

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

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

**Tuesday, the 20<sup>th</sup> day of January 2015**

**O.P.No.38/2006**

Petitioner : M.Nandakumar,  
S/o Parameswaran Nair,  
Residing at Indira Nivas, HMT Colony P.O.,  
Councillor, Kalamassery Municipality,  
Ernakulam District.

**(By Advs.R.Balakrishnan Nair & S.K.Sreejith)**

Respondent : Jamal Manakkadan,  
Residing at Manakkad House, HMT P.O.,  
Ernakulam District.  
Councillor, Kalamassery Municipality.

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

This petition having come up for hearing on the 26<sup>th</sup> day of November 2014, in the presence of Advocates **R.Balakrishnan Nair & S.K.Sreejith** for the petitioner and Advocates **Cherunniyorr P.Sasidharan Nair & Kallambalam S.Sreekumar** 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(1) of the Kerala Local Authorities (Prohibition of Defection) Act for declaring that the respondent has become subject to disqualification for being a Councillor of Kalamassery Municipality.

2. The short facts are as follows:- The petitioner and respondent were elected as Councillors belonging to Congress Party under LDF coalition from ward Nos.10 and 28 respectively. There was an election to the post of Vice Chairman on 10.02.2005 and the UDF decided to elect Sri.I.M.Abdul Rahman belonging to Indian Union Muslim League for that post. The decision of the Indian Union Muslim League was communicated to the District Congress Committee President Sri.K.P.Dhanapalan and thereupon the Congress party and UDF accepted the said proposal and thus Sri.I.M.Abdul Rahman was decided as the candidate. On 08.02.2005 the leader and whip of the UDF parliamentary party of Kalamassery Municipality Shri.M.B.Prakash issued whip to all the UDF Councillors. The notice of the whip was sent to the respondent through registered post on 08.02.2005 and it was also affixed in front of the house of the respondent on the same date. But the respondent in flagrant violation of the whip issued by the party leader and the whip of the UDF deliberately abstained from attending the election meeting and so the rebel candidate Sri.K.K.Sulaiman

happened to be elected as the Vice Chairman of the Municipality. The conduct of the respondent in absenting himself from participating in the election meeting held on 10.02.2005 contrary to the direction issued by the Parliamentary party whip is an Act constituting defection as provided by Section 3(1)(a) and (b) of the Kerala Local Authorities (Prohibition of defection) Act. Hence this petition.

3. The contentions raised by the respondent are in short, as follows:- The petition is not maintainable either in law or on facts. The allegation that the UDF decided to present Sri.I.M.Abdul Rahman belonging to Indian Union Muslim League as its candidate for the Vice Chairman post is totally false. The Indian Union Muslim League or Indian National Congress or the UDF parliamentary party had never decided to elect Sri.I.M.Abdul Rahman as the Vice Chairman at any point of time. The respondent was not served with any notice regarding the parliamentary party meeting of the UDF prior to the election of the Vice Chairman. This respondent did not participate in any meeting of the UDF parliamentary party and no UDF parliamentary party meeting was convened for the said purpose. The Indian Union Muslim League had never taken any decision to elect Sri.I.M.Abdul Rahman as Vice Chairman of Kalamassery Municipality. So the allegation that the DCC President as per consensus decided to present Sri.I.M.Abdul Rahman as the UDF candidate is an utter falsehood. The averments that on 08.02.2005 the UDF parliamentary party of the Municipality

Sri.M.B.Prakash issued whip to all the UDF members are false. The UDF parliamentary party had never decided to elect Sri.M.B.Prakash as the parliamentary party leader and whip. Moreover this respondent was in Gulf at the time of Vice Chairman election. To the knowledge of the respondent Sri.N.K.Pavithran was the UDF parliamentary party leader and whip of the Kalamassery Municipality. The alleged whip was neither sent nor received by the respondent and the allegation that whip was affixed in front of the house of the respondent is false. Sri.K.K.Sulaiman was the UDF Vice Chairman candidate and another UDF Councillor as per majority decision of the UDF parliamentary party proposed his name. The respondent has never acted against the interest of his party and he has not committed any defection. Hence the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1 to 6 and RW1 and Exts.P1 to P6 series, R1 and X1.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent has become subject to disqualification for being a Councillor of Kalamassery Municipality?
- (iii) Reliefs and costs?

7. **ISSUE Nos.(i) to (iii)**: Since common questions of law and facts arise for consideration in all these points, they are taken up together for brevity and convenience. Certain facts are not in dispute. The petitioner and respondent were elected as Councillors belonging to Indian National Congress in the election to the Municipality during the relevant term and an election to the post of Vice Chairman was held on 10.02.2005. According to the petitioner the UDF decided to present Sri. I.M.Abdul Rahman belonging to Indian Union Muslim League as its candidate to the post of Vice Chairman in the election scheduled on 10.02.2005 and the leader and whip of UDF parliamentary party of Kalamassery Municipality, Sri.M.B.Prakash issued whip to all UDF Councillors including this respondent and contrary to the direction issued by the parliamentary party leader and whip, the respondent purposefully abstained from attending that meeting and thus violated the direction of the parliamentary party whip and thereby committed defection. The respondent would deny the allegations and contend that the UDF had never decided to nominate Sri. I.M.Abdul Rahman the Vice Chairman candidate and that Sri.M.B.Prakash was not the UDF parliamentary party leader and the whip and to his knowledge Sri.N.K.Pavithran was the UDF parliamentary party leader and whip and the said alleged whip was not served to the respondent or affixed in front of his house as alleged and also that he was in Gulf at the time of the said election.

8. The petitioner has been examined as PW1. He has deposed in terms of the allegations contained in his petition. PW1 would depose that Sri.I.M.Abdul Rahman who was functioning as Vice Chairman was removed by way of a no confidence motion and in the subsequent election to that post, he was again decided by the UDF as the candidate as per the decision of the Muslim League District Committee and in the said election to the post of Vice Chairman Sri.M.B.Prakash the then UDF whip had issued direction to all the UDF Councillors to vote in favour of Sri.I.M.Abdul Rahman and the respondent, by violating that whip purposefully absented from attending that meeting. Ext.P1 is stated to be the direction issued by the UDF whip. PW1 would further depose that the direction issued to the respondent was affixed in front of his house. PW2 is examined to prove the affixture of the whip in front of the house of the respondent. He has stated that he saw Sri.M.B.Praksh and another affixing the notice in front of the house of the respondent about four or five years before and he also had put his signature in the said paper and he identified Ext.P1 as the said record affixed in front of the house of the respondent. PW2 has stated that he is the Branch Secretary of CPI(M) and that his house is situate about 3/4 kms away from the house of the respondent. He further states that he does not know the details contained in the notice affixed there. PW3 is the Secretary of Kalamassery Municipality and Ext.X4 the register showing the political

relationship of the respondent is proved through him. PW4 was the Vice Chairman candidate in the concerned election and he would depose that while functioning as Vice Chairman he was removed from that post by way of a no confidence motion and again he was decided as the candidate by the UDF and the then District President of Indian Union Muslim League gave letter to the DCC President informing the decision of Indian Union Muslim League regarding his candidature and that the then UDF parliamentary party leader and whip was Sri.M.B.Prakash and he had issued whip to all the UDF Councillors and in the election to that post the respondent had deliberately absented himself in the said election meeting. In cross-examination PW4 has deposed that the whip issued to the respondent by the UDF parliamentary party whip was known have been affixed in front of his house. The then UDF parliamentary party leader Sri.M.B.Prakash has been examined as PW5. He has deposed that Sri.I.M.Abdul Rahman was the UDF candidate in the election to the post of Vice Chairman held on 10.02.2005 and that he was decided as the candidate by Indian Union Muslim League and UDF and his opposite candidate was Sri.K.K.Sulaiman and he contested as a rebel of Indian Union Muslim League and that PW5 had issued whip to all the Councillors of UDF and the whip to the respondent was sent by registered post and has identified Ext.P1 as the whip issued by him to the respondent and the respondent did not participate in the said election meeting and

therefore the rebel candidate had won in that election. PW5 has also deposed that the whip sent by registered post was returned unserved and that he does not remember whether he had affixed the whip in front of the house of the respondent. PW6 was the then Ernakulam District Secretary of Indian Union Muslim League. He is presently the PWD Minister. He has deposed that Sri.I.M.Abdul Rahman was decided as the candidate for the post of Vice Chairman by Muslim League and this was informed to the DCC President Sri. K.P.Dhanapalan and the photocopy of that letter containing his signature is marked as Ext.P2. He has further deposed that Sri.I.M.Abdul Rahman was the official candidate of Muslim League whereas Sri.K.K.Sulaiman was rebel candidate and he won the election with the support of LDF and the whip were issued to the Councillors by the UDF parliamentary party leader and whip Sri.M.B.Prakash. In cross-examination it was suggested to PW6 that the respondent could not participate in the election because he was abroad to which PW6 deposed that he does not remember.

9. The respondent has been examined as RW1. He has deposed in terms of his contentions Ext.R1 it is stated to be a certificate issued by Assistant Director, Bureau of Immigration, Cochin International Airport stating that the respondent had departed from India on 02.02.2005 by flight No.GF-271 and arrived on 16.02.2005 by flight No.GF-270 through Cochin International Airport



and it was marked subject to proof as Ext.R1. However this document has not proved by examining the person who issued the certificate. The petitioner has produced Exts.P5 series and P6 series to counter the contention and evidence of the respondent that he was then abroad. Even though the respondent had at first produced the photocopies of certain pages of his passport in support of his contention that he was abroad during the relevant time, he declined to produce the original passport even for verification in spite of the direction issued on the basis of the request of the petitioner. So, now there is no acceptable evidence to prove that the respondent was abroad at the relevant time of the meeting convened for electing the Vice Chairman.

10. The definite case of the petitioner is that the respondent who was a member belonging to Indian National Congress did not attend the election meeting held on 10.02.2005 contrary to the direction issued by Sri.M.B.Prakash in this capacity as the leader and whip of UDF parliamentary party and thereby he has committed defection. The fact that the respondent had absented from attending the election meeting held on 10.02.2005 is not in dispute. So whether his abstention from the election meeting by violating the direction issued by the leader and whip of UDF parliamentary party would constitute defection arises for consideration. Disqualification on the ground of defection is dealt with under

Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act 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.*

*(b) if an independent member belonging to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorized by the coalition in its behalf in the manner prescribed, votes or abstains from voting.*

*(i) in a meeting of a Municipality, in an election of its President, Vice President, a member of Standing Committee or the Chairman of the 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 a voting on a no confidence motion against any one of them except of a member of a Standing Committee;*

*(c) if an independent member not belonging to any coalition, joins any political party or coalition he shall be disqualified for being a member of that local authority.”*

11. Section 3(1)(a) of the Act deals with a member of local authority belonging to any political party. Under Section 3(1)(a) of the Act, if a member belonging to a political party either voluntarily gives up his membership from the party or votes or abstains from voting contrary to the direction issued by the party in an election to the post of Chairman, Vice Chairman, Standing Committee member or its Chairman or on a no confidence motion against any of them except a Standing Committee member, he shall be disqualified for being a member/Councillor of that local body. Section 3(1)(a) consists of two distinct and separate limbs. As already stated the first limb under Section 3(a) is attracted when a member of a political party voluntarily gives up his membership from the party and the second limb is attracted when he violates the direction issued in writing by the political party or the person authorized by it in this behalf in an election to the office bearers or on a no confidence motion as stated in the Section. Admittedly the respondent is a Councillor belonging to Indian National Congress. So he is a Councillor of Kalamassery Municipality belonging to a political party. Therefore Section 3(1)(a) alone is attracted against him. In such a case, for constituting defection he should have either voluntarily given up his membership from Congress party or should have voted or abstained from voting against the direction issued by the party or a person authorized by the party in the manner as prescribed. 'As prescribed' appearing

in Section 3(1)(a) definitely means as provided by Rules. The Kerala Local Authorities (Disqualification of Defected Members) Rules 2000 prescribed the manner in which a political party or coalition has to issue direction in respect of voting or abstaining from voting. Rule 4(1) of the Rules deals with the manner in which a direction in writing is to be given to a member belonging to a political party and as it then existed it read;

*“4(1)If a political party or coalition gives any direction in respect of the casting of vote in an election or in a voting as has been mentioned in clause (a) or clause (b) of Section 3, it shall be in writing and such a direction shall be given,-*

*In the case of a member who belongs to a political party or is considered to be included in it, by the member whom the members of the said political party and the members considered to be included in it in the local authority concerned elect for the purpose, on majority basis from among themselves.”*

12. This Rule was subsequently amended as per SRO No.913/2005 w.e.f 30.09.2005 and it was again amended as per SRO No.458/2014. However the Rule as unamended alone is applicable to the facts of this case and as per the

said Rule, the person competent to issue direction is the member belonging to the political party elected from among the members of such party on majority basis.

13. Now the question to be considered is whether the person who had issued the whip is the person elected for that purpose from among the members of his political party as provided by Section 3(1)(a) of the Act and 4(1)(i) of the Rules. Admittedly there is no pleading that Sri.M.B.Prakash was elected as the whip by the Councillors of the Congress party on majority basis. On a perusal of Ext.P1 it is found that Sri.M.B.Prakash has issued the direction in writing in his capacity as the leader and whip of the UDF parliamentary party of Kalamassery Municipality. So whether the direction issued by the leader and whip of the UDF parliamentary party can be considered as a proper direction issued as provided by the Act and Rules deserves consideration. No doubt the Congress party is a constituent of UDF coalition. So whether the member belonging to a Congress party which is a constituent of UDF coalition is bound by the direction issued by the parliamentary party whip also deserves consideration. Section 3(1)(b) of the Act deals with an independent member belonging to a coalition and as per this provision if such a member withdraws from such coalition or joins any political party or any other coalition, or votes or abstains from voting contrary to any direction as enumerated under Section

3(1)(b) of the Act, he shall be disqualified for being a member of that Local Authority. As a matter of fact Ext.P1 direction was issued as provided by Section 3(1)(b) of the Act. The manner in which a direction is to be issued under Section 3(1)(b) of the Act is prescribed under Rule 4(1)(ii) which reads as follows,-

*“In the case of a member who belongs to a coalition or considered to be included in it by the member whom the members of the said coalition and the members considered to be included in it in the local authority concerned elect for the purpose, on majority basis from among themselves.”*

14. Sri.M.B.Prakash is stated to be the person elected by the Councillors belonging to UDF parliamentary party and in the case of an independent member belonging to a coalition he is the competent person to issue whip. However as already pointed out, the whip of the coalition elected as provided by Rule 4(1)(ii) of the Kerala Local Authorities (Disqualification of Defected Members) Rules is competent to issue direction only to an independent member belonging to UDF coalition. The respondent is admittedly not an independent member belonging to UDF coalition and he is a member belonging to a political party, viz. Indian National Congress coming under Section 3(1)(a) of the Act.

Therefore Sri.M.B.Prakash who had issued Ext.P1 direction was not competent to issue the said direction to the respondent and as such Ext.P1 direction in respect of voting in the election to the post of Vice Chairman held on 10.02.2005 was not binding on the respondent. The petitioner does not have a case that the respondent had voluntarily given up his membership from the Congress party. His only case is that the respondent had violated Ext.P1 direction issued by the UDF Parliamentary Party whip, Sri.M.B.Prakash who has been examined as PW5. Since the definite case of the petitioner is that the respondent has committed defection by abstaining from voting in the election held on 10.02.2005 by violating Ext.P1 direction issued by PW5 who is the UDF parliamentary party whip and as the respondent is a Councillor belonging to Indian National Congress and no direction has been issued to him by any competent person as provided by Section 3(1)(a) of the Act r/w Rule 4(1)(i) of the Rules, I find that the petition is not maintainable on this score itself. Even though the contentions of the respondent that Sri.I.M.Abdul Rahman was not the official candidate of UDF or that the respondent was in Gulf Country at the time of election are untenable, since no direction in writing was issued to the respondent as provided by Section 3(1)(a) of the Act and Rule 4(1)(i) of the Rules, I find that the petition is only to be dismissed. The points are answered accordingly.



In the result, the petition is dismissed.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 20<sup>th</sup> day of January 2015

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

**APPENDIX**

**Witnesses examined on the side of the petitioner**

- PW1 : Sri.M.Nandakumar, Indira Nivas, HMT Colony  
PW2 : Sri.P.Raviprakash, HMT Colony, Kalamassery P.O  
PW3 : Secretary, Kalamassery Municipality  
PW4 : I.M.Abdul Rahman, Iyyath Veedu, HMT Colony  
PW5 : Sri.M.B.Prakash, LIC Agent, Maloth House,  
Kollam Muri Road, Idappalli.  
PW6 : Sri.V.K.Ibrahim Kunju, PWD Minister

**Witnesses examined on the side of the respondent**

- RW1 : Sri. Jamal Manakkadan, Chairman,  
Kalamassery Municipality

**Documents produced on the side of the petitioner**

- P1 : Copy of the whip issued by Sri.M.B.Prakash, Leader  
& whip(UDF Parliamentary Party) Kalamassery  
Municipality dated 08.02.2005 addressed  
to Sri.Jamal Manakkadan

- P2 : Letter dated 07.02.2005 of the General Secretary, IUML, Ernakulam DCC President
- P3 : True copy of Order dated 12.06.2012 in O.P.Nos.174/2004 and 175/2004 before the State Election Commission, Kerala
- P4 : True Copy of the Order dated 25.04.2012 in O.P.No.37/2006 before the State Election Commission, Kerala
- P5 : Copy of the application dated 12.08.2014 of Sri.M.Nandakumar addressed to Information Officer, Cochin International Airport Authority
- P(a) : Copy of acknowledgement of application No.34/2014 dated 12.08.2014
- P5(b) : Copy of the letter No.CIAL/RTI/PIO/34-14 dated 16.08.2014
- P5(c) : Copy of the application dated 28.06.2014 of Sri.M.Nadakumar addressed to Information Officer, Cochin International Airport Authority
- P5(d) : Copy of acknowledgment application No.30/2014 dated 02.07.2014
- P5(e) : Copy of the letter No.CIAL/RTI/PIO/30-14 dated 04.07.2014
- P5(f) : Copy of the letter No.CIAL/RTI/PIO/30/14 dated 16.07.2014
- P5(g) : Copy of the Memorandum dated 07.07.2014
- P5(h) : Copy of the application dated 12.08.2014 of Sri.M.Nandakumar addressed to Information Officer, Cochin International Airport Authority

- P5(i) : Copy of the letter No.CIAL/RTI/PIO/30-14 dated 13.08.2014
- P5(j) : Copy of the registered letter dated 07.08.2014 addressed to Mr.Syed Imran Ahmed, CPIO & Under Secretary, Ministry of Civil Aviation, Rajiv Gandhi Bhawan, Safdarjung Airport, New Delhi - 110003
- P5(k) : Copy of the letter dated 21.08.2014 of the Under Secretary and CPIO, Ministry of Civil Aviation
- P6 : Front office receipt showing inward No.14484 Dated 17.09.2014, Kalamassery Municipality
- P6(a) : Copy of the application dated 17.09.2014 of Sri.M.Nandakumar, addressed to Public Information Officer, Kalamassery Municipality
- P6(b) : Copy of the Registered letter No.C/APIO/14484/14 dated 14.10.2014 issued by Smt.S.Sinimole Public Information Officer Kalamassery Municipality
- P6(c) : Copy of the letter No.C-900/03 dated 02.02.2005 of the Secretary, Kalamassery Municipality

**Documents produced on the side of the respondent:**

- R1 : Certificate issued by the Assistant Director, Bureau of Immigration, Cochin International Airport, Nedumbaserry dated 10.06.2014

**Documents produced on the side of the witness:**

- X1 : Copy of the register showing party affiliation of the members of Kalamassery Municipality

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