

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

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

Tuesday, the 13th day of May 2014

O.P.No.49/2013

Petitioner : Sindhu,
W/o C.K.Chandra Bose, Oriyara,
Mavilakkadappuram P.O,
Kasaragode District,
PIN: 671 312.
Member, Ward No.1,
Valiyaparamba Grama Panchayat

(By Advs.Hashim Babu & Sajitha.S)

Respondent : Mattammel Baby,
Member, Ward No.3,
Valiyaparamba Grama Panchayat,
Kasaragode District,
Pin: 671 312.

(By Adv .T.Geenakumari)

This petition having come up for hearing on the 29th day of April 2014, in the presence of Advocates **Hashim Babu & Sajitha.S** for the petitioner and Advocate **T.Geenakumari** 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 Valiyaparamba Grama Panhayat.

2. The averments in the petition, are in short, as follows:- The petitioner and respondent had contested the election in ward Nos.1 and 3 respectively of Valiyaparamba Grama Panchayat as official candidates of Indian National Congress and were elected as members. Out of the 13 wards in this Panchayat, the UDF which consists of Congress party and Indian Union Muslim League secured 7 seats and the CPI(M) in the LDF found victory in 6 seats. The Congress party alone secured 4 seats. There was consensus among the Congress members to share the post of President for 2 ½ years each by the petitioner and respondent. After the term of the petitioner she was ready to resign so as to pave way for the respondent to become the President. In the meanwhile the LDF moved a no confidence motion against the petitioner who was the President and the Indian National Congress directed all Congress members to vote against the no confidence motion. The decision of the Congress party was that after defeating the motion the petitioner should resign on the next day. The DCC

President Adv.C.K.Sreedharan issued specific directions to the respondent and other Congress members to defeat the motion. The respondent, in gross defiance of the direction issued by her political party had aligned with the LDF members and voted in favour of the said motion and thereby out seated by the petitioner from the post of President. Thus the respondent has voluntarily abandoned her membership from the Congress party which elected her as a member in the General Election. The subsequent events also show that the respondent is now moving with the LDF members. The voting in favour of the no confidence motion against the direction of the Congress party and out seating the President of the Panchayat belonging to Congress party would constitute defection by voluntarily giving up her membership from the party. Hence this petition.

3. The contentions raised by the respondent, in her objection are in short as follows,- The petition is not maintainable either in law or on facts. There were some internal group problems in the party and so the party could not implement the agreement regarding the sharing of the post of President. The day today developmental activities also stopped due to the crisis in the ruling party. So the LDF moved a no confidence motion against the President. No direction or whip was given to the respondent by the party and she was permitted to take her own decision. It is true that there was an agreement to share the post of President between the petitioner and respondent in equal terms. The allegation that the

respondent had involved in anti party activities is totally false. The term of the petitioner expired on 08.05.2013 and she was not ready to resign in spite of the direction issued by the party. The allegation that the Congress party decided to defeat the no confidence motion and gave direction to the members is totally false. The averment that the DCC President had issued specific instruction to defeat the motion is absolutely false. No such whip was given to the respondent. The stand of the political party was not communicated to the respondent. The respondent did not disobey any direction of the party and she has not voluntarily abandoned her membership from the party. The respondent is till continuing as an active worker of the Congress party and the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1 and 2, RWs 1 and 2 and Exts.P1 to P10 and X1series.

5. All parties were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent has disobeyed the direction of the Congress party to defeat the no confidence motion moved against the petitioner?
- (iii) Whether the respondent has voluntarily given up her membership from the party as alleged?
- (iv) Reliefs and costs?

7. **POINT No.(i)**: The petition is filed by a member belonging to the Congress party under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, hereinafter referred to the 'Act' for declaring that the respondent has become subject to disqualification for being a member of Valiyaparamba Grama Panchayat. Admittedly the petitioner and respondent contested the General Election in ward Nos.1 and 3 respectively of Valiyaparamba Grama Panchayat as candidates of Indian National Congress and were elected as members. According to the petitioner the respondent aligned with the LDF members who moved a no confidence motion against the petitioner who was then the President and the DCC President directed all the Congress members to vote against the said motion and by violating such direction and decision of the Congress party, the respondent voted in favour of the said motion and out seated the President belonging to her own party and thereby committed defection. The respondent would contend that no direction was given by the party to vote against the no confidence motion and the petitioner had flouted the agreement to resign from the post of President after her 2 ½ years and as no specific instructions were given to the respondent regarding voting on the no confidence motion, she supported the said motion and that she has not committed any defection. From the rival claims it is seen that a question arises as to whether the respondent has committed defection. Section 4(1) of the Act states that 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. As already pointed out, from the disputed facts a question arises as to whether the respondent has become subject to disqualification under the provisions of the Act. The petitioner being a member of the same local authority in which the respondent also is a member, she is fully competent to file a petition as provided by Section 4(1) of the Act. 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 concerned member is deemed to have become subject to disqualification and as per its proviso a petition filed beyond such period can be entertained on sufficient grounds. In the case on hand this petition has been filed within the period prescribed by Rule 4A(2) of the said Rules. So this Commission has to decide the question involved in this case. No serious contentions are raised challenging the maintainability of this petition. Therefore, I find that the petition is maintainable. The point is answered accordingly.

8. Point Nos.(ii) to (iv): Since common questions of law and facts arise for consideration in all these points, for brevity and convenience, they are discussed together. Certain facts are not in dispute. The petitioner and

respondent contested in ward Nos.1 and 3 of Valiyaparamba Grama Panchayat as candidates of Indian national Congress and after election they had filed declarations stating their political affiliations which are marked as Ext.P1 series. The Panchayat has prepared the register based on Ext.P1series as provided by Rule 3(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and its copy is marked as Ext.P2. In Exts.P1(a) and P2 the respondent is shown as a member belonging to Indian National Congress. There was an agreement made by the party whereby the post of President was decided to be shared between the petitioner and respondent in equal terms. According to the petitioner there was a discussion on 08.07.2013 in the presence of Congress party leaders and also Congress parliamentary party members wherein it was decided that the petitioner should resign so as to pave way for the respondent to become the President and in the meantime a no confidence motion was moved by the members of the LDF against the President. Out of the total 13 members in this Panchayat 7 seats were secured by UDF, out of which Congress party alone secured 4 seats and the CPI(M) secured 6 seats. So there was a majority of only one seat for UDF.

9. According to the petitioner the Indian National Congress decided to oppose the no confidence motion moved against him and the DCC President gave direction to all the Congress members to vote against the said motion and the

respondent by violating such direction voted in favour of the said motion along with LDF members and thus the petitioner was out seated from the post of President. The petitioner would allege that the above conduct of the petitioner would constitute defection by voluntarily giving up membership from the party. On the other hand the respondent would contend that the petitioner did not resign from the post of President even after expiry of the term of 2 ½ years as agreed and the Congress party had never decided to oppose the no confidence motion nor given any direction to vote against the same and so his action in having voted in favour of the said motion will not amount to voluntarily giving up her membership from the party.

10. The petitioner has been examined as PW1. She has given a version in accordance with the allegations contained in the petition. She has stated that as the UDF secured majority, she was elected as President and though there was an agreement for sharing the post of President and she was ready to resign from the post, the LDF moved a no confidence motion and the copy of the notice on that motion is Ext.P3. She has further deposed that Sri.V.A.Narayanan, General Secretary of KPCC convened the parliamentary party meeting of Congress members at the DCC office in the presence of DCC President and it was decided in the meeting that the no confidence motion should be defeated and then the petitioner should resign from the post of President and accordingly the DCC

President issued direction to all Congress members to vote against the no confidence motion and the copy of that whip is Ext.P5. PW1 has further deposed that since the respondent refused to receive the whip it was affixed in front of her house and the respondent by violating the decision and direction of the Congress party voted in favour of the no confidence motion. Ext.P6 is the copy of the minutes of the meeting on the no confidence motion and Ext.P7 is the record showing that the respondent had voted in favour of the said motion. PW1 has also deposed that as the respondent favoured the no confidence motion, it was passed and the petitioner was removed from the post of President. PW1 has also deposed that the respondent had voted in favour of the said no confidence motion along with the LDF members and in the subsequent elections to the post of President the respondent voted in favour of the candidate set up by the LDF and in the election to the post of Vice President, the respondent became the President by aligning with LDF members and thus she had abandoned her membership from the Congress party. Ext.P8 is the copy of the minutes of the meeting for the election of the President and Ext.P9 is the copy of the minutes of the meeting for the election of Vice President. Even though PW1 has been cross-examined at length, nothing has been brought out to discredit her testimony. She has reiterated regarding the agreement to share the post of President between herself and the respondent. She has further deposed that the respondent was informed of

the meeting convened by the KPCC General Secretary on 08.07.2013 and the DCC President had informed the respondent regarding the said meeting over phone and the Mandalam President went to her directly and informed of the said meeting. It was suggested to PW1 in cross examination that since the petitioner did not comply with the agreement to share the post of President, the local Congress leaders instructed the respondent to vote in favour of the no confidence motion, which PW1 denied. PW1 has further stated that the respondent has already been expelled from the party.

11. The DCC President has been examined as PW2. He has deposed that the petitioner was elected as President in the meeting held on 08.11.2010 and thereafter the respondent was continuously disobeying the direction of the party. PW2 has further deposed that the CPI(M) members moved a no confidence motion against the petitioner and it was tabled for discussion on 10.07.2013 and knowing of the notice on the motion, the Congress leadership convened the meeting of the parliamentary party members on 08.07.2013 and the KPCC General Secretary Sri.V.A.Narayanan presided over that meeting in which he was also present and all the members except the respondent were present and in that meeting it was decided that the no confidence motion should be defeated and thereafter the petitioner was to resign from the post of President so as to enable the respondent to become the President. PW2 has further deposed that he had

issued whip to all the congress members and he also gave a copy of the same to the Secretary evidenced by Ext.P5 and the Congress Mandalam President was authorized to serve the whip of the respondent and as the respondent refused to receive the whip, it was affixed in front of her house and it is marked as Ext.P10. PW2 has further stated that the respondent had voted in favour of the no confidence motion moved against the petitioner on 10.07.2013 and it was passed with the support all the CPI(M) members. PW2 has also deposed that all the other six members of UDF had voted against the no confidence motion and as the respondent had voted in favour of the no confidence motion along with the LDF members by disobeying his direction and decision of the Congress party, the respondent has committed defection and thereupon she has been expelled from the party for which intimation was given to him on 21.07.2013 and Ext.X1 series are the records in this regard. In cross-examination PW2 has deposed that initially there was no agreement to share the post of President between the petitioner and respondent and as the respondent was continuously disobeying the instructions of the party it was decided that the post of President may be shared between the petitioner and respondent and this was done for electing an Indian Union Muslim League member as a Chairman of a Standing Committee. PW2 has reiterated that the respondent did not attend the meeting convened by Sri.V.A.Narayanan and the respondent was informed that her request to elect her

as President could be decided in the meeting proposed on 08.07.2013. PW2 has also deposed that in that meeting two DCC Secretaries, Block President, Mandalam President and Sri.V.A.Narayanan along with PW2 and four members of Congress party were present. PW2 has further deposed that in the subsequent election to the post of President, the respondent had voted in favour of an LDF candidate and then in the election to the post of Vice President, the respondent was elected as President with the support of LDF members.

12. The respondent has been examined as RW1. She has deposed that no direction was served to her to vote against the no confidence motion and the party leaders are not given any instruction regarding the no confidence motion and that she had voted in favour of the motion as instructed by the Congress party and the petition has been filed without bonafides. In cross-examination RW1 has stated that he was instructed to vote in favour of the no confidence motion by the Congress party booth level workers. RW1 has further deposed that in the subsequent election to the post of President the LDF candidate was one Syamala and the UDF candidate was one P.Soujath and that she had voted in favour of the LDF candidate. RW1 has further stated that she was under the impression that his name will be nominated for the post of President and as her name was not proposed by anybody she voted in favour of the LDF candidate. She has also deposed that she did not enquire with the DCC President regarding the stand to

be taken on the no confidence motion. She has also deposed that the Mandalam President did not give any direction to her regarding the voting on the no confidence motion. She has further deposed that the decision of the DCC President was to defeat the no confidence motion. She has admitted that except herself all the members belonging to UDF had spoken against the no confidence motion during discussion and it was thereafter that she voted in favour of the said motion. She has also admitted that all the others who had supported the motion were CPI(M) members. She has further stated that in the subsequent election to the post of Vice President, she contested and became the Vice President with the support of LDF members.

13. A DCC member has been examined as RW2. He has deposed in chief examination itself that the Congress party had given direction to the Congress to abstain from voting on the no confidence motion moved against the President and this was informed to all the Congress members. It was suggested to PW1 in chief examination that the Congress party had not taken any decision regarding the stand to be taken on the no confidence motion and that a section of Congress party had decided to support the said motion to which RW2 has stated that no members were directed to support the no confidence motion. In chief examination itself RW2 has admitted that the respondent had voluntarily given up her membership from the party. In cross-examination RW2 has stated that

Ext.P5 is the direction issued by the DCC President and that the respondent had acted against the said direction.

14. On an evaluation of the entire evidence, it is clearly found that a no confidence motion was moved by the LDF members against the petitioner who was the President and on receiving the notice, a meeting of the Congress parliamentary party members was convened by the KPCC General Secretary Sri.V.A.Narayanan in the presence of DCC President and it was decided that the no confidence motion should be defeated and thereafter the petitioner shall resign from the post of President so as to pave way for the respondent to become the President. From the evidence of PW2 it is clearly found that the Congress party had decided to defeat the no confidence motion moved against the President by the LDF members and all the Congress members including the respondent were fully aware of such a decision. The version of the respondent that she was not aware that the decision of the Congress party was to defeat the no confidence motion is totally unbelievable. Admittedly the no confidence motion was moved by LDF members. Out of the total number of 13 members, 7 members belonged to UDF and 6 members belonged to LDF. So even change of one member would tilt the balance. The respondent alone from UDF supported the no confidence motion and that was done by aligning with the LDF members. Though the respondent was not present in the meeting convened by the KPCC General

Secretary and the DCC President on 08.07.2013, his absence was conspicuous and that will not indicate that he was not aware of the decision of the Congress party regarding the stand to be taken on the no confidence motion. PW2 the DCC President has deposed that whip was issued to the respondent to vote against the no confidence motion and the Mandalam President was authorized to serve the whip and that when the whip was given to the respondent in person, she refused to receive and so it was affixed in front of her house. Ext.P10 is the copy of the record relating such affixture made in the presence of two witnesses. But the person who had affixed the whip or the witnesses have not been examined and therefore it cannot be said that there is sufficient proof for service of the direction issued by the DCC President. However the fact that the no confidence motion was moved by the six CPI(M) members against the President belonging to Congress party and that the respondent also belonged to Congress party would itself imply that all the Congress members would be opposing the no confidence motion. The respondent alone is seen to have aligned with the LDF members and voted along with them in support of the no confidence motion. On account of the disloyalty by the respondent in having voted in favour of the no confidence motion along with the six LDF members, the petitioner was removed from the post of President.

15. Whether the above conduct of the respondent would constitute defection deserves consideration. Section 3 of the Act deals with disqualification on the ground of defection and Section 3(1)(a) is applicable 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.”

16. 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 foundation 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 the 10th

schedule, the Apex Court in **Kihoto Hollohan Vs.Zachillhu (1992) Supp.2 SCC 651**) has held as follows,-

“Any freedom of its members to vote as they please independently of the political party’s declared policies 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 very survival.”

Referring to the object behind the provision dealing with disqualification on the ground of defection in the 10th Schedule, the Apex Court has further held as follows:-

“the provision is to curb the evil of political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The only remedy would be to disqualify the member.”

17. 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 from the party and the second limb is attracted when he votes or abstains from voting in defiance of a direction issued by the person competent to recommend symbol for the candidates contesting in election to the local bodies.

In the case of Congress party, it is the DCC President who is competent to recommend symbol and it is his direction which is to be obeyed in respect of a no confidence motion. From the settled position of law it is found that even in the absence of whip a member shall become subject to disqualification if he become disloyal to the party in an election to the post of President, Vice President etc., or in a voting on a no confidence motion. In the case on hand admittedly no confidence motion was moved by the LDF members and it was mandatory for all the UDF members especially the Congress members to oppose the no confidence motion so as to protect the interest of the Congress party and to see that the President belonging to Congress party is not removed. But the respondent aligned with the LDF members and voted in favour of the said motion and thus out seated the President belonging to his own party. The version of the respondent is that the petitioner did not comply with the agreement to resign from the post of President after her agreed term of 2 ½ years and so the Congress booth level workers instructed RW1 to vote in favour of the no confidence motion and so she voted accordingly. It was not the opinion of the Congress booth level workers which was to be considered by the respondent and she should have acted consistently with the policy and decision of the Congress party. The decision of the Congress party means, as regards a local body is concerned, the decision of the DCC President because even as per clause (iva) of

Section 2 of the Act, a direction in writing to a member of a local authority is to be given by the person who is competent to recommend symbol to the members while contesting as candidates in an election to a local body. So even assuming that no whip was served to the respondent, she should have asked PW2 regarding the stand to be taken on the no confidence motion before voting in favour of said motion. The respondent as RW1 has admitted that he did not contact the DCC President to ascertain the stand of the party in this regard. The witness examined on the side of the respondent as RW2 has admitted in chief examination itself that the decision of the Congress party was to defeat the no confidence motion and that the respondent had acted against that decision. RW2 has not been declared as hostile or cross-examined on the side of the respondent. Since RW2 has been examined on the side of the respondent and his evidence remains unchallenged, it is to be held that the respondent was fully aware that the decision of the Congress party was to defeat the no confidence motion. It is surprising to notice that the witness examined on the side of the respondent has given evidence against her and remains unchallenged. From the facts and materials on record it is clearly found that the respondent had voted in favour of the no confidence motion against the policy and decision of the Congress party and this would definitely constitute defection by voluntarily giving up membership from the party. I am supported to take this view in the light of the decision in **Varghese**

Vs. Kerala State Election Commission (2009 (3) KLT1) and at Paras 8 and 9

it has been held 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. One has to be loyal to his political party. The situation would be different if the political party itself, taking note of such strange realities, permits the elected members to cast conscience vote. In such situations the whip itself is for decision by the individual concerned according to his conscience. The Oxford dictionary defines conscience to mean “the part of your mind that tells you whether your actions are right or wrong”,. In the absence of a specific whip for conscience vote, an elected member, under law, is entitled and liable to cast only a conscious vote, being aware of the consequences of his decision, in terms of Section 3 of the Kerala Local

Authorities (Prohibition of Defection) Act, 1999 on disqualification on the ground of defection on account of voluntarily giving up membership in the political party. Conscience vote is hence a matter of express whip in the absence of which an elected member is bound by the policies of his political party and he can cast only a conscious vote. That is nothing but an expected expression of his obligation to the political party and responsiveness to the people, by doing things carefully and correctly and if not the conduct would amount to betrayal of the political conscience which is impermissible under law.”

18. This position has been further clarified in **Dharmamani Vs. Parassala Block Panchayat (2009(3) KLT 29)**. In the above decision it has been held at **Paras 16 and 17** as follows,-

“In the instant case, it is not in dispute that the petitioners were elected to the Parassala Block Panchayat as official candidates of the Indian National Congress. The Indian national Congress is admittedly a political party registered under Section 29A of the Representation of the People Act,

1951. It is also not in dispute that they had actively participated in the no confidence motions moved by the opposition against the President and Vice President, of the Parassala Block Panchayat, who were also official candidates of the Indian National Congress. The petitioners are admittedly signatories to the no confidence motions and the motions were carried with their support. Though their contention that no whip was issued was accepted by the Commission, the Commission disqualified them on the ground that they have voluntarily given up their membership of the Indian National Congress. Though the learned counsel for the petitioners contend that the finding of the Commission that the petitioners had acted contrary to the directions issued by PW2, the President of the Thiruvananthapuram District Committee of the Indian National Congress cannot be sustained, I am of the opinion that on the admitted facts of this case, it is not necessary to go into the correctness of the said finding.

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 had 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.”

The Division Bench of the **Hon'ble High Court in Writ Appeal No.795/2009** has confirmed the judgment in **Dharma Mani's** case and held at **Para 8** as follows,-

“The appellants, who were elected from the Indian National Congress party were parties to elect the President and Vice President of the Panchayat. Whatever may be their differences with the President and the Vice President, they could not have joined hands with the opposite LDF party, to move no confidence motion against their own party men, and vote against their own men. Further, the fact that these appellants proposed and seconded the new President and Vice President belonging to the opposite group, clearly indicates that, they were aligning themselves with the LDF and were not loyal to their party on the symbol of which they were elected. In our view, this conduct of the appellants, joining hands with the opposite party, clearly establishes that they had voluntarily given up their membership in the party”.

19. The legal position that it is not necessary to prove disobedience of whip issued by the competent person for attracting disqualification and it is the conduct of a member that is the relevant has been clarified in **Muhammed**

Kunhi.B. Vs. K.Abdulla (2010 (4) KLT 736) and at **Para 24** of the above decision it has been held 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.”

20. The above decisions are squarely applicable to the facts of this case. It is to be pointed out in this context that the decision in **Babychan Mulangasserry Vs. State Election Commission (2013(3) KLT 633)** has no application to the facts of this case.

In that case the members who support the no confidence motion did not align with any members belonging to the rival party or coalition and they had formed themselves as a group against another group including the President. But in this case the respondent had joined with the LDF members and voted in favour of the no confidence motion against the President belonging to his own party and out seated her from that post. It is settled by a catena of decisions of the Hon'ble High Court that voting of a no confidence motion moved against the President belonging his own party without in favour of a no confidence motion against the President belonging to his own party without the express consent from the party would constitute defection by voluntarily giving up membership from the party. In this case it is further seen that the subsequent events also spell out the defection on the part of this respondent. In the subsequent election to the post of President, the respondent voted in favour of the candidate set up by LDF and in the election to the post of Vice President, the respondent became the Vice President with the support of LDF members. In the petition itself it is alleged that the subsequent events also proves that the respondent has voluntarily given up her membership from the party. In the light of the above facts and evidence, it is clearly found that the conduct of the respondent in having voted in favour of the no confidence motion against the policy and decision of the Congress party, by aligning with LDF members, would attract the 1st limb of Section 3(1)(a) of

the Act and therefore I find that the respondent has become subject to disqualification for being a member of Valiyaparamba Grama 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 Valiyaparamba Grama 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 authorities 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 13th day of May 2014

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

Witnesses examined on the side of the petitioner

- PW1 : Smt.Sindhu, Oriyara, Mavilakkadappuram,
PW2 : Sri.C.K.Sreedharan, Advocate, DCC President, Kanjangad,
Kasaragode

Witnesses examined on the side of the respondent

- RW1 : Smt.M.Baby, Mattammal House, South Madakkal

RW2 : Sri. A.Chandran, Madakkal House, Udumbanthala P.O.
Kasaragode

Documents produced on the side of the petitioner

- P1 : Declaration in Form No.2 submitted by Smt.Sindu.K,
Member, Valiyaparamba Grama Panchayat
- P1(a) : Declaration in Form No.2 submitted by Smt.Mattammal
Baby, Member, Valiyaparamba Grama Panchayat
- P1(b) : Declaration in Form No.2 submitted by
Sri.K.V.Ramachandran, Member, Valiyaparamba Grama
Panchayat
- P1(c) : Declaration in Form No.2 submitted by Sri.T.K.Narayanan,
Member, Valiyaparamba Grama Panchayat
- P1(d) : Declaration in Form No.2 submitted by Sri.Usman
Pandyala, Member, Valiyaparamba Grama Panchayat
- P1(e) : Declaration in Form No.2 submitted by Smt.P.Soujath,
Member, Valiyaparamba Grama Panchayat
- P1(f) : Declaration in Form No.2 submitted by Smt.Bushra M.T,
Member, Valiyaparamba Grama Panchayat
- P2 : Copy of the Register showing party affiliation of the
members of Valiyaparamba Grama Panchayat
- P3 : Copy of the notice to no confidence motion against
Smt.K.Sindhu, President, Valiyaparamba Grama Panchayat
- P4 : Copy of the whip of President, DCC, Kasaragod, addressed
to the Secretary, Valiyaparamba Grama Panchayat
- P5 : Copy of the whip of President DCC, Kasaragod, addressed
to Smt.K.Sindu, Valiyaparamba Grama Panchayat

- P6 : Copy of the minutes of the meeting to discuss the no confidence motion against Smt.K.Sindhu, President, Valiyaparamba Grama Panchayat
- P7 : Details of voting in the no confidence motion against Smt.K.Sindhu, President, Valiyaparamba Grama Panchayat
- P8 : Copy of the minutes of the meeting to elect the President, held on 13.08.2013
- P9 : Copy of the minutes of the meeting to elect the Vice President, held on 16.08.2013
- P10 : Copy of the whip dated 09.07.2013 of the President DCC, Kasaragod addressed to Smt. Mattammal Baby

Document produced on the side of the witness

- X1 : Copy of the whip addressed to Smt.Mattammal Baby dated 21.07.2013, issued by the President, DCC, Kasaragode
- X1(a) : Acknowledgment card

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