

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

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

Tuesday, the 5th day of August, 2025

O.P. No.59 of 2023 & O.P. No. 60 of 2023

O.P. No.59 of 2023

Petitioner

**: Sri. Jomy Joseph,
S/o Chandy Joseph,
Kavalam Puthuparambil, Kavala,
Changanassery P.O.,
Kottayam District - 686101**

**(Councillor, Ward No. 07,
Changanassery Municipality)**

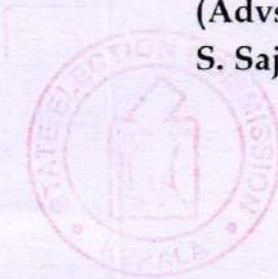
(Adv. A. Santhosh Kumar)

Respondent

**: Sri. Varghese Thomas @ Babu Thomas
S/o Thomas,
Neelathumukkil, Kakkamthodu,
Vazhappalli East,
Changanassery P.O.,
Kottayam District - 686101**

**(Councillor, Ward No. 33,
Changanassery Municipality)**

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



O.P. No. 60 of 2023

Petitioner : Sri. Jomy Joseph,
S/o Chandy Joseph,
Kavalam Puthuparambil, Kavala,
Changanassery P.O.,
Kottayam District - 686101

(Councillor, Ward No. 07,
Changanassery Municipality)

(Adv. A. Santhosh Kumar)

Respondent : Sri. Raju Chacko
S/o P. T. Chacko,
Plamparambil,
Fathimapuram P. O.,
Changanassery,
Kottayam District - 686102

(Councillor, Ward No. 17,
Changanassery Municipality)

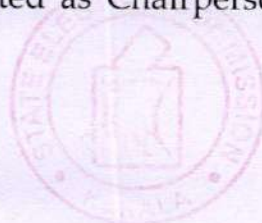
(Advs. Kallambalam S. Sreekumar &
S. Sajitha)



COMMON ORDER

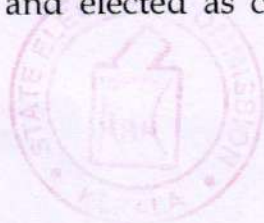
These original petitions are filed by petitioner under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for declaring that respondents, who are the elected Councillors of Changanassery Municipality, have committed defection and hence disqualified to continue as Councillors of Changanassery Municipality and also for declaring them as disqualified to contest as a candidate in any election to the local authorities for a period of six years. Since common questions of law and facts arise in these cases they are tried together, as OP No. 59/2023 as leading case.

2. The petitioner's case is that: - The petitioner and respondents have contested the General Election to the local authorities held in the year 2020 as candidate of Indian National Congress (hereinafter 'INC'), in the official symbol "Hand" and got elected as Councillors of Changanassery Municipality. Petitioner is representing ward No. 7. Respondents are representing ward No. 33 and 17 respectively. After the election, respondents filed sworn declarations before the Secretary of the Municipality stating their allegiance to INC as Councillors of INC. On the basis of such declaration, the Secretary of the Municipality had prepared Political Affiliation Register, wherein also it is stated that respondents are elected Councillors belonging to INC. INC is a constituent of UDF coalition. In Changanassery Municipality the contest was mainly between the UDF and LDF.
3. Altogether 37 elected Councillors in the Changanassery Municipality. Out of it, 18 Councillors belonging to UDF coalition, 16 Councillors belonging to LDF coalition and 3 Councillors belonging to BJP political party. UDF consists of 9 Councillors belonging to INC, 4 Councillors belonging to Kerala Congress, 2 independent Councillors supported by UDF and 3 pure independent Councillors. LDF consists of 12 Councillors belonging to CPI (M), 1 Councillor each belonging to Kerala Congress (M) and Janathipathiya Kerala Congress, 2 independent candidates supported by LDF.
4. On getting majority, one Smt. Sandhya Manoj, a pure independent Councillors was elected as Chairperson of Changanassery Municipality



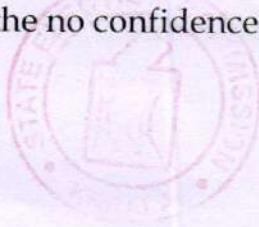
with the support of UDF. While so, LDF Councillors in the Municipality moved no confidence motion against the Chairperson of the Municipality for removing her from the office. The no confidence motion against the Chairperson was slated for consideration on 27.07.2023. The UDF coalition decided to defeat the no confidence motion.

5. In the aftermath of no confidence motion, the District President of the INC, who had recommended the symbol of INC to the candidates belonging to INC, issued direction in writing (whip) dated 19.07.2023 to the Councillors belonging to INC, including the respondents directing them to abstain from the meeting of the no confidence motion scheduled to be held on 27.07.2023. The whip was issued to the respondents by registered post with acknowledgment due. However, respondent purposely evaded from the acceptance of whip, knowing the contents of the whip, and the registered post containing the whip was ultimately returned to the sender with the endorsement "unclaimed". In addition to the above, whip was tried to be served on the respondents directly, which was refused by the respondents. Hence the whip was served by affixture at the residences of the respondents in the presence of witnesses on 26.07.2023. Further, a copy of the whip was communicated to the Secretary of the Changanassery Municipality as mandated under rule 4 (2) of the Rules.
6. On 27.07.2023, when the no confidence motion was taken up for consideration in the meeting of Councillors of the Municipality, the respondents, who are legally bound by the direction of political party, participated in the meeting, take sides with opposite LDF coalition and voted in favour of the no confidence motion. Resultantly, the UDF supported Chairperson Smt. Sandhya Manoj was removed from the office. The said conduct of the respondents is in gross defiance of the whip issued by their political party and by colluding with the opposite LDF. Respondent have voluntarily abandoned the membership of INC, by joining the opposite LDF coalition. Respondents by their conduct have committed defection under both limbs of section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act and liable to be disqualified under the provisions of the Act.
7. The respondents' case in brief is that; - It is true that respondents were contested and elected as candidates of INC from ward No. 17 and 13



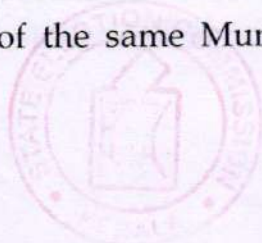
respectively of the Changanassery Municipality. There is no lawful direction from the political party INC as to its stand on the no confidence motion against Chairperson of the Municipality held on 27.07.2023. It is true that there are altogether 37 elected Councillors in the Municipality, out of which 3 Councillors are independents. After the election, no political party or coalition have secured majority in the Municipal Council to elect Chairperson by its own. Using the said situation one Sandhya Manoj, an independent elected Councillors, contested as candidate for the office of Chairperson of the Municipality and won the election. It is pertinent to note that said Sandhya Manoj has no connection with INC or UDF. During the General Election held in 2020, she contested from ward No. 15 against the candidates of UDF by soliciting votes as an independent candidate. The tenure of Smt. Sandhya Manoj as Chairperson was an utter failure and she was committed several corruptions. In that background certain members moved no confidence motion against her.

8. It is false and incorrect that whip have been served to the respondents. In fact, no written directions by way of whip have been served to the respondents by INC in connection with the no confidence motion held on 27.07.2023. Respondent never refused any postal cover containing the whip as alleged. It is false and incorrect that respondents purposely evaded from the acceptance of postal article. It is equally untrue that on 26.07.2023 whips have been affixed in the front door of the respondent's house. Respondents have no knowledge about the communication of alleged whip to the Secretary of the Municipality. The documents produced by the petitioner are created by him for filing these original petitions. Respondents have no knowledge about the existence of alleged whip, prior to the meeting of no confidence motion. Respondents never violated any whip issued by their political party. The no confidence motion was moved against a corrupted person and respondents have every right to oust her from the post under the provisions of the Kerala Municipality Act. No person can restrain a Councillors from exercising of his rights conferred by law to oust a corrupt Chairperson from the office by supporting the no confidence motion.
9. Respondent admitted that they participated in the meeting of no confidence motion against Smt. Sandhya Manoj held on 27.07.2023 and voted in favour of the no confidence motion. However, the definite case of



the respondents is that they never cast vote against either an INC or UDF Councillor and therefore there exists no question of any voluntarily giving up of membership of INC. Respondent, never acted against the interest of their political party INC. The original petitions lack merit and liable to be dismissed.

10. The evidence in this case consists of oral testimonies of PW1 to PW7, RW1 to RW5, documents Ext.A1 to A23, Ext.B1 and Ext.X1 to X5.
11. Both sides were heard.
12. The following points arise for consideration, namely; -
 - (i) Whether respondents have been served the whip prior to the meeting of no confidence motion against the Chairperson of the Municipality held on 27.07.2023, as mandated under section 3 (2) of the Act?
 - (ii) Whether respondent was aware of the decision and direction of INC to abstain from the meeting of no confidence motion held on 27.07.2023?
 - (iii) Whether the respondents have disobeyed the decision and direction of INC in the meeting of no confidence motion held on 27.07.2023?
 - (iv) Whether respondents by their conduct voluntarily abandoned the membership of INC?
 - (v) Whether respondents have committed defection as contemplated under section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act?
13. Points 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 admittedly an elected Councillors of Changanassery Municipality. The Original petitions were filed by the petitioner alleging defection against respondents, who are elected Councillors of Changanassery Municipality. Therefore, undisputedly petitioner is having *locus standi* to file the petition before the Commission under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act. Petitioner was contested and elected as candidate of INC from ward No.7 of the Changanassery Municipality and respondents were admittedly contested and elected as candidates of INC from ward No. 33 and 17 respectively of the same Municipality. According to the petitioner, the



respondent who were elected as candidates of INC in the Municipality, voted in favour of the no confidence motion moved by opposite LDF and thereby incurred defection under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act. Commission ordered joint trial of both original petitions, since it appears that common question of law and facts arises in both the proceedings.

14. After General Election, admittedly the UDF Councillors in the Municipality, including the respondents voted in support of Smt. Sandhya Manoj for the office of Chairperson and she became the Chairperson of Municipality with majority votes. LDF is the main opposition in the Municipality. It is evident from the Political Affiliation Register, which is marked as Ext.A8 (a) that Smt. Sandhya Manoj was contested and elected as independent candidate not belongs to any political party or coalition. There is no dispute over the entries in Ext.A8 (a). The District President of INC, Sri. Nattakam Suresh, who was examined as PW6 admitted that, Sri. Joshi Philip was the District President of INC at the time of General Election. However, PW6 explained the circumstances under which INC fielded Smt. Sandhya Manoj as their candidate after the General Election. He admitted that UDF having no absolute majority in the Municipality to form Board. Therefore, UDF supported independent candidates for the posts of Chairperson and Deputy Chairperson of the Municipality. Accordingly, as per understanding Smt. Sandhya Manoj was elected as Chairperson for a period of two years. However, PW6 further clarified that no decision had been taken in UDF to remove her from position after the expiry of said two years tenure. The respondent who was examined as RW1 and RW2 confirmed that Smt. Sandhya Manoj was elected as Chairperson with the support of all UDF Councillors, including respondents. The said fact is further corroborated by the record of Minutes of the UDF meeting held on 28.12.2020, which is marked as Ext.A23. Ext.A23 would goes to show that UDF Councillors, including the respondent were participated in the meeting held on 28.12.2020 and taken a decision to vote in support of Smt. Sandhya Manoj for the post of Chairperson. Therefore, petitioner has proved that Smt. Sandhya Manoj, a pure independent Councillor was elected as Chairperson of the



Municipality with the support of all the UDF Councillors in the Municipality.

15. While so, LDF Councillors in the Municipality moved a no confidence motion against Smt. Sandhya Manoj, which was scheduled to be held on 27.07.2023. However, according to the respondents the no confidence motion against Smt. Sandhya Manoj was moved by Councillors beyond political lines. However, District President of INC in cross examination as PW6 categorically stated that no confidence motion against Smt. Sandhya Manoj was moved by LDF. It is further corroborated by the Ext.X5 Minutes of the meeting of no confidence motion that no confidence motion was moved by LDF with the support of respondents and one independent. Therefore, there is material on record that no confidence motion against Smt. Sandhya Manoj was moved by LDF.
16. In the aftermath of no confidence motion against Chairperson, the District President of INC issued whip to all elected members belonging to INC, including the respondents directing them to abstain from the meeting no confidence motion. The INC political party intended to defeat the no confidence motion by abstaining from the meeting. The copy of whip issued to respondent in OP No. 59/2023, Sri. Varghese Thomas, is marked as Ext.A9. Ext.A11 is the postal receipt in proof of despatch of postal article to his address, through registered post with acknowledgment due. Ext.A12 is the returned postal article containing the whip. The copy of whip issued to the respondent in O P No. 60/2020, Sri. Raju Chacko is marked as Ext.A10. Ext.A13 is the postal receipt in proof of despatch of postal article to his address through registered post with acknowledgment due. Ext.A14 is the returned postal article containing the whip.
17. According the petitioner on refusal of respondent to accept the whip, when tendered directly, the political party through its office bearers served the whip by affixture at the premises of the residences of the respondents. Ext.A15 is the duplicate copy of whip affixed at the residence of the respondent in OP No. 59/2023 in the presence of witnesses. Ext.A16 series are the photographs taken at the time of affixture. Ext.A17 is the duplicate copy of the whip affixed at the residence of the respondent in OP No.60/2020. Ext.A17 series are the photographs taken at the time of affixture. Ext.A19 and A20 are the copy of whip communicated the



Secretary of the Changanassery Municipality as provided under section 3 (2) of the Act.

18. The District President of the INC, during the examination before the Commission as PW6, identified Ext.A9 and Ext.A10 whip issued by him to the respondents, Ext.A11 and Ext.A13 postal receipts, Ext.A12 and Ext.A14 returned postal articles. PW6 further identified the Ext.A15 and Ext.A17 duplicate copy of the whip affixed at the residence of the respondents and Ext.A19 and Ext.A20 copy of the whip communicated to the Secretary of the Municipality. Though PW6 was cross examined at length by the Counsel for the Respondent PW6 maintained his consistent stand.
19. The consistent case of the respondents is that they were not served whip by their political party prior the meeting no confidence motion held on 27.07.2023. However, petitioner has proved the despatch of whip to the addresses of the respondents, through registered post with acknowledgment due on 24.07.2023. It is also evident from Ext.A12 returned postal article that postal intimation was given to the respondent in OP No.59/2023 on 25.07.2023. However, he was not turned up to collect the postal article and therefore it was ultimately returned to the sender with the endorsement "absent". It is further evident from Ext.A14 returned postal article that postal intimation was also given to the respondent in O P No. 60/2023 on 25.07.2023 and again on 26.07.2023. However, he was not turned up to collect the postal article and therefore it was returned to the sender with the postal endorsement " addressee unclaimed". Though different endorsements are made on Ext.A12 and A14, in substance it signifies that the addressees did not take possession of the postal articles. RW1 in cross examination denied that he was issued intimation by the postal authorities before returning the postal article. He has not examined the postman concerned to rebut the endorsements on the postal cover.
20. It is significant to note that respondents have no case that the addresses shown in Ext.A12 or A14 postal covers are incorrect. In fact, respondents while examining as RW1 and RW2 admitted that the addresses shown in Ext.A12 and A14 are correct addresses.

RW1 in cross examination deposed that, -

"Ext.A14 shown to me. ഇതിലെ From അഡ്രസ് നാട്ടുകം സുരേഷ് , DCC പ്രസിഡന്റിന്റേയും , To അഡ്രസ് എന്റേതുമാണ് . പ്ലാപ്പററിൽ എന്നത് എന്റെ വീടുപേരാണ് .



Ext.A14 -ലെ അഡ്രസ് എന്റേതാണ്. അഡ്രസ് കറക്ട് ആണ് (Q) കവറിന്റെ പിറകിൽ "unclaimed എന്ന് കാണുന്നു . ശരിയാണോ ? (Ans) ശരിയാണ്"

RW2 in his cross examination deposed that, -

"കൂറമാറ്റ നിരോധന നിയമം ഞാൻ വായിച്ചു മനസ്സിലാക്കിയിട്ടുണ്ട്. ആ നിയമമനുസരിച്ച് പാർട്ടിയിലെ ചീഫും നൽകാൻ അധികാരം ഉള്ളയാൾക്ക് പാർട്ടിയിലെ അംഗങ്ങൾക്ക് നിർദ്ദേശം നൽകാനും അധികാരം ഉണ്ടെന്നറിയാം. ഞാൻ DCC കോട്ടയത്തിന്റെ കീഴിലുള്ള പാർട്ടി പ്രവർത്തകനാണ്. കോട്ടയം DCC പ്രസിഡന്റ് നാട്ടകം സുരേഷിനെ അറിയാം. Ext A9 shown to me. ഇത് കോട്ടയം DCC പ്രസിഡന്റിന്റെ ഒപ്പും സീലും അടങ്ങുന്ന രേഖയാണ്. ഈ കത്ത് എനിക്ക് അഡ്രസ്സ് ചെയ്തിട്ടുള്ളതാണ്. Ext A11 Shown to me. ഇത് എനിക്ക് അഡ്രസ്സ് ചെയ്തിട്ടുള്ള പോസ്റ്റൽ റെസിപ്റ്റ് ആണ്. Ext. A12 shown to me. ഇത് DCC പ്രസിഡന്റ് അയച്ച രജിസ്റ്റേഡ് പോസ്റ്റൽ ആർട്ടിക്കിൾ ആണ്. Ext A 12 രേഖയിൽ അക്നോളജ്സ് കാർഡ് ഉണ്ട്. Ext A12 രേഖയിൽ കാണുന്നത് എന്റെ ഫുൾ അഡ്രസ്സ് ആണ്. Ext A12 പ്രകാരം കവറിന് പുറത്ത് 25.07.2023-ന് Postal authority intimation തന്നെയായി കാണുന്നു. (Q) എന്ത് കാരണത്താലാണ് തിരിച്ചയച്ചത്? (Ans) Absent എന്ന രേഖപ്പെടുത്തി, Return to sender എന്ന് കാണിച്ചിരിക്കുന്നു."

Respondents have neither disputed the correctness of their addresses nor the geniuses of the postal endorsements. When a notice is sent by registered post to the correct address, there is a presumption that it has been duly served to the addressee.

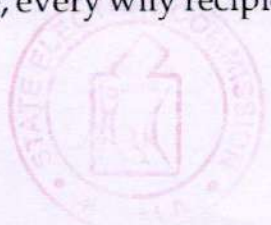
21. Further, the manner in which a political party or coalition may give direction to its members is provided in rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules, which reads as follows; -

" (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. Copy of the direction in writing shall also be given to the Secretary."

22. In *Praveena Ravikumar V State Election Commission* (2023 (6) KLT 845) the Hon'ble High Court has examined the legal effect of returning the postal article either as addressee " unclaimed" or "refused" and held that, -

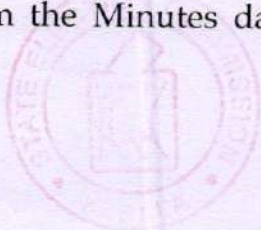
" If the notice sent to the correct address is returned either as unclaimed or as addressee left, the failure to serve the notice can only be attributed to the addressee and not to the sender" (Para 21)

" Refusal of notice and notice returned as unclaimed, both tantamount to service of notice, if it was intimated within time especially in the context of the Act. Otherwise, every wily recipient would be able to defeat the process



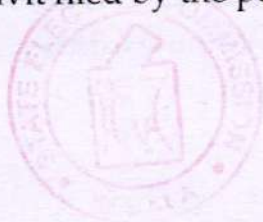
of law by allowing the postal article to be returned as unclaimed. In *Harcharan Singh V Smt. Shivani and Others* (1981) 2 SCC 535) and in *Jagadish Singh V Nattu Singh* (1992) 1 SCC 647) the Supreme Court had observed that a notice refused to be accepted can be presumed to have been served on him. In the said decisions, the Supreme Court observed that when a notice is sent to the correct address, the obligation of the sender ends with that, and if he does not claim the notice, it shall be deemed that there was valid service of notice. Viewed in the above perspective, it is evident that the respondents were served with the whip" (Para 22).

23. Petitioner has a case that in addition to sending the whip through registered post, the District President of INC has served the whip to the respondents by affixing it at the premises of the residences of respondents in the presence of witnesses. PW6, the District President of INC identified the Ext.A15 and Ext.A17 duplicate copy of the whip served through affixture. There is no cross examination of PW6 on the above aspect. On the reverse side of Ext.A15 and Ext.A17 duplicate copy of whip, contains Mahazers prepared by PW3, who is the Changanassery East Block Committee President of INC in the presence of two witnesses each. One of the witnesses was examined as PW4, who supported the case of the petitioner. PW4 identified his signature in Ext.A17. One of the witnesses of Ext.A15 Sri. Shyam Samson is a Councillor of the Municipality. Ext. A16 series and Ext.A18 series are photographs taken at the time of affixture of whip PW3 and PW4, who were present at the time of affixture of whip identified the Ext.A16 series and Ext.A18 series photographs.
24. The District President of INC, in cross examination as PW6, further deposed before the Commission that a meeting of parliamentary party of INC in Changanassery Municipality was convened prior to the no confidence motion and which takes a decision to abstain from the meeting of no confidence motion against Smt. Sandhya Manoj. Petitioner examined PW7, who is the UDF Niyojakamandalam Secretary of UDF. PW7 produced the Minutes Book of Changanassery Municipality UDF Parliamentary party Minutes as Ext A23. It appears that minutes of the meeting of parliamentary party is being recorded regularly for a period from 28.12.2020 to 10.02.2024 as evident from Ext.A23 Minutes Book. It further appears from the Minutes dated 24.07.2023 in Ext.A23 Minutes



Book that a meeting of UDF Parliamentary Party was held on 24.07.2023 and taken a decision to issue whip to the elected Councillors of UDF and independents supporting UDF, directing them to abstain from the no confidence motion moved by LDF. Smt. Sandhya Manoj was also present in the UDF meeting held on 24.07.2023.

25. As per section 3 (2) of the Kerala Local Authorities (Prohibition of Defection) Act and rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules it is mandatory that copy of the whip should be given to the Secretary of the Municipality concerned. In the present case, the District President of the INC, in cross examination categorically stated that he has entrusted the Parliamentary Party leader of UDF in the Municipality, PW1 to hand over the copy of the whip to the Secretary of the Municipality. PW1 in cross examination corroborated the fact that Ext.A19 and A20 whip were handed over to the Secretary by himself. The Municipal Secretary, who was examined as PW2 confirmed the receipt of Ext.A19 and A20 copy of whip on 25.07.2023 and produced the office copy thereof as Ext.X4. Therefore, in unequivocal terms petitioner has proved the service of copy of whip to the Secretary of the Municipality as mandated under law.
26. PW6, the District President of INC, in his cross examination made clear that Smt. Sandhya Manoj was elected as Chairperson with the support of UDF for the initial period 2 years. However, she continued in the post beyond the period of two years with the concurrence of UDF. There is no direction to Smt. Sandhya Manoj by UDF to step down from the post. Neither INC nor UDF has taken a decision to remove her from the post after the expiry of two years. On going through the objection, it appears that her overstayed in the post of President was not a reason for the respondents to support the no confidence motion against her.
27. In para 10 of the Chief affidavit filed by respondents, it is admitted that they attended the meeting of no confidence motion against Smt. Sandhya Manoj and voted in favour of the no confidence motion. RW1 further admitted that one of the signatories of the Minutes dated 27.07.2023 Sri. Arun Mohan belongs to CPI (M), a constituent of LDF. However, in para 22 of the Chief affidavit filed by the petitioner as PW1, it stated that



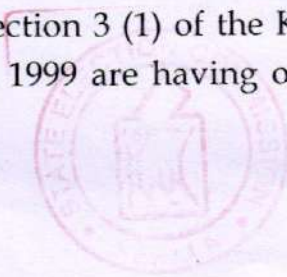
"തെരഞ്ഞെടുപ്പിൽ യു.ഡി.എഫ്- നെ രാഷ്ട്രീയമായി എതിർത്ത എൽ.ഡി.എഫ്-ന്റെ സഹായത്തോടെ ചങ്ങനാശ്ശേരി മുൻസിപാലിറ്റി ചെയർപേഴ്സനെതിരായിട്ടുള്ള അവിശ്വാസ പ്രമേയത്തിൽ എൽ.ഡി.എഫ്- നോടോപ്പം നിന്ന് പാർട്ടി വിപ് ലംഘിച്ചതുവഴി പാർട്ടിക്ക് സ്ഥാനവും ഭരണവും നഷ്ടപ്പെടുകയും പാർട്ടി പ്രവർത്തകർക്കിടയിൽ കടുത്ത ആക്ഷേപത്തിനും മുന്നണിക്ക് പൊതുജന മദ്ധ്യത്തിൽ അപഹാസ്യതയ്ക്കും ഇടവരുത്തിയിട്ടുള്ളതാകുന്നു."

It is pertinent to note that there is no cross examination on the above statement. It is settled legal position that the testimony of a witness which is not challenged or controverted in cross examination is deemed to be admitted by the cross examining party.

28. There is enough material on the record that INC has taken a conscious decision to abstain from the meeting of no confidence motion. From the evidence of PW6, it is crystal clear that INC is desirous of the continuance Smt. Sandhya Manoj as Chairperson. Accordingly, the District President of INC issued whip to the respondents directing them to abstain from the meeting of no confidence motion. Petitioner examined the present Authorised Officer of the Commission, who was appointed under section 19 of the Kerala Municipality Act, as PW5. PW5 produced the Minutes of the Meeting of No confidence motion held on 27.07.2023 as Ext.X5. Ext.X5 would goes to show that both respondents were attended the meeting of no confidence motion held on 27.07.2023, cast their valid votes in favour of the no confidence motion and ultimately the no confidence motion was carried with majority. In para 8 of the Objection respondents admitted that there are altogether 37 elected Councillors in the Municipality. Further, respondent has not controverted the case of the petitioner that out which 16 Councillors are belonging the LDF coalition. Therefore, LDF coalition is not having the required majority its own, to carry the no confidence motion against Chairperson. However, there is material on the record that respondents joined hands with the elected Councillors of opposite LDF coalition to expel the Chairperson of the Municipality supported by INC, in violation of the whip issued by the political party. Respondent has no case that barring respondents no other Councillors belonging to INC/UDF had participated the meeting of no confidence motion. In other words, no Councillors of UDF, other than respondents participated the meeting of no confidence motion.



29. From the side of the respondent, RW3, RW4 and RW5 were examined RW3 is stated to be a former Booth President of INC. According to him the no confidence against Chairperson was moved by LDF, UDF and BJP. RW4 is stated to be a former Booth Vice President of INC. According to him there is a decision by the local unit of INC to move no confidence motion against Smt. Sandhya Manoj. RW5 is stated to be the former Changanassery West Block President of INC. He deposed before the Commission that LDF secured majority of seats in the Municipality. On going through the objection, even the respondents have no such case. It appears that RW3 to RW5 are strongly interested witnesses and their testimonies are against the substantive evidence on the record and hence cannot be relied on.
30. In para 13 and 17 of the objections, respondents have raised the allegations of corruption and nepotism against the Chairperson during her tenure. Therefore, according to him Councillors irrespective of political affiliation moved no confidence motion against the Chairperson for removing her from the position. However, respondents have not pointed out any single instance of corruption or nepotism by the Chairperson.
- The Hon'ble Apex Court in *Babubhai Muljibhai Patel V Nandlal Khodidas Barot* (1974) 2 SCC 706) examined this aspect and held as follows, -
- "There is no legal bar to the passing of a motion of no confidence against an authority in the absence of any charge of impropriety or lapse on the part of that authority. The essential connotation of a no confidence motion is that the party against whom such motion is passed has ceased to enjoy the confidence of requisite majority of members." (emphasis supplied)
- Therefore, the allegations of corruption and nepotism levelled against the Chairperson are not relevant considerations in moving no confidence motion. Hence the case of the respondent in this regard is unsustainable.
31. In para 17 of the objection respondents asserted that they have ample authority to move no confidence motion against a corrupt Chairperson to protect the interest of the Municipality. The said contention is already found unsustainable. Further, according to the respondents there are clear provisions in the Kerala Municipality Act conferring rights to a Councillors to move no confidence motion against an erring Chairperson. In fact, the provisions of section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 are having overriding effect over the provisions of



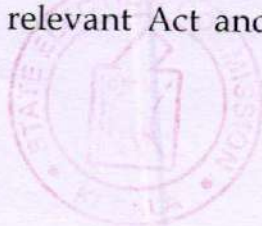
Kerala Municipality Act, 1994. Therefore, the rights conferred under section 19 of the Kerala Municipality Act to a Councillors is always subject to the provisions of section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. In other words, the provisions of section 3 (1) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 will prevail over the provisions of Kerala Municipality Act, 1994.

32. Further, in *Varghese VV V. Kerala State Election Commission* (2009 (3) KLT 1) the Hon'ble High Court observed that

"9. The learned Senior Counsel Sri. Ramkumar contends that in modern democracy the elected member is free to vote according to his conscience, in the absence of specific whip, particularly in view of the modern trends in democracy-intra party groups. We are afraid, the Court will not be justified in taking judicial notice of such developments and in re-writing law. The Court shall only analyse the facts and decide the case in accordance with law and upholding the spirit of laws. The law, as it stands now, is unambiguously clear that one has to be loyal to his political party. The situation would be different if the political party itself, taking note of such strange realities, permits the elected members to cast conscience vote, in such situations the whip itself is for decision by the individual concerned according to his conscience."

33. The Hon'ble High Court in *Nizar Muhammed V Misy Shaji* (Judgment dated 18.12.2024 in WA No. 1454/2024) observed that

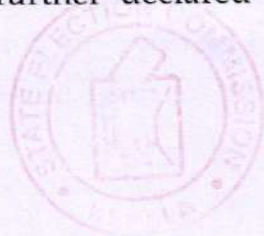
"12. Appellant does not dispute that he had declared his allegiance to the coalition UDF after getting elected as a member of the panchayat. Appellant had voted in the election to the post of President of the panchayat in support of the independent candidate Mrs. Cissy Jaison, who was fielded by the UDF. It is also a germane fact that Appellant got elected as Vice President of the panchayat as the candidate fielded by UDF. His resignation from the said post was not decided by UDF. A no confidence motion was moved against Mrs. Cissy Jaison after Appellant resigned from the post of Vice President. As proved before the Commission, the decision of UDF was to abstain from voting. Though the President was a person elected to the post with the support of UDF, the Appellant supported the no confidence motion moved by opposite coalition.....In view of the provisions of the relevant Act and law laid down by this Court in



various decisions, we are of the view that these acts of the Appellant are sufficient to conclude that he had voluntarily withdrawn from the coalition which he was a part and also joined another coalition. The shifting of loyalty is vivid. Therefore, he must be considered to have voluntarily given up his membership."

The facts highlighted in the above judgment are more or less similar to that of present case.

34. In *Rama Bhaskaran V Kerala State Election Commission and Others* (2018 (2) KHC 126) the Hon'ble High Court held that "a person, who is a member of a political party, which in turn is part of coalition, who acts against the interest of coalition or who won an election with the support of members of a rival coalition would be seen as acting against the interest of his own political party, which allied itself with a coalition."
35. It has come out in evidence that respondents were aware of the decision and direction of the political party to abstain from the meeting of no confidence motion moved by LDF coalition, against the Chairperson supported by UDF. Admittedly, LDF coalition is having no required strength in the Municipality to expel the Chairperson through no confidence motion, but respondents in collusion with LDF, extended their support in expelling the UDF supported Chairperson and thereby overthrow the UDF rule in the Municipality. They succeeded in their efforts. The respondents have also acted in defiance of the whip issued by their political party. There is also clear evidence that respondents shifted their political loyalty to the opposite LDF coalition through their overt acts. Therefore, the only inference possible is that respondents have voluntarily given up their membership of the INC political party, as provided under section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.
36. In the result OPs are allowed and the respondents in OP No.59/2023 and OP No.60/2023 are declared as disqualified for being Councillors of Changanassery Municipality as provided under section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999. The respondents are 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 5th day of August 2025

Sd/-
A. SHAJAHAN
STATE ELECTION COMMISSIONER



APPENDIX

Witness examined on the side of the Petitioner

- PW1 - Jomy Joseph
PW2 - Saji L. S.
PW3 - K. A. Joseph
PW4 - Ramesh Babu K. M.
PW5 - Shaji Clement
PW6 - Nattakam Suresh
PW7 - Mathukutty Plathanam

Witness examined on the side of the Respondent

- RW1 - Raju Chacko
RW2 - Varghese Thomas
RW3 - Anil P. Antony
RW4 - Joshi Thomas
RW5 - Sebin John

Documents produced on the side of the Petitioner

- A1 - Copy of ID card issued by Changanassery Municipal Secretary to Sri. Jomy Joseph, Councillor, Changanassery Municipality.
A2 - Copy of the letter for allotment of symbol to Varghese Thomas dated, 21.11.2020 issued by Joshi Philip, President DCC, Kottayam to Returning Officer, Changanassery Municipality.
A3 - Copy of the nomination filed by Varghese Thomas in Form No. 02.
A4 - Copy of the letter for allotment of symbol to Raju Chacko dated, 21.11.2020 issued by Joshi Philip, President DCC, Kottayam to



Returning Officer, Changanassery Municipality.

- A5 - Copy of the nomination filed by Raju Chacko, in Form No. 02
- A6 - Copy of the declaration in form No. 2 submitted by Varghese Thomas.
- A7 - Copy of the declaration in form No. 2 submitted by Raju Chacko.
- A8 - Copy of the relevant page of the register showing the party affiliation of the elected councillors of Changanassery Municipal Council.
- A8(a) - Copy of the relevant page of the register showing the party affiliation of the elected councillors of Changanassery Municipal Council.
- A9 - Copy of the whip dated 19.07.2023, issued by Nattakam Suresh, President, DCC Kottayam, to Varghese Thomas.
- A10 - Copy of the whip dated 19.07.2023, issued by Nattakam Suresh, President, DCC Kottayam, to Raju Chacko.
- A11 - Postal receipt.
- A12 - Returned Postal Article addressed to Varghese Thomas, Municipal Councillor.
- A13 - Postal Receipt.
- A14 - Returned Postal Article addressed to Raju Chacko, Municipal Councillor.
- A15 - Copy of the whip dated, 19.07.2023 showing the affixture details.
- A16 (a, b, c) - Photograph
- A17 - Copy of the whip dated, 19.07.2023 showing the affixture details



A18 (a, b, c) - Photograph

A19 - Copy of the letter showing the receipt of intimation of whip by Secretary, Changanassery Municipality, given by the DCC President.

A20 - Copy of the letter showing the receipt of intimation of whip by Secretary, Changanassery Municipality, given by the DCC President.

A21 - Copy of the minutes of the meeting held on 27.07.2023 in connection with no confidence motion against Municipal Chairperson.

A22 - Malayala Manorama daily dated, 28.07.2023 (Page No. 04)

A23 - Minutes book of UDF Parliamentary Party and Swathanthra Block Party, Changanassery Municipality.

A23(a) Minutes of the meeting of UDF Parliamentary Party and Swathanthra Block Sakhyam on 24.07.2023.

A23(b) Minutes of the meeting of UDF Parliamentary Party dated, 12.08.2023.

Documents produced on the side of Respondent.

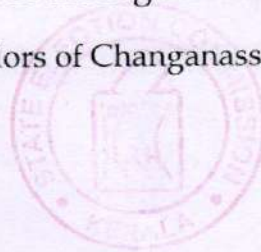
B1 - Copy of the letter dated 31.08.2022 from Raju Chacko and Babu Thomas to Nattakam Suresh, President DCC, Kottayam.

Documents produced on the side of the Witness

X1 - Declaration in form No. 02 submitted by Varghese Thomas (Original)

X2 - Declaration in form No. 02 submitted by Raju Chacko (Original)

X3 - Copy of the relevant page of the register showing the party affiliation of elected councillors of Changanassery Municipal Council.



- X4 - Letter from Nattakam Suresh, President DCC, Kottayam issued to Secretary, Changanassery Municipality.
- X5 - Copy of the minutes of the meeting held on 27.07.2023 in connection with no confidence motion against Municipal Chairperson

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

