismissal. The points are answered accordingly.

In the result, the petitions are dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 5th day of September 2014

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Smt.Lissy Joseph, Ilarayil Veedu, Adakkathodu,
Kelakam P.O.
- PW2 : Sri.Joy. V.T, Vettaparambil
- PW3 : K.Surendran, Surya, Paladu, Kannur

Witnesses examined on the side of the respondent

- RW1 : Sri.Paily Variatt, Variatt Veedu, Kelakam P.O.
- RW2 : Sri.Stani Sebastian, Advocate, Adakkachira House,
Kelakam P.O.

Documents produced on the side of the petitioner

- P1 : Letter No.A-485/2013 dated 19.11.2013 of the
Secretary, Kelakam Grama Panchayat and its enclosures
- P2 : Letter dated 10.10.2013 of Sri.Paily Vathiattu
- P3 : Letter dated 26.10.2013 of the President, DCC, Kannur
addressed to Sri.Paily Vathiattu
- P4 : Notice to no confidence motion against President,
Kelakam Grama Panchayat
- P5 : Notice No.B-3029/2013 dated 29.10.2013 of the
Secretary Peravoor Block Panchayat
- P6 : Letter (whip) dated 08.11.2013 of the President,
DCC Kannur
- P7 : Receipts of registered letters
- P8 : Acknowledgment cards of registered letters

- P9 : Acknowledgment cards of registered letters
- P10 : Copy of the whip dated 08.11.2013 of the President, DCC Kannur
- P11 : Copy of the whip dated 08.11.2013 of the President, DCC Kannur
- P12 : Receipts of registered letters
- P13 : Acknowledgment cards of registered letters
- P14 : Copy of the minutes of the meeting of Kelakam Mandalam Congress Committee held on 09.10.2013
- P15 : Copy of the minutes of the meeting held on 13.11.2013 to discuss the no confidence motion against President, Kelakam Grama Panchayat
- P16 : Letter dated 14.11.2013 of the President, DCC Kannur

Documents produced on the side of the respondents :

- R1 : Copy of the FIR No.641 dated 28.10.2013
- R2 : Whip dated 08.11.2013 issued by the President, DCC Kannur
- R2(a) : Envelop of registered letter addressed to Sri.Stany Sebastian

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER.

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