

BEFORE THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM

PRESENT: SHRI.A SHAJAHAN, STATE ELECTION
COMMISSIONER

Tuesday, the 3rd day of February, 2026

O.P. No. 23 of 2024

Petitioner

: Geetha Suresh
W/o Suresh
Neduyakal Purayidam,
Paliyathodu,
Pozhiyoor P.O. Kulathoor
Thiruvananthapuram District

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

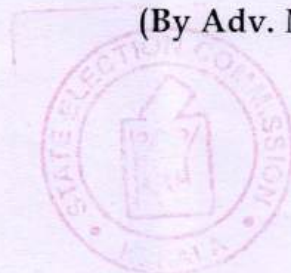
(By Advs. Mridul John Mathew &
Sajitha S.)

Respondent

: Santhosh Kumar K.
S/o Krishnan Nair
Manikyavilakath Veedu,
Naloorevettam
Plamootikada P.O.
Thiruvananthapuram District

(Member, Ward No.2, Kulathoor Grama
Panchayat)

(By Adv. M. S. Mahesh Dev)



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 member of Kulathoor Grama Panchayat 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 and respondent are elected members of Kulathoor grama panchayat representing ward 10 and 2 respectively. Petitioner and respondent were contested and elected as candidates of Indian National Congress (hereinafter "INC") in the General Election to local self government institutions held in 2020. The District President of the INC had recommended the election symbol "hand" to the respondent for contesting election from ward 2. After becoming as an elected member of the panchayat, respondent filed a sworn declaration before the Secretary of Kulathoor grama panchayat stating that he was contested as a candidate of INC. On the basis of said declaration the Secretary of panchayat prepared a register showing the political affiliation of the member, wherein also it is stated that respondent belongs to INC.
3. Altogether 20 members in Kulathoor grama panchayat. Out of which 9 members belonging to UDF, 6 members belonging to LDF and 3 members belonging to BJP and 2 independents. While so, the President of the panchayat resigned from the post and Commission scheduled the date of fresh election to the post of President as 29.01.2024. Prior to the election, INC convened a meeting of its parliamentary party on 23.01.2024 at Kulathoor Mandalam committee office of INC at Uchakkada for discussing the issue of ensuing President election. Though notice was issued to the respondent he did not attend the meeting. In the said meeting it was decided to field petitioner Smt. Geetha Suresh as the President candidate of INC.



4. Thereafter District President of the INC Sri. Palode Ravi issued whip to all the elected members of the INC including the respondent to vote in favour of Smt. Geetha Suresh, petitioner herein in the Presidential election. The whip issued by District President of the INC was attempted to be served to the respondent directly by the petitioner herself on 25.01.2024, but respondent refused to accept it. Thereafter on 26.01.2024 the Pozhiyoor Mandalam committee President of the INC reached the residence of the respondent and tried to serve the whip to the respondent directly. However, he refused to accept the same. Therefore, the whip was read over to him and affixed in front of the residence of respondent in the presence of the witnesses. All elected members of the INC except respondent accepted the whip when directly served. Copy of the whip was given to the Secretary of the panchayat and the Returning Officer concerned. Respondent having sufficient knowledge about the whip.
5. However, in the election to the post of President held on 29.01.2024, respondent stood as a candidate against the official candidate of INC with the support of opposite LDF. Respondent intentionally acted in violation of the whip issued by his political party and voluntarily given up membership of INC, in whose banner he was elected as member. Respondent committed defection and thereby incurred disqualification under section 3 (1) (a) of the Act.
6. The respondents' case in brief is that; -Respondent is an elected member belongs to INC. In the President election held on 29.01.2024, respondent was not the candidate of LDF as alleged. In the election the name of the respondent was proposed by Sri. Rajagopal and seconded by Sri. Ajith Pozhiyoor, both independent elected members. Respondent is not having any direct or indirect relation with the LDF or its members. But quite contrary, petitioner colluded with opposite BJP political party in the Presidential election held on 29.01.2025, which was questioned by the respondent. Therefore, the petitioner was in inimical terms with him. This petition is filed to wreak vengeance to the respondent. Petitioner was elected as the President of the panchayat on 29.01.2025 with the



support of BJP political party and a case against the BJP members in this connection is pending before the Commission under the provisions of Defection Act.

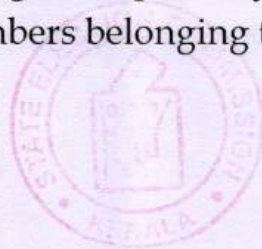
7. It is true that respondent is an active member of INC. He never given up membership of INC political party till date. Respondent has no information about the whip allegedly issued by INC. Therefore, there is no question of any violation of whip. No parliamentary party meeting was held on 23.01.2024 at the Mandalam Committee Office at Uchakkada prior to the Presidential election. No intimation was given to the respondent or any other elected member belonging to INC about the meeting.
8. The District President of the INC has not issued any whip to the respondent or any other elected member belonging to INC to cast vote in favour Smt. Geetha Suresh, petitioner herein. No such decision was taken by the INC in connection with the election held on 29.01.2024. Petitioner never made any attempt to serve whip to the respondent. None of the office bearers of the INC came to the residence of the respondent for communication of whip on 26.01.2024 as alleged. It is untrue that Sri. Dustan C Sabu read out and affixed the whip at the residence of the respondent. The whip produced is a forged document. Since there is no issuance of whip by INC there is no question of acceptance of whip by the respondent. Copy of the whip was not communicated to the Secretary of the panchayat or Returning Officer as alleged. Respondent never acted against the direction of INC till date. Respondent never got any support from LDF. The Minutes produced is a forged document. Respondent has not committed any act of defection and hence petition is liable to be dismissed.
9. The evidence in this case consists of oral testimonies of PW1 to PW8, RW1 and RW2, documents Ext.A1 to A4, B1 and B2 and Ext.X1 toX3 series.
10. Both sides were heard.
11. The following points arise for consideration, namely;-



- (i) Whether respondent was aware of the decision of the INC to field Smt. Geetha Suresh as its Presidential candidate in the election held on 29.01.2024?
- (ii) Whether copy of the whip was served to the Secretary of the Kulathoor grama panchayat as mandated under section 3 (2) of the Act?
- (iii) Whether respondents had disobeyed the decision and direction of the INC political party in the Presidential election held on 29.01.2024?
- (iv) Whether respondents have committed defection as contemplated under section under section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act?

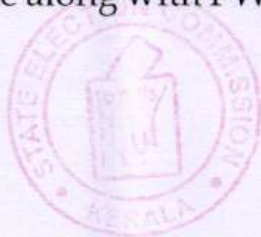
12. Point No. (i) to (iv); - As common questions of law and facts are arise for consideration in these points, they are considered together for convenience and to avoid repetition. The petitioner and respondent are elected members of Kulathoor grama panchayat representing ward 10 and 2 respectively. Admittedly, petitioner and respondent were contested and elected as candidate of INC in the General Election to local authorities held in December, 2020. Ext.A1 is the copy of the Party affiliation Register maintained by the Secretary of the panchayat as per rule 3 (1) of the Rules on the basis of the sworn declaration filed by elected members of the Kulathoor grama panchayat. Ext.X2 is the office copy of Ext.A1 produced by the PW6 Panchayat Secretary. Ext.A1 would goes to show that both petitioner and respondent are elected members belonging to INC. There is no dispute with regard to the *locus standi* of the petitioner. Admittedly, the District President of INC had recommended the official symbol of INC to the respondent for contesting election.

13. There is no dispute as to the political party position in Kulathoor grama panchayat as stated in para 4 of the petition. Altogether 20 elected members in Kulathoor grama panchayat. Out of which 9 members belonging to INC, 6 members belonging to LDF, 3 members belonging to



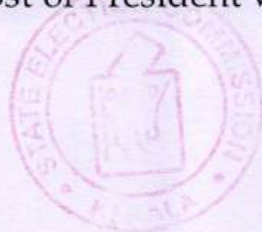
BJP and 2 independent members. Petitioner further proved the party position in the panchayat through Ext.X1 party affiliation register.

14. Admittedly after General Election, Sri. Sudharjunan, who belongs to INC was elected as President. After a tenure of 3 years, he resigned from the post of President, which necessitated fresh election to the post of President on 29.01.2024. Prior to the election, the INC convened a meeting of its parliamentary party at Kulathoor Mandalam Committee office at Uchakkada for discussing about the Presidential election. Though notice were given to all elected members belonging to INC, respondent did not attend the meeting. It was decided in the meeting to field petitioner as the Presidential candidate of INC in the election to be held on 29.01.2024.
15. Accordingly, Ext.A2 whip has been issued by the District President of the INC to the respondent. During the examination as PW7 the District President of the INC confirmed that he had issued Ext.A2 whip to the respondent in connection with the Presidential election held on 29.01.2024. PW7 further clarified that he issued whip to the respondent directing him to vote in favour of Smt. Geetha Suresh the candidate fielded by INC and it has been served to the respondent through Pozhiyoor Mandalam President of the INC Sri. Dunstan C Sabu.
16. Petitioner examined the Pozhiyoor Mandalam President of the INC Sri.Dunstan C Sabu as PW2. PW2 confirmed that he served Ext.A2 whip to the respondent by affixture at the residence of the respondent as respondent was refused to accept the whip when served directly. Ext.A2 is the duplicate copy of the whip affixed at the residence of the respondent in the presence of attesting witnesses Sri. T Santhosh Raj and Sri. V K Pushpasanan Nair, who were examined as PW3 and PW4 respectively. PW3, who is the booth President of INC and elected member of ward No.7 of the Kulathoor grama panchayat, during the examination confirmed that he along with PW2 served whip to the respondent by affixture. PW4 is the Kulathoor Mandalam President of INC who confirmed that he along with PW2 and PW3 served whip to the



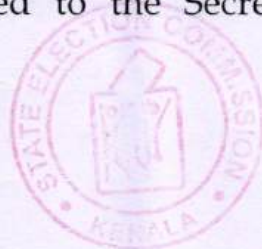
respondent by affixture at the residence of the respondent, as respondent was not accepted the whip when it served directly.

17. The definite case of the respondent as disclosed from objection filed by him is that Ext.A2 whip was not served by affixture at the residence of the respondent in the presence of PW2, PW3 and PW4 as alleged and the whip produced is a forged document. However, during the cross examination PW2 to PW4 categorically denied such a suggestion by the respondent. PW7 the District President of INC who issued whip to the respondent when confronted, refuted the allegation that Ext.A2 is a forged or fabricated document. Another case put forth by the respondent is that nothing forthcoming from Ext.A2 whip that it was affixed at the residence of the respondent. However, as a matter of fact Ext.A2 whip was addressed to the respondent. PW2 to PW4 and PW7 categorically stated that all elected members of INC except respondent accepted the whip when it served directly and therefore, they constrained to affix the whip at the residence of the respondent. PW2 to PW4 were actually took part in the affixture of whip. Therefore, there is enough material to conclude that copy of the whip was affixed at the residence of the respondent. Petitioner has also examined the present Returning Officer of Kulathoor grama panchayat as PW8. The office copy of the whip addressed to the elected members are marked through him as Ext.X3. Ext.X3 (b) is the office copy of the whip served to the respondent. Therefore, the existence of such a whip to the elected members of the INC including the respondent is proved through PW7 and PW8.
18. The Minutes of the Presidential election held on 29.01.2024 is marked as Ext.X1 through the PW5, Returning Officer who presided over the election meeting. Ext.X1 Minutes would go to show that all the elected members of the panchayat were present in the Presidential election held on 29.01.2024. It further shows that name of Smt. Geetha Suresh was proposed for the post of President by Smt. Laila Kumari and seconded by Smt. Serafin, both elected members belonged to INC. The name of respondent for the post of President was proposed by Sri. Rajagopal, an



independent member and seconded by Sri. Ajithkumar J an elected member belonged to CPI (M). One of the elected members belonged to BJP Smt. Raji abstained from voting. In the subsequent polling, petitioner got 10 votes as against 9 votes secured by the respondent and elected as President of the panchayat. All the elected members belonged to LDF voted in favour of the respondent. Ext.X3 shows that BJP issued whip to all the 3 elected members belonging to BJP to abstain from the voting. However, BJP members Smt. Priyakumari and Sureshkumar voted in favour of Smt. Geetha Suresh. District President of the BJP filed OP No. 19/2024 and 20/2024 before the Commission for disqualifying Smt. Priyakumari and Sureshkumar based on the said cause of action and same has been dismissed by the Commission as per Order dated 23.10.2025. In the President election held on 29.01.2024 though LDF members supported the respondent he was defeated by the official candidate of INC Smt. Geetha Suresh. During the cross examination as RW1 respondent admitted that respondent stood as candidate against the official candidate of INC in the Presidential election and all the 6 LDF members voted for him.

19. Respondent has a case that there was an understanding to share the Presidentship for two and half years each for both Sri. Sudharjunan and respondent. However, Sri. Sudharjunan overstayed in the post for 3 years and INC breached its promise by fielding Smt.Geetha Suresh for the post of President after the tenure of Sri. Sudharjunan. In order to prove the same petitioner produced Ext.B2. However, Ext.B2 is an unauthenticated document having no evidentiary value.
20. Petitioner has taken a further case that copy of the whip was communicated to the Secretary of the panchayat and Returning Officer. Petitioner produced the copy of the whip addressed to the Returning Officer as Ext. A4 series through PW6 who is the present Secretary of the panchayat. PW8 present Returning Officer produced the Ext. X 3 series whips served upon him. However, petitioner has neither produced the copy of whip addressed to the Secretary of the Kulathoor grama



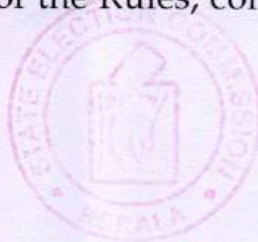
panchayat nor produced any proof of service of whip to the Secretary of the panchayat. PW6 the present Secretary of the Panchayat categorically deposed before the Commission that no copy of the whip issued by District President of INC was available in the panchayat. PW6 confirmed that Ext.A4 series are the certified copy of whip made available by the Returning Officer to the panchayat. RW2 who was the Secretary of the panchayat at the time of Presidential election held on 29.01.2024 deposed before the Commission that no whip was served to the Secretary of the panchayat in the connection with the Presidential election held on 29.01.2024. Therefore, there is every reason to believe that there is no whip served to the Secretary of the panchayat as mandated under section 3 (2) of the Act.

21. In *Lizy Valsalan V Suja Salim* (2015 (3) KHC 968) (DB) the Hon'ble High Court observed as follows, -

" The very purpose by which the rule making authority had imposed on a further stipulation to provide a copy of the direction to be given to the Secretary is to ensure existence of a valid direction by the political party to its members." (para 27)

22. Further, the Hon'ble High Court in *George Elamplakkadu V A V Mathew* (2020 (5) KHC 297) held that

" Serving of copy of the direction in writing (whip) to the Secretary of the local authority concerned is the only method by which a member of that local authority belonging to any other political party to come to know about the whip. In the enquiry conducted by the State Election Commission under sub-section(2) of section 4 of the Act, the petitioner has to establish the existence of a valid direction in writing (whip) by the political party to tis members, in terms of clause (i) of sub-rule (1) of Rule 4 and that, it was given to the members concerned and also the Secretary of the local authority, in the manner prescribed in sub-rule (2) of Rule 4. Keeping in view of the intendment of the enactment and context in which the word "shall" has been used in sub-section (2) of section 3 of the Act and sub-rule (2) of Rule 4 of the Rules, conclusion is irresistible that the



said provisions, which require that copy of the direction in writing (whip) shall be given to the Secretary, are mandatory in nature."

23. In *Jomon K L V Kerala State Election Commission, Thiruvananthapuram* (2021 KHC 3056) the Hon'ble High Court held that in the absence of any evidence that the whip was served on the Secretary of the local authority, there cannot be a valid service of whip and if there is no valid service of whip, a member cannot be disqualified with reference to the second limb of section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.
24. In *Chinnamma Varghese V. State Election Commission of Kerala* (2009 (4) KHC 527) Division Bench of High Court held that " incurring of the disqualifications under any one of the contingencies depends upon the existence of a definite set of facts, which are required to specifically pleaded before they are sought to be proved to establish the allegation of disqualification under the Act."
25. In the present case there is no sufficient material on the record showing that whip was communicated to the Secretary of the panchayat as mandated under section 3 (2) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 and rule 4 (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules, 2000. Therefore, respondent has not incurred any disqualification under section 3 (1) (a) of the Act.

In the result, the original petition is dismissed.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



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

- PW1 - Smt. Geetha Suresh
PW2 - Sri. Dunstan C. Sabu
PW3 - Smt. Santhosh Raj T.
PW4 - Sri. Pushppasanan V. K.
PW5 - Sri. Jose Alex
PW6 - Sri. Sujith Kumar R. C.
PW7 - Sri. Palode Ravi
PW8 - Sri. Sreejith S.

Witness examined on the side of the Respondent

- RW1 - Sri. K. Santhosh Kumar
RW2 - Sri. B. P. Kumar

Documents produced on the side of the Petitioner

- A1 - Copy of the register showing the party affiliation of elected members of Kulathoor Grama Panchayat.
A2 - Copy of the whip dated, 24.01.2024 showing the affixture details.
A3 - Copy of the minutes of meeting held on 29.01.2024 in connection with the President election of Kulathoor Grama Panchayat.
A4 - Copy of the letter dated, 24.01.2024 issued by Sri. Palode Ravi, DCC President Thiruvananthapuram to Returning Officer, Kulathoor Grama Panchayat.
A4(a) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi,



- DCC President, Thiruvananthapuram to Sri. G. Sudharjunan
- A4(b) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi, DCC President, Thiruvananthapuram to Sri. Arundev.
- A4(c) - Copy of the whip dated, 24.01.2024 issued by Palode Ravi, DCC President, Thiruvananthapuram to Smt. Geetha Suresh
- A4(d) - Copy of the whip dated, 24.01.2024 issued by Palode Ravi, DCC President, Thiruvananthapuram to Sri. T. Santhosh Kumar.
- A4(e) - Copy of the whip dated, 24.01.2024 issued by Palode Ravi, DCC President, Thiruvananthapuram to Sri. K. Santhosh Kumar.
- A4(f) - Copy of the whip dated, 24.01.2024 issued by Palode Ravi, DCC President, Thiruvananthapuram to Smt. Sirafin R.
- A4(g) - Copy of the whip dated, 24.01.2024 issued by Palode Ravi, DCC President, Thiruvananthapuram to Smt. E. Mercy
- A4(h) - Copy of the whip dated, 24.01.2024 issued by Palode Ravi, DCC President, Thiruvananthapuram to Smt. Lailakumari
- A4(i) - Copy of the whip dated, 24.01.2024 issued by Palode Ravi, DCC President, Thiruvananthapuram to Sri. S. G. Sarath.

Documents produced on the side of the Respondent

- B1 - Malayala Manorama daily dated, 10.07.2023
- B2 - Copy of Congress meeting decision dated, 29.12.2020

Documents produced on the side of the Witness

- X1 - Copy of the minutes of meeting held on 29.01.2024 in connection with the President election of Kulathoor Grama Panchayat.



- X2 - Copy of the register showing the party affiliation of elected members of Kulathoor Grama Panchayat.
- X3 - Copy of the letter dated, 26.01.2024 issued by Sri. V. V. Rajesh, District President, BJP, Thiruvananthapuram to Returning Officer Kulathoor Grama Panchayat.
- X3(a) - Copy of the letter dated, 24.01.2024 issued by Sri. Palode Ravi, DCC President, Thiruvananthapuram to Returning Officer Kulathoor Grama Panchayat.
- X3(b) - Copy of the whip dated, 24.01.2024 showing the affixture details,
- X3(c) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi, DCC President, Thiruvananthapuram to T. Santhosh Raj.
- X3(d) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi, DCC President, Thiruvananthapuram to Sri. Arundev.
- X3(e) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi, DCC President, Thiruvananthapuram to Sri. S. G. Sarath.
- X3(f) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi, DCC President, Thiruvananthapuram to Smt. Geetha Suresh.
- X3(g) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi, DCC President, Thiruvananthapuram to Sri. G. Sudharjunan.
- X3(h) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi, DCC President, Thiruvananthapuram to Sri. Sirafin R.
- X3(i) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi,



DCC President, Thiruvananthapuram to Smt. E. Mercy.

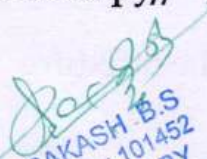
X3(j) - Copy of the whip dated, 24.01.2024 issued by Sri. Palode Ravi,
DCC President, Thiruvananthapuram to Smt. B. Laila Kumari

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//


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

