

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

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

Tuesday, the 30th day of December 2014

O.P.No.109/2013

Petitioner : Bindhu Sunny,
W/o Sunny, 9-Karara,
Residing at Pulikkakudiyil Veedu,
Mundanpara, Karara P.O., Attappadi,
Palakkad District-678 581.
Member, Ward No.9,
Attappadi Block Panchayat

(By Adv.Vazhuthacaud R.Narendran Nair)

Respondent : Thankamany,
D/o Mankutty Mooppan,
Residing at Kottamala Ooru, Chittoor P.O,
Attappadi, Palakkad District, PIN: 678 581.
Member, Ward No.7,
Attappadi Block Panchayat

(By Advs.M.Hashim Babu & Sajitha. S)

This petition having come up for hearing on the 15th day of November 2014, in the presence of Advocate **Vazhuthacaud R.Narendran Nair** for the petitioner and Advocates **Hashim Babu & Sajitha.S** for the respondent 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 respondent has become subject to disqualification for being a member of Attappadi Block Panchayat.

2. The short facts are as follows:- The petitioner and respondent were elected as members belonging to Communist Party of India under the LDF coalition in the election held to the Attappadi Block Panchayat on 25.10.2010. Out of the total number of 13 members, Smt.Usha K.K.elected from ward No.11 was disqualified by this Commission as per order dated 08.10.2013 in O.P.No.105/2012. Out of the remaining 12 members, 6 members including the petitioner and respondent belonged to LDF coalition and 6 members belonged to UDF coalition. The election to the post of President of this Panchayat was notified to be held on 19.11.2013. The Palakkad District Council Secretary of Communist Party of India issued whip to its members as provided by Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Rules to vote in favour of the petitioner who was the official candidate decided for the post of President. As the respondent refused to accept the whip it was affixed in front of her house in the presence of two witnesses. The respondent was fully aware of the direction and decision of the Communist Party of India to elect the

petitioner as President. But she deliberately abstained from attending the election meeting held on 19.11.2013 with the intention to aid the rival political party. Due to the willful absence of the respondent from the election meeting, the member belonging to UDF coalition Shri.K.Rajan was elected and the petitioner who was the candidate of LDF was defeated. The conduct of the respondent in having deliberately remained absent in the election meeting in violation of the direction and decision of Communist Party of India amounts to voluntarily giving up her membership from the political party in which she belonged. Thus the respondent has committed defection by way of voluntarily giving up her membership from the party. Hence this petition.

3. The respondent filed objection contenting in brief, as follows:- The petition is not maintainable either in law or on facts. It is true that the respondent was elected as a member to the Attappadi Block Panchayat belonging to Communist Party of India in the LDF coalition and after her election she remained as a responsible and obedient party member and she had obeyed all the instructions of her party. Out of the 13 members, 6 members belonged to LDF and 7 members belonged to UDF and thereupon Smt.K.K.Usha became the President and she was disqualified by this Commission for having committed defection. Thereupon the post of President became vacant and the election was scheduled on 19.11.2013. The respondent was under treatment in Swamy

Vivekananda Medical Mission Hospital at Attappadi and she consulted the Doctor on 16.10.2013 and 11.11.2013. She then went to the hospital for further check up and the Doctor advised for 10 days rest. On 18.11.2013 the respondent was admitted in Siva Nursing Home, Agali and she was discharged on 20.11.2013. The President election was scheduled on 19.11.2013 and on that day the respondent could not attend the meeting due to her hospitalization. It was not a negligent or deliberate act on the part of the respondent. She has informed the details of her hospitalization to the leaders of her party. But none of them enquired about her. The respondent has never disobeyed any direction of the party. If there was any possibility the respondent would have attended the meeting. The respondent is still a member of Communist Party of India and she has never voluntarily given up her membership from the party. The party has not issued any direction about the President candidate of LDF. There was no willful disobedience to any direction of her party. No whip was served to her as alleged. The original petition has been filed with false and frivolous assertions and it is only to be dismissed.

4. The evidence consists of the oral depositions of PWs1 to 3, RWs1 and 2 and Exts.P1 to P4 and Exts. R1 to R8.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent was given any direction in writing by the Palakkad District Council Secretary of (CPI) to vote in favour of the petitioner in the election to the post of President held on 19.11.2013?
- (iii) Whether the respondent was prevented by sufficient cause from attending the election meeting held on 19.11.2013 as contended by the respondent?
- (iv) Whether the respondent has become subject to disqualification for being a member of Attappadi Block Panchayat?
- (v) Reliefs and costs?

7. **ISSUE No.(i)**: The petition is filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, for declaring that the respondent has become subject to disqualification on the ground of defection. Admittedly the petitioner and respondent were elected as members belonging to Communist Party of India (CPI) in the election held on 25.10.2010. Section 3(1)(a) of the Kerala Local (Authorities (Prohibition of Defection) Act, for short the 'Act', states that a member belonging to any political party shall become subject to disqualification for being a member of the concerned local authority if he voluntarily gives up his membership from the party or votes contrary to the direction issued by the party in the election to the post of President, Vice President etc. The definite case of the petitioner is that the respondent has defied the direction issued by the Palakkad District Council Secretary of CPI to vote in

favour of the petitioner in the election to the post of President held on 19.11.2013 and that by abstaining herself from the said meeting deliberately, she has voluntarily abandoned her membership from the party. The above allegation no doubt would come within the ambit of Section 3(1)(a) of the Act, of course the above allegation is denied by the respondent. As per Section 4(1) of the Act, when a question arises as to whether a member has become disqualified 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. From the rival claims definitely a question arises as to whether the respondent has become disqualified under Section 3(1) (a) of the Act. As per Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules a petition under the provisions of this Act is to be filed within 13 days from the date on which the cause of action arises. The petition has been filed within the said time limit. As the petition has been filed by a member who is competent to file the same and since a question arises as to whether the respondent has become subject to disqualification, I find that the petition is maintainable. The point is answered accordingly.

8. POINT Nos(ii) to (v): Certain facts are not in dispute. The Attappadi Block Panchayat consists of 13 wards. In the General Election held in October 2010 the UDF secured 7 seats and LDF secured 6 seats. Smt.K.K.Usha elected

as President belonging to UDF was disqualified for having committed defection and thereupon the President election was notified to be held on 19.11.2013. The petitioner and respondent are admittedly elected as members belonging to Communist Party of India. Exts.P1 and P2 also prove the same. The fact that the petitioner belonging to CPI was decided as the candidate for the post of President also is not in dispute.

9. The petitioner as PW1 has deposed that the Palakkad District Council Secretary of CPI had issued whip to all the three CPI members to vote in favour of the petitioner in the election to the post of President scheduled to be held on 19.11.2013 and the copy of the whip issued to the respondent is marked as Ext.P3. PW1 has further deposed that Ext.P3 whip was given to the petitioner and another member of CPI directly on 17.11.2013 and as the respondent refused to receive the whip, it was served by affixture in front of the house of the respondent. PW1 would further depose that the Palakkad District Council Secretary of CPI along with the petitioner and the Mandalam Secretary Sri.Roy Joseph went to the house of the respondent and as she refused to receive the whip, it was affixed by the District Secretary in front of her house.

10. The Palakkad District Council Secretary of CPI has been examined as PW2. He has deposed that the respondent was elected as member of Attappadi Block Panchayat belonging to Communist Party of India and that he had

recommended the official symbol of CPI to her while contesting in the election. PW2 would further depose that as per the consensus arrived at in the LDF, the petitioner was decided as the candidate for the post of President in the election scheduled on 19.11.2013 and he had directed the three CPI members including this respondent to come to the CPI Mandalam Committee office to receive his whip. According to PW2 the petitioner and another member came to the office and received the whip whereas this respondent failed to come to that office and so he along with the petitioner and Attappadi Mandalam Secretary of CPI went to the house of the respondent and gave the whip which the respondent refused to receive and so it was affixed in front of her house and its copy is identified as Ext.P3. He has also deposed that the petitioner and the Mandalam Secretary had stood as attestors in Ext.P3. PW2 has also stated that in the election held on 19.11.2013, the respondent, with the intention of favoring the UDF had deliberately failed to attend and thereupon the UDF candidate had won the election by defeating the petitioner and thus the respondent has committed defection. Even though PW2 has been cross-examined at length nothing has been brought out to discredit his testimony in material particulars. In cross-examination PW2 has deposed that he went to the house of the respondent on 17.11.2013. According to PW2 the house of the respondent was having thatched

roof and at that time the respondent was not residing in the house constructed under the EMS Housing Scheme.

11. The Attappadi Mandalam Secretary of the CPI has been examined as PW3. He also states that in the election to the post of President scheduled on 19.11.2013 the petitioner was decided as the candidate of CPI and LDF and the District Secretary of CPI directed all the three members of CPI to come to the Mandalam Secretary office to receive the whip and the respondent did not come to the office and so the District Secretary along with the petitioner and himself went to the house of the respondent on 17.11.2013 and gave the whip which the respondent refused to receive and so it was affixed in front of her house for which he and the petitioner had stood as witnesses. He has identified Ext.P3 as the copy of the whip. PW3 has further deposed that in the election to the post of President held on 19.11.2013 the respondent did not attend and so the candidate belonging to UDF was elected and thus the respondent has voluntarily given up her membership from CPI. In cross-examination it was suggested to PW3 that the respondent at that time was residing in the house constructed under the EMS Housing Scheme which he denied. He has further deposed that the respondent was directed to come to the Mandalam Committee office on 17.11.2013 to receive the whip and she was also informed that the Palakkad District Council Secretary would be then present, but she did not come.

12. The respondent has been examined as RW1. She has deposed that she is residing in the house constructed under the EMS Housing Scheme and Exts.R1 and R1(a) are stated to be the photographs of her house. She has admitted that in the election to the post of President scheduled on 19.11.2013, the petitioner was decided as the candidate of CPI and LDF. According to her no whip was either served to her or affixed in front of her house and that the whip was understood to have been affixed in front of the house of her father. Her definite case is that she could not attend the election meeting held on 19.11.2013 as she was undergoing treatment in the hospital.

13. The fact that the petitioner was decided as the candidate for the post of President in the election scheduled on 19.11.2013 is admitted by the respondent which giving evidence as RW1. From the evidence of PWs 1 to 3 it is clearly found that PW2 who had recommended symbol to this respondent in the election held in 2010 had issued whip to vote in favour of the petitioner which the respondent refused to receive and so it was affixed in front of her house. The Palakkad District Council Secretary himself went to her house along with PWs1 and 3 to serve the whip and since the respondent refused to receive the same, it was affixed in front of her house evidenced by Ext.P3. This affixture was in the presence of PWs1 and 3. It is not in dispute that PW2 was the competent person to issue whip to a member of the Attappadi Block Panchayat belonging to his

party. Clause (iva) of Section 2 of the Kerala Local Authorities (Prohibition of Defection) Act is relevant in this context and it reads as follows,-

“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.”

14. The manner of serving a whip is provided in sub rule 2 of Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Rules which 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.”

15. The version of PW2 that he had recommended symbol to the respondent for contesting as a candidate of the Attappadi Block Panchayat is not in dispute. The respondent also does not have a case that PW2 was not

competent to issue whip to her in respect of voting in the election to the post of President scheduled on 19.11.2013. It has come out in evidence that as there was no time to sent the whip by registered post, it was attempted to be serve directly which the respondent refused to receive and so it was affixed in front of her house. I do not find any reason to disbelieve the testimony of PWs 1 to 3 regarding affixture of Ext.P3 in front of the house of the respondent. Even otherwise the respondent was fully aware of the decision of Communist party of India to put up the petitioner as the candidate for the post of President in the election scheduled on 19.11.2013. So being a party member the respondent was bound to attend the election meeting and to vote in favour of the petitioner. It is significant notice that the political line up at that time was six members each to UDF and LDF which means that every vote of a member was significant in deciding the fate of the election. The conduct of the respondent in having abstained from attending the election meeting held on 19.11.2013 had definitely resulted in electing the member of the UDF as President. However the case of the respondent is that she was under treatment in a hospital from 18.11.2013 to 20.11.2013 and so she could not attend the said election meeting. In the above context whether the respondent was prevented by sufficient cause from attending the election meeting held on 19.11.2013 deserves consideration.

16. At Para 4 of her objection it is stated that she was under treatment in Swamy Vivekananda Medical Mission Hospital, Attappadi and she consulted the doctor on 16.10.2013 and 11.11.2013 and on 18.11.2013, she was admitted in Siva Nursing Home, Agali due to fever, tiredness, Giddiness for one week and discharged on 20.11.2013. At Para 5 of the objection it is stated that the respondent could not attend the election meeting held on 19.11.2013 as she was hospitalized on that day and that she has informed the details of the hospitalization to the leaders of her party and none of them enquired about it and now they have filed a false petition against her and that she had never disobeyed the direction of the party as alleged.

17. The respondent as RW1 has deposed that on 26.09.2013 her urine was tested and found that she was pregnant and on 04.10.2013 that was aborted and Exts.R2 to R4 are the medical records of the same. She has further deposed that there was bleeding on 11.11.2013 for which she was again treated and during that period she was going to the Block Panchayat office only for urgent meetings. She has further deposed that she was having fever, tiredness and Giddiness on 18.11.2013 and so she went to the hospital and she was admitted there and discharged only on 20.11.2013. Exts. R5 to R7 are stated to be the medical records regarding the hospitalization and treatment from 18.11.2013. In cross-examination she has deposed that she went to Siva Nursing Home on 18.11.2013

in a jeep and that there is Ambulance available for taking patients to the hospital from her settlement colony and due to certain procedural aspects she did not avail the service of the Ambulance and went in a jeep. In cross-examination she has further stated that she did not inform any of the party members regarding her hospitalization. The doctor who is stated to have treated her at Siva Nursing Home has been examined as RW2 on Commission. He has deposed in chief as follows,-

“I know Mrs. Thankamany (Respondent) and I have treated her in my hospital for various ailments including headache, vomiting, giddiness etc. She was admitted in my hospital on 18.11.2013 as inpatient and started I.V.fluids. On next day morning I have done routine blood investigation, everything found to be normal. On that day I advised her to take rest at hospital for another one day, and on the next day dated 20.11.2013 she was discharged with the advice of taking medicines. Ext.R5 shown to the witness, this is the treatment certificate issued by me it bears my seal and signature. Ext.R6 shown to the witness, this is the medical certificate issued by me it bears my seal and signature. Ext.R7 shown to the witness, it is the prescription for taking medicals. I have examined the

patient according to me she is not well nerrished and anemic, in short, she is not health. I have not known about her previous treatment at that time there was no bleeding. She came to hospital by jeep and walked herself and she was 40% able to attend her routine. That means she cannot 100% attend her routine. That means she cannot 100% attend her routines. She is coming from a tribal area and the general health condition is poor due to food and malnutrition.”

18. In cross-examination he has deposed that he has not done any investigation on 19.11.2013 as the respondent came at odd time. He has further deposed that there is a register regarding I.P and treatment but one year has elapsed and so he is doubtful whether it is available or not. According to RW2 he had treated the respondent only for viral fever and he also stated regarding the medicines prescribed to her. RW2 has further deposed that on 19.11.2013 the respondent was feeling better and her BP and pulse were found to be normal and that she was discharged at 7 am on 20.11.2013. It was suggested to RW2 that Exts.R5 to R7 are fake documents and that the respondent was never treated in his hospital which he denied.

19. In this context the medical records relied on by the respondent also deserves consideration. Exts.R2 to R4 do not have any relevance as regards this

case is concerned because there is no connection between the pregnancy and abortion with the alleged viral fever for which she was said to have been treated at Siva Nursing Home. The medical records marked as Exts.R5 to R7 are found to be a peculiar type of records that normally a doctor who passed MBBS may not issue. Ext. R5 dated 22.11.2013 is stated to be a Certificate issued by him which reads as follows,-

“This is to certify that MRS.THANKAMANI admitted here for doing the investigations and treatment in this Institution on 18.11.2013 in the I.P.No.2240 7 pm, then she got discharged on 20th morning 7 am.”

Ext.R6 dated 20.11.2013 is stated to be another Medical Certificate issued by him which reads as follows,-

“This is to certify that Mrs.Thankamani, D/o Mankuttimooan, Kottamala, Chittoor P.O., Agali, aged 32 years, is having Body pain on & Off fever, tiredness, Giddiness for one week, admitted here for doing investigation, etc. So she got admitted then she was on IVF turn to be Viral Fever observed for 3 days discharged on 20th November 2013. During here discharge she was quite all right.”

Ext.R7 is stated to be a prescription dated 19.11.2013 in which Vikroyl, Phexin and Stugeron have been prescribed.

20. Whether the contention of the respondent that due to her hospitalization in the Siva Nursing Home she could not attend the election meeting is tenable deserves a close scrutiny. The learned counsel for the petitioner would argue that the respondent had deliberately abstained from attending the election meeting held on 19.11.2013 with a view to favour the UDF candidate and that she was not at all having any illness on the relevant date and the evidence and records produced by her in this behalf are fake and fraudulent. According to RW2 the respondent came to his hospital on 18.11.2013 at 7 pm and he gave I.V. fluid along with pain reliever and he did not do any investigation on that day as there was no facility in this hospital to do investigation at odd times. He has further deposed that on the next day morning, ie on 19.11.2013 he has done investigation and everything was found to be normal and he advised her to take rest for another day and she was discharged on 20.11.2013 at 7 am. In cross-examination RW2 has stated that he is keeping a register regarding I.P. and treatment and as one year has elapsed he does not know whether such records are still available in the hospital. It is relevant to point out that RW1 was examined at his hospital at Attappadi itself on Commission and there was no difficulty to make available the I.P. register if any.

The respondent also did not make a request to produce the I.P. Register or to bring out evidence in this regard. The documents produced by the respondent in this behalf are only Exts.R5 to R7. On the face of these records they appear to be recently created. Even though the date mentioned therein relate back to 22.11.2013, 20.11.2013 and 19.11.2013 respectively, it cannot be believed that these records were issued to the respondent on the above dates. There is no record showing the details of her treatment at the hospital. No doubt these records can be prepared at any time by RW2. There is not even a mention regarding the O.P or I.P. number of the petitioner in any of these records. Exts.R5 to R7 are seen to be unusual records and a thick cloud of suspicion is surrounding on these records and there is nothing to dispel such doubts in this case. The evidence of PWs1 to 3 would show that they had gone to the house of the respondent on 17.11.2013 and met the respondent and as she refused to receive the whip, PW2 affixed the same in front of her house. If the respondent was having any illness on 18.11.2013 and admitted in the hospital she would have definitely informed the matter to the members or leaders of her party. In the objection filed by the respondent it is stated at para 5 that she had informed the details of hospitalization to the leaders of her party and that none of them had enquired about it and now they have filed a false case. At the same time to the suggestive question put to RW1 in cross-examination as to whether she had

informed the party that she could not attend the election meeting, her answer is that she could not inform the same on account of her illness. So admittedly the respondent did not inform her party members or leaders that she was unable to attend the election meeting scheduled on 19.11.2013. She also did not inform to any of her party workers regarding alleged hospitalization at the hospital. If she was actually ill on 18.11.2013 she could have informed her party workers regarding her illness and they would have been convinced of her physical state and done the needful in the matter. On a careful consideration of all facts and materials on record it is found that the respondent with the help of RW2 had only created certain medical records with a view to make it appear that she was prevented by sufficient cause from attending the election meeting scheduled on 19.11.2013. Even otherwise, the evidence of RW2 if to be believed would only indicate that she took admission in the hospital not for any genuine disease and she was only pretending to be ill. Anybody can say that he is having guiding, body pain and vomiting and take admission in a hospital. According to RW2, the tests conducted on the respondent on 19.11.2013 revealed only normal results. So at any rate it can rely be a case of malingering by respondent.

21. Even assuming and not deciding that the respondent was hospitalized on 18.11.2013 with viral fever as stated by RW2, it is necessary to consider whether she was unable to attend the election meeting held on 19.11.2013 on

account of the said illness. I have already discussed regarding the medical records relating to the alleged illness of the respondent and evidence of RW2. According to RW2 the respondent was having only a viral fever. The medicines prescribed also are only Vikroyl, Phexin and Stugeron. There is no evidence regarding the subsequent follow up of her treatment. To the definite question as to whether on 19.11.2013 the respondent was having giddiness the answer of the doctor is that she was feeling better and her B.P. and pulse rate were found to be normal. She was stated to have been discharged at 7 am on the next day. So on the face of Exts.R5 to R7 and the evidence of RW2 it is found that the respondent was having only a viral fever and she was not unable to attend the election meeting held on 19.11.2013. If she could go back to her home at 7 am on 20.11.2013, she could have gone to the Block Panchayat office where the election meeting was held on 19.11.2013. Even otherwise if she had a genuine illness which was sufficient to abstain from attending the meeting, her party workers also would have been convinced of her physical stage as on the same date. The very fact that she refused to receive the whip and thereafter took admission in a hospital in the night on 18.11.2013 secretly and remained there without informing her party workers and got discharged at 7 am on 20.11.2013 would expose her ulterior motives in this regard. When even persons who are having serious ailments are attending such election meetings, a person who is

having only a viral fever cannot be said to have been prevented by sufficient cause from attending such a meeting. This is more so in view of the reason that the political equation at Attappadi Block Panchayat was 6-6 for UDF and LDF. The medical records and the evidence of RW2 assuming to be true do not prove that the respondent had such illness as to abstain from attending the election meeting held on 19.11.2013. So it cannot be held that she was prevented by sufficient cause from attending the election meeting held on 19.11.2013. The contention of the respondent in this behalf is totally untenable.

22. Whether the conduct of the respondent in having abstained from attending the election meeting held on 19.11.2013 in violation of the decision and direction of her party would constitute defection as provided by the Act deserves consideration. **Section 3(1) (a)** of the Act deals with disqualification in respect of a member belonging to a political party 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.”

23. **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 and second limb is attracted when such a 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 in a meeting convened for

electing the President, Vice President, Standing Committee member or its Chairman or in a voting on a no confidence motion moved against anyone of them except a member of the Standing Committee. In the case on hand the petitioner has taken up only the 1st limb of Section 3(1)(a) which deals with disqualification by voluntarily giving up membership of the political party in which the respondent is a member.

24. 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.”

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.”

25. It is settled law that a member belonging to a political party has to be loyal to her party and the moment she becomes disloyal she would become subject to disqualification on the ground of voluntarily giving up her membership from such party. The conduct of the respondent in this case would clearly demonstrate that she has deliberately abstained from attending the election meeting held on 19.11.2013 by violating the direction and decision of her party. The fact that the petitioner was the official candidate of CPI and the LDF for the post of President in the election held on 19.11.2013 was very much known to the respondent. She has categorically admitted the same in her evidence. The only

reason stated by her for not attending the election meeting was her alleged illness and hospitalization. I have already found that she was not prevented by sufficient cause from attending the above meeting. The political equation being a tie between the LDF and UDF was quite crucial in relation to absence of a member belonging to LDF. She has definitely become instrumental in getting a member of the UDF elected as President. It is also important to notice that she remained absent in the election meeting without informing the same to her party workers. The said conduct of the respondent would reveal that she was deliberately abstaining from attending the said election meeting. This conduct of the respondent in having abstained from attending the election meeting held on 19.11.2013 would definitely constitute defection by voluntarily giving up membership from her party.

26. From the discussion held above I hold that the respondent has voluntarily given up her membership from the party in which she belonged as provided by Section 3(1)(a) of the Act and so she has become subject to disqualification for being a member of Attappadi Block Panchayat. The points are answered accordingly.

In the result, the petition is allowed and the respondent is declared as disqualified for being a member of Attappadi Block Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act

and she is also declared as disqualified for contesting as candidate in an election to any local authority 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 December 2014

Sd/-
K.SASIDHARAN NAIR,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Smt.Bindhu Sunny, Pulikkakudiyil, Karara P.O. Agali
- PW2 : Sri.Suresh Raju, U.M.Bhavan, Sreekrishnapuram,
Palakkad
- PW3 : Sri.Radhakrishnan, Chavarikkattil Veedu,
Jellippara P.O., Agali, Palakkad District.

Witnesses examined on the side of the respondent

- RW1 : Smt. Thankamany, Kottamala Ooru, Chitoor P.O.
Palakkad District
- RW2 : Dr.Sivaraman M.R., Siva Nursing Home, Agali,
Palakkad District

Documents produced on the side of the petitioner

- P1 : Copy of the register showing party affiliation of the
members of Attappadi Block Panchayat

- P2 : Copy of the nomination in Form No.2 filed by Smt.Thankamany
- P3 : Copy of the whip issued by Sri.K.P.Sureshraj, Palakkad District Council Secretary, Communist Party of India addressed to Smt.Thankamany
- P4 : Copy of the Minutes of the meeting to elect the President held on 19.11.2013, Attappadi Block Panchayat

Documents produced on the side of the respondent:

- R1 : Photograph
- R1(a) : Photograph
- R2 : Investigation report dated 26.09.2013 of Smt.Thankamany
- R3 : Investigation report dated 10.10.2013 for Smt.Thankamany
- R4 : Scanning report of Smt.Thankamany dated 20.10.2013
- R5 : Certificate dated 22.11.2013 issued by Dr.M.R.Sivaraman
- R6 : Medical Certificate dated 20.11.2013 issued by Dr.M.R.Sivaraman
- R7 : Medicines Prescription dated 19.11.2013
- R8 : Copy of the whip issued by Sri.K.P.Sureshraj, Palakkad District Council Secretary, Communist Party of India

Sd/-

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

//True Copy//