

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

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

Tuesday, the 11th day of February 2014

O.P.Nos.121/2012& 122/2012

O.P.121/2012

Petitioner : K.P.Ummar,
S/o Kunji Bhava,
Residing at Mukkandathu House,
Punnayoor P.O.,
Thrissur District, PIN: 679 562.
Member, Block Division No.13,
Chavakkad Block Panchayat.

(By Adv.A.Santhoshkumar)

Respondent : Sunitha Balan,
W/o Balan, Residing at Vettekkatte
House, Akalad, Edakkara P.O.
Thrissur District, PIN-680 518.
Member, Block Division No.12,
Chavakkad Block Panchayat

(By Advocate Ajayakumar)

O.P.No.122/2012

Petitioner : K.P.Ummar,
S/o Kunji Bhava,
Residing at Mukkandathu House,
Punnayoor P.O.,
Thrissur District, PIN: 679 562.
Member, Block Division No.13,
Chavakkad Block Panchayat.

(By Adv.A.Santhoshkumar)

Respondent : Vyleri Gopalakrishnan,
Residing at Vyleri House,
Vadakkkadu P.O.
Thrissur District, PIN-679 562.
Member, Block Division No.04,
Chavakkad Block Panchayat

(By Advocate Ajayakumar)

These petitions having come up for hearing on 8th day of January 2014, in the presence of Advocate **A.Santhoshkumar** for the petitioner and Advocate **Ajayakumar** 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 (1) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondents have become subject to disqualification for being members of the Chavakkad Block Panchayat. The petitions are filed by a common petitioner. Since common questions of law and facts arise for consideration in both these cases, they have been taken up jointly and O.P. 121/2012 is treated as the main case.

2. The petitioner has raised common allegations in both these cases which are, in short, as follows:- The petitioner and respondents contested the General Election held in October, 2010 of Chavakkad Block Panchayat as candidates of Indian National Congress and they were elected as members. Out of the 13

divisions in the Block Panchayat, the Congress party secured 6 divisions and the Indian Union Muslim League, which is a constituent of UDF, secured 4 divisions. Thus the UDF obtained majority and Smt.Mumtaz T.P. belonging to Congress party was elected as the President of the Block Panchayat and Sri.P.M.Mujeeb belonging to Indian Union Muslim League was elected as the Vice President. While so, the respondent in O.P.121/2012 along with the four members of Indian Union Muslim League moved a no confidence motion against the President and it was tabled for discussion on 27.11.2012. The Thrissur District Congress Committee President convened a meeting of the Congress members on 22.11.2012 to discuss about the no confidence motion and it was attended by only four members. The respondents did not attend that meeting. It was decided in the meeting to issue direction to all the Congress members to vote against the no confidence motion. The Thrissur District Congress Committee President who is the authorized person to recommend symbol to the candidates of the Congress party has given written direction by way of whip dated 22.11.2012 to all the Congress members to attend the meeting on the no confidence motion and to cast vote against the said motion. The above direction was sent by registered post from the DCC office to the respondents and the DCC President authorized the Vadakkekadu Block Congress Committee President to serve the whip directly to the respondents and in case of their refusal, to affix the same in

front of their houses. Since the respondents refused to receive the whip, the Vadakkekka Block Congress Committee President affixed the same in front of their houses on 24.11.2012. But the respondents defied the direction issued by the DCC President and they attended the meeting on the no confidence motion and voted in favour of the same along with the Muslim League and CPI(M) members and thus the motion against the President was carried. The respondents intentionally disobeyed the decision and direction of the political party and out seated the President who belongs to their own party by supporting the no confidence motion along with the CPI(M) members. The respondents have sacrificed the interest of the political party which fielded them as candidates in the General Election. To Act against the party and voting against the will of the party is disloyalty. The respondents are now aligning with the CPI(M) members and their act has caused crack in the shared belief of the party and tarnished its political image among the public. Thus the respondents have voluntarily abandoned their membership from the party and thus become subject to disqualification for being members of the Vadakkekka Block Panchayat. Hence these petitions.

3. These respondents have filed objections raising common contentions which are briefly, the following:- The petitions are not maintainable either in law or on facts. The petitioner has no locus-standi to file these petitions as he had

already shifted his loyalty to the LDF Camp and has voluntarily given up his membership from the Congress party. It is true that the respondents had contested the election as candidates of Indian National Congress and became members of the Chavakkad Block Panchayat. It is also true that the Muslim League was a partner of UDF along with the Congress party and as UDF secured majority Smt.Mamthaz T.P. was elected as President. But after the election Smt.Mamthaz T.P. started acting against the interest of the Congress party and coalition and so moved the no confidence motion against her. Though the Thrissur District Congress Committee issued written instruction, it had gone back from the said instruction due to the reason that the District Congress Committee was convinced that Smt.Mumthaz T.P. was acting against the interest of the party and the coalition. Based on the discussions after serving the whip, the party had directed the respondents to go ahead with the no confidence motion which was dis-obeyed by the petitioner by abstaining himself from voting on the no confidence motion. The respondents had acted as decided and directed by the party and so no action was taken by the party against them. In the subsequent election to the post of President, the respondent in O.P.121/2012 contested to the post of President as decided by the party. But Smt.Mumthaz T.P., voted in favour of the LDF candidate and she had betrayed the party and the coalition. No whip was affixed in front of the houses of the respondents as alleged. This

petitioner and Smt.Mamthaz T.P. had abandoned their membership from the party by voting in favour of the LDF candidate in the election to the post of President. The respondents are active workers of Congress party and they have not abandoned their membership from the party. The petitioner is not entitled to any relief and the petitions are only to be dismissed.

4. Upon the above pleadings, the following common issues were settled for trial;

- (i) Whether the petitions are not maintainable?
- (ii) Whether the no confidence motion against the then President Smt.Mumtaz.T.P. was moved as decided by the Congress Party?
- (iii) Whether the respondents have committed defection by their voluntarily giving up their membership from the Congress party or defying the whip issued by the Party as alleged?
- (iv) Whether the respondents have voluntarily abandoned their membership from the Congress party or dis-obeyed the direction of the party as alleged?
- (v) Whether the respondents have become subject to disqualification for being members as alleged?
- (vi) Reliefs and costs?

5. The evidence consists of the oral depositions of PWs1 to 6 and RW1 and Exts.P1 to P13.

6. Both sides were heard.

7. **ISSUE No.(i)**: These petitions are filed for declaring that the respondents have become subject to disqualification for being members of the Chavakkadu Block Panchayat on the ground of defection. According to the common petitioner, the respondents, by defying the direction issued by the Thrissur DCC President, voted in favour of a no confidence motion moved against the President belonging to their own party by aligning with CPI(M) members and thus they have given up their membership from the party. Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, for short the 'Act', deals with disqualification on the ground of defection. As per Section 3(1) (a) of the Act, if a member of the 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, votes on a no confidence motion moved against the President, Vice President etc., he shall be disqualified for being a member of that local authority. The respondents are members belonging to a political party and so Section 3(1)(a) of the Act is applicable to them. These petitions are filed under Section 4(1) of the Act and it reads as follows,-

“4.Decision on question as to disqualification on ground of defection, (1) 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.”

8. It cannot be doubted that a question arises as to whether the respondents have become subject to disqualification as provided by Section 3(1)(a) of the Act. These petitions are filed by a member of the same local authority of which the respondents are members and all of them belonged to the same political party. As per Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, a petition under Section 4(1) of the Act is to be filed within 15 days from the date on which the respondents are deemed to have become subject to disqualification. These petitions are filed within 15 days from the date on which the no confidence motion was carried. Therefore, it is seen that these petitions are filed by a competent person, within the time limit prescribed under the Rules, and as a question arises as to whether the respondents are disqualified under Section 3(1)(a) of the Act, I find that the petitions are maintainable. The issue is answered accordingly.

9. **ISSUE Nos.(ii) to (vi):** Since common questions of facts and law arise for consideration in all these issues, for brevity and convenience, they are taken up together. The definite case of the petitioner is that the respondents who were

elected as Congress members of Chavakkad Block Panchayat had moved a no confidence motion against the then President Smt. Mumtaz. T.P. who also belonged to Congress Party and by defying the decision and direction of the DCC President, they voted in favour of the said motion along with CPI(M) and Muslim League members and ousted the President and thereby they have voluntarily given up their membership from the party. The petitioner has been examined as PW1. He has given a detailed version in terms of the allegations contained in the petition. Admittedly the petitioner and respondents were elected as members of Congress party. Exts.P1 to P3 also would prove that they were elected as members belonging to Congress Party. Out of the 13 divisions in the Chavakkad Block Panchayat, the Congress party secured 6 seats and the IUML found victory in 4 seats. Thus admittedly the UDF secured majority and Smt.Mumtaz T.P. was elected as President. The version of PW1 that the 4 members of IUML along with the respondent in O.P.No.121/2012 had moved a no confidence motion against the President Smt. Mumtaz T.P and it was tabled for discussion on 27.11.2012 is not in dispute. PW1 has deposed that the Thrissur DCC President had convened a meeting of the Congress members on 22.11.12 at the DCC office and except the respondents, all the other Congress members attended and it was decided in that meeting to issue direction to all the Congress members to vote against the no confidence motion. PW1 has further deposed that the directions to

the respondents were sent by Registered Post from the DCC Office and the Block Congress Committee President was authorized by the DCC President to serve such directions to the respondents directly and in case of refusal to receive the same, the Block President was directed to affix the same in front of their houses. Exts.P4 and P5 are stated to be the copies of the directions affixed in front of the houses of the respondents and Exts.P6 and P7 are the photographs taken at the time of affixture. PW1 has further deposed that these respondents have disobeyed the direction of the DCC President and voted in favour of the no confidence motion along with the 4 IUML and 3 CPI(M) members and thus the motion was carried. Ext.P8 is the copy of the minutes of the meeting on the no confidence motion. PW1 has also deposed that since the respondents have violated the direction issued by the Congress party and voted in favour of the no confidence motion, they were expelled from the party. Exts.P9, P10 and P11 are the Mathrubhoomi, Malayala Manorama and Madhyamam dailies respectively containing the news items regarding the no confidence motion. Though PW1 has been cross-examined at length,ss nothing has been brought out to discredit his testimony. Most of the questions to PW1 in the cross-examination were relating to the alleged giving up of the membership of the Petitioner and Smt.Mumtaz T.P. from the Congress party in the subsequent election to the post of President. Since the question that arises for consideration in these cases is only whether the

respondents have become subject to disqualification for having voted in favour of the no confidence motion, the above questions put to PW1 suggesting that PW1 and Smt.Mumtaz. T.P have abandoned their membership from the party by their conduct in the subsequent election to the post of President are totally irrelevant and alien to the facts in issue in these cases.

10. PW2 is the Vadakkekad Block Congress Committee President. He has deposed that the respondent in O.P.No.121/2012 along with 4 others had moved a no confidence motion against the then President of the Block Panchayat and the Thrissur DCC President convened a meeting of the members of the Congress party and in that meeting the respondents did not attend and in that meeting it was decided that the no confidence motion should be defeated and accordingly the DCC President handed over the directions prepared and signed by him to PW2 to serve them to the 6 Congress members and except the respondents, the four others accepted the said directions and these respondents refused to receive the directions and this was communicated to the DCC President and as directed by the DCC President, the said directions to the respondents were affixed in front of their houses in the presence of Vadakkekad Block Committee Secretary Sri.Fazal Ali and the Mandalam Congress Committee Secretary Shri.Rajeev and photographs were taken in respect of such affixture and the CD of the same is

marked as Ext.P12. Ext.P13 is the receipt regarding payment of the charges for taking the photographs. PW2 has further deposed that the respondents had defied the said direction and voted in favour of the no confidence motion. PW2 has reiterated that he had affixed the whips in front of the houses of the respondents as they refused to receive the same. He has also deposed that such affixture was made as per the instruction of the DCC President. Nothing has been brought out to discredit the evidence of PW2 in his cross-examination. His evidence appears to be fully reliably.

12. PWs3 and 4 are the witnesses regarding the affixture of Exts.P4 and P5 and there is not even a serious cross-examination for their evidence. PWs2 to 4 are found to be responsible office bearers of the Congress party and their evidence is found to be fully reliable. PW5 is the photographer who took Exts.P6 and P7 and he had also given Exts.P12 CD which is the negative of Exts.P6 and P7 and he also gave Ext.P13 receipt on receiving the charges for taking the photos. From his evidence it is clearly found that Exts.P6 and P7 photographs are in relation to affixture of the whip by PW2.

13. The then DCC President was examined on Commission as PW6. Of course the DCC President is a crucial witness. But unfortunately his evidence is of no help either to the petitioner or the respondents. He has deposed that he had recommended symbol for the Congress candidates who contested in the election

to the Chavakkad Block Panchayat and out of them 6 candidates belonging to Congress party found victory and from them Smt. Mumtaz T.P was elected as President. He has further deposed that the respondent in O.P.No.121/2012 belonging to Congress party along with four other members moved a no confidence motion against the Block Panchayat President Smt.Mumtaz T.P. belonging to her own party. Thereafter he has feigned forgetfulness regarding all the relevant questions put to him in chief examination. To the question as to whether he had convened a meeting of the Congress Block Panchayat members after the no confidence motion was moved against the President, his answer is that he does not remember. When Exts. P4 and P5 letters were handed over to him and asked whether he had issued these directions, his answer is that he can give a reply only on seeing the originals of Exts.P4 and P5. PW6 further states that he can not say whether the signatures appearing in these directions were put by him without seeing the originals. He has admitted that PW2 is the Vadakkekadu Block Congress Committee President and that he knows PW3 as the Congress Block Secretary and PW4 as the Congress Mandalam President. His further version is that he had heard regarding the no confidence motion moved against the President. But he immediately states that he does not remember whether he had given any direction in respect of voting on the said no confidence motion. He further states that he does not remember whether Exts.P4

and P5 were issued by him and he does not also remember whether the no confidence motion was carried and he also states that he cannot say whether the signatures appearing on Exts.P4 and P5 are forged or not. He admits that the signature and handwriting appearing on the overleaf of Exts.P4 and P5 are original. His further version is that since Exts.P4 and P5 are only Photostat copies, he cannot say whether they are genuine or not. To the suggestive question that Exts.P4 and P5 happened to be copies due to the reason that its originals were affixed in front of the houses of the respondents, his answer is that it may be so. He has admitted that he had suspended these respondents from the Congress party and he does not remember the reason for their suspension. He has also deposed that the respondents were taken back by the present DCC President. He has also admitted that the respondents were suspended from the party for their anti party activities. The evidence tendered by PW6 appears to be typically that of a persons suffering from amnesia. But it was only his pretentious for reasons best known to himself. However he has admitted that the no confidence motion was moved by the respondent in O.P.No.121/2012 along with four others against the President who belonged to her own party and he had suspended both the respondents from the party for anti party activities. The suspension continued during his entire period as DCC President. Even though he states that he cannot say without seeing the originals whether Exts.P4 and P5 are

genuine, it is clearly found from the other evidence adduced through PWs 1 to 5 that they were the directions issued by PW6 and served by affixture by PW2 in the presence of PWs 3 and 4.

14. The respondent in O.P.No.122/2012 has been examined as RW1. He has deposed that the copy of the whip filed along with the original petition was fraudulently created for the purpose of these cases and no such whip was served to these respondents. He has further deposed that the Chavakkad Block Panchayat was under the UDF rule and as the President along with three other members were functioning arbitrarily, a no confidence motion was moved against the President as per the decision of the UDF and since they pleaded for pardon and agreed to abide by the party decision, at one stage it was decided not to proceed with the no confidence motion and since the President did not mend her ways, as decided by the UDF and the Congress Party, the no confidence motion was proceeded with. The documents produced for proving the affixture of whip also are stated to be false and according to RW1 no directions were received by the respondents nor affixed in their houses. In cross-examination RW1 has admitted that the house seen in Ext.P7 is her house and the person who is affixing the record is admitted to be the Congress Block President.

15. On a careful evaluation of the entire facts and evidence, it is clearly found that the respondent in O.P.No.121/12 along with four Muslim League members of the Block Panchayat had moved the no confidence motion against the President without any consent or decision of the District Congress Committee or its President and that all these respondents voted in favour of the said no confidence motion by dis-obeying the decision and direction of the Congress party. In respect of a local authority, the decision of the DCC President is to be treated as the decision of that party. The fact that the whip of the DCC President was served to both these respondents was not disputed by them in their objection.

In **Para 9** of the petition it is averred as follows,-

“9. The Congress(I) Party through the Thrissur District Congress Committee President, who is the authorized person and who is empowered to grant symbol of “Hand” to candidate, has given a written instruction by way of whip dated 22.11.2012, to attend the no confidence motion meeting and directed to cast vote against the no confidence motion and defeat the motion. The said direction was in the official letterhead of the District Congress Committee with seal and signature of the President of the District Congress Committee.”

This Para has been countered at **Para 10** of the objection of the respondents as follows,-

“10. The averments in paragraph 9 of the petition are false and denied. The Thrissur District Congress Committee has gone back from the instructions given, due to the reason that the District Congress Committee was convinced that Smt.Mumtaz.T.P was acting against the interest of the party and the coalition. The respondents herein had a disciplined party worker who has acted only in the interest of the party and as directed by the party that the sole reason that the respondent is still in the party. It is to be noted that based on the discussions after serving of the whip the party has directed to go ahead with the no confidence motion, which was disobeyed by the petitioner by abstaining himself from voting in the no confidence motion.”

So the contentions of the respondents in their pleadings is that the Thrissur District Congress Committee has gone back from the instruction given due to the reason that the District Congress Committee was convinced that the President was acting against the interest of the party and after serving the whip, the party

has directed them to go ahead with the no confidence motion. But in the evidence of RW1 the definite case of the respondents is that no whip was ever issued to them by the DCC President which is contrary to their own pleadings in their objections. This evidence is attempted to be adduced as an after thought on account of the double stand taken by the then DCC President while examining as PW5. The evidence of the respondents that no whip was served by the DCC President to them being against their own pleadings cannot be looked into at all. Even otherwise the evidence of PWs1 to 5 along with Exts.P4 to P7, P12 and P13 would substantially prove that PW6 the then DCC President had issued whips to the respondents and they were fully aware of the same and they had voted in favour of the no confidence motion by dis-obeying the said directions. The contentions of the respondents that based on the discussions held after serving the whips, the party had instructed them to proceed with the no confidence motion is not even attempted to be proved in evidence in these cases. Instead, by taking advantage the dubious stand of the then DCC President while giving evidence as PW6, they had attempted to deny the service of the whip itself. On a meticulous analysis of the entire evidence, I have no hesitation to hold that the no confidence motion was moved against the President of the Block Panchayat without the consent or knowledge of the District Congress Committee or its President and

that the respondents had voted in favour of the no confidence motion along with LDF members by dis-obeying the directions issued by the DCC President.

16. Whether the conduct of the respondents in having supported the no confidence motion against the decision and direction of the DCC President would constitute defection deserves considerations. Section 3 of the Act deals with disqualification on the ground of defection and Section 3(1)(a) is in respect of a member belonging to a political party which is relevant in these cases. **Section 3(1)(a) of the Act** 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.”

17. The object sought to be achieved by the Act is to prohibit defection among members of the Local Authorities and to provide disqualification for the defecting members. What is ultimately sought to be prevented is the evil of the political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. It is settled law that if an elected member or a group of members of a political party takes a different stand from that of the political party as such and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. The **Kerala Local Authorities (Prohibition of defection) Act**, derived its source from the *10th schedule to the*

Constitution of India. While considering the Constitutional validity of 10th schedule the **Apex Court in Kihoto Hollohan Vs.Zachillhu (1992) Supp.2 SCC 651**” observed as follows:-

“A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party.If a member while remaining a member of the political party which had set him up as a candidate at the election votes or abstains from voting contrary to any ‘direction’ issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, he incurse disqualification. A political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political party’s declared politics

will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance-nay indeed its survival.To vote against the party is disloyalty. To join with others in abstention or voting with other side smacks of conspiracy.”

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

“Politics without principle is one of the seven capital sins to be deprecated, according to the Father of our Nation, Mahatma Gandhi. Political defection is one of the grave vices in that group. In the statement of objects and reasons for the Fifty – second Amendment to the Constitution introducing Tenth Schedule in order to prevent frequent political defects, it is stated as follows:- “The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it”.

18. In the cases on hand I have already found that the respondents had ousted the Block Panchayat President belonging to their own party by way of supporting a no confidence motion and that they had supported the said motion along with LDF members by dis-obeying the direction of the DCC President. The DCC President is admittedly the competent person to recommend symbol for the candidates of his party contesting in the local body and so he is the person competent to issue direction to such members belonging to his party. Rule 4(1)(i) of the Kerala Local Authorities (Disqualification of Defected Members) Rules states that 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. As per Section 3(1)(a) of the Act, a member belonging to a political party is bound by the decision and direction of his party. To Act against the direction of the party would amount to 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 from the party. This position is clarified in **Varghese V.V Vs. Kerala State Election Commission (2009 (3) KLT (1)**, the relevant portion of which reads as follows,-

“Therefore, if a member or a group of the elected members of the political party takes a different stand from that of the

political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. In Naseera Beevi's case the rebel group in the parliamentary party wing of the political party concerned had not only formed a separate group, but they had voted infavour of the no confidence motion moved by the rival political party. Thus by their conduct of being disloyal to the political party in which they were members and by voting as they pleased independent of the political party's declared policy, they had incurred the disqualification. In view of both factual and legal position as above, the dictum laid in Naseera Beevi's case that having the parliamentary party and exercising the right to vote according to the choice of the elected member would not attract disqualification on the ground of voluntarily giving up membership in the political party is not good law".

19. The case developed by the respondents during evidence that no whip was served to them regarding the no confidence motion and that they had voted

in favour of that motion as instructed by party can not stand to legal scrutiny. At first this evidence is beyond their pleadings. Secondly one of them moved and both of them supported the no confidence motion along with LDF members without any written instruction or consent from the party. It is the settled position of law that even if no whip is issued, if a member belonging to any political party votes in favour of a no confidence motion moved against the President or Vice President belonging to his own party, that would constitute defection. In *Shiny Augustin Vs. Kerala State Election Commission (2010 (2) KLT (SN3)* it is held that even if no whip is issued, if a member was instrumental in moving voting and carrying the no confidence motion against another party member, it is to be concluded that the member had voluntarily given up membership of the political party to which he belonged. This position is further clarified in the decision in **Biju R.S. Vs. Kerala State Election Commission (2009(3) KLT 29) and at Para 17** it has been held as follows,-

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

violated the whip or has abandoned the membership of the political party to which he belongs shall be disqualified. It is not necessary to hold that the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. The grounds for disqualification are distinct and are not interlinked. Therefore even if this Court were to hold that the petitioner before the Commission has not proved that PW2 has issued and served on the writ petitioners a direction regarding the voting on the no confidence motions that were tabled on 14.05.2008, the Commission was justified in holding that the petitioners have voluntarily abandoned their membership in the Indian National Congress.”

20. The above decision has been confirmed by the Division Bench of the Hon’ble High Court in Writ Appeal No.795/2009.

21. It cannot be doubted that if a member or a group of elected members of a political party takes a different stand from that of the political party as such and acts against the policies and decisions of that political party, it is nothing but disloyalty and the moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership

as provided by the 1st limb as Section 3(1)(a) of the Act. In such a case it is not necessary to prove that the said member or members had dis-obeyed the direction issued by the competent person as provided by the 2nd limb Section 3(1)(a) of the Act. In **Muhammed Kunhi.B. Vs. K.Abdulla (2010 (4) KLT 736)** this **position has been clarified at Para 24** as follows,-

“ 24. The conduct of the members being important, going by the decision of the Apex Court in Ravi S.Naik’s case, the conduct of the petitioners herein in signing the no confidence motion along with the members of the BJP, voting in favour of the no confidence motion against the 1st respondent, a member of the very same political party and the then Vice President who belonged to the UDF and voting against the candidates of the UDF in the subsequent election and the conduct of the petitioner in WP (C) No.28051/2010 in contesting and getting elected as President against the nominee of the UDF, will squarely attract the vice of disqualification and are sufficient to imply that they have voluntarily given up membership of the political party which set them up as candidates in the election.”

22. The respondents have taken a contention that the petitioner has abandoned his membership from the party by voting in favour of a CPI(M)

member in the subsequent election to the post of President in which the respondent in O.P. 121/2012 was a candidate. Whether the petitioner or Mumtaz T.P has become subject to disqualification is not a fact in issue in these cases. Moreover, even if the respondents had complied with any subsequent directions of the party or followed party line after ousting their President, they cannot escape from the consequence of defection already committed. In **Faisal's case (2008(3)KLT 534)** this position has been clarified as follows,-

“The relevant date for deciding the question of disqualification is the date on which the member voluntarily given up the membership or defied the whip.”

This position has been further clarified in **Muhammed Kunhi.B V K.Abdulla (2010(4)KLT 736)** and at Para 21 it is observed that what is evident from Section 3(1)(a) of the Act is that the act of voting in the election of the office bearers or in support of the no confidence motion, is a crucial aspect and the subsequent conduct cannot justify the same. Therefore the above contention cannot legally sustain.

23. Out of the six members belonging to Congress party these respondents are found to have aligned with the CPI (M) members in carrying the no confidence motion moved against the then President of the Block Panchayat and they have supported that motion against the decision and direction of their

political party as is clear from the facts and evidence in these cases. Even though the respondents had pleaded that after serving the whip the District Congress Committee had instructed them to proceed with the no confidence motion, admittedly no written permission or consent was given to them to support the no confidence motion. Even otherwise no attempt is made by the respondents to prove such a case pleaded in their objections, probably on account of the present shift of the stand by PW6. As already pointed out, the evidence tendered by PW6 is unworthy of credence and a person holding such responsible position should not have forgotten that those who are evaluating his evidence are persons having at least normal prudence. Having regard to all the facts and materials on record, it is clearly found that these respondents have supported the no confidence motion against the decision and direction of their political party and that the said motion was got passed by aligning with the CPI(M) members. Thus the respondents are found to have become disloyal to the party and so they have voluntarily given up their membership from the party as provided by Section 3(1)(a) of the Act. The points are answered accordingly.

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

election to any local 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 11th day of February 2014

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

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : K.P.Ummar, Mukkandath House, Punnayoor P.O.
PW2 : K.Abubaker, Karakkayil Veedu, Edakkassayar
PW3 : Fasalul Ali, President, Indian National Congress,
Vadakkekad Panchayat Committee
PW4 : Rajeev, Anchingal Veedu, Edakkara, Thrissur
PW5 : Sucheendran, Photographer, Athira Studio, Vadakkekad
PW6 : V.Balaram, Velloor House, Ramnagar, Poonkunnam,
Thrissur

Witness examined on the side of the respondent

- RW1 : Gopalakrishnan, Vailery Veedu, Vadakkekad.P.O

Documents produced on the side of the petitioner

- P1 : Verification report of Sri.K.P.Ummar

- P2 : Verification report of Smt.Sunitha Balan
- P3 : Verification report of Sri.Vyleri Gopalakrishnan
- P4 : Copy of the whip dated 22.11.2012 issued by the President, DCC, Thrissur, addressed to Smt.Sunitha Balan
- P5 : Copy of the whip dated 22.11.2012 issued by the President, DCC, Thrissur, addressed to Sri.Gopalakrishnan, Vyleri
- P6 : Photograph
- P7 : Photograph
- P8 : Copy of the minutes of the meeting of no confidence motion held on 27.11.2012
- P9 : Mathrubhoomi daily dated 28.11.2012
- P10 : Malayala Manorama daily dated 28.11.2012
- P11 : Madhyamam daily dated 28.11.2012
- P12 : Photograph and CD
- P13 : Invoice No.5500 dated 25.11.2012 of Athira Digital A/c Photos and Video, Vadakkekad

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