

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A SHAJAHAN,
STATE ELECTION COMMISSIONER

Tuesday, the 2nd day of July, 2024

O.P. No. 27 OF 2021

Petitioner

: Milsy Shaji
W/o. Shaji,
Aadukuzhiyil House,
Paingottor P.O., Kadavoor Village,
Kulappuram Kara, Kothamangalam.

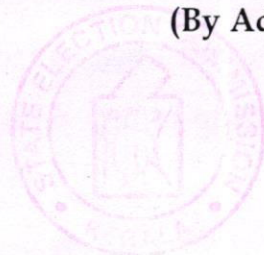
(Member, Ward No.13
Paingottoor Grama Panchayat)

(By Adv. A.Santhosh Kumar)

Respondent

: Nizar Muhammed,
S/o Muhammed,
Veliyathkudiyil Veedu,
Paingottoor.P.O, Kadavoor Village,
Kulappuram Kara, Kothamangalam
(Member, Ward No.10,
Paingottoor Grama Panchayat)

(By Adv. Praveen C.P)

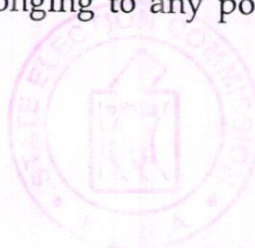


ORDER

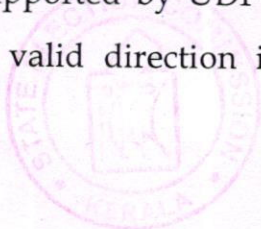
This is a petition filed under section 3 and section 4 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that the respondent has committed defection and hence became disqualified to continue as a member of Paingottoor Grama Panchayat and also for declaring him as disqualified to contest as candidate in any election of local authority for a period of six years.

2. The averments in the petition are in short, as follows:

The Petitioner and respondent are elected members of Paingottoor Grama Panchayat in the general election held to the Local Self Government Institution, during December 2020. The Petitioner contested and was elected as the official candidate of Indian National Congress, in official symbol "Hand". The Respondent contested as an independent candidate supported by UDF. After the election, both the petitioner and the respondent had given sworn declaration before the Secretary, Paingottoor Grama Panchayat, showing their association with political party as INC. On the basis of the same, the Secretary of Paingottoor Grama Panchayat prepared the register showing the political affiliation of the elected members and wherein it is stated that the Respondent is an independent candidate supported by INC and UDF. There are 13 ward members in Paingottoor Grama Panchayat. Out of which UDF got 6 seats viz. 5 members belong to Indian National Congress (INC) and 1 independent member supported by INC/UDF. The LDF coalition has 6 members, viz. 3 members belong to CPI (M), 2 member belong to Janathipathya Kerala Congress and 1 belongs to Kerala Congress (M). One independent member not belonging to any political party or coalition was also elected.



3. Thereafter the respondent was elected as the Vice President of the Panchayat as the candidate of INC and UDF. However, subsequently respondent was resigned from the post of Vice President without any prior intimation to the INC or UDF as part of conspiracy with the LDF members. Within days after the resignation of respondent, the LDF faction has issued a notice of no-confidence motion against the Panchayat President Smt. Cissy Jaison , who was elected to the post with the support by INC and UDF. The no-confidence motion was tabled in the meeting held on 15.09.2021. Prior to the meeting to consider no confidence motion, Ernakulam District Committee President of INC, has issued written instruction by way of whip (direction in writing) dated 11.09.2021, to all the members belonging to the INC, including the respondent. It was specifically directed in the whip to refrain from voting in the no-confidence motion moved against the President of the Panchayat supported by UDF and thereby to defeat the no-confidence motion scheduled on 15.09.2021. The respondent was not amenable to receive the whip which was sent by registered post on 11.09.2021. Therefore the whip was served by affixture at the residence of the respondent as provided. A copy of the whip was communicated to the Secretary of Paingottoor Grama Panchayat.
4. However in the meeting held on 15.09.2021, for considering the no-confidence motion against the panchayat president, the respondent in blatant violation of the whip issued to him attended the meeting and voted in favour of the no-confidence motion along with elected members of LDF. Thereby respondent disobeyed the written direction issued to him by INC/UDF. Thus the no confidence motion against Panchayat President Smt. Cissy Jaison was carried with the support of LDF members and respondent and accordingly the panchayat president supported by UDF was removed from the post. The respondent defied the valid direction issued by the District Committee



President of INC and thus the respondent has voluntarily abandoned his membership from INC/UDF which fielded him as a candidate in the general election. He has voluntarily abandoned or given up his membership in INC, and joined in another party moving with the support of LDF in the Panchayat against the will of INC and the UDF coalition. Respondent has committed defection and thereby liable to be disqualified under Kerala Local Authorities (Prohibition of Defection) Act, 1999.

5. The contentions raised by the Respondent in his objection are in short as follows:

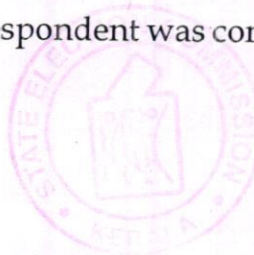
The Original Petition is not maintainable either in law or on facts. In the general election to the Local Self Government Institutions held during December, 2020, respondent contested the said election from Ward No.10 as directed by Muslim League. The respondent has acted only in accordance with the directions issued by the authorized persons of Muslim League. UDF was constrained to elect respondent as the Vice President as they could not rule the Panchayat by its own without the support of independent members. The period of Smt.Cissy Jaison as the President of the Panchayat was absolutely a period of maladministration, mismanagement, corruption, misutilization of funds etc. As the atrocities became intolerable, this respondent was constrained to resign from the post of Vice President of the Panchayat by giving prior intimation to all the authorities concerned. There was no conspiracy in the resignation of the respondent as alleged. Respondent was not given any written instruction by way of whip (direction in writing) dated 11.09.2021 as alleged. The Ernakulam District Committee President of INC is not competent to issue any direction to the respondent to abstain from voting in no confidence motion. The averment that the District President of INC has served the whip directly to the respondent is false. The alleged whip was not

served to the respondent either by registered post or by affixture at the residence of the respondent. The allegation that a copy of the whip was communicated to the Secretary of Paingottoor Grama Panchayat is also false. The respondent did not act against the direction or will of the UDF and he has not committed any defection or disloyalty to them. Respondent has not committed any defection and hence is not liable to be disqualified under the Kerala Local Authorities (Prohibition of Defection) Act, 1999

6. The evidence consists of the oral depositions of PW1 to PW3, RW1 and RW2 and the Exhibits A1 to A7, B1 and X1 to X3.
7. Both the sides were heard.
8. The following points arise for consideration
 - (i) Whether the respondent contested the election as an independent candidate supported by INC as alleged?
 - (ii) Whether the whips issued by the INC is binding on the respondent as alleged?
 - (iii) Whether the respondent has committed defection as provided under section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 as alleged?
 - (iv) Whether the petitioner is entitled to the declaration as prayed for ?
9. Points (i) to (iv):-There is no serious dispute with regard to the *locus standi* of the petitioner to file the petition or jurisdiction of the Commission to entertain the petition. As regards of the merit of the matter, Ext. A1 is the nomination paper submitted by the respondent which would show that respondent is an independent candidate supported by UDF. Ext.X1 is the declaration filed by the respondent immediately after the election under rule 3 (2) of Kerala Local Authorities (Disqualification of Defected members) Rules, which would show that respondent is a member of UDF coalition. Ext.X3 is the register

maintained in the panchayat under rule 3 (1) of Kerala Local Authorities (Disqualification of Defected members) Rules, to record the party affiliation of elected members of the panchayat. Ext.X3 would go to show that respondent is an independent member supported by INC in the UDF. During the cross examination of respondent as RW1, he admitted the veracity of entries in Ext.A1 nomination paper, Ext. X1 declaration and Ext.A2 Party Affiliation Register.

10. Petitioner has examined PW3, the District Committee President of INC, who issued whip to the respondent. He deposed before the Commission that he had issued whip to the elected members of INC, including the respondent prior to the no confidence motion held on 15.09.2021. Respondent was directed in the whip to abstain from the meeting of the no confidence motion held on 15.09.2021. The whips were served to the respondent as well as secretary of the panchayat through Mandalam President of the INC. The whip to the respondent was served through registered post as well as by affixture at the residence of the respondent by Mandalam President of the INC. Petitioner has produced the Ext.A5 postal receipt dated 13.09.2021 addressed to the respondent in proof of dispatch of whip to the respondent through registered post. Petitioner has also produced the Ext.A6 series (a to c) photographs taken at the time of affixture of whip at the residence of the respondent.
11. The evidence adduced by PW3-District Committee President of the INC, who issued whip to the respondent would show that the respondent was an independent candidate supported by INC. His testimony cannot be disbelieved. Admittedly INC or UDF has not fielded any other candidate to the constituency, where the respondent was contested election as a candidate.

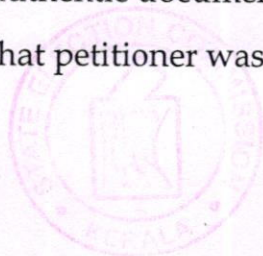


12. It appears from nomination, declaration, statutory register, etc., the respondent was truly recorded as an independent candidate supported by the INC/UDF.
13. Further, the Explanation to Section 3(3) of the the Kerala Local Authorities (Prohibition of Defection) Act, 1999 created a deeming provision that an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was set up or given support as a candidate for the election.

Explanation to Section 3(3) reads as follows:-

“Explanation. — For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was set up or given support as a candidate for the election.”

14. In the judgment in *Sujith Sreerangam v. Sunil Sradheyam* [2023 (3) KHC 482], the Honble High Court has relied on the statutory fiction created by the Explanation to Section 3 that even if a member though has no formal membership in a political party, he can still be treated as a member of the party in order to apply Section 3(a) of the Defection Act, 1999. Explanation 3 is equally applicable to section 3 (b) also.
15. Even though respondent has a contention that he was fielded as a candidate by IUML, the respondent has failed to prove the same. Respondent has produced the agreement dated 23.10.2020 allegedly executed between the respondent and one Mohammed Veliyathukudi, who is allegedly the President of IUML Paingottoor panchayat committee, which is marked as Ext.B1. In view of the authentic documents produced by petitioner, Ext B1 is no sufficient to prove that petitioner was a candidate of IUML. Petitioner has



not produced the direction allegedly issued by IUML directing him to vote in favour of LDF in the president election. There is clear provisions in para 8 of the Local Authorities Election Symbols (Reservation and Allotment) Order, 2017 for setting up of a candidate by political party. There is also clear provisions for issuing whip to members of the political party in rule 4 of Kerala Local Authorities (Disqualification of Defected members) Rules. B1 agreement is against the specific provisions of law and has no legal sanctity. The respondent has no case that the person signed the agreement allegedly for IUML is having authority to issue whip to the respondent by virtue the agreement.

16. Petitioner has examined PW3, the District Committee President of INC, who issued whip to the respondent. He deposed before the Commission that he had issued whip to the elected members of INC, including the respondent prior to the no confidence motion held on 15.09.2023. Respondent was directed in the whip to abstain from the meeting of the no confidence motion held on 15.09.2023. The whips were served to the respondent as well as secretary of the panchayat through Mandalam President of the INC. The whip to the respondent was served through registered post as well as by affixture at the residence of the respondent by Mandalam President of the INC. Petitioner has produced the Ext.A5 postal receipt dated 13.09.2021 addressed to the respondent in proof of dispatch of whip to the respondent through registered post. Petitioner has also produced the Ext.A6 series (a to c) photographs taken at the time of affixture of whip at the residence of the respondent.
17. In the cross examination of respondent as RW1, he deposed before the Commission that

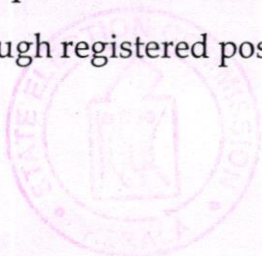


"Ext.A3 (whip) shown to me. ഇത് എനിക്ക് എന്റെ പേരിൽ DCC പ്രസിഡന്റ് അയച്ച നിർദ്ദേശമാണ്. ഇത് ഔദ്യോഗിക ലെറ്റർ ഹെഡിൽ പ്രസിഡന്റിന്റെ ഒപ്പും സീലും ഉള്ളതാണ്. പേരിൽ തിരുത്തുണ്ട്. അഡ്രസ് എന്റേതാണ്. Ext.A5 (postal receipt) shown to me. അതിൽ കാണുന്ന അഡ്രസ് എന്റേതാണ്. Ext.X3 (office copy of the whip served to the secretary of the panchayat) shown to me അതിൽ കാണുന്നതും എന്റെ അഡ്രസ്സാണ്. അതിൽ പൈങ്ങോട്ടൂർ ഗ്രാമ പഞ്ചായത്ത് സെക്രട്ടറിയുടെ പേരും ഒപ്പും സീലും ഉണ്ട്. Ext A4 (Minutes dated 15.09.2021) shown to me അതിൽ ഏഴാമതായി പേരെഴുതി ഒപ്പിട്ടിരിക്കുന്നത് ഞാനാണ് .15 09 2021 ൽ നടന്ന അവിശ്വാസ പ്രമേയ ചർച്ചയുടെ മിനിറ്റ്സാണ് Ext A4. അവിശ്വാസ പ്രമേയത്തെ അനുകൂലിച്ചു വോട്ട് ചെയ്തതായി മിനുട്സ് പ്രകാരം കാണുന്നു. അനുകൂലിച്ചവരിൽ 7-ാമതായി കാണുന്നത് എന്റെ പേരാണ് മറ്റ് ആറുപേരും LDF മുന്നണിയിൽ പെട്ടവരാണ്."

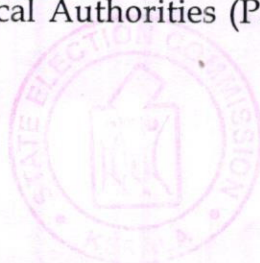
18. Respondent has a case that District President of INC has no manner of right or authority to issue whip to the respondent. In *Sindhu Anilkumar V State Election Commission* (judgment dated 22.02.2024 in WA No.1474/2023) the High Court examined the position and held that :-

"As per explanation to section 2(ii) of the Act, a member who stood as a candidate in an election with the support of any one of the political parties shall be deemed to be a member included in that political party. The position further clarified by Explanation to section 3 of the Act. The above deeming provision creates a fiction by which an independent candidate, who had contested the election with the support of a political party, is to be considered as a member of that political party even without the member joining the political party."

19. But in view Explanation to Section 3 (3) the case of the respondent is unsustainable and District President of DCC has the necessary authority to issue whip to the respondent. It further appears that the whip was served to the respondent through registered post as well as by affixture at the residence of the respondent.



20. Secretary of the panchayat has produced the office copy of whip served to him as Ext. X3. From this it is evident that petitioner has proved the compliance of rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules.
21. Petitioner has produced the copy of the Minutes of the meeting of no confidence motion held on 15.09.2021. It testifies in unequivocal terms that respondent contrary to the Ext.A3 whip issued by INC and acted in defiance of the same at the meeting of the no confidence motion held on 15.09.2021 and resultantly the panchayat president sponsored by INC was removed from the post. There is sufficient evidence to indicate that respondent has voted in favour of the no confidence motion and it was by colluding or conniving with the members of opposite party LDF for removing the Panchayat President from the position and thereby UDF lost governance of Paingottoor Grama Panchayat. Even if there is a failure to prove a valid whip, still the petitioner has proved that the respondent by his conduct voluntarily given up his membership of the party under whose banner he was elected.
22. Hon'ble High Court in *Mohandas K P V State Election Commission* (2009 (4) KHC 935) (decision prior to 17.01.2012) held that " Therefore, 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 same vigour to cases where the allegations 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 Kerala Local Authorities (Prohibition of Defection) Act, 1999 and Explanation thereto.



23. There is evidence on the record that respondent is aware of the decision taken by UDF coalition, but failed to act in accordance with political directive and acted hand in glove with LDF members to oust panchayat president, who was elected with the support of UDF members, by carrying no confidence motion against her. It is nothing short of disloyalty under section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

In the result the OP is allowed and the respondent is declared as disqualified for being a member of Paingottor Grama Panchayat as provided under Section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. The respondent is further declared as disqualified from contesting as a candidate in an election to any local authorities for a period of 6 years from this date, as provided under section 4 (3) of the Act.

Pronounced before the Commission on the 2nd day of July, 2024.



Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER

APPENDIX

Witness examined on the side of the Petitioner

- PW1 : Smt. Milsy Shaji
 PW2 : Sri. M.V. Ajaya Kumar
 PW3 : Sri. Muhammed Shiyas

Witness examined on the side of the Respondent

- RW1 : Sri.Nizar Muhammed
 RW2 : Sri.Ajims P.M.

Documents produced on the side of the Petitioner

- A1 : Copy of the nomination paper submitted by Sri.Nizar Muhammed
 A2 : Copy of the relevant page of the register showing the party affiliation of elected members of Paingottoor Grama Panchayat
 A3 : Copy of the whip dated 11.09.2021 issued to Sri.Nizar Muhammed by Muhammed Shiyas, DCC President, Ernakulam
 A4 : Copy of the minutes of the meeting held on 15.09.2021 in connection with the no confidence motion against the President, Paingottoor Grama Panchayat
 A5 : Postal Receipt
 A6(a-e) : Photographs
 A7 : Copy of the whip dated 11.09.2021 with showing "Copy to Secretary, Paingottoor Grama Panchayat"

Documents produced on the side of the Respondent

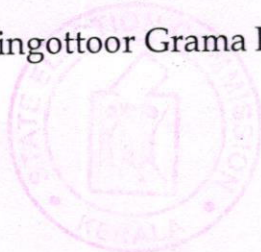
- B1 : Agreement dated 23.10.2020

Documents produced by Witnesses

- X1 : Copy of the declaration in form No.2 submitted by Sri. Nice Eldo dated 21.12.2020



- X1(a) : Copy of the declaration in form No.2 submitted by Sri. Sunny dated 21.12.2020
- X1(b) : Copy of the declaration in form No.2 submitted by Sri. Sabu Mathai dated 21.12.2020
- X1(c) : Copy of the declaration in form No.2 submitted by Smt. Saramma Paulose dated 21.12.2020
- X1(d) : Copy of the declaration in form No.2 submitted by Sri. Reji Santi dated 21.12.2020
- X1(e) : Copy of the declaration in form No.2 submitted by Sri.Santhosh George dated 21.12.2020
- X1(f) : Copy of the declaration in form No.2 submitted by Sri.Jiji Shibu (Shiju) dated 21.12.2020
- X1(g) : Copy of the declaration in form No.2 submitted by Smt. Subimol Shine
- X1(h) : Copy of the declaration in form No.2 submitted by Smt. Seema Sibi dated 21.12.2020
- X1(i) : Copy of the declaration in form No.2 submitted by Sri.Nizar Muhammed dated 21.12.2020
- X1(j) : Copy of the declaration in form No.2 submitted by Smt.Sissy Jaison dated 21.12.2020
- X1(k) : Copy of the declaration in form No.2 submitted by Sri.Hareesh Rajappan dated 21.12.2020
- X1(l) : Copy of the declaration in form No.2 submitted by Sri.Milsy Shaji dated 21.12.2020
- X2 : Copy of the Register showing the party affiliation of the members of the Paingottoor Grama Panchayat



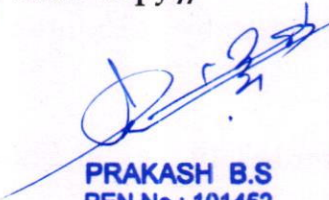
X3 : Copy of the whip served to the Secretary of Paingottoor Grama Panchayat by Sri.Muhammed Shiyas, DCC President, Ernakulam.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

// True Copy //


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

