

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 4th day of November 2016

O.P.No.12/2015

Petitioner : G.Sajimon,
S/o George, Kondooraazhikath Thekkethil,
Poovattoor East, Kalayapuram P.O.,
Kalayapuram Village,
Kollam District – 691 560.

Member, Ward No.09,
Kulakkada Grama Panchayat

**(By Adv. Hashim Babu.M. &
Sajitha.S)**

Respondent : Asha,
W/o Arun Kumar,
Panickarazhiketh Veedu,
Mylamkulam, Puthur P.O.,
Puthur Village,
Kollam District 691 507
Member, Division No.18,
Kulakkada Grama Panchayat.

(By Adv. N.Vasu)

This petition having come up for hearing on the 19th day of October 2016,
in the presence of Advs. **Hashim Babu.M. & Sajitha.S** for the petitioner and
Adv. **N.Vasu** for the respondent and having stood over for consideration to this
day, the Commission passed the following.

ORDER

This is a petition filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent committed defection and hence disqualified to continue as member of KulakkadaGramma Panchayat and also for declaring her as disqualified to contest as candidate in any election to the local body for a period of six years.

2. The petitioner's case in brief is as below:- The petitioner and respondent were elected members of KulakkadaGramma Panchayat in Kollam District in the election held in October 2010. The petitioner was elected as the candidate of Indian National Congress and the respondent was elected as an independent candidate supported by UDF. Major political parties contested in the election in two political fronts – UDF and LDF. There are 19 wards in KulakkadaGramma Panchayat. In the election the Congress led UDF secured 9 seats and out of which Indian National Congress won 5 seats, 2 seats by Kerala Congress (B) and 2 seats by independents supported by UDF. The LDF secured 10 seats – 4 seats by CP(M), 5seats by CP(I) and one seat by RSP. As the LDF got majority it decided to form the Panchayat board. Ward No.18 of KulakkadaGramma Panchayat from where the respondent contested has been with the UDF. The respondent contested from there as an independent candidate supported by UDF against the LDF candidate and she was elected with a thumbing majority. The voters of ward No.18 voted in her favour believing and

trusting the UDF and the words of its leaders. The State leaders of UDF campaigned for her and the UDF workers strived hard for her victory. In the nomination paper it was stated by the respondent that she was a candidate supported by UDF. In the declaration given after the election to the Secretary of KulakkadaGramma Panchayat also it was stated by her that she was an independent candidate supported by UDF. On the basis of that the Secretary prepared a register showing the political affiliation of the members and wherein also she was shown as a member of UDF.

3. The parliamentary party of UDF convened a meeting on 09.12.2011 and the petitioner was elected as the Secretary and whip of the UDF parliamentary party. All the members including the respondent unanimously elected the petitioner as the whip. While the LDF was in rule in the KulakkadaGramma Panchayat, election to the Loksabha was held in April 2014. During that time RSP withdrew from LDF and consequently the LDF lost the majority and power. Thereafter with the support of RSP Shri.Anil Kumar of Indian National Congress was elected as Panchayat President and it was a shock to the LDF. In the meanwhile the LDF preferred a no confidence motion against the Vice-President of KulakkadaGramma Panchayat Smt.LeelavathyAmmamma a nominee of UDF and it was carried in the meeting held on 12.12.2014 with the support of the respondent. She supported the motion violating the whip issued by UDF. Thereafter the LDF with the support of the

respondent moved no confidence motion against the President Shri.Anil Kumar and the meeting to consider motion was held on 29.12.2014. Before that the UDF parliamentary party meeting was convened with the notice to all members and decided to defeat the motion. Whip was issued to the members and the whip to the respondent was sent by registered post on 26.12.2014 and she accepted the same on 27.12.2014. On 29.12.2014 the motion was tabled for consideration and the respondent willfully disobeyed the direction of the UDF to defeat the motion. She in gross defiance of the direction issued by the parliamentary party whip, purposefully voted against the direction and with her support the no confidence motion moved by the LDF was carried. The respondent committed defection and became part of political horse trade. The respondent is now in the LDF camp. Acting in violation of the instructions of the UDF and specific whip alone is sufficient to hold that the respondent has abandoned her membership in the UDF. She is disqualified to continue as a member of Kulakkada Grama Panchayat and to contest the election for a period of six years. Hence this petition.

4. The respondent filed counter statement contending as follows,-It is not correct to say that the respondent contested the election as a UDF candidate. She contested the election purely as an independent candidate. Originally there was a candidate put up by the Indian National Congress and later the candidate was withdrawn probably for want of winning chance. It is incorrect to state that both the elected independent members were supported by UDF. The respondent

contested the election and got elected purely as an independent. Voters belonging to all political parties supported the respondent. It is not correct to state that ward No.18 is a 'UDF supporting ward'. A good number of the electorate in ward No.18 are relatives of the respondent. Several prominent persons, cutting across party lines campaigned for the respondent. In the nomination paper it was clearly shown that the respondent was contesting as an independent candidate. Averments to the contra are false. Similarly in the declaration she had declared that she was an independent without the support of any political party or coalition. The entry stated to have been made by the Secretary in the register showing the respondent is an independent supported by UDF is contrary to the facts and is one made at the instruction of the UDF leaders. Subsequent to the election certain manipulations were committed at the instance of certain influential UDF leaders in the declaration submitted by the respondent to make it appear that she was part of the UDF combination. The alleged entry in the register is a fabricated one. The respondent was never part of the UDF. The respondent was not aware of the so called parliamentary party meeting of the UDF said to have been held on 09.12.2011. It is true that the respondent attended a meeting along with UDF members to discuss the modernization of Puthur Market which is an important developmental activity in her ward. She has participated in the meeting convened by the LDF members also to discuss the very same issue. All along the respondent has been taking an issue based stand and she voted in accordance with her conscience. The alleged

whip is not binding on the respondent. When the motion of the no confidence against the President was taken up on 29.12.2014 the respondent, as on all previous occasions, acted in accordance with her conscience and voted accordingly. It is not correct to state that the respondent moved towards the LDF and the respondent became part of LDF. It is not correct to say that the respondent is now in the LDF camp. She continues to be an independent member and she is not attached to any front. The petitioner is not entitled to get any relief in the petition and hence it is to be dismissed.

5. The evidence in this case consists of the oral testimonies of PWs1 to PW3, RW1,RW2 and Exts.P1 to P8,X1 and X2.

6. Both sides were heard.

7.The following points arise for consideration;

- (1) Whether the petition is maintainable?
- (2) The respondent was elected as an independent member supported by UDF as alleged?
- (3) Whether the respondent has committed defection as contemplated under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (4) Whether the respondent has withdrawn from the UDF as alleged?
- (5) Reliefs and costs?

8. **POINT No.(1)**: The petition is filed under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. The petitioner seeks declaration that the respondent committed defection and hence she became

disqualified to be the member of KulakkadaGramapanchayat and also from contesting as a candidate in any election of the local body for a period of six years.

9. The petitioner and respondent were elected members of KulakkadaGramapanchayat in the election held in October, 2010. The petitioner was elected as a candidate of Indian National Congress. According to the petitioner the respondent was elected as an independent candidate supported by UDF. There are 19 wards in KulakkadaGramapanchayat and out of which the Congress led UDF secured 9 seats – 5 seats by Indian National Congress, 2 seats by Kerala Congress (B) and 2 independents supported by UDF including the respondent. The LDF got 10 seats and out of which 4 seats were won by CP(M), 5 seats by CP(I) and one by RSP. As the LDF secured majority it formed the Panchayat committee. In the meanwhile RSP withdrew from the LDF during the Loksabha election in April 2014. Consequently the LDF lost the majority in the Panchayat and Shri.Anil Kumar of Indian National Congress was elected as the Panchayat President with the support of RSP. Later, it is stated, the LDF with the support of the respondent moved a no confidence motion against the President Shri.Anil Kumar, a UDF nominee and the meeting to consider the motion was convened on 29.12.2014. The UDF parliamentary party meeting was convened after issuing notice to all members and it was decided to defeat the motion. Whip was issued to the respondent and it was sent to her by registered post on 26.12.2014 and she accepted the same on

27.12.2014. On 29.12.2014 the respondent supported the no confidence motion along with the LDF members defying the direction of the UDF and the motion was carried. Thus, according to the petitioner the respondent has committed defection inviting disqualification.

10. According to the respondent she did not commit any defection as alleged. She was elected as an independent member and she is not a UDF member. Among other things it is contended by the respondent that this petition is not maintainable.

11. Though it is contended by the respondent in her counter statement that this petition is not maintainable there is nothing from her side to show that this petition is not maintainable. As per Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) 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 in writing issued by the political party or by a person or authority authorized by the party in this behalf votes or abstains from voting, in an election to the post of President, Vice President or on a no confidence motion moved against them, he shall become subject to disqualification for being a member of that local authority.

12. Contention of the petitioner is that the respondent was elected as independent member supported by UDF and she committed defection by supporting the no confidence motion moved by the rival front LDF against the Panchayat President Shri.Anil Kumar, a UDF nominee, defying the whip issued

by the UDF parliamentary party whip. So according to him the respondent is to be disqualified. The respondent denies the allegations.

13. It may be noted that this petition is filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act. As per Section 4(1) of the Act, if any question arises as to whether a member of the local authority has become subject to disqualification under the provisions of the Act a member of that local authority or the political party concerned or a person authorized by it in this behalf may file a petition before the State Election Commission for decision.

14. From the pleadings and evidence adduced in this case it can be seen that there arises a question as to whether the respondent became disqualified for being member of Kulakkada Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. This petition is filed by a member of the same Panchayat of which the respondent also is a member and this petition is filed within the time prescribed under Rule 4(A)(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. It may be noted except stating that the petition is not maintainable there is no material from the side of the respondent that the petition is not maintainable. As this petition is filed by a competent person within the time limit and a question arises as to whether the respondent has become subject to disqualification as provided by Section 3(1)(a) of the Act this petition is held to be maintainable. Point is answered accordingly.

15. POINT Nos.2 to 5:Caseofthe petitioner is that the respondent committed defection and he seeks a declaration that the respondent is disqualified to be the member of KulakkadaGramam Panchayat and also from contesting as candidate in the election to the local body for a period of six years. Petitioner and respondent were elected members of KulakkadaGramam Panchayat. Petitioner was elected as an Indian National Congress candidate. According to PW1, the petitioner the respondent was elected as an independent with the support of UDF and she is a UDF member. To PW1 Exts.P2 to P4 would show that the respondent is a UDF member. Ext.P2 is the copy of the register showing the party affiliation of elected members. Ext.P3 is the copy of the declaration given by the respondent after the election. Ext.P4 is the minutes of the KulakkadaGramam Panchayat UDF parliamentary party. It is stated by PW1 that the respondent attended majority of the parliamentary party meetings of the UDF as a UDF member and her signatures are there. The respondent's supporting the no confidence motion moved by the rival LDF members against the Panchayat President Shri.Anil Kumar a UDF nominee, defying the direction of the UDF is the reason for filing in this petition.

16. According to PW1 the respondent committed disloyalty to UDF to which she belongs and that she withdrew from United Democratic Front. She took a different stand from that of her front UDF in the no confidence motion moved by the rival front LDF and considered on 29.12.2014. Though whip was issued to her by the UDF Whip to defeat the no confidence motion she

supported the motion defying the direction issued. Ext.P7 is the copy of the whip. Whip was sent by registered post and it was accepted by her. Ext.P6(c) is the acknowledgment card for that. Ext.P8 is the copy of the minutes of the meeting which considered the no confidence motion on 29.12.2014. Ext.P8 would show that the respondent supported the no confidence motion and it was carried with the support of the respondent.

17. Evidence of PWs 2 and 3 is also on the similar lines of PW1. PW2 is another elected member of KulakkadaGramma Panchayat from Indian National Congress. Earlier he filed a similar petition to disqualify the respondent as O.P.142/2014 when she supported the no confidence motion on 12.12.2014 against the Vice President, a UDF nominee. The said O.P was dismissed as PW2 did not press the same. Why he has not proceeded with that, is not known. PW3 is the President of KulakkadaGramma Panchayat Congress Mandalam Committee. Both PW2 and PW3 also stated that the respondent was elected as an independent member supported by UDF and that she supported the no confidence motion moved by the rival front defying the direction of the UDF.

18. It is a fact that the rival LDF members moved a no confidence motion against the Panchayat President Shri.Anil Kumar, the UDF nominee and it is a matter of admission that the respondent supported the motion and it was carried on 29.12.2014. According to the respondent she is a complete independent member and not a UDF member. According to her she supported

the no confidence motion moved by the LDF as per her conscience. As she is an independent member she is entitled to take such a stand and the whip if any issued is not binding on her. Thus according to her the question of disqualification alleged does not arise.

19. The question to be considered now is whether the respondent is an independent member supported by the UDF. Both sides rely on Ext.X1 declaration given by the respondent to substantiate their respective contentions. Ext.P3 is also a copy of the declaration. Exts.P1 and P3 are one and the same. In this case the respondent has given a declaration complying the provisions. As per Rule 3(2) of Kerala Local Authorities (Disqualification of Defected Members) Rules, an elected member has to give a declaration to the Secretary of the Panchayat showing his party affiliation and support of any party or coalition. Ext.X1/P3 is the copy of the said declaration. The Secretary of the Kulakkada Grama Panchayat was examined as RW2. It is stated by him that if a candidate is elected as an independent candidate the said fact would be shown in column (d) of Ext.X1. It can be seen that the respondent has clearly shown her in Ext.X1 as an independent candidate without the support of any political party or coalition by ticking column(d) therein. It is admitted by PW1 that the affiliation is to be shown in Ext.X1 by ticking the relevant column. There are four columns in the printed form of declaration. Among them column (b) and (d) are the relevant ones in this case. Column(b) is with regard to the independent

candidate with the support of the coalition and column(d) is with respect to an independent without the support of any party or coalition. Ext.X1 would show that the respondent has ticked column (d)ie., column with regard to the independent candidate without the support of any political party or coalition.

20. The learned counsel for the petitioner has a contention that in column (b) the respondent has written UDF and it was on that basis Ext.P2 register was prepared and that in Ext.P2 the respondent is shown as UDF member. Hence the respondent is to be considered as a UDF member, the counsel submits. It may be noted that the letters UDF in Ext.X1 is seen scored. Who wrote the same and scored is not known. PW1 has no case either in the petition or when he was examined as PW1 that the respondent has scored that portion subsequently after this petition. Further, as per the evidence of RW2 Panchayat Secretary there is no possibility of that. It is stated by RW2 that Ext.P2 register is being kept in the chest and it will not be taken out even it is asked by the Panchayat President or other members. It may also be noted here that the respondent has ticked column (d) in Ext.X1 showing that she is an independent member without support of any party or coalition and not column (b). Nowhere in the petitionPW1 has a case that the respondent has committed any mischief or manipulation in the records. At the same time in the counter statement itself the respondent has a contention that the letters 'UDF' was added in column (b)by manipulating the records at the instance of UDF leaders influencing the

officials. The letters 'UDF' now seen in Ext.X1 is to be considered in that background also.

21. Anyway the respondent has stated in Ext.X1 that she is an independent candidate without the support of any party or coalition by ticking the relevant column (d) and there is nothing in evidence to show that the respondent has ticked the same subsequently. Further the letters UDF found in clause (d) are scored also and the petitioner has no case in his petition that the respondent scored those letters. In Ext.P1 election return also the respondent is shown as independent. Under the above circumstances it is not possible to base a decision in this case only on the basis of the entry in Ext.P2 register. It was not prepared in the presence of the respondent. It is true that the Secretary prepares the entries in the register on the basis of the declaration given by the elected members. But in the light of Ext.X1 and the tick mark against the column (d) therein it is not safe to rely on the entry in Ext.P2 regarding the respondent.

22. Another argument put forward by the learned counsel for the petitioner is with regard to the respondent's attending in the UDF parliamentary party meeting. Relying on Ext.P4 minutes it is contended by the counsel that the respondent has attended majority of the parliamentary party meeting of the UDF and it would show that she is a UDF member. As stated above Ext.P4 is

minutes book of the UDF parliamentary party meetings. Evidence of RW1 is that she attended the meetings attended by UDF members and other party members to discuss the developmental activities in her ward and she attended those meetings not as a UDF member. She denied her alleged signatures in Ext.P4 minutes. Further, even assuming that the respondent attended some of the parliamentary party meetings of UDF it cannot be said that the respondent is not an independent member as claimed by her. It is noticed above that the respondent is an independent member without the support of any party or coalition as per Ext.X1 declaration. As an independent member she can take any decision. It is stated by RW1 that her support to UDF and LDF is issue based and she is within her right to take such a decision as an independent member elected without the support of any political party or coalition.

23. From the available evidence and circumstances in this case it is not safe to conclude that the respondent is a member elected with the support of any political party or coalition. In Ext.X1 she has declared her as an independent member without any support of any political party or coalition. As she is an independent member without any support of the party or coalition the whip issued by the UDF is not binding on her. That being the situation the petitioner cannot question the stand taken by her in the no confidence motion and allege that the respondent has committed defection. Therefore, under above

circumstances I will have to necessarily hold and I hold that the petitioner failed to establish a case warranting a declaration as prayed for.

In the result, the petition dismissed. No costs.

Pronounced before the Commission on this the 4th day of November 2016

Sd/-
V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Shri.G.Sajimon
PW2 : Shri.Rajesh
PW3 : Shri.Ajaya Kumar, Mandalam President,
Kulakkada INC

Witnesses examined on the side of the respondent

RW1 : Smt.Asha
RW2 : Shri.Rejimon.M, Assistant Secretary (Secretary I/C),
KulakkadaGramma Panchayat

Documents produced on the side of the petitioner

P1 : Attested copy of Form -27 Election return, Puthur
Constituency, KulakkadaGramma Panchayat dated
02.06.2015
P2 : Certified copy of Form – I Affiliation of political
parties by members dated 02.06.2015

- P3 : Declaration in Form-2, by the respondent dated 02.06.2015
- P3(a) : Acknowledgment receipt issued by KulakkadaGrama Panchayat towards “Application submitted under RTI Act”. No.1718 dated 20.02.2015
- P4 : KulakkadaGrama Panchayat – UDF Parliamentary Party meeting minutes book dated 02.06.2015
- P5 : Copy of the form of notice of intention to move the motion, KulakkadaGrama Panchayat (Appendix-I) Rule 15(2)
- P6 : Copy of the notice of UDF parliamentary party meeting scheduled on 28.12.2014, addressing the respondent
- P6(a) : Postal receipt issued by Kalayapuram Post office dated 26.12.2014- registered post addressing the Respondent
- P6(b) : Postal receipt issued by Kalayapuram Post office dated 26.12.2014- registered post addressing respondent
- P6(c) : Acknowledgment card receipt of registered post from the respondent
- P6(d) : Acknowledgment card receipt of registered post from the respondent
- P7 : Copy of the whip issued to members of Kulakkada Grama Panchayat falling under UDF coalition, by UDF parliamentary party Secretary
- P8 : Copy of the minutes of the meeting for moving no confidence motion against Shri.K.V.Anil, President, KulakkadaGrama Panchayat held on 29.12.2014

Document produced on the side of the Court witness

- X1 : Declaration in Form-2 by the respondent (Through RW2)
- X2 : Copy of Page 6 of register of members affiliation to political parties (Through RW2)

Sd/-
V.BHASKARAN
STATE ELECTION COMMISSIONER

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