

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER

Thursday, the 23rd day of October, 2025

O.P. No. 34 of 2024

Petitioner

: Sri. Tomy Joseph,
S/o Joseph Kurian,
Maliyil House,
Ramanalloor,
Kothamangalam P.O,
Ernakulam District - 686691

(District President, Kerala Congress (M)
Ernakulam)

(Adv. E. Sulficker & Soorya L)

Respondent

: Sri. Gils Thomas,
S/o Thomas,
Periyapuram House,
Mulakkulam P.O,
Ernakulam District - 686664

(Councillor, Ward No.21,
Piravom Municipality)

(Adv. A. Santhosh Kumar)



ORDER

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 a Councillor of Piravom Municipality and also for declaring him 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; - Petitioner is the Ernakulam District President of Kerala Congress (M). Respondent is an elected Councillor of Piravom Municipality representing ward 21. Respondent was contested and elected as a candidate of Kerala Congress (M) in the General Election to local authorities held in 2020. The District President of Kerala Congress (M) had recommended the election symbol of Kerala Congress (M) to the respondent for contesting the election from ward 21 as a candidate of Kerala Congress (M). After the election respondent filed a sworn declaration before the Secretary of the Municipality stating his political allegiance to the Kerala Congress (M). On the basis of said declaration, the Secretary of the Municipality prepared a Party affiliation register, wherein also it stated that respondent is an elected Councillor of Kerala Congress (M), a constituent of LDF. Altogether 27 wards in the Piravom Municipality. Out of which, LDF secured 14 seats and UDF secured 13 seats. Thus, LDF got majority of seats.
3. Petitioner further submitted that after the General Election to Kerala Legislative Assembly held in 2021, the conduct and attitude of the



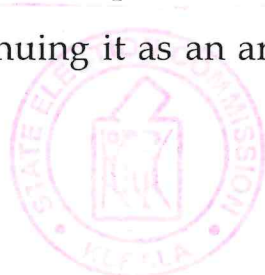
respondent towards his political party took a different turn and he began to raise severe allegations against his political party Kerala Congress (M). Thereafter during the Parliament election held in April, 2024, respondent openly supported Sri. Francis George, the opposite UDF candidate in fray, instead of supporting the candidate fielded by his political party Sri. Thomas Chazhikadan. Respondent canvassed/requested vote for the UDF candidate in the public gatherings and through social media. Moreover, he raised false and frivolous allegations against Sri. Thomas Chazhikadan and it was adversely affected the prospects of the Kerala Congress (M) candidate in the election. When the Parliamentary election result was declared on 4th June, 2024, the Kerala Congress (M) candidate Sri. Thomas Chazhikadan was defeated by UDF candidate.

4. Petitioner further submitted that after the declaration of result, under the leadership of respondent, UDF workers of Kottayam Parliamentary constituency had celebrated the victory of UDF candidate by distributing "**pidiyum pothum**" (a non-veg food) among the public. The report of said news item was published in all dailies on 05.06.2024. According to the petitioner, the above said acts and conduct of the respondent are contrary to the decisions of the political party and the LDF coalition. Respondent by his conduct withdrawn from the LDF coalition in which he is a Councillor and has voluntarily given up membership of his political party. Respondent has also acted against the interest, will and wish of his political party. Respondent took a stand different from his political party and intentionally defied



the direction issued by it. By the conduct of respondent his political party lost its image and political dignity among the electorate and lost the spirit of workers, who strived hard to get the respondent elected as Councillor. Respondent is supporting UDF in every act, word and deed. Respondent has committed defection by voluntarily giving up membership of the political party, in whose banner he was elected as a Councillor and therefore liable to be disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act.

5. The respondent case in brief is as follows: - Petitioner is not competent to file this original petition since he has not proved his *locus standi* to file the petition. It is true that respondent is an elected Councillor of ward 21. Further admitted that respondent was contested and elected as a candidate of Kerala Congress (M), a constituent of LDF coalition and still continuing so. Respondent never supported UDF candidate as alleged nor raised any allegations against his party. He never canvassed votes for opposite UDF coalition. The cause of action for the present OP is based solely on the reports published in the newspapers. Respondent never been part of the alleged incident allegedly held on 04.06.2024. Petitioner failed to aver that respondent has done any act of voluntarily abandonment/ withdrawal from the membership of the political party, either express or implied and hence the petition is not maintainable.
6. It is further submitted that respondent started his political life at an early age and still continuing it as an ardent political worker for the



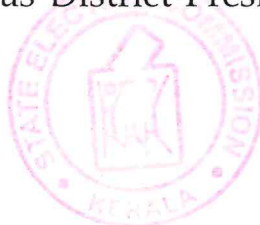
last 36 years, by upholding the interest of the political party. Respondent was always loyal to his political party and the coalition he represents. The allegations in the petition are mere conjectures and surmises. Respondent never voluntarily gave up membership of the political party or acted against the interest of the political party as alleged. Respondent is still an obedient worker loyal to the political party. He still obeys the policies and decisions of the party. Respondent was not part of the alleged incident held on 04.06.2024. The facts narrated in the petition would not attract the provisions of the Kerala Local Authorities (Prohibition of Defection) Act. The petition has no cause of action against the respondent. There are no allegations of express or implied acts or conducts of the respondent that would attract voluntarily giving up of membership of the party. Hence the original petition is *prima facie* not maintainable and hence liable to be dismissed.

7. The evidence in this case consists of oral testimonies of PW1 to PW4, RW1 and documents Ext.A1 to A17.
8. Both sides were heard.
9. The following points arise for consideration, namely ;-
 - (i) Whether the original petition is maintainable?
 - (ii) Whether respondent canvassed votes for the UDF candidate, who contested election from the Kottayam parliamentary constituency?



- (iii) Whether respondent celebrated the victory of UDF candidate from the Kottayam parliamentary constituency, along with UDF workers?
- (iv) Whether respondent by his conduct withdrawn from the LDF coalition and voluntarily given up membership of the Kerala Congress (M), in whose banner he was elected as Councillor?
- (v) Whether respondent has committed defection as contemplated under section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act?

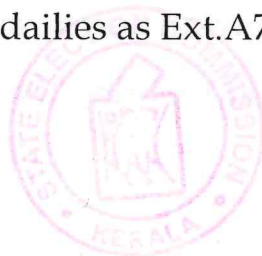
10. Point No (i) to (v);- As common questions of law and facts arise for consideration in these points, they are considered together for convenience and to avoid repetition. Petitioner is the Ernakulam District President of Kerala Congress (M). Admittedly respondent is a Councillor of Piravom Municipality, who was contested and elected as a candidate of Kerala Congress (M). In the objection respondent raised specific plea that petitioner is not competent to file the original petition since he has failed to prove his competency to file the original petition. During the cross examination of petitioner as PW1, when respondent confronted him with such a question, PW1 deposed that it was his predecessor in office Sri. Babu Joseph, who recommended the symbol "Two leaves" to the respondent for contesting election. During the cross examination petitioner emphatically stated before the Commission that he is the Ernakulam District President of the Kerala Congress (M). Petitioner produced the letter dated 05.07.2024 issued by him in his capacity as District President of Kerala Congress (M),



which is marked as Ext.A14. Respondent has no case that Ext.A14 is forged or fabricated document. Moreover, respondent during the cross examination as RW1 admitted that petitioner is the Ernakulam District President of Kerala Congress (M). Therefore, petitioner is having *locus standi* to file the petition under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act.

11. According to the petitioner after General Election to Kerala Legislative Assembly held in 2021, the conduct and attitude of the respondent towards his party defers and he made severe allegations against the political party Kerala Congress (M). Respondent specifically denied said allegations. However, petitioner has no adduced any evidence to prove the said allegations. Moreover, petitioner has no case that political party had sought any explanation from the respondent in this regard. In the absence of which, Ext.A3 to A6 Minutes of the meetings of political party are not sufficient to fix any culpability upon the respondent.

12. Another allegation put forth by the petitioner is that after the declaration of election result of Kottayam Parliamentary constituency on 04.06.2024, respondent celebrated the victory of opposite UDF candidate Sri. Francis George, along with UDF workers by distributing "**pidiyum pothum**" among the public. The news of above said incident was reported in the all the daily newspapers on 05.06.2024. Petitioner marked the said news item published in the *Mathrubhumi*, *Malayala Manorama* and *Deepika* dailies as Ext.A7 to A9.



13. It appears from the *Mathrubhumi* daily published on 05.06.2024, which is marked as Ext.A7 that *Janakiya Kuttayma* under the leadership of LDF Councillor Sri. Gils Periyapuram distributed "**pothirachi kariyum pidiyum**" at Piravom town in celebration of the defeat of Sri. Thomas Chazhikadan, the candidate fielded by Kerala Congress (M). However, it is pertinent to note that petitioner has not examined the reporter of the *Mathrubhumi* daily to prove his case.
14. In this context, in *Prakash C V State of Kerala* (judgment dated 15.01.2021 in WP (C) No. 4756/2017) the Hon'ble High Court held that "33. It is now well-settled that a statement of facts contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposed to have perceived the fact reported. Therefore, report published in *Mathrubhumi* daily is inadmissible in evidence.
15. Ext.A8 is the copy of *Malayala Manorama* daily published on 05.06.2024. Ext.A8 contains a news item that *Janakiya Kuttayma* under the leadership of LDF Councillor Gils Periyapuram distributed "**pidiyum pothukariyum**" in celebration of the defeat of Sri. Thomas Chazhikadan, the candidate fielded by Kerala Congress (M). Ext.A8 report does not contain the details of reporter attached to *Malayala Manorama*, who gather and report the news. However, petitioner examined one Manoj Joseph, who claimed to be a reporter attached to *Malayala Manorama*, Piravom bureau as PW4. PW4 deposed before the Commission that he had reported the Ext.A8 news item published in



Malayala Manorama daily. He further stated that he was present at the time of distribution of food in connection with the celebration of victory of UDF candidate. However admittedly he does not know Gils Periyapuram. He was unable to identify the presence of the respondent when confronted with Ext.A8 photograph. PW4 admitted that the photograph was not taken by him, but procured from a freelancer on payment. Further, neither petitioner nor PW4 has produced any documents at least an identity card or authorisation letter issued by *Malayala Manorama* to prove that PW4 is the author of Ext.A8 report. Moreover, PW4 failed to testify the presence of the respondent at the venue of the victory celebration and has not perceived the fact reported.

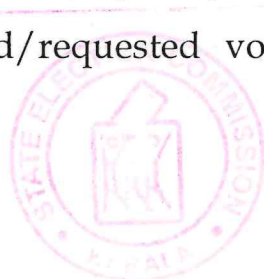
16. Ext.A9 is the *Deepika* daily dated 05.06.2024, it contains a news item that *Janakiya Munnani* under the leadership of Kerala Congress (M) Councillor Gils Periyapuram distributed "**pidiyum pothukariyum**" in celebration of the victory of Sri. Francis George from the Kottayam Parliamentary constituency. The said news item does not contain the details of the reporter. However petitioner examined one Jomon Varghese, who is stated to be the local reporter of *Deepika* daily as PW3. PW3 is admittedly not a professional reporter. During examination when confronted with the Ext.A9 photograph, he identified the presence of the respondent from the photograph. However, during the cross examination PW3 admitted that the Ext.A9 photograph was not taken by him. It was taken a local photographer, whose whereabouts are unknown to him. Further, neither petitioner nor PW3 has



produced any documents at least an identity card or authorisation letter issued by Deepika daily to prove that PW3 is the author of Ext.A9 report. Therefore, PW3 is also failed to provide any concrete material as to the presence of the respondent at the victory celebration and has not perceived the fact reported.

17. Further, during the cross examination as PW1, petitioner admitted that he was no direct knowledge about the involvement of respondent in the distribution of "pidiyum pothum" in the alleged victory celebration of UDF candidate Sri. Francis George as he was not present at the venue. Petitioner further admitted that he came to know about the things only through newspaper reports. Respondent in his objection specifically stated that he never joined with the victory celebration of the candidate of opposite faction as alleged. Further, during the cross examination as RW1, respondent denied the allegation that he had campaigned for the victory of UDF candidate and celebrated the victory of UDF candidate along with UDF workers. Respondent also denied the contents of Ext.A7, A8 and A9 news reports and his alleged presence in the photographs.

18. In para 7 of the petition petitioner has taken a case that respondent made severe allegations against the political party after the election to Kerala Legislative Assembly held in 2021. Further, in para 8 of the petition petitioner has taken a case that during the parliament election held in April, 2024 respondent openly supported Sri. Francis George, the UDF candidate. Similarly in para 9 petitioner has alleged that respondent canvassed/requested vote for UDF candidate in the



parliament election at public gatherings and through social media and raised frivolous allegations against Kerala Congress (M) candidate Sri. Thomas Chazhikadan. Respondent in his objection specifically denied all the above allegations. However, petitioner has not adduced any evidence to prove the said allegations.

19. Further, in para 14 of the Chief affidavit of the petitioner as PW1, he stated that respondent through media promised voters to distribute "**pothum pidiyum**" if the LDF candidate Thomas Chazhikkadan was defeated in the election. It is further alleged that respondent indulged in anti-party activities when Party Chairman contested election from Pala Legislative assembly constituency and party candidate Dr. Sindhumol Jacob from Piravom Legislative Assembly constituency. However, it is pertinent to note that there are no such pleadings in the original petition. Further in cross examination of RW1, petitioner put a suggestion to him that respondent was involved in the burning in effigy of party Chairman. However, there is also no such pleadings in the petition.

20. In *Srinivas Raghavendra Rao Desai (Dead) By LRS V Kumar Vamanrao@ Alok & Others* (2024 Live Law (SC) 194) the Hon'ble Supreme Court reiterated the settled position that " there is no quarrel with the proposition of law that no evidence could be led beyond pleadings."

21. This is because the purpose of pleadings is to inform the other party of the case they need to meet. Without pleadings, any evidence produced is irrelevant and inadmissible. Therefore, the above evidence is inadmissible against the respondent.



22. It appears from Ext.A3, A4 and A5 Minutes that certain discussions were made in the District Steering Committee as well as Piravom Niyojakamandalam Committee of the Kerala Congress (M) about the anti party activities of respondent. However, no documents pertaining to the disciplinary action against the respondent have been produced by the petitioner. Therefore, it seems that no disciplinary action was taken against the respondent. It further appears from Ext.A6 Minutes dated 24.09.2021 that subsequently the District Steering Committee decided to drop proceedings against the respondent. It further appears from Ext.A10, A12 and A13 minutes that Kerala Congress (M) had decided to initiate action against respondent for his alleged role in the distribution of "**pothum pidiyum**" in the event of defeat of LDF candidate Thomas Chazhikkadan and issued show cause notice to the respondent. However, no such documents produced by the petitioner. Petitioner has a further case that respondent has been suspended from the membership of Kerala Congress (M) pending enquiry as per Ext.A14. However, Ext.A14 dated 05.07.2024 is neither in the nature of a show cause notice nor suspension order of respondent. Therefore, there no adequate material in the record that Kerala Congress (M) had taken any action against the respondent for alleged role in the distribution of "**pothum pidiyum**" in the event of defeat of LDF candidate.

23. As a matter of fact, the events disclosed from Ext.A13 to Ext.A17 occurred subsequent to the filing of present original petition before the Commission. To rely and bring such subsequent facts into the attention



of the Commission, law requires an application to amend the pleadings as provided under Order VI, rule 17 of the Code of Civil Procedure. However, petitioner has not filed any application for amending the original petition to bring the above facts as part of pleadings. It is well settled that in the absence of pleadings being submitted to the Court, any amount of evidence will not help the party. Therefore, in the absence of pleadings subsequent documents viz Ext.A13 to A17 are inadmissible in evidence.

24. From the foregoing discussions it appears that petitioner has not adduced adequate materials to prove that respondent has committed disloyalty or conduct that would tantamounts to voluntarily giving up of membership of his political party, in whose banner he was elected.

25. In *Varghese K V @ Thankachan Kanjirakkattu V State Election Commission* (2020 KHC 841 (DB)) the Hon'ble High Court drawn a distinction between the conduct which may attract only disciplinary action within the political party and the conduct which attract disqualification under the Prohibition Act. If a conduct has no relation or bearing with the membership in a local authority, that may only attract disciplinary action within the party. In the said judgment the Hon'ble Court further observed that

" The conduct of a member of a political party in relation to the affairs of the local authority alone has to be considered for disqualification under the Prohibition Act. If a member of a political party defies any political directives in relation to the affairs of the local body, that amounts to voluntarily giving up membership of such political party."



The dictum laid down in the above judgment is reiterated in the judgment in *Mathew Joseph V Joseph John* (2024 KHC 752).

26. In the light of the above judgments of the Hon'ble High Court it is pertinent to examine whether the conduct of the respondent reflected in the exhibits produced from the side of the petitioner relates to the affairs of the Piravom Municipal Council, in which respondent is an elected Councillor. On going through the pleadings and evidence adduced by the petitioner it is not forthcoming that petitioner has such a case.

27. In *Chinnamma Varghese V. State Election Commission* (2009 (4) KHC 527) the Division Bench of Hon'ble High Court held that " incurring of the disqualification under any one of the contingencies depends upon the existence of a definite set of facts, which are required to be specifically pleaded before they are sought to be proved to establish the allegation of disqualification under the Act"(Paragraph 19)

28. In *Madhu V State Election Commission* (Judgment dated 11.12.2003 in O P No. 35632/2003 and connected cases) the Hon'ble High Court observed that " the policy of law in all legislations covering the field of election is that the elected member should be left to discharge his duties to the constituency and he should not be disturbed unnecessarily. The validity of the election can be gone into by the competent court if the conditions for challenging the election are strictly complied with. The same principle will apply to disqualification also."



29. Petitioner has failed to prove that respondent by his conduct voluntarily given up membership of Kerala Congress (M) by aligning with opposite UDF coalition. Therefore, this is not a fit case for finding that respondent has committed defection under section 3 (1) (a) the Kerala Local Authorities (Prohibition of Defection) Act.

In the result, Original Petition is dismissed.



Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER

APPENDIX

Witness examined on the side of the Petitioner

- PW1 - Sri. Tomy Joseph
PW2 - Sri. Tomy K. Thomas
PW3 - Jomon Varghese
PW4 - Manoj Joseph

Witness examined on the side of the Respondent

- RW1 - Gils Thomas Periyapuram

Documents produced on the side of the Petitioner

- A1 - Copy of the declaration submitted by Sri. Gils Thomas Periyapuram.
A2 - Copy of the register showing the party affiliation of Sri. Gils Thomas Periyapuram, elected member, Piravom Municipality (Relevant Page)
A3 - Minutes of the meeting of Kerala Congress (M) Ernakulam District Steering Committee dated, 15.07.2021.
A4 - Minutes of the meeting of Kerala Congress (M) Piravom Niyojakamandalam committee dated, 22.07.2021.
A5 - Minutes of the meeting of Kerala Congress (M) Piravom Niyojakamandalam committee dated, 27.07.2021.
A6 - Minutes of the meeting of Kerala Congress (M) Ernakulam District Steering Committee dated, 24.09.2021.
A7 - Mathrubhumi Daily dated, 05.06.2024
A8 - Malayala Manorama Daily dated, 05.06.2024.
A9 - Deepika daily dated, 05.06.2024.



- A10 - Minutes of the meeting of Kerala Congress (M), Piravom Niyojakamandalam committee, dated 19.06.2024.
- A11 - Attendance register of Kerala Congress (M) District Committee members, Ernakulam dated, 29.06.2024.
- A12 - Minutes of the meeting of Kerala Congress (M) District Committee dated, 29.06.2024.
- A13 - Minutes of the meeting of Kerala Congress (M), Piravom Niyojakamandalam committee, dated 28.07.2024.
- A14 - Copy of the letter dated, 05.07.2024 issued by Tomy Joseph, District President Kerala Congress (M), Ernakulam to Gils Periyapuram
- A15 - Postal receipt.
- A16 - Attendance register of Kerala Congress (M) District Committee members, Ernakulam dated, 18.07.2024.
- A17 - Minutes of the meeting of Kerala Congress (M) District Committee dated, 18.07.2024.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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



