

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

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

Tuesday, the 20th day of January 2015

O.P.No.61/2014

Petitioner : Sajeev.B,
S/o Bhargavan, Residing at Kuzhivila,
Padinjattammuri, Kunnathoor East P.O.,
Kollam District.

(By Adv.K.Vinayakumar)

Respondent : Thankachi Sadanandan,
W/o Sadanandan,
Residing at Sandhyalayam,
Thuruthikkara P.O., Kollam District.
President, Ward No.13,
Kunnathoor Grama Panchayat

(By Advs.P.Rahim & Satheesh Babu. G)

This petition having come up for hearing on the 7th day of January 2015, in the presence of Advocate **K.Vinayakumar** for the petitioner and Advocates **P.Rahim & Satheesh Babu.G** 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 member of Kunnathur Grama Panchayat.

2. The short facts are as follows:- The petitioner is the Vice President and the leader of LDF parliamentary party of Kunnathur Grama Panchayat. The respondent contested the election in ward No.13 of this Panchayat as an independent candidate with the support of LDF coalition. All the LDF leaders and workers campaigned for the respondent and thus she was elected from this ward. Out of the total 17 wards, CPI(M) won in 5 seats, CPI found victory in 3 seats, RSP won in one seat and the respondent who was an independent candidate supported by LDF also won and thus the LDF coalition secured majority. The UDF coalition found victory in seven wards. Due to the recent political developments RSP left the LDF coalition and thus the strength of LDF was reduced to nine. On 12.05.2014 Smt.Arunamani the President of the Panchayat resigned from that post as part of political arrangement and the election was notified to fill that post on 09.06.2014. A meeting of the LDF members was convened on 06.06.2014 at 9 am, and Smt.P.T.Anupama was

decided as their candidate for the post of President. The respondent remained absent from that meeting. The petitioner who was decided as the whip issued direction to the members present at the meeting and the whip issued to the respondent was taken to her residence and as she refused to accept the same, it was affixed in front of her house at 12 noon on 06.06.2014. In the meeting convened for electing the President, a UDF member proposed the name of the respondent and another UDF member supported her name and the respondent accepted the said proposal and contested as a candidate Smt.P.T.Anupama was proposed and seconded by LDF members and in the election the respondent secured 9 votes including her vote and Smt.Anupama secured only 8 votes. Thus the respondent who belonged to LDF coalition had withdrawn from such coalition and she contested as a candidate and voted in her favour contrary to the direction issued in writing by the petitioner and thereby the respondent has committed defection. Hence this petition.

3. The respondent filed objection contenting in brief, as follows:- The petition is not maintainable either in law or on facts. The respondent contested the election held on 23.10.2010 as an independent candidate without support from any political parties or coalition. She had never represented herself as an independent candidate having the support of LDF coalition. She contested the election with symbol "SUN" without any support of LDF coalition. The

respondent was not a member of the LDF parliamentary party in the Panchayat. The petitioner is not entitled to give any whip to the respondent and no incident as alleged in Para 7 has taken place. The allegation that the respondent has withdrawn from the LDF is totally false as she was never a part of LDF coalition. The respondent was proposed and seconded by members of the Panchayat and she also voted in her favour. The respondent is not bound to obey any direction issued by the LDF as she was never a member of that coalition. The respondent has not committed any defection and the petition deserves only dismissal.

4. The evidence consists of the oral depositions of PWs1 to 7, RWs1 to 4 and Exts.P1 to P5, R1 and R2 and X1 to X5.

5. Both sides were heard.

6. The following points arise for consideration;

- (i) Whether the petition is not maintainable?
- (ii) Whether the respondent had contested the election held on 23.10.2010 to Kunnathoor Grama Panchayat as an independent candidate supported by LDF coalition as alleged?
- (iii) Whether the respondent has become subject to disqualification for being a member of this Panchayat due to defection as alleged?
- (iv) Reliefs and costs?

7. **POINT No.(i)**: This is a petition filed under Section 4(1) of the Kerala Local Authorities (Prohibition of Defection) Act, (hereinafter referred to as the 'Act') for declaring that the respondent has become subject to disqualification for being a member of Kunnathur Grama Panchayat. According to the petitioner the respondent who was elected as an independent member with the support of LDF coalition had withdrawn from such coalition by contesting and voting against the official candidate in the election to the post of President by disobeying the direction given by the leader and whip of the LDF. The respondent would inter alia contend that the original petition is not maintainable and that she was not a member elected with the support of LDF coalition. Section 4(1) of the Act states that if any question arises as to whether a member of a 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 can file a petition before the State Election Commission for decision. As per Section 3(1)(b) of the Act 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 in an election of the President, Vice

President, Standing Committee member or Chairman he shall be disqualified for being a member of that local authority. In the light of the facts and materials on record it is found that a question arises as to whether the respondent has become subject to disqualification as provided by Section 3(1)(b) of the Act. Apart from raising an evasive plea regarding maintainability, no specific contentions are raised by the respondent in this regard. From the facts it is found that the petition has been filed as provided by Section 4(1) of the Act within the time limit prescribed under Rule 4A(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and therefore the petition is found to be maintainable. The point is answered accordingly.

8. POINT No.ii. The definite case of the petitioner is that the respondent had contested the election in ward No.13 of Kunnathur Grama Panchayat as an independent candidate with the support of LDF coalition and that the LDF leaders and workers had campaigned for her in the said election and thus she was elected as a member belonging to LDF. The respondent on the other hand would contend that she had contested as a complete independent candidate without support from any political parties or coalition. The petitioner has been examined as PW3. He has deposed in terms of the allegations contained in the petition. PW3 has stated that except the

respondent there was no candidate for the LDF in ward No.13 and that the respondent's election committee Convenor was none other than the CPI(M) Kunnathur Local Committee member Sri.T.Mohanan and her election agent was CPI(M) leader Sri.Bhargavan Pillai. He has further deposed that the election convention of the respondent was inaugurated by Sri.Soma Prasad a District Committee member of CPI(M) and that the respondent has addressed herself as LDF candidate in her notice and it is marked as Ex.t.P1. In cross-examination PW1 has deposed that the respondent had published Ext.P1. PW1 is the Secretary of the Kunnathur Grama Panchayat and he has produced Ext.X1 register showing the political affiliations of the Panchayat members. Ext.X1(a) is in relation to the respondent. Ext.X2 is stated to be the declaration given by the respondent based on which Ext.X1(a) has been prepared. In cross-examination PW1 has stated that the respondent is an independent member of LDF. She has explained that from Ext.X1(a) it is to be inferred that the respondent is an independent member under LDF coalition. PW2 was the then Secretary of the Panchayat and he has deposed that he had prepared Ext.X1(a) and that during the first meeting conducted in the Panchayat, Ext.X2 declaration was given by the respondent in his presence and that the respondent had affixed her signature in Ext.X2 before him. In cross-examination he has stated that the respondent on 01.11.2010 in

his presence and of other members gave Ext.X2 declaration also. Ext.X2 is found to be a declaration given by the respondent on 01.11.2010 as provided by Rule 3(2)(b) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. The above provision reads as follows,-

*“If a member elected to a local authority is,-
(b) an independent who contested election as a candidate of a coalition or as a candidate with the support of the coalition, shall file a declaration to that effect before the Officer authorized under sub-rule (1) and accordingly that member shall be treated as a member of that coalition or as a member with the support of that coalition, as the case may be;”*

9. Ext.X1(a) is found to have been prepared by PW2 on the basis of Ext.X2 as provided by Rule 3(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules. The above provision states that the Officer authorized for the purpose by the State Election Commission shall record in the Register in Form 1 appended to these rules the details as to whether a member duly elected to a local authority is one who belongs to a political party or coalition or is having the support of any one of them or is an independent member not belonging to any political party or coalition. From

the above facts it is found that Ext.X1(a) and X2 are records prepared as provided by the provisions of the Kerala Local Authorities (Disqualification of Defected Members) Rules and they are prepared on the date of swearing by the members after their election and as the above declaration has been given at an undisputed point of time, it cannot be disbelieved. More over they acquire the status of statutory records and simply by disowning the signature contained in the declaration it is not possible to discard the same. The signature appearing on Ext.X2 is very much similar to the admitted signatures of the respondent. She has categorically stated in Ext.X2 that she is a member belonging to LDF coalition which consists of CPI(M), CPI and RSP and all the other nine members belonging to this coalition also are mentioned in this record. I do not find any reason to disbelieve Ext.X2 as well as Ext.X1(a) in this case.

10. PW4 who is the LDF Kollam District Committee Convenor has stated that the respondent was elected as a member belonging to LDF coalition and she contested the election as an independent candidate with the support of LDF. Sri.K.Soma Prasad who is the CPI(M) Kollam District Committee member as PW5 has deposed that he is the former Kollam District Panchayat President and he had inaugurated the Election Convention meeting of the respondent who contested the election as an independent candidate with

the support of LDF coalition and that he inaugurated the said convention in the first week of October 2010. Even though PW5 has been cross-examined at length, nothing has been brought out to discredit his evidence.

11. Ext.P2 is found to be the nomination paper submitted by the respondent for her election ward No.13 and even though in this nomination paper under Column 10 it is stated that she has no relationship with any political parties, in the application submitted before the Returning Officer on 08.10.2010 which is attached to Ext.P3, it is stated that she is an independent candidate of LDF. As a matter of fact, in Ext.P2 there is no column to state whether the candidate is supported by any coalition. PW1 had specifically stated that Sri.Bhargavan Pillai was her election agent and it is seen that the Returning Officer has checked the name of the proposer appearing in the voters list attached to Ext.P3. Ext.P4 is found to be the letter appointing Sri.Bhargavan Pillai as the election agent of the respondent and even though the respondent denies this record, it also contains her signature which is similar to her other admitted signatures. The respondent as RW1 has admitted that Sri.Bhargavan Pillai is CPI(M) leader. Ext.P5 is the copy of the election expenses obtained from the authorized officer. This also is denied by the respondent. But it is beyond any doubt that Ext.P5 is the statement of her election expenses and it contains the notice which she had published. The

notice which is appended to this election expenses is found to be the very same notice which is marked as Ext.P1. In this notice the respondent is found to have categorically stated that she is a candidate of Left Democratic Front. This notice is stated to be sponsored by the Convenor LDF Election Committee and the name of the printing press also is mentioned. I do not find any reason to disbelieve this notice contained in Ext.P5 which is the same as Ext.P1.

12. The respondent on the other hand has deposed that she contested the election as an independent candidate without support of any political party or coalition and that she has never become part of LDF parliamentary party at any point of time and the decision or direction of the LDF is not binding on her. Ext. R1 which is the poster regarding her election is relied on in support of her contention. But in Ext.R1 there is only a statement to vote in her favour and there is no mention that she is an independent candidate in this record. Ext.R2 is only a model ballot paper containing her name and symbol and this record also does not in any way help her to prove that she contested the election as a complete independent. Ext.R5 which also has been produced by her is only a pass to the counting agent of ward No.13 and there is nothing in Ext.X5 to indicate that she was an independent candidate. In the evidence of the respondent she has denied her signatures contained in her nomination

paper, declaration given by her to the Panchayat immediately after she was sworn in as a member and also in her letter given to the Returning Officer for including the name in the ballot paper. All these are statutory records the correctness of which cannot be doubted. She has also denied her signature contained in Ext.P5 only due to the reason that it contained a notice similar to Ext.P1 where in it is stated that she has contested as a candidate of LDF coalition. However RW1 has admitted that Sri.Bhargavan Pillai may have helped in her election. The husband of the respondent has been examined as RW2. He has deposed that the respondent had contested the election without the support of any political party or coalition. He has admitted in cross-examination that he was an activist of CPI(M) and according to him he was expelled from that party in 2009. It was suggested to RW2 that he was the Branch Secretary of CPI(M) at the time of election to the local bodies which he denied. It is also suggested that there was report in Desabhimani daily that he was expelled from the party on 10.06.2014 to which he stated that he did not see such a report. RW2 further states that he does not know who was the election agent of the respondent. He would also state that he had filled up the details in the nomination of the respondent and he also wrote the letter requesting to appoint election agent. But he has denied to be written in Ext.P4 that the respondent was an independent candidate of LDF. At the same time

he has admitted that to have written the name of the party member as election agent and adds that he does not remember his name. He also has denied the signature of the respondent appearing in Ext.P5 and says that there is slight difference in the said signature. RWs3 and 4 are examined only to state that the respondent has contested the election as an independent candidate. Their evidence is not of any use to prove the same.

13. It is not in dispute that apart from the respondent there was no candidate in ward No.13 for the LDF. Admittedly the respondent contested against the UDF candidate and was elected as a member. From Exts.X1(a) and X2 it is clearly found that the respondent was elected as a member belonging to LDF and she herself had given Ext.X1(a) declaration admitting the above fact and on the basis of this record, Ext.X2 has been prepared. As already observed these are statutory records, the veracity of which cannot be doubted. In the notice contained in Ext.P5, the expenses of which has been including in the statement of expenditure submitted by the respondent it is clearly stated that she had contested the election as an independent candidate with the support of LDF. The respondent cannot disown the said notice as it was produced before the authorized officer by her. The fact that the CPI(M) leader has been appointed as her election agent, as revealed from Ext.P4, also would further vindicate the fact that the respondent was having the support of

LDF and CPI(M). The evidence of PWs 3, 4 and 5 would support the allegation of the petitioner that the respondent had contested the election as an independent candidate with the support of LDF coalition. On a careful consideration of all facts and materials on record I find that the respondent had contested the election as a LDF candidate and she was elected as a member belonging to LDF in this Panchayat. The point is answered accordingly.

14. Point Nos.3 and 4: The petitioner would allege that the LDF parliamentary party had decided to elect Smt.P.T.Anupama as the candidate for the post of President in the election scheduled on 09.06.2014 as per its meeting held on 06.06.2014 and whip was given to all the other LDF members directly and the whip of the respondent was taken to her house and as she refused to receive the same it was affixed in front of her house. The petitioner as PW3 has deposed that the parliamentary party had met on 06.06.2014 at 9 am in the presence of Shri.K.Soma Prasad, Sri.R.Ramachandran etc., and it was decided to elect Smt.P.T.Anupama as President in the election proposed to be held on 09.06.2014 and except the respondent all other LDF members were present and the whip of the respondent was taken to her house by him along with Sri.Sivankutty and Sri.Sajeev Kumar and at 11.30 am PW3 requested to receive the whip which

she refused and thereupon the same was affixed in front of her house. Ext.P2 is the copy of the whip stated to have been affixed in front of her house. Copy of the same was given to the Secretary also evidenced by Exts.X3 and X4. The said Sri.Sivankutty and Sri.Sajeev Kumar are examined as PWs 6 and 7 and they also have deposed that the whip was affixed in front of the house of the respondent as she refused to receive the same on 06.06.2014. Nothing has been brought out to discredit the testimony of PWs 5 to 7 I have already found that the contention of the respondent that she was elected as an independent member without support from any political party or coalition is false and that she was elected as a member with the support of LDF coalition. It is also seen that till this election to the post of President, she had supported the LDF in the former elections. The fact that Smt.P.T.Anupama was decided as the candidate of LDF for the post of President in the election scheduled on 09.06.2014 cannot be doubted. All the LDF members except the respondent voted in favour of that candidate. But the respondent had contested against the official candidate of LDF as proposed and seconded by the UDF members and with the support of all the UDF members she was elected as President. Whether the conduct of the respondent in having accepted the candidature for the post of President which was proposed and seconded by UDF members and becoming elected with the support of all the UDF members by defeating the

LDF candidate would constitute defection by withdrawing from the LDF coalition and also by violating the direction issued by the LDF parliamentary party whip deserve consideration.

15. Section 3(1)(b) of the Act deals with defection in respect of an independent member supported by a coalition 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.

(b)if an independent member belong 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 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 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 foundations of our democracy. 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. As per Section 2(ii) of the Kerala Local Authorities (Prohibition of Defection) Act, an independent member contesting with the support of any coalition is to be considered as a member of the coalition. The above provision reads as follows,-

“(ii). “coalition” means a coalition made between more than one political parties or between more than one political parties and one or more independents or between one political party and one or more than one independents or between more than one

independents for the purse of contesting any election of a local authority.”

18. Section 3(1)(b) of the Act specifically states that if an independent member belong to any coalition withdraws from such coalition or if such a member, votes or abstains from voting contrary to any direction in writing issued by a person or authority authorized by the coalition in its behalf, he shall be disqualified for being a member of that local authority. The manner in which the coalition may give direction to its members is under Rule 4(1)(ii) of the Kerala Local Authorities (Disqualification of Defected Members) Rules and it reads as follows,-

“4.The manner in which a political party or coalition may give direction to its members,- (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 Section3, it shall be in writing and such a direction shall be given,-

(ii) In the case of a member who belongs to a coalition or considered to be included in it, but 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.”

19. He had also it is specifically stated that the members considered to be included in the coalition are deemed members of the same. In the case on hand it is proved beyond doubt that the respondent had contested the election with the support of LDF coalition and she became a member belonging to this coalition as admitted in Ext.X2(a). PW5 was the person elected for the purpose of issuing whip to the members of the coalition and the evidence spell out that he had affixed the whip of the respondent in front of her house which of course is as provided by Rule 4(2) of the Rules. The fact that in Mohandas K.P. V.State Election Commission (2009 (4) KHC 935) it has been held as follows,-

“The prohibition and the liability for violating the prohibition are the same for all the members of the local authorities. They do not get classified on any ground referable to the question whether they are members of a political party or whether they along with a political party are members of a coalition or whether they are independence forming part of

a coalition. What is ultimately sought to be prevented is the evil of political defection motivated by lure of office or other similar considerations, which endanger the foundations of our democracy. The principles laid down by this Court in the different precedents referred to above on the concept of appreciation of evidence regarding the question whether a member of a local authority belonging to a political party has voluntarily given up his membership of such political party apply with the same vigor to cases where the allegation of defection is made against an independent who has allegedly withdrawn from a coalition to which he belonged by virtue of Section 2(ii) of the PD Act and the Explanation thereto.”

20. The respondent who was a member of LDF is found to have contested against the official candidate of LDF as proposed and seconded by UDF members and she voted in her favour along with the UDF members and thus defeated the official candidate of LDF by disobeying decision and

direction of the LDF and thus she had withdrawn from the LDF coalition and also voted against the direction of the LDF whip in the election to the post of President held on 09.06.2014 and thereby committed defection as provided by Section 3(1)(b) of the Act. Therefore I find that the respondent has become subject to disqualification for being a member of Kunnathur 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 Kunnathur 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 authority for a period of 6 years from this date as provided by Section 4(3) of the Act.

The parties shall bear their respective costs.

Pronounced before the Commission on this the 20th day of January 2015

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

APPENDIX

Witnesses examined on the side of the petitioner

PW1 : Smt.Manubhai, Secretary,
Kunnathur Grama Panchayat

- PW2 : Sri.Mohanachandran Pilla, Senior Superintendent,
Aswathi, Ambalathubhagam P.O.
Poruvazhi, Kollam District.
- PW3 : Sri.B.Sajeev, Teacher, Kuzhivila,
Kunnathur East P.O.,
- PW4 : Sri. R.Ramachandran, Kalathil Veedu,
Kalleli Bhagam P.O., Karunagapally
- PW5 : Sri.K.Soma Prasad, Vyshnavam,
Muthupilakkad West, Poruvzhi P.O.
- PW6 : Sri.Sivankutty, Kalloor Kizhakkathil,
Kunnathur West, Kunnathur East P.O.
- PW7 : Sri.Sajeev Kumar, Amrithalayam,
Kunnathur West, Kunnathur P.O.

Witnesses examined on the side of the respondent

- RW1 : Smt. Thankachy Sadanandan, LIC Agency,
Kunnathur Panchayat President.
- RW2 : Sri. Sadanandan, Sandhyalayam,
Thuruthikkara P.O.
- RW3 : Sri.Mani, Koyikkasseri, Vadakke
Kunnathur, thuruthikkara P.O.
- RW4 : Sri.Udayan, Kizhakkumsseril,
Kunnathur East P.O.

Documents produced on the side of the petitioner

- P1 : Statement published by Smt.Thankachy
Sadanandan on 08.10.2010
- P2 : Copy of the whip dated 06.06.2014 issued
by Sri. B.Sajeev,

- P3 : Copy of the nomination in Form No.2 filed by Smt.Thankachy Sadanandan
- P4 : Copy of the appointment of election agent in Form No.8 filed by Smt.Thankachy Sadanandan
- P5 : Copy of keep the election expenses in Form No.N-30 submitted by Smt.Thankachy Sadanandan

Documents produced on the side of the respondent:

- R1 : Poster of Smt.Thankachy Sadanandan
- R2 : Dummy Ballot paper Kunnathur Grama Panchayat

Documents produced on the side of the witnesses

- X1 : Copy of the register showing party affiliation of the members
- X1(a) : Copy of the register showing party affiliation of the members Page No.13 of X1
- X2 : Copy of the declaration dated 01.11.2010 in Form No-2 filed by Smt.Thankachi Sadanandan
- X3 : Copy of the letter dated 06.06.2014 issued by Sri.R.Ramachandran, Convenor, LDF Kollam District Committee addressed to the Secretary, Kunnathur Grama Panchayat
- X4 : Copy of the whip issued by Sri.B.Sajeev held on 06.06.2014 Kunnathur Grama Panchayat

X5 : Pass to the counting agents in Form No.25
of Ward No.13

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