

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

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

Tuesday, the 27th day of May, 2025

O.P. No.35/2022

Petitioner

: Sri. Aboobacker P.K.,
S/o. Khadhar,
Parayil,
Kottapully, Kappur P.O.,
Palakkad, Pin - 679 552

(Member, Ward No.6,
Kappur Grama Panchayat)

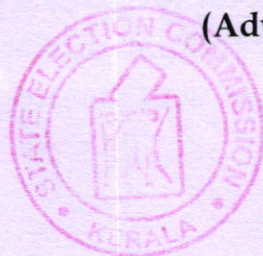
(Adv. A. Santhosh Kumar)

Respondent

: Smt. Radhika M.,
D/o. Chaathu,
Madakkattu Veedu,
Kumaranelloor P.O.,
Palakkad, Pin - 679 552

(Member, Ward No.16,
Kappur Grama Panchayat)

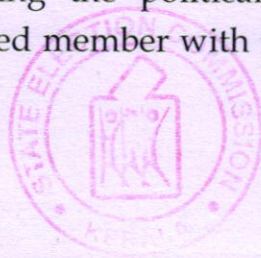
(Adv. Sujai Sathian K.)



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 Kappur Grama Panchayat and also for declaring her 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 Kappur grama panchayat representing ward No. 6 and 16 respectively, elected in the General Election to local authorities held in December, 2020. The respondent contested election as an independent candidate not belonging to any political party or coalition, in the free symbol " Autorickshaw". Petitioner has produced a certified copy of the nomination paper submitted by the respondent, which is marked as Ext.A1. While contesting from ward No.16, the main opponents of the respondent were from LDF and UDF. The election campaign notices of the LDF and UDF candidates are marked as Ext.A2 Series. During the election campaign respondent approached and convinced the electorate that she does not belongs to any political party or coalition and is contesting as pure independent candidate. The election campaign notice of the respondent is marked as Ext.A3. Respondent won the election from ward No. 16 of Kappur grama panchayat by defeating the candidates fielded by both LDF and UDF.
3. The petitioner further states that after being elected as an independent candidate not belonging to any political party or coalition, respondent joined LDF coalition by filing a sworn declaration under rule 3 (2) of the Local Authorities (Disqualification of Defected members) Rules before the Secretary of the panchayat stating her political allegiance that she is being a part of LDF coalition. The certified copy of the sworn declaration dated 21.12.2020 is marked as Ext.A4. On the basis of the said sworn declaration the Secretary of the panchayat prepared a Register under rule 3 (1) of the said Rules showing the political affiliation of the respondent as an independent elected member with the support of LDF coalition. The Party



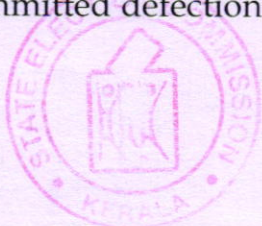
affiliation register is marked as Ext.A5. According to the petitioner the conduct of the respondent, who contested election as a pure independent candidate and after being elected as a member caused to join the LDF coalition, shall acquire disqualification on the teeth of section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

4. The Original Petition was filed on 26.11.2022. In order to overcome the period of limitation, petitioner has raised a plea that in the judgment dated 28.09.2022 in WA No. 1356/2022, the Division Bench of the Hon'ble High Court had pronounced an authoritative and binding precedent on the subject covered under section 3 (1) (c), which was made known to the petitioner on 28.10.2022. Therefore, petitioner is aware of the facts constituting cause of action only on 28.10.2022 and reckoning from 28.10.2022, the original petition is filed within the time limit provided under rule 4A (2).
5. Petitioner further states that respondent is now in LDF camp. Because of the unscrupulous acts of the respondent, the morale of the voters of the respondent's ward lost. The cause of action arose on 28.10.2022, when the petitioner was made known about the judgment in WA No. 1356/2022. Respondent has committed defection and hence liable for disqualification under section 3 (1) (c) of the Act.
6. Respondent's case in brief is as follows;- The original petition is not maintainable either in law or on facts. The petition is filed without any bonafides and on experimental basis. The petition is filed without complying the statutory mandate as contemplated under rule 4A (2) of the Local Authorities (Disqualification of Defected members) Rules. It provides that a petitioner under the Act shall be filed within 30 days from the date of deemed disqualification of the member. However, the original petition is filed against the respondent after a period of 2 years from the date of alleged deemed disqualification. Therefore, petition is hopelessly barred by limitation.
7. It is true that respondent was contested from ward No. 16 as an independent candidate not belonging to any political party, in the election symbol



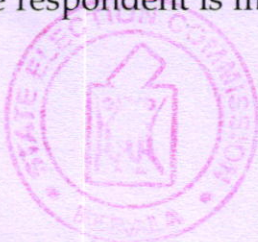
"Autorickshaw". The ward No. 16 of Kappur grama panchayat was a constituency reserved for schedule caste community and respondent belongs to that community. After her election as a member of Kappur grama panchayat, she continues to remain as an independent elected member and has not joined any political party or coalition as alleged.

8. Even according to the case of the petitioner itself, respondent had allegedly committed defection on 21.12.2020, when she filed sworn declaration stating her allegiance to LDF coalition, reckoning from the said date of cause of action, the original petition should have been filed before the Commission on or before 19.01.2021. However, the petitioner filed the original petition on 26.11.2022. In the original petition, petitioner has stated that the cause of action arose on 28.10.2022, when he was made known about the judgment dated 28.09.2022 in WA No. 1356/2022. Even from the date of judgment, the petition is filed with a considerable delay. Moreover, the judgment does not provide any retrospective application to the dicta laid down therein or sufficient to revive any petition, which is barred by limitation.
9. It is the fundamental principle of law that "ignorantia juris non excusat" or "ignorance of the law is no excuse". The scheme of law under which the petitioner has preferred the petition was existent even before the said precedent of the Hon'ble High Court of Kerala and if the petitioner's interest were legitimate, genuine and bonafide, the petitioner would have been filed in 2021 itself. His abstinence to proceed under law for the alleged actions of the respondent then, disqualifies from proceeding now, after the lapse of prescribed period. Petitioner has not furnished any sufficient reason for not filing the petition within the stipulated time.
10. The only contention is that petitioner was made aware of the defection laws after being informed about the dicta laid down in the judgment in WA No. 1356/2022. It is the duty of every citizen to be aware of the laws of the Country. No citizen has any right to claim that they only know about a certain law after reading a judgment, when provisions of law were existent for a long time. The laws on defection are not newly laid down by the dicta in WA No. 1356/2022. So, the only reason that an independent candidate, who had committed defection was disqualified by the said decision cannot



be considered as " sufficient reason" to accept time barred petition seeking disqualification under the Act. Therefore, the original petition is barred by the limitation provided under law and hence not maintainable. Petition may be dismissed with costs.

11. The evidence in this case consists of oral testimonies of PW1 to PW6 and Ext.A1 to A5 and Ext. X1 to X3.
12. Both sides were heard.
13. The foremost contention advanced by the respondent is that the original petition is filed beyond the time limit provided under rule 4A (2) of the Local Authorities (Disqualification of Defected members) Rules and reasons shown to cover up the delay is unsustainable in law. It is settled that once facts are disputed about limitation, the determination of the question of limitation cannot be made as a preliminary issue or any other issue of law, which requires examination of disputed facts.
14. It has come out in evidence that during General Election, 2020 respondent filed nomination paper before the Returning Officer for contesting election from ward No. 16, reserved for scheduled caste, as an independent candidate not belonging to any political party or coalition, in the election symbol "Autorickshaw". Ext.A3 Campaign notice would show that respondent was contested as a pure independent candidate as against LDF and UDF candidates. PW5 and PW6 testified before the Commission that they unsuccessfully contested election against the respondent as candidates of LDF and UDF respectively from ward No.16. Campaign notices of LDF and UDF are marked as Ext.A2 series. In para 4 of the objection itself respondent admitted that she was contested and elected as an independent candidate not belonging any political party or coalition.
15. In the original petition, petitioner has taken a case that respondent, after being elected as a pure independent candidate, joined in the LDF coalition by giving such a sworn declaration to the Secretary of the panchayat, as provided under rule 3 (2) of the Local Authorities (Disqualification of Defected members) Rules. The certified copy of the sworn declaration dated 21.12.2020 filed by the respondent is marked as Ext.A4. Ext.A4 would goes



to show that respondent made a declaration that she is an independent elected member belonging to LDF coalition. On the basis of Ext.A4 declaration filed by the respondent, the Secretary of the panchayat had prepared a Register showing the Party affiliation of the respondent an independent member supported by LDF coalition. It is significant to note that in para 10 of the petition, it is stated that the action on the part of the respondent, who contested and won as pure independent member and thereafter joining in any political party or coalition, shall acquire disqualification on the teeth of section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act. Therefore, there is no doubt that the legal basis for seeking the remedy under the Act is the alleged conduct of the respondent on 21.12.2020.

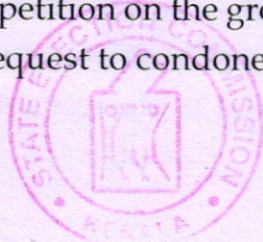
16. Section 3 (1) (c) of the Kerala Local Authorities (Prohibition of Defection) Act provides that

"Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act,-

.....

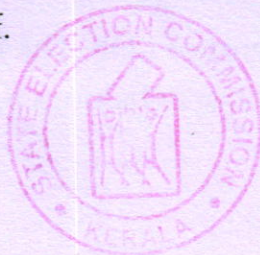
(c) if an independent member not belonging to any coalition, joins any political party or coalition; he shall be disqualified for being a member of that local authority."

17. Rule 4A (2) of the Local Authorities (Disqualification of Defected members) Rules mandates filing of a petition regarding disqualification within 30 days from the date of deemed disqualification of the member. The Commission, however, is given the power under the proviso to the said rule to condone any delay involved without any prescription of outer time limit within which delay can be condoned. If there are no sufficient grounds explained for the delay occurred in filing the petition, it is open for the Commission to reject the original petition on the ground of laches. As a matter of fact, there is no petition or request to condone the delay in this case.

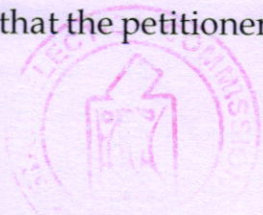


18. In the present case the deemed disqualification arose on 21.12.2020, when respondent filed Ext.A4 sworn declaration before the Secretary that she was contested election as an independent candidate with the support of LDF coalition, quite contrary to her status as a pure independent elected member. Therefore, the right to sue and the commencement of running of time for the purpose of limitation as provided under rule 4A (2) arose on 21.12.2020. In para 10 of the original petition petitioner admitted that respondent acquired disqualification under the Act on the date of joining LDF on 21.12.2020.
19. However, in para 16 of the original petition, it is stated that the cause of action arose on 28.10.2022, when petitioner came to know about the binding precedent of the Hon'ble High Court in WA No. 1356/2022 (judgment dated 28.09.2022). It is very easy for a person to give a date in the original petition and to say that he came to know of the defection only on that date with a view to defeat the provision of limitation.
20. In the objection respondent vehemently contented that the petitioner having failed to file the original petition within the stipulated time from the date of alleged disqualification. The petition is barred by limitation since it is filed after 2 years. The judgment in WA No. 1356/2022 has no retrospective application. The scheme of law under which the petitioner preferred the original petition was existent even before the said judgment. The judgment cannot be considered as a "sufficient reason" to accept the time barred petition.
21. Normally, a precedent set in a judgment or the date when the petitioner came to know about the precedent would not attract cause of action.

"A precedent is said to be a judicial decision which contains its principles. The stated principle which thus forms its authoritative element is called the *ratio decidendi*. The concrete decision is thus binding between the parties, but it is abstract *ratio decidendi* which alone has the force of law as regards the world at large" (Sir John Salmond) The law declared by the Supreme Court under Article 141 of the Constitution of India is the law of the land. It is a precedent for itself.

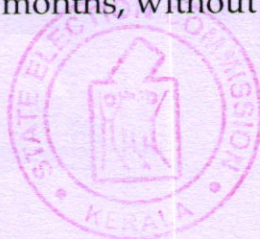


22. As rightly pointed out by the respondent, the scheme of law under which the petitioner preferred the original petition was existent even before the precedent set in WA No. 1356/2022. There is clear provision in section 3 (1) (c) of the Act that if an independent member not belonging to any coalition joins any political party or coalition, he shall be disqualified for being a member of that local authority. Moreover, there are precedents in this regard even before the judgment dated 28.09.2022 in WA No. 1356/2022. In *Prasannakumary D V G R Shibu and Ors* (2020 (5) KHC 602 judgment dated 13.10.2020) the Hon'ble High Court *inter alia* held that any action on the part of independent member joining any political party would acquire disqualification under section 3 (1) (c) of the Act. (Para 6). Further, petitioner has no case that respondent acquired disqualification on the date of judgment in WA No. 1356/2022.
23. It is pertinent to note that though petitioner pleaded that the cause of action arose on 28.10.2022, when the petitioner came to know about the binding precedent in WA No. 1356/2022, during the examination of petitioner as PW1, he was conspicuously silent about the said cause of action. Petitioner has not adduced any evidence in this regard. It is settled principle that a party who pleads a fact or asserts a claim must prove it before the Court, as the burden of proof rests on the party making the assertion, not the one denying it. The petitioner has not discharged his burden of proof.
24. Moreover, the dictum laid down in WA No. 1356/2022 (*Sheeba George V State Election Commission and Ors*) is inapplicable to the facts and circumstances of the present case. The facts of the case of *Sheeba George V State Election Commission and Ors* as narrated in para 15 of the judgment dated 02.09.2022 in WP (c) 25560/2022,-
- "15. The pleadings in the case would show that the writ petitioner contested as an independent candidate in Ward No.6 of the Keerampara panchayat. Both the political coalitions, LDF and UDF, has their own candidates, who contested from ward No.6. The petitioner in her mandatory declaration filed under Rule 3 of the Rules, 2000 has stated that she contested as an independent with the support of LDF. The Register maintained under Rule 3 also indicated that the petitioner belongs to CPI (M)/LDF. It is an admitted



fact that the petitioner has voted in favour of LDF candidates in the election to the post of Panchayat President. It is not disputed that the LDF proposed the name of the petitioner to the post of Vice President and the petitioner was elected as Vice President with LDF support."

25. However, there is no allegation in the present case that respondent joined LDF coalition in *quid pro que* to any favours received or offered by the LDF. There is also no allegations in the present case that respondent was being motivated by any lure of office or other similar considerations in joining LDF. Apart from a single instance of filing sworn declaration dated 21.12.2020, there is no allegations that respondent had committed any act or omissions which amounts to losing her status as independent elected member, in the present case. Therefore, judgment in WA No. 1356/2022 has no bearing to the facts and circumstances of the present case and the judgment has nothing to do with the cause of action in the present case.
26. Section 3 of the Limitation Act limits the time limit after which a suit or other proceedings would be barred." The right to sue and commencement of the running of time for the purpose of limitation depend on the date when the cause of action arose. Cause of action has been defined as simply a factual situation, the existence of which entitles one person to obtain from the Court a remedy against another person "(Halsbury's law of England- 4th Edition). It is already found that petitioner has no cause of action on the judgment in WA No. 1356/2022. Therefore, the cause of action is reverted to 21.12.2020, when the respondent allegedly filed the Ext.A4 sworn declaration. Reckoning from that date there is a delay of 1 year and 11 months in filing the original petition.
27. The proviso to rule 4A (2) confers power upon the Commission to condone the delay involved without any prescription of outer time limit. If there are no sufficient ground explained for the delay occurred in filing the petition, it is open for the Commission to reject the petition on the ground of laches. As already stated, the original petition has been filed on 26.11.2022 with a delay of 1 year 11 months, without supported by a petition to condone the delay.

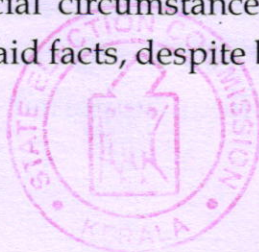


28. In the cross examination of petitioner as PW1, he deposed that

"ഈ കേസിലെ എതിർകക്ഷി സത്യപ്രസ്താവന നൽകുന്നത് ഞാൻ കണ്ടിട്ടില്ല. Ext. A5 കക്ഷി ബന്ധം തെളിയിക്കുന്ന രജിസ്റ്റർ സെക്രട്ടറി തയ്യാറാക്കിയിട്ടുള്ളത് 2020 ഡിസംബറിലാണ്. തീയതി ഓർമ്മയില്ല. എതിർകക്ഷിയുടെ കക്ഷിബന്ധം സംബന്ധിച്ച് സംശയം ഉണ്ടായപ്പോഴാണ് ഞാൻ കക്ഷിബന്ധ രജിസ്റ്റർ പരിശോധിച്ചത്. തീയതി ഓർക്കുന്നില്ല. 2020 പ്രസിഡന്റ്, വൈസ് പ്രസിഡന്റ് തിരഞ്ഞെടുപ്പിനു ശേഷമാണ് പരിശോധിച്ചത്. തിരഞ്ഞെടുപ്പിനുശേഷം രണ്ടുവർഷം കഴിഞ്ഞാണ് 16-ആം വാർഡിൽ നിന്നും പൂർണ്ണ സ്വതന്ത്രയായി മത്സരിച്ച എന്റെ സുഹൃത്ത് രാധിക സ്വതന്ത്ര അല്ലാതെ പ്രവർത്തിക്കുന്നു എന്ന് എനിക്ക് സംശയമുണ്ടായത്."

Even in the testimony of petitioner there is nothing forthcoming that he is having sufficient ground for delay occurred in filing the original petition. Petitioner has not let any evidence that he came to know the judgment in WA No. 1356/2022 on 28.10.2022.

29. In *Vinayakumar R and Others V A A Raouf and Another* (2015 (3) KHC 787), the Hon'ble High Court held that "it is true that, it is the satisfaction of the second respondent (Commission) that is material, in deciding whether to accept a petition filed, in spite of the delay, where there exists sufficient reason for not filing the petition within time. In the present case, apart from the statement of the petitioner in his affidavit that he had come to know of the defection only on 17.05.2024 from Sri. Surya Prakash, there is nothing on record to support his bonafides. It is worth noticing that, the petitioner is a Councillor of the Municipality..... Petitioner being the Councillor of the very same Municipality ought to have been aware of the said developments. If the petitioner had no knowledge of the above facts, he should at least have pleaded such lack of knowledge and the circumstances under which he was prevented from coming to know of the said developments..... It is very easy for a person to give a date and to say that, he came to know of the defection only on that date. That is not sufficient to lend credence to the statement. He should have explained the special circumstances that prevented him from acquiring knowledge of the said facts, despite being a Councillor of the Municipality." (Paragraph 15).



30. In *Basawraj V The Spl. Land Acqusition Officer* reported in MANU/SC/0850/2013, the Hon'ble Supreme Court has held that

"15. The law on the issue can be summarised to the effect that where a case has been presented in the Court beyond the limitation, the applicant has to explain the Court as to what was the "sufficient cause", which means an adequate and enough reason which prevented him to approach the Court within limitation. In case a party is found negligent, or for want of bonafide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay"

31. From the evidence on the record in this case, it cannot be said that petitioner was not aware of the alleged act of joining of the respondent in LDF till the date of judgment in WA No. 1356/2022. This original petition ought to have been filed within 30 days from the 21.12.2020. But it is seen filed on 26.11.2022 ie, after 1 year 11 months. So, it can't be said that the above original petition is filed within the period specified in rule 4A (2) of the Local Authorities (Disqualification of Defected members) Rules. Further, there is no petition or request to condone the delay in this case. So, the question of considering that aspect does not arise in this case. The original petition is barred by limitation. There are latches on the part of petitioner in filing the original petition.

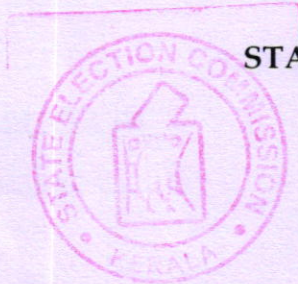
In the result, the Original Petition is dismissed

Pronounced before the Commission on the 27th day of May 2025

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER



PRAKASH S.S.
PEN No : 101453
SECRETARY
State Election Comm.
Kerala, Thiruvananthapuram

APPENDIX

Witness examined on the side of the Petitioner

- PW1 - Aboobacker P.K.
PW2 - P.A. Thaju
PW3 - Mariath Kibithiyya K.
PW4 - Stephen V. Soloman
PW5 - Lekshmi
PW6 - Kamalam

Documents produced on the side of the Petitioner

- A1 - Copy of the nomination form of Smt. Radhika M.
A2(a) - Election Poster in respect of Smt. V.P. Lekshmi
A2(b) - Election Poster in respect of Smt. Kamalam Vallikkattu Padi
A3 - Election Poster in respect of Smt. Radhika M.
A4 - Copy of the Declaration submitted by Radhika M. dated, 21.12.2020
A5 - Copy of the relevant page of Register showing the party affiliation of the elected members of Kappur Grama Panchayath

Documents produced on the side of the Witness

- X1 - Copy of the Declaration in form 2 submitted by Smt. Radhika dated, 21.12.2020
X2 - Copy of the Register showing the Party affiliation of the elected Members of Kappur Grama Panchayath
X3 - Copy of the Nomination submitted by Smt. Radhika M. dated, 18.11.2020

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//True Copy//



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

