

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

**PRESENT: SHRI. A. SHAJAHAN,
STATE ELECTION COMMISSIONER**

Thursday, the 22nd day of February, 2024

O.P. No. 28 of 2021

Petitioner

: R. Krishnakumar
S/o. M.N. Raveendran Nair,
Mullappone House,
Ezhumattoor P.O.,
Pathanamthitta - 689 586

(Member, Ward No.14,
Ezhumattoor Grama Panchayat)

**(By Adv. Mridul John Mathew &
Adv. Sajitha S.)**

Respondent

: Leelamma Sabu
W/o. Sabu Koinadath,
Koinadathu House,
Chuzhanna, Valakkuzhy P.O.,
Vennikulam, Pathanamthitta

(Member, Ward No.05,
Ezhumattoor Grama Panchayat)

(By Adv. Omanakuttan)



ORDER

This is a petition filed under Section 3 and 4 of Kerala Local Authorities (Prohibition of Defection) Act for declaring that the Respondent is disqualified for committing defection and hence to declare that the Respondent is disqualified for a period of six years to contest in any local body.

2. The Petitioner's case in brief is as follows:

The Petitioner and Respondent are the elected members representing Ward No.14 and 5 of Ezhumattoor Grama Panchayat and elected during the General Election held in 2020. They contested and won the election as the official candidate of Indian National Congress under the official symbol 'Hand'. After the election, all members of Indian National Congress including the Petitioner and Respondent had given sworn declarations before the Secretary, Ezhumattoor Grama Panchayat showing their political allegiance as Indian National Congress. Based on the declarations given to the Secretary as per Rule 3(2) of the Act, the Secretary, Ezhumattoor Grama Panchayat prepared a register showing the political affiliation of the members and wherein stated that the Respondent is a member of Indian National Congress. There are 14 wards in Ezhumattoor Grama Panchayat and after election the representation of the parties in the board was as follows: Indian National Congress - 4, Kerala Congress (Joseph) - 1, CPI(M) - 4, Independent (CPM Support) - 1, Independent (CPI Support) - 1, Kerala Congress (M) - 1, BJP - 1, Independent (BJP Support) - 1. There were 2

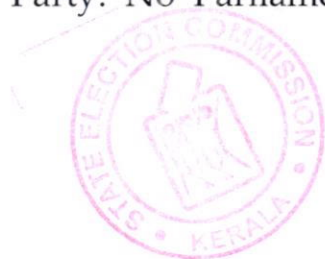


vacancies in the Health and Education Standing Committee. The election for vacancies to the Health and Education Standing Committee scheduled on 27.09.2021. On that day only one member submitted his nomination and she was elected and the other vacancy remained unfilled. Election to the said vacancy was declared to be held on 01.10.2020. The parliamentary party meeting of the Indian National Congress decided to contest Mr. Ajikumar, member from Ward No.11 for the said vacancy and decided to issue whip to all INC members in this regard. The District Congress Committee directed the Respondent not to submit any nomination to the election to be held on 01.10.2021. Party decided to issue a whip directing her not to file nomination to the Health and Education Committee elections to be held on 01.10.2021. The petitioner (who was the parliamentary party leader), tendered both whips to the respondent on 30.03.2021 but she refused to accept the same. The petitioner went to the house of the respondent with Sugathakumari K. (Member from Ward No.4) and Joby Parrankamoottil (member from Ward No.13) on 01.10.2021 and gave both the whips directly to the respondent. The respondent accepted the whip to vote infavour of Mr. Ajikumar in the Health and Education Standing Committee to be held on 01.10.2021 and acknowledged the receipt of the same on the copy of the whip. Thereafter the petitioner handed over the other whip directing her not to submit nomination or contest as the candidate in the Health and Education Standing Committee Election to be held on 01.10.2021. She refused to accept the same claiming that she is not bound to obey any such direction and it was her right to contest or



not to contest. Copies of the whips affixed in front of the house of the respondent. The respondent, voted against the written direction given by the District President of the Indian National Congress and was elected as the Chairman of Standing Committee with the support of LDF. The candidate of the Indian National Congress defeated. The respondent moved hand in glove with LDF to defeat Indian National Congress and therefore betrayed the party and electorate. The respondent has voluntarily abandoned her membership from Indian National Congress which fielded her as a candidate in the General Election by disobeying the specific directions not to contest and by disobeying the whips. It is clear case of defection liable for disqualification provided under Kerala Local Authorities (Prohibition of Defection) Act, 1999.

3. The Respondent stated that the petition is not maintainable either in law or on facts. She denied the contention of the petitioner that the respondent filed nomination to the election to be held on 01.10.2021 without the consent, knowledge etc of the present Congress Committee or Parliamentary Party is not correct. Congress Mandalam Committee President Sri. Viju Thomas Karot has informed the matter and has brought to the notice of DCC President and in his letter, it was stated that permission and full support have been given to Smt. Leelamma Sabu to file nomination and contest in the election scheduled on 01.10.2021. Petitioner Sri. Krishnakumar is not the leader of the Parliamentary Party. No Parliamentary committee has constituted or

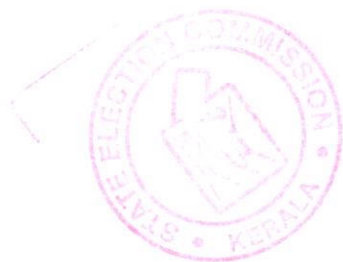


convened a single meeting. Petitioner is the junior most and thus his claim as the parliamentary party leader is not proper. Whip received with direction to cast her vote in favour of Sri. Ajikumar, the candidate contesting to Health and Education Standing Committees. Another direction from DCC President that not to file nomination or not to contest the election is not maintainable and is against Section 2 explanation IV (a) of Kerala Local Authorities (Prohibition of Defection) Act 1999. Eventhough she herself contested the election, she exercised the vote in favour of UDF candidate. By doing so, she never violated or disobeyed the direction of the DCC President. The respondent did cast her vote in favour of Ajikumar, the UDF candidate, but unfortunately the said vote was invalid as she forgot to put her name and signature on the reverse side of the ballot paper due to the excessive pressure and coercion exerted by the member of the UDF including the petitioner. Thus there was no deliberate latches or wrong committed by the respondent in this regard. DCC President's direction not to file nominations or to contest in election to the Health and Education Standing Committee is against the provisions of the said Act.

4. The evidences in this case consists of oral testimonies of PW1, PW2, PW3, PW4, RW1, RW2, RW3 and RW4 and Exhibits A1 to A7 and B1 and B2.
5. Heard both sides.
6. The following points arise for consideration:



- i) Whether the Respondent disobeyed the decision and direction of his political party and has committed defection as provided u/s 3 of Kerala Local Authorities Act.
 - ii) Whether the Petitioner entitled to the declaration prayed for.
7. Points (i) & (ii) - PW1, the Petitioner has stated that he and the respondent contested and won the election to Ezhumattoor Grama Panchayat, held in 2020 from Ward 14 and Ward 5 respectively as the official candidates of Indian National Congress. Both of them were allotted, with the official symbol of INC 'Hand' by the District Congress Committee President. After the election both of them have given sworn statement that they belong to INC and based on the declaration Grama Panchayat Secretary prepared party affiliation register, the copy of the register produced and marked as Exhibit A1. Out of the 14 Wards in the Panchayat, INC got four, Kerala Congress (Joseph) one, CPI(M) four, CPI(M) Supported independent one, CPI supported independent one, Kerala Congress (M) one, BJP one and BJP Supported independent one. There was a vacancy in the Health Education Standing Committee and the election to the standing committee held on 01.10.2020, Congress decided to field Ajikumar, member of Ward No.11 and whip was issued to the respondent by the DCC President directing him to contest in the election and to give his vote to Ajikumar. The petitioner handed over the whip to the respondent on 01.10.2021 morning at her residence in the presence of the witness and has the receipt which is marked as Exhibit



A2. Then the respondent declined to receive the direction not to contest the election and so both the whips were affixed at the residence. The copies of the affixture marked as Exhibit A3 and A4. Copy of the whips intimated to the Secretary of Grama Panchayat, marked as Exhibit A5 and A6. The respondent gave nomination in the Standing Committee elections defying the party's direction and won with the support of LDF. She made her vote invalid consciously. The copy of the minutes of the election meeting is produced and marked as Exhibit A7. In the Cross Examination he said that though the respondent did cast her vote in favour of congress candidates but she invalidated it. He did not agree to the statement that the respondents action was under immense pressure in the situation of the meeting.

PW2, member of Ezhumattoor Grama Panchayat Ward No.4 deposed that the direction of INC party regarding the election to Health and Education standing Committee on 01.10.2021 was to vote in favour of Ajikumar for which DCC President issued whip. She identified her signature in the affixtures of whip at the residence of the respondent. She stated that the authority to issue whip is DCC President and not the Block President of the party.

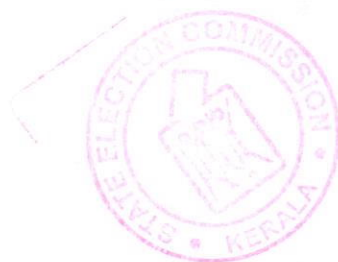
PW3, deposed that he is the second signatory of the affixture of the whip at the residence of the respondent.

PW4, the DCC President of INC, Pathanamthitta deposed that party nominated Mr. AjiKumar for the post of Chairman, Health and Education Standing Committee of Ezhumattoor Grama Panchayat as



party nominee in the election dated 01.10.2021 and whip was issued to all members belong to INC. The respondent received and signed the whip with direction not to contest the standing committee election. He stated that the respondent became standing committee Chairman by contesting to the post with the support of LDF. Her party took action against her. He does not remember whether the respondent has given with two whips on the same day. In the cross examination he stated that he has issued two whips, but in the whip it is not mentioned to cast the vote for the post of Chairman. He said in Exhibit A3, the direction was not to contest and such a direction is possible. He said that whip was issued to Ajikumar and Leelamma Sabu. Ajikumar is not a member of Congress. When he was asked about the whip issued to Ajikumar who contested against the official candidate of Congress, he said the issue was not known to him since he was not DCC President at the time of general election.

RW1, the respondent stated that the petition is baseless. She is elected from Ward No.5 of Ezhumattoor Grama Panchayat with symbol 'Hand'. When a vacancy of Health standing committee chairman arose Ezhumattoor congress Mandalam Committee President has given letter to DCC President Satheesh Kochuparambil for candidature of the respondent, the letter is marked as Exhibit B1. She produced a letter sent by Thalayar Gopi, to DCC President on the subject matter is marked as Exhibit B2. She received whip, Exhibit A2 issued to her by DCC President. She has not received Exhibit A3 whip. She voted in



favour of congress candidates in the Health Standing Committee Chairman election. Even though there was no clarity in the whip. DCC President was informed by the President of Congress, Ezhumattoor Mandalam and Pathanamthitta. DCC member, Thalayar Gopi not to field Ajikumar to the post of Welfare Standing Committee Chairman, who defeated in the General Election as a rebel of the official candidate. She has not done anything that attracts defection. Ajikumar contested in the General Election as Congress rebel and so the Ezhumattoor Mandalam President and DCC Member Thalayar Gopi informed DCC President no to field him for Health Standing Committee Chairman. In the cross examination she confirmed the Exhibit A2 is the direction to her to vote for Ajikumar. The signature in the Exhibit is her own. She was not given any direction by the DCC president to give nomination for the Chairman election. When she was shown the Exhibit A4, She denied the receipt of the same. She denied the affixture of the whip at her residence. She deposed that in the election for the Health Standing Committee Chairman on 01.10.2023 she contested against Ajikumar and won the election. When she was shown the Exhibit A7 she affirmed all the seven members voted in favour of Leelamma Sabu, the Respondent is LDF member. Four members voted in favour of Ajikumar are INC members. Respondent's vote became invalid. She admitted that the whip issuing authority is DCC President, but in the instant case she obeyed the decision of the Mandalam President. DCC President has given direction not to contest to the committee but not contest to the chairman and there is no specific direction to vote in favour of



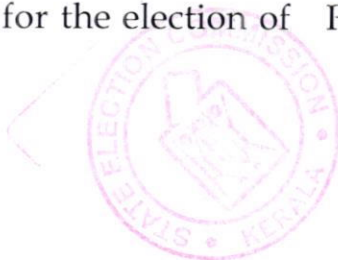
Ajikumar. Her vote became invalid as she did not sign on the reverse side of the ballot as she forgot to do so.

RW2, is the Mandalam President of INC, Ezhumattoor deposed that Mandalam committee denied to field Leelamma Sabu as the Health Education Standing Committee Chairperson in its meeting held on 01.09.2021. When he was shown with Exhibit A3 and A4 he said there is no directions to Leelamma Sabu not to contest as Chairman. In the cross examination he said he is not aware about the whip issuing authority. He agreed that Congress members are bound to obey the whip issued by the DCC President. He agreed to the suggestions that DCC President is the authority to issue whip to panchayat members belonging to INC.

RW3, Secretary of Congress Ezhumattoor mandalam deposed that Mandalam Committee meeting held on 01.09.2021 decided to field Leelamma Sabu as Health and Education Standing Committee Chairman. In the cross examination he agreed that the respondent is bound to obey the direction of the DCC President.

RW4, the Ezhumattoor Block Secretary of INC deposed that the meeting held on 01.09.2021 decided to field Leelamma Sabu as the Chairman of Health and Education Standing Committee. In the cross examination he agreed that the respondent is bound to obey the whip issued by the DCC President.

8. The facts of the case would reveal that the petitioner and the respondent were contested and elected as nominees of INC/UDF and when the meeting was scheduled for the election of President for the Panchayat



on 25.06.2018 the respondent contested against the UDF nominee and elected as the President with the support of LDF members. The respondent, on the other hand, disputed that no whip was served to cast her vote in favour of UDF nominee.

The basic issue herein is whether the respondent has committed defection by acting in violation of a duly served valid whip as provided under Section 3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act. Rule 4 Kerala Local Authorities (Disqualification of Defected Members) Rules provides the manner in which a political party or coalition may give 'direction in writing'/whip to its members. 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 Section 3, it shall be in writing and such a direction shall be given,-

[(i) ഒരു രാഷ്ട്രീയ കക്ഷിയിൽപ്പെട്ട അംഗത്തിന്റെയോ അതിലുൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗത്തിന്റെയോ കാര്യത്തിൽ പ്രസ്തുത അംഗത്തിന് തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ആ രാഷ്ട്രീയകക്ഷിയുടേതായ ചിഹ്നം ശുപാർശ ചെയ്യുന്നതിന്, അതതു കാലങ്ങളിൽ, രാഷ്ട്രീയ കക്ഷി അധികാരപ്പെടുത്തിയിട്ടുള്ള ആൾ ആയിരിക്കേണ്ടതാണ്.

എന്നാൽ, മേൽപ്പറഞ്ഞ നിർദ്ദേശം ആ രാഷ്ട്രീയ കക്ഷിയുടെ ലെറ്റർഹെഡിൽ തീയതി വച്ച് ഒപ്പിട്ട് അതിന്റെ മുദ്രയോടുകൂടി ആയിരിക്കേണ്ടതാണ്.]

(ii) In the case of a member who belongs to a coalition or considered to be included in it; by the member whom the members of the



said coalition and the members considered to be included in it in the local authority concerned elected for the purpose, on majority basis from among themselves.

[(iii) X X X]

[X X X X]

[(2)] While issuing a direction under sub -rule(1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgment due and while effecting it by affixing it shall be done in the presence of at least two witnesses. 4[Copy of the direction in writing shall also be given to the Secretary]”.

Rule 4(1) (i) specifically provides that the direction in writing (whip) given to a member by the person authorized shall be in their letter head with dated signature and seal of the political party concerned. Evidently, in this case, Exhibit A2 and Exhibit A3 are the copies of the whip issued by the PW4 President, District Congress Committee in tune with the provisions under Clause 2 (iva) of Section 2 of the Act. R4 (2) provides that which issuing a direction under sub rule (1) directly, the person who give it shall obtain a receipt from the member and while sending it by registered post, it shall be done along with acknowledgment due and while effecting it by affixture it shall be done in presence of at least two witnesses. Further it is also provided that a copy of the ‘directions in writing’ to the Secretary of the local authority so as to ensure the existence of a valid direction by the political party to



its members in terms of clause (i) of sub rule (1) of Rule 4. Copy of the whips intimated to the Secretary of the Ezhumattoor Grama Panchayat, vide Exhibits A5 and A6. The respondent's version is that she obeyed the whip to cast her vote in favour of Sri. Ajikumar, the official candidate of INC for the Chairman, Standing Committee, but it became invalid as she forgot to sign and affix name on the reverse side of the ballot. At the same time, she contested to the post defying the direction given by the DCC President not to contest, claiming that she was not in receipt of any whip to that effect. Therefore it can be inferred that the respondent has a constructive knowledge of the 'direction in writing'/whip and the 'direction in writing'/whip was issued following the procedures as mandated under Rule and hence the respondent is liable to be disqualified on account of disobeying the whip under the second limb of Section 3(1)(a).

Alongside, it is obvious from the facts of the case that the respondent herein, who was elected to the Ezhumattoor Grama Panchayat as an official candidate of INC and, while so, contested and elected as a member of Standing Committee with the support of rival political party. Standing in an election as a candidate in Standing Committee election, when admittedly there is no such mandate from the political party and then defeating the candidate, whom the competent authority of the party described and recognized as official candidate of the party, by securing the vote of the opposition can only be an act of disloyalty. Needless to say, that an action of disloyalty of such nature would



amount to voluntarily giving up membership of the particular political party and the said act invariably attracted the first limb of Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act.

In the result O.P is allowed and the Respondent is declared as disqualified for being a member of Ezhumattoor Grama Panchayat under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act. The Respondent is also declared as disqualified for contesting as candidate in an election to any Local Authorities for a period of 6 years from this date as provided by Section 4(3) of Act.

Pronounced before the Commission on the 22nd day of February, 2024.

Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

- 1) PW1 : Sri. R. Krishna Kumar
- 2) PW2 : Smt. Sugatha Kumari
- 3) PW3 : Sri. Joby
- 4) PW4 : Prof. Satheesh Kochuparambil

Witness examined on the side of the Respondent

- 1) RW1 : Smt. Leelamma Sabu
- 2) RW2 : Sri. Viju Thomas
- 3) RW3 : Sri. Binu T. Samuel
- 4) RW4 : Sri. Muhammed Nahas

Documents produced on the side of the Petitioner

- 1) A1 : Copy of the Register showing the party affiliation of members of Ezhumattoor Grama Panchayat.
- 2) A2 : Copy of the whip issued to Smt. Leelamma Sabu, also showing the receipt.
- 3) A3 : Copy of the whip issued to Smt. Leelamma Sabu showing the affixture details.
- 4) A4 : Copy of the whip dated 30.09.2021 issued to Smt. Leelamma Sabu showing the affixture details.
- 5) A5 : Copy of the whip dated 30.09.2021 issued to the Secretary, Ezhumattoor Grama Panchayat.
- 6) A6 : Copy of the whip dated 30.09.2021 issued to Returning Officer, Ezhumattoor Grama Panchayat.



B. SURENDRAN PILLAI
 No. 101664
 SECRETARY
 State Election Commission
 Kerala, Thiruvananthapuram

- 7) A7 : Copy of the meeting minutes in connection with the Standing Committee Election held on 01.10.2021.

Documents produced on the side of the Respondent

- 1) B1 : Copy of the letter dated 01.10.2021 from Sri. Viju Thomas, Mandalam Congress President to Sri. Satheesh Kochuparambil, DCC President
- 2) B2 : Copy of the application submitted by Thalayar Gopi, DCC Member to President, DCC, Pathanamthitta

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

// True Copy //


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Pen No : 101664
SECRETARY
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Kerala, Thiruvananthapuram

