

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

PRESENT: SHRI.V.BHASKARAN, STATE ELECTION COMMISSIONER

Friday, the 28th day of October 2016

O.P.No.59/2015

Petitioner : Ani Valiyakala,
S/o Late V.T.Abraham,
ValiyakalayilHouseAngadi.P.O.,
Ranni, Pathanamthitta District.

Member, Division No.13,
RanniBlock Panchayat

**(By Adv. HashimBabu.M. &
Sajitha.S)**

Respondent : Susan Alex,
W/o Alex.C.Idicula, Lahayil,
Mandiram. P.O.,Ranni,
Pathanamthitta District.
PIN 689 672
Member, Division No.12,
Ranni Block Panchayat.

(By Adv. V.Ajakumar)

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

ORDER

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

2. The petitioner's case in brief is as below:- The petitioner and respondent were elected members of Ranni Block Panchayat in the local body election held in October 2010. The petitioner was elected as the candidate of Indian National Congress and the respondent as the candidate of Kerala Congress (M). Kerala Congress (M) contested the election under a coalition byname United Democratic Front. There are 13 wards in Ranni Block Panchayat. Out of which the UDF got 7 seats- Indian National Congress 6 and Kerala Congress (M)-1. The LDF secured six seats- CPI(M) four seats, CPI one seat and Kerala Congress (P.C.Thomas) one seat. As the UDF got majority it decided to form the board. There was an understanding to share the post of President and Vice President between Indian National Congress and Kerala Congress (M). As per that Presidentship was allotted to Indian National Congress and the Vice Presidentship to Kerala Congress (M). Among the Congress members there was an agreement to share the Presidentship between one Thomas Mathew (Shri. Benny Puthenparambil) and the petitioner for 2 ½

years each. Shri.Thomas Mathew (Shri.BennyPuthenparambil) was elected as the President for the first term and the petitioner was decided to be the President for the second half. The respondent was elected as the Vice President. After 2 ½ years Shri.BennyPuthenparambil did not resign from the post of President as agreed. Thereafter the DCC President intervened and then he tendered his resignation. In the election to the new President Shri.Thomas Mathew was again nominated as a candidate to avoid dispute and direction was given to UDF members to vote in his favour. But defying the direction of her party the respondent stood as a candidate for the post of President without resigning the Vice Presidentship. In the election she was elected as the President with the support of the members of the rival Left Democratic Front. Later, after ten months the respondent resigned from the post of President on 10.04.2015. Election of the new President was scheduled to be held on 05.05.2015. The petitioner was decided as the President candidate of United Democratic Front. The decision of the Congress to nominate the petitioner as the candidate was communicated to the Kerala Congress(M) and they also agreed for that and gave direction to the respondent to vote in favour of the petitioner in the election. Whip of the Kerala Congress (M) was issued to the respondent on 02.05.2015 by speed post and also by courier. The respondent was well aware of the decision of her party. But violating and defying the direction of her party Kerala Congress (M) she voted against the petitioner in the election on 05.05.2015 and she cast her vote in favour of the rival LDF candidate

ignoring of all morals of politics. Because of her such conduct the political party and UDF lost their image and dignity among the electorate. She has shown disloyalty not only to her political party but also to the coalition and the electorate. The whip was issued to her to vote in favour of the petitioner. She disobeyed it and her defying the direction of the party amounts to defection. By her above conduct she voluntarily abandoned and gave up the membership of her party and thereby she is disqualified to contest the election for a period of six years. The petitioner seeks a declaration to that effect.

3. The respondent filed counter statement contending as below,- The petition is not maintainable. The member of ward No.13 of Ranni Block Panchayat is one V.A.AbrahamValiyakalayil and not Shri. Ani Valiyakala. Shri. Ani Valiyakala is a fictitious person. The respondent's name is Smt. Susan Alex and not Smt. Susan Abraham as shown in the address portion of the petition. The petition is barred by limitation also. It is true that the respondent was elected from ward No.12 as a candidate of Kerala Congress (M). The respondent was not aware of any arrangement made in between the Indian National Congress and the Kerala Congress (M). There was no front formulated as UDF before or after the election and the decision of seat sharing arrangement between Indian National Congress and Kerala Congress(M). It is not correct to say that the petitioner contested the election as a candidate of Indian National Congress. The respondent was obeying the instructions of Kerala Congress (M) and she is not bound to obey the instructions of Indian

National Congress. There was no agreement to share the post of the President and Vice President between Indian National Congress and Kerala Congress(M). The respondent was elected as Vice President of Ranni Block Panchayat and Shri.Thomas Mathew was the President. Earlier when the post of the President fell vacant the respondent contested and elected as President and she resigned her Vice Presidentship. All those were done with the knowledge and consent of her party Kerala Congress (M). Later due to some political pressures from the Indian National Congress the Kerala Congress (M) changed its stand and this respondent was expelled from the Kerala Congress party alleging that the respondent violated the party discipline. The said fact was announced by the District President of Kerala Congress (M)Shri.VictorT.Thomas in the press conference and the same was published in all leading newspapers. Thereafter the respondent was continuing as an independent member of the Ranni Block Panchayat. Neither the Indian National Congress nor the Kerala Congress (M) party initiated any proceedings against the respondent for contesting the presidential election. After the expulsion from the Kerala Congress (M) party the respondent never continued as a member of Kerala Congress (M).

4. The respondent resigned from the post of President on 10.04.2015 due to personal reasons. After the expulsion the Kerala Congress (M) or the Indian National Congress have no authority to give any instructions to the respondent. The respondent was totally unaware of any decision taken by the DCC approving the petitioner as the President candidate. The respondent was not

aware of any communications allegedly made in between DCC and Kerala Congress (M). The respondent did not receive any whip as alleged. The election meeting was held in Ranni Block Panchayat Hall at 11 am. When she returned to her house at about 5pm the respondent got a postal intimation left by the postman reporting that a postal article was brought for delivery on that day. The postman came to the house only at about 2pm on 05.05.2015. As the respondent was expelled from the party in September 2014 the Kerala Congress (M) has no authority to issue any whip to the respondent and this respondent has no legal obligation to obey the same. The respondent has not committed any acts of defection. It is permissible for an expelled member of a political party to vote according to her conscience and she cannot be controlled by the said party by issuing a whip. The respondent has won the election because of her personal contacts and influence on the electorate. There was no defection on the part of the respondent to be disqualified her. The petitioner is not entitled to get any relief in the petition and hence it is to be dismissed.

5. The evidence in this case consists of the oral testimonies of PW1, PW2, RW1 and RW2 and Exts. P1 to P10 and B1 to B8.

6. Both sides were heard.

7. The following points arise for consideration;

- (1) Whether the petition is maintainable?
- (2) Whether the petition is barred by limitation?

- (3) Whether the respondent has disobeyed the decision and direction of the Kerala Congress (M) party in the election held on 05.05.2015 to the post of President of Ranni Block Panchayat as alleged?
- (4) Whether the respondent has committed defection as contemplated under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act as alleged?
- (5) Whether the respondent has voluntarily given up her membership from the Kerala Congress (M) as alleged?
- (6) Reliefs and costs?

8. **POINT No.(1)**: The petitioner filed this petition alleging that the respondent committed defection and hence she became disqualified to be the member of Ranni Block Panchayat and also to contest the election to any local body for a period of six years. The petitioner and respondent were elected as members of Ranni Block Panchayat in the election held in October, 2010. The petitioner was elected from ward No.13 as Indian National Congress candidate and the respondent was elected from ward No.12 as Kerala Congress (M) candidate. In the election the Congress led UDF got 7 seats out of the total 13 seats. The Kerala Congress (M) is a constituent of the Congress led UDF. As the UDF got majority it formed the board and Shri.Thomas Mathew (Benny Puthenparambil) from Indian National Congress was elected as the President and the respondent from Kerala Congress (M) as Vice President. It is stated that there was an understanding to share the Presidentship among Shri.BennyPuthenparambil and the petitioner. Accordingly

Shri.BennyPuthenparamblbecame the President for the first half. But after 2 ½ years Shri.Puthenparambil refused to resign. When the leaders intervened he resignedand the election of new President was held on 23.06.2014. In that election also Shri.Thomas Mathew (Benny Puthenparambil) was nominated as the candidate of UDF to avoid further dispute. But as against Shri.Thomas Mathew the respondent stood as a candidate violating the direction of her party Kerala Congress (M) and she contested with the support of the rival LDF members. The respondent was elected as the President of Ranni Block Panchayat with the support of LDF members. Later after ten months she resigned from the post of President. Election of new President was decided to be held on 05.05.2015. This petition relates to the alleged acts of the respondent in the election held on 05.05.2015.

9. It is stated that the Congress led UDF decided to nominate the petitioner as the candidate for Presidentship. The DCC President and the District President of Kerala Congress(M) issued whips to the members of their respective parties. But in the election held on 05.05.2015 the respondent supported the LDF candidate Shri.M.S.Rajendran and cast her vote in his favour defying the direction of the party. According to the petitioner the respondent committed defection by supporting LDF candidate and voting him in the Ranni Block Panchayat President election defying the direction of her political party and hence she became disqualified.

10. Respondent denies the allegations. According to her she did not violate the direction of the party as alleged inviting disqualification. The petition is filed by a fictitious person and there is no member as Shri.AniValiyakalainRanni Block Panchayat and hence this petition is not maintainable.

11.As the respondent raised a contention regarding the maintainability of the petition that question is to be considered. As per Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, if a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party or by a person or authority authorized by the party in this behalf votes or abstains from voting, in an election to the post of President, Vice President or on a no confidence motion moved against them, he shall become subject to disqualification for being a member of that local authority. As the respondent herself contested the post of Panchayat President against the UDF candidate defying the direction of his political party, it is to be stated that Section 3(1)(a) of the Act arises for consideration.

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

in this behalf may file a petition before the State Election Commission for decision.

13. According to PW1 he is known as Ani Valiyakala though his official name is V.A.Abraham. In the counter statement the respondent has a contention that this petition is filed by a fictitious person and there is no such member by name Shri.AniValiyakala. But she has no such case at the time of evidence when she was examined as RW1. It is admitted RW1 that the petitioner is known to her and he was elected as a member of Ranni Block Panchayat in the election held in October 2010. It is also admitted by her that the petitioner has an alias name and he is known as Ani. Further, Exts.P2 to P4 and P6 to P10 also would show that the petitioner Shri.AniValiyakala and Shri.V.A.Abraham are one and the same person and that the petitioner was an elected member of Ranni Block Panchayat during 2010-2015 period. So it cannot be said that the petitioner is a fictitious person. The contention of the respondent under the above circumstances that this petition is not maintainable as it is filed by a fictitious person is only to be ignored and I do so. There cannot be a dispute over the identity of the petitioner in this case. As this petition is filed by a competent person and a question arises as to whether the respondent has become subject to disqualification as provided by Section 3(1)(a) of the Act this petition is held to be maintainable. Point is answered accordingly.

14. POINT No.2: Another contention put forward by the respondent is that this petition is barred by limitation. It may be noted that the alleged cause of action in this case takes place on 05.05.2015 when the respondent cast her vote in favour of the candidate of the rival party allegedly defying the direction of her party and committing defection.

15. As stated above 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 the local authority or political party concerned or a person authorised by it in this behalf may file a petition under Section 4(1) of the Act before the State Election Commission for decision. As per Rule 4(A)(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules such petitions are to be filed within 30 days from the date when the cause of action arises for the petition. In this case the cause of action/question of disqualification arose on 05.05.2015. The petitioner filed this petition on 03.06.2015 and hence it can be seen that this petition is well within time.

16. The learned counsel for the respondent has a contention that on earlier occasions also the respondent committed similar acts and the same were not questioned at that time. Hence the petitioner cannot be allowed now to question the present act of the respondent. It is true that the petitioner or any other member did not challenge the earlier alleged acts of the respondent like the present one. But that non questioning will not take away the right of the petitioner to question the present acts of the respondent in question. Of course

the earlier acts cannot be challenged by filing a petition now as the same was barred by limitation. But the question to be considered in this case is with regard to the alleged defection and the respondent's acts of violation of the direction of her political party said to have been committed on 05.05.2015. The respondent then cannot be heard to say that this petition is barred by limitation. This petition as stated above is filed within 30 days from the date of cause of action and this petition is hence not barred by limitation.

17. **POINT Nos.(3) to (6):**As stated above the petitioner seeks a declaration that the respondent has become disqualified to continue as a member of Ranni Block Panchayat and also from contesting as candidate in the election to local authorities for a period of six years. The respondent's act of supporting the candidate of the rival front LDF and voting him in the Ranni Block Panchayat President election on 05.05.2015 defying the direction of her political party is stated to be the reason for filing this petition.

18. According to PW1 the respondent committed disloyalty to her party Kerala Congress (M), to which she belongs and that she voluntarily gave up her membership in the party. She took a different stand from that of her political party Kerala Congress (M) in the election of Ranni Block Panchayat President and disobeyed the whip issued by the President of Kerala Congress (M) who is competent to issue the same. It is stated that in the President election held on 05.05.2015 the Congress led UDF nominated the petitioner as the candidate. Whips were issued to the elected members of Indian National Congress by the

DCC President, Pathanamthitta and to the respondent who is the member of Kerala Congress (M), by the District President of Kerala Congress (M) directing to vote in favour of the petitioner. According to the petitioner the respondent supported the rival LDF candidate Shri.Rajendran in the election and got him elected as the President defying the direction issued by PW2 the District President of Kerala Congress (M). Instead of casting her vote in favour of the candidate nominated by her party she deliberately supported the candidate of the rival LDF. She defied the direction of her party Kerala Congress (M) and became disqualified as per Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, PW1 states. On earlier occasions also the respondent has violated the direction of her party in the president's election, it is further stated.

19. PW2 is the Pathanamthitta District President of the Kerala Congress. He gave evidence supporting the case of the petitioner. It is stated by him that it was he who as the President of Kerala Congress (M) Pathanamthitta District recommended the official symbol of Kerala Congress (M) to the respondent in the local body election to Ranni Block Panchayat. The respondent has no dispute over that. It is stated by him that Kerala Congress (M) is a part of Congress led UDF and UDF allotted the post of President of the Ranni Block Panchayat to the Congress party and Vice Presidentship to the Kerala Congress (M). On that basis the respondent was elected as the Vice President of Ranni Block Panchayat.

20. Among the Congress members Shri.BennyPuthenparambil (Thomas Mathew) was elected as President. There was an understanding, among the Congress members to share the Presidentship between Shri.BennyPuthenparambil and the petitioner equally and accordingly Shri.BennyPuthenparambil was elected for the first term of 2 ½ years. But Shri.BennyPuthenparambil did not resign on expiry of 2 ½ years and later the DCC President had to interfere and thereafter he resigned. In the election to the new President, PW2 states, the respondent stood as a candidate without the consent and knowledge of Kerala Congress and she was elected as President with the support of LDF members. After ten months thereafter she resigned. Election of the new President was held on 05.05.2015.

21. In that election the petitioner was decided as the President candidate by the UDF committee in Ranni Block Panchayat consisting the Indian National Congress and Kerala Congress (M). It is stated by PW2 that whip was issued to the respondent directing her to vote in favour of the petitioner and elect him as the President. Ext.P7 is the copy of the whip issued by PW2. It is in the letterhead of the District Committee of Kerala Congress (M) and it contains the seal and signature of PW2. According to PW2 whip was sent to the respondent by speed post and also by courier. Ext.P8 is the postal receipt for speed post and Ext.P9 is the receipt for sending the whip to the respondent by courier. The respondent was well aware of the whip issued by PW2 and disobeying and

defying the direction of the party the respondent supported the candidate of the rival party Shri.Rajendran and elected him as the President, PW2 further states.

22. Respondent admits that she did not vote in favour of the petitioner and she cast her vote in favour of LDF candidate Shri.Rajendran according to her conscience. No whip was issued to her and she was not bound by the whip issued by Kerala Congress (M). According to her she was expelled from Kerala Congress (M) party much prior to 05.05.2015 and hence the whip if any issued by Kerala Congress (M) is not binding on her. To prove that she was expelled from the party she has produced Ext.B2letter dated 15.09.2014 issued by the then Vice Chairman of Kerala Congress (M). The then Vice Chairman of Kerala Congress (M) Shri.P.C.George was examined as RW2 and according to RW2 the respondent was expelled from the party and the said fact was intimated to her as per Ext.B2. As the respondent was expelled from the party she is entitled to vote according to her conscience and hence to her the question of disqualification does not arise.

23. The petitioner and respondent were elected members of Ranni Block Panchayat during 2010-2015. Admittedly the petitioner was elected as Congress candidate and the respondent as Kerala Congress (M) candidate. Ext.P1 document also would show the said fact. Ext.P1 is the copy of the register showing the party affiliation of the elected members. It is also in evidence that Kerala Congress (M) contested the election as part of UDF coalition. It was PW2 the President of Pathanamthitta District Kerala Congress

(M) Committee who recommended the party symbol for the respondent to contest the election as Kerala Congress (M) candidate. District President of Kerala Congress (M) is the competent person to recommend the party symbol to the Kerala Congress (M) candidates and he is competent to issue whip also to the elected members of Kerala Congress (M). It is stated by PW2 that he has issued whip to the respondent directing her to vote infavour of the petitioner in the President election held on 05.05.2015. Ext.P7 is the copy of the whip. Whip was sent by Speed post and also by courier. Exts.P8 and P9 are the receipts for that. Exts.P8 and P9 would show that the whip was sent to the respondent on 02.05.2015 and it was sent in the correct address of the respondent. It is in evidence that the postal article reached the respondent's house. Evidence of RW1 also would show the said fact. Her case is that the postman dropped a postal intimation in her house on 05.05.2015 and she came to know about that only in the evening of 05.05.2015. To support that contention the respondent has produced Ext.B3 intimation said to have been dropped by the postman in her house. Regarding the date and time stated by her she did not examine the postman concerned. Anyway it can be seen from the above that the whip was sent to the respondent in her correct address by PW2 sufficient early i.e.,on 02.05.2015. Nothing is seen stated by RW1 regarding receipt or non-receipt of the whip sent to her by courier. Further, it is admitted by RW1 that she was asked about the whip before election when she went to vote in the election on 05.05.2015. From the evidence and circumstances in

this case it cannot be said that of the respondent was not aware of the whip before the election on 05.05.2016.

24. It may be noted that the respondent was a responsible elected member of Kerala Congress (M) then in Ranni Block Panchayat and she cannot act according to her whims and fancies and that too against her own party direction in the President election. As she did not resign and continued to be the elected member of Kerala Congress (M) she is bound by the decision of her party and disobedience and acting against the interest of the party is nothing but disloyalty. The decision of her party to vote and elect the petitioner as Ranni Block Panchayat President in the election held on 05.05.2015 was intimated to the respondent and she was directed to act as per the direction of the party by issuing whip to her by PW2, the District President of Kerala Congress (M). It is in evidence that the whip was properly sent to the respondent in her correct address. Admittedly the respondent did not cast her vote in favour of the petitioner as directed by her party. Instead she disobeyed and defied the direction of the party and supported the rival LDF candidate Shri.Rajendran in the election.

25. The learned counsel for the respondent has a contention that the respondent was expelled from Kerala Congress (M) much prior to the Ranni Block Panchayat President election on 05.05.2015 and as she was not the member of Kerala Congress (M) on 05.05.2015 she is not bound by the direction of PW2 or the Kerala Congress (M) party. But such a contention is

not sustainable as per law. Even assuming that RW1 was expelled from Kerala Congress (M) she continued to be a member elected by the Kerala Congress (M) as she did not resign her membership in the Ranni Block Panchayat board. As she was elected as a candidate of Kerala Congress (M) she is bound by the direction of her party Kerala Congress (M) till the expiry of her membership in Ranni Block Panchayat. She cannot take a decision different from that of her party till the expiry of her term of membership in Ranni Block Panchayat.

26. It is settled law that if a person belonging to a political party that had set up him or her as a candidate gets elected as a member and thereafter joins another political party or front for whatever reason either because of expulsion from the party or otherwise he/she voluntarily gives up his/her membership of the political party and incurs disqualification. The respondent stood as a Kerala Congress candidate and she was elected as a Kerala Congress member and she continued to be so till the expiry of the term. If the contention of the respondent is accepted it will defeat the very purpose for which the 10th schedule of the Constitution was incorporated and would fail to suppress the mischief i.e., breach of faith of the electorate. Merely for the reason that the person is expelled from the political party he does not cease to be a member of the political party that had set him up as a candidate for the election unless he resigns by voluntarily giving up his membership. A member elected or nominated by a political party continues to be under its control even after his or her expulsion. An expelled member cannot escape from the rigour of law which

was intended to curb the evil of defection which has polluted our democratic polity as held in the decision reported in **1996 KHC 704 (G.Viswanathan V.Speaker ofTamilnadu Legislative Assembly and another)**. The above contention of the learned counsel under the above circumstances is only to be turned down and I do so.

27. The learned counsel for the respondent has an argument that the above decision in G.Viswanathan case is not applicable in this case. It was not related to an elected member of local body and it was in respect of a member of Legislative Assembly. It is to be stated that the said contention is only to be ignored in the light of the decision reported in **2015 KHC 454(Suryaprakash and others V. Kerala State Election Commission and others)**.The said case was in respect of the alleged disqualification of the elected member of Varkala Municipality and theeffect of expulsion from the party was considered in that case following the decision in G.Viswanathan's case. The Hon'ble High Court of Kerala held that merely for the reason that a person is expelled from the political party he/she does not cease to be a member of the political party that had set him up as a candidate for the election unless he resigns by voluntarily giving up his membership. Further, as stated above, if the contention of the respondent is accepted it will defeat the very purpose for which the 10th schedule come to be introduced and would fail to suppress the mischief ie., breach of faith of the electorate. The expelled member cannot escape from the

rigour of law which was intended to curb the evil of defection which has polluted out democratic polity. The above contention of the learned counsel under the above circumstances is not sustainable.

28. Admittedly the respondent was elected to Ranni Block Panchayat as Kerala Congress (M) candidate. It is admitted by the respondent that she did not vote in favour of the candidate nominated by her party Kerala Congress (M) and UDF and she supported and cast her vote in favour of the rival LDF candidate. According to the learned counsel for the petitioner the respondent by supporting the rival candidate defying the direction of her party voluntarily gave up her membership in the party.

29. It may be noted that Section 3(1)(a) of the Act has two limbs. The first limb is attracted when a member belonging to any political party voluntarily gives up his membership of such political party and second limb comes to play when such member violates or disobeys the direction issued by the political party or a person authorized by it in this behalf. As per clause (iv) of Section 2, a direction in writing means a direction in writing signed with date, issued to a member belonging to or having the support of a political party, by the person authorized by the political party from time to time to recommend the symbol of the said party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting.

30. 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 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 of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. The **Kerala Local Authorities (Prohibition of defection) Act**, derived its source from the *10th schedule to the Constitution of India*. While upholding the Constitutional validity of 10th schedule, the *Apex Court in KihotoHollohanVs.Zachillhu AIR (1993) SCC 412*” observed as follows:-

“A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party.If a member while remaining a member of the political party which had set him up as a candidate at the

election votes or abstains from voting contrary to any 'direction' issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, he incurs 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."

31. In the decision reported in 2008 (3) KHC 267 in (Faisal P.A. Vs. K.A.AbdullaKunhi) it was held as follows,-

"Since the words voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by resignation, from the conduct of the petitioner if an inference can be drawn that he has voluntarily given up his membership of his political party, he is liable to be disqualified. From the facts

noticed by the second respondent, it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition. These facts certainly justify the inference that the petitioner had voluntarily given up his membership in Indian Union Muslim League, although he had not tendered his resignation.”

32. A member belonging to a political party has to be loyal to his party and the moment he becomes disloyal he would become subject to disqualification on the ground of voluntarily giving up his membership from the party. The conduct of the respondent in refusing to vote in favour of the candidate nominated by her party in the Ranni Block Panchayat election on 05.05.2015 colluding with LDF members and supporting the rival LDF candidate and elect him as the Block Panchayat President defying the direction of her party would clearly demonstrate that she became disloyal to the party which elected her as a member. Her above acts would amount to defection inviting disqualification as alleged and the case put forward by the petitioner against the respondent is clearly established. According to the Father of Nation Mahatma Gandhi politics without principle is one of the grave vices in that group. The menace of defection is, certainly, to be curbed. 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.

33. Considering the above facts and the circumstances it is found that the respondent has committed defection and she has voluntarily given up her membership from the party which elected her as member, as provided by Section 3(1)(a) of the Act and therefore she became subject to disqualification for being member of RanniBlock Panchayat. Points are answered accordingly.

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

Considering the circumstances of the case the parties are directed to bear their respective costs.

Pronounced before the Commission on this the 28th day of October 2016

Sd/-

V.BHASKARAN,
STATE ELECTION COMMISSIONER

APPENDIX

Witnesses examined on the side of the petitioner

- PW1 : Shri.AniValiyakala
- PW2 : Shri.Victor T. Thomas, President,
Kerala Congress (M), Pathanamthitta

Witnesses examined on the side of the respondent

- RW1 : Smt.Susan Alex
- RW2 : Shri.P.C.George, MLA

Documents produced on the side of the petitioner

- P1 : Copy of the Register showing the party affiliation of the members of the Ranni Block Panchayat
- P2 : Minutes of the meeting (copy) to elect the President, Ranni Block Panchayat held on 08.11.2010
- P3 : Copy of the minutes of the meeting to elect the President, Ranni Block Panchayat held on 23.06.2014
- P4 : Copy of the minutes of the meeting to elect the Vice President, Ranni Block Panchayat held on 10.07.2014
- P5 : Copy of the notice issued by the Returning Officer to conduct election to the post of President, Ranni Block Panchayat on 05.05.2015
- P6 : Copy of the whip issued by the President DCC, Pathanamthitta addressed to Shri.V.A.Abraham dated 01.05.2015
- P7 : Whip issued by the President, Kerala Congress (M) Pathanamthitta addressed to Smt.Susan Alex dated 02.05.2015
- P8 : Postal receipt of registered letter No.EI025624673IN dated 02.05.2015
- P9 : Receipt No.6154729 dated 02.05.2015 of Professional Couriers
- P10 : Copy of the minutes of the meeting to elect the President, Ranni Block Panchayat held on 05.05.2015

Document produced on the side of the respondents

- B1 : Letter No.A4-1583/2015 dated 20.06.2015 of the Secretary and SPIO, Ranni Block Panchayat
- B2 : Copy of the letter dated 15.09.2014 of the Vice Chairman, Kerala Congress (M)
- B3 : Intimation Slip of Postal Department dated 05.05.2015
- B4 : Copy of the MalayalaManorama, daily dated 22.09.2014
- B5 : MalayalaManorama daily dated 09.10.2014
- B6 : Receipt and details of telephone calls BSNL, Mobiles Services, Pathanamthitta, dated 01.07.2015
- B7 : Copy of the Aadhar of Smt.Susan Alex
- B8 : Copy of the electoral Identity card of Smt.Susan Alex,dated 13.11.1988

Sd/-

V.BHASKARAN
STATE ELECTION COMMISSIONER

//True Copy//