

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER

Tuesday, the 22nd day of October, 2024

O.P. No. 29 of 2022

Petitioner

: P.S. Lakshmanan,
S/o sankaran,
Pattiyamkunnath
Desamangalam P.O
Thrissur District-679532

(Member, Ward No.10,
Desamangalam Grama Panchayat)

(By Adv. A. Santhosh Kumar)

Respondent

: Jumailath,
W/o Sulaiman
Punchakkundil,
Pallam P.O., Desamangalam,
Thrissur-679532

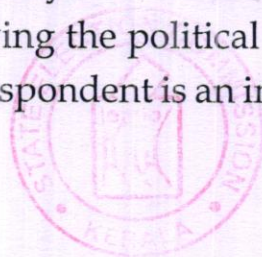
(Member, Ward No.9,
Desamangalam Grama Panchayat)

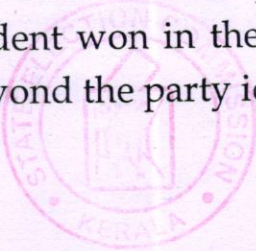
(By Adv. Kallambalam S. Sreekumar
& Sajitha S.)



ORDER

1. 1 This is a petition filed under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that this respondent committed defection and hence disqualified to continue as member of Desamangalam Grama Panchayat and also for declaring her as disqualified to contest as candidate in any election to the local authorities for a period of six years.
2. The petitioner's case in brief is as follows;- The Petitioner and respondent are elected members of Desamangalam Grama Panchayat in the General Election to local authorities held in the year 2020. Petitioner and respondent are representing ward No. 10 and 9 of respectively of Desamangalam Grama Panchayat. As an elected member of the panchayat, petitioner is competent to file this OP under section 4 of Kerala Local Authorities (Prohibition of Defection) Act.
3. Respondent submitted nomination for contesting election in ward No. 9, wherein respondent made a specific statement that she does not to belong to any political party or in any coalition. As an independent candidate not belonging to political party or coalition, she had been allotted the symbol "scissors" from the List of free symbols, meant for purely independent candidates for contesting the election. Respondent contested the election as a purely independent candidate and her main opponent in fray was a candidate belonging to LDF. The nomination paper submitted by the respondent, election campaign notices and the nomination paper submitted by opposite LDF candidate are produced and marked as Ext A1 to A3.
4. In the election respondent has been elected from ward No. 9 as a purely independent candidate. It is further contended that after the election, she joined LDF coalition by filing a sworn declaration before the Secretary of the Panchayat on 21.12.2020. On the basis of the said declaration Secretary of Desamangalam Grama Panchayat prepared a Register showing the political affiliation of respondent, wherein it is stated that respondent is an independent supported by

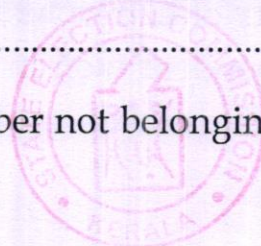


- CPI (M). The sworn declaration dated 21.12.2020 is marked as Ext. A4. The Party affiliation Register is marked as Ext.A5.
5. Ongoing through the Ext. A4 declaration submitted by the respondent it appears that she contested election to ward No.9 of Desamangalam Grama Panchayat as an independent candidate of CPI (M) and belongs to LDF coalition. Petitioner submitted that the action on the part of the respondent, who contested and won as pure independent candidate and thereafter joining a political party and coalition, shall incur disqualification under section 3 (1) (c) Kerala Local Authorities (Prohibition of Defection) Act.
 6. In the Original Petition filed on 15.11.2022, it is further stated that the cause of action for filing the petition arose on 28.10.2022, when the petitioner was made known the judgment dated 02.09.2022 in WA No. 1356/2022 (*Sheeba George V State Election Commission Kerala and Others*)
 7. Respondent filed objection contending as follows;- As per rule 4A (2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000, it is clearly stated that the petition under rule 4A (1) shall be filed within 30 days from the date of deemed disqualification of the member. The alleged deemed disqualification mentioned in the petition arose on 21.12.2020 and hence as per the provisions of rule 4A (2), the petition has to be filed before 20.01.2021 and the present original petition filed on 15.11.2022 is not even supported by petition to condone the delay. The date of judgment of the Hon'ble High Court in WA No. 1356/2022 has no bearing to the facts and circumstances of the present case. There is no provision or law allowing a party to file a petition by calculating the time limit based on an order pronounced by the Hon'ble High Court in another petition, which has no way connected with the present petition.
 8. As regards of fact in issue, it is stated that in ward No. 9 major political parties especially LDF and UDF are not active in election campaign. Majority of LDF voters supported the respondent in the election. The respondent won in the election with the support of majority of voters beyond the party ideas.
- 

9. Before filing the objection respondent filed an IA for hearing the question of maintainability of the OP as a preliminary issue. In the said IA it is stated that the original petition is barred by limitation prescribed in the rule 4A (2) of Rules and judgment dated 02.09.2022 in WA No. 1356/2022 has nothing to do with the cause of action of the present petition. Petitioner filed objection to the IA and after hearing the parties Commission by Order dated 02.03.2023 disposed the IA with a finding that all these questions raised by the respondent should be considered at the time of trial. Respondent challenged the order dated 02.03.2023 of the Commission before the Hon'ble High Court. Hon'ble High Court as per judgment dated 09.06.2023 in WP (C) No. 17261/2023 dismissed the petition by confirming the decision of Commission.
10. The evidence in this case consists of oral testimonies of PW1 to PW4, RW1 & RW2 and Ext A1 to A5 and Ext.X1 to X3.
11. Both sides were heard.
12. Section 3 of the Limitation Act enjoins a Court to dismiss any suit instituted, appeal preferred and applications made, after the period of limitation prescribed. Therefore, it is only appropriate to examine whether the OP is filed within the time limit prescribed under rule 4A (2).
13. As per rule 4A (2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000, it is clearly stated that the petition under rule 4A (1) shall be filed within 30 days from the date of deemed disqualification of the member. Section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act provides that
- "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,-

.....

 (c) if an independent member not belonging to any coalition, joins



any political party or coalition; he shall be disqualified for being a member of that local authority."

14. From the provisions of section 3 (1) (c) of the Act it is crystal clear that act of joining any political party or coalition constitutes the defection under the Act. In the petition it is alleged that respondent, who contested and elected as an independent candidate not belonging to any coalition, joined CPI (M), a constituent of LDF by filing a sworn declaration under rule 3 (2) on 21.12.2020.
15. The right to sue and commencement of the running of time for the purpose of the limitation depend on the date when the cause of action arose. Cause of action is a fact or combination of facts that gives a person the right to seek judicial redress or relief against another. Therefore cause of action for the OP arose on 21.12.2020 and petitioner filed this OP on 15.11.2022, without supported by a petition to condone the delay. There is a delay of 1 year, 11 months and 12 days in filing the Original petition.
16. As per the proviso to rule 4A, any petition may be accepted by the Commission after the prescribed time limit of 30 days, if the petitioner proves that there exists sufficient reason for not filing the petition within the time limit. But petitioner has not filed any petition for condoning the delay.
17. According to the petitioner cause of action for filing the petition arose on 28.10.2022, when petitioner was made known about the binding precedent in the judgment dated 02.09.2022 in *Sheeba George V State Election Commission Kerala and Others*.
18. In *Sheeba George V State Election Commission Kerala and Others*, Hon'ble High Court held that when a declaration was made by independent candidate, who was elected without support of a coalition or political party that she belongs to a political party and Secretary of Grama Panchayat registered so in the Statutory Register, it is clear that she was violated the requirement of law under section 3 (1) (c). The judgment dated 02.09.2022 has nothing to do with the cause of action in the present case. Petitioner has no case that he was unaware of the contents of the sworn declaration filed by the respondent till the judgment of dated 02.09.2022 *Sheeba George V State Election Commission Kerala and Others*.

Therefore the Original Petition is barred by limitation provided under rule 4A (2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000 and therefore Original Petition is dismissed.

Pronounced before the Commission on the 22nd day of October 2024

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



APPENDIX**Witness examined on the side of the Petitioner**

- PW1 : Sri. P.S. Lakshmanan
PW2 : Smt. Sindhu T.P.
PW3 : Smt. Rajasri R
PW4 : Sri. Faisal A.M.

Witness examined on the side of the Respondent

- RW1 : Smt. Jumailath
RW2 : Sri. Ashraf Ali

Documents produced on the side of the Petitioner

- A1 : Copy of the nomination form filed by Smt. Jumailath
A2 series (a-e) : Election campaign posters of Smt. Jumailath
A3 : Copy of the nomination form filed by Smt. Sareena C.V
A4 : Copy of the declaration submitted by Smt. Jumailath
A5 : Copy of the relevant page of the Register showing the party affiliation of the members of Deshamangalam Grama Panchayat

Documents produced by Witnesses

- X1 : Declaration in form No. 2 submitted by Smt. Jumailath
X2 : Register showing the party affiliation of the member of Deshamangalam Grama Panchayat
X3 : Nomination filed by Smt. Jumailath on 19.11.2020

Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER

//True Copy//


PRAKASH B.S
PEN No : 101452
SECRETARY
State Election Commission
Kerala, Thiruvananthapuram

