

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

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

Thursday, the 22nd day of February, 2024

O.P. Nos. 02 of 2023 and 03 of 2023

O.P. No. 02 of 2023

Petitioner

: V.A. Sooraj
S/o. V.K. Achuthan Nair,
Venmelil, Aruvappulam P.O.,
Konni, Pathanamthitta

(District President,
Bharatiya Janata Party, Pathanamthitta)

(By Adv. Hari V.R.)

Respondent

: Raveendran @ Mandiram Raveendran,
S/o. Karthiyayani,
Parackkal House (Parackkal Nivas),
Mandiram, Ranni, Pathanamthitta

(Member, Ward No.04,
Ranni Grama Panchayat)

(By Adv. S. Ajith Kumar)

O.P. No. 03 of 2023

Petitioner

: V.A. Sooraj
S/o. V.K. Achuthan Nair,
Venmelil, Aruvappulam P.O.,
Konni, Pathanamthitta

(District President,
Bharatiya Janata Party, Pathanamthitta)

(By Adv. Hari V.R.)

Respondent

: Vinod A.S.
S/o. Sadasivan,
Adichinal Niravel,
Puthusserimala P.O.,
Pathanamthitta

(Member, Ward No.07,
Ranni Grama Panchayat)

(By Adv. S. Ajith Kumar)

ORDER

These are petitions filed under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

2. The averments in the petition in short are as follows:

The Petitioner, the District President of the Bharatiya Janata Party, Pathanamthitta, heads the coalition of the National Democratic Alliance (NDA) Pathanamthitta District; the Respondents are the members of the

Bharatiya Janata party and have contested the election as a member candidate of the Bharatiya Janata Party and hence the petitioner has the authority to file the petition for disqualifying the Respondents. The Respondent in O.P. No.02/2023 has contested and won the election to the Ward No.04 of the Panchayath of Ranni as a candidate belonged to the Bharatiya Janata Party. Election to Grama Panchayat President, Vice President was scheduled on 27.10.2022. On 22.10.2022, there arranged a meeting of the two (2) Ward members of the NDA in the Panchayath of Ranni. And in the meeting, the Respondent read over the direction in writing of the Bharatiya Janata Party to all its ward members of the Panchayath of Ranni to abstain from the voting to President and Vice President. On the same day, the petitioner has directly served the direction in writing to the respondents to abstain from voting for the post of President and Vice President. The respondent have acknowledged the same. A copy of the direction was also sent to the Grama Panchayath Secretary. The respondent on 27.10.2022 has violated the direction of the Bharatiya Janata Party under National Democratic Alliance and has voted in favour of UDF candidates in the meeting of the election for the post of President and Vice President, which is against the public will and trust of the voters of the Panchayath of Ranni. The act of the respondent amounts to defection and needs to be disqualified and the original petition is filed for those reliefs. The Respondents are members of the Bharatiya Janata Party and the State President of the Bharatiya Janata Party has suspended the Respondents for six years from the primary membership of the party.

3. The contentions raised by the Respondents in their objections in short are as follows:

The petition is not maintainable either in law or on facts. The petition is filed by the Petitioner with an experimental motive to oust the Respondent from the Panchayath in order to achieve his illegal gain through crooked means. It is to be dismissed in limine. The Respondent was never given any instructions from the District leadership of BJP at any point of time.

The present petition is filed by the petitioner on the reason that the Respondent supported a purely independent candidate in the President election of Ranni Grama Panchayath held on 27.10.2022. The political party or the authorized person of the political party never given any direction to the Respondent with respect to the election held on 27.10.2022. The intention of this Respondent and another BJP member was to avoid LDF and UDF from the administration of the Ranni Grama Panchayath. The Respondent and another BJP member named Vinod A. S., who is respondent in OP No.03/2023 only acted as per the decision of the BJP Parliamentary party and the BJP Ranni Grama Panchayath Committee. The Respondents were the official candidates of BJP with its official symbol "lotus". These Respondents submitted Form number 2 declaration before the Grama Panchayat Secretary. No meeting was held on 22.10.2022 as alleged. No direction was read over to the Respondent or others. No whip was given to the Respondents in OP No.02/2023 and 03/2023 to abstain from the voting of President and

Vice President election as alleged by the Petitioner. Nothing was signed or acknowledged by the Respondents. No copy of whip was communicated to the Grama Panchayat Secretary as alleged by the Petitioner. These Respondents nominated and voted in favour of a purely independent candidate contested against the LDF and UDF in the Panchayath. These Respondents never joined with UDF coalition as alleged never committed disloyalty or cheated to BJP and its policies. The Respondents contested and elected as the official candidates of BJP and will continue as members of BJP.

4. The evidence consists of the oral depositions of PW1 to PW3 and RW1 and Exhibits A1 to A4 and X1 to X4.
5. Both the sides were heard.
6. The following points arise for consideration
 - i) Pass an order disqualifying the Respondents under the ground of defection and direct the Secretary, Ranni Grama Panchayath that the Respondent ceased to be member of the Panchayath of Ranni and Respondent shall be disqualified for contesting as candidates in an election to any local authority for 6 years from the date of the decision.
 - ii) Pass such other reliefs as may be prayed and deem just in the circumstance of the case.
7. Points i) & ii) PW1, the Petitioner, the Pathanamthitta District President of Bharatiya Janata Party deposed that the Respondent in OP No. 02/2023, M.P. Raveendran and in OP No. 03/2023, Vinod A.S. contested

and won the nominees of BJP from Ward No.4 and Ward No.7 respectively of Ranni Grama Panchayat. In the nomination paper, declaration they have claimed as candidates of BJP and symbol 'Lotus' was allotted by the Returning Officer on the basis of the letter given by the party. After winning the election the Respondents have given declaration in form 2 that they belongs to BJP and the Secretary, Grama Panchayat prepared the party affiliation Register in Form accordingly. BJP have two members in Ranni Grama Panchayat. Since there was election for the post of President and Vice President of Grama Panchayat on 27.10.2022, the Petitioner convened a meeting of BJP members on 22.10.2022 in which direction was given to the Respondents who attended the meeting to abstain from the election meeting on 27.10.2022. Respondents received the directions directly and acknowledged the same. The acknowledgement with signature of the Respondents produced and marked as Exhibit-A1 of Raveendran and Exhibit-A2 of Vinod A.S. The copy of the same was sent to the Returning Officer by post and the copy of the same is marked as Exhibit-A3; the acknowledgement card received back is marked as Exhibit-A3(a). The Respondents attended the election meeting held on 27.10.2022 and voted in defiance of the party direction and so they became disqualified. They are suspended from the party for six years. The copy of the suspension order is produced and marked as Exhibit-A4. In the cross examination, he stated that he is appointed as the District President by the State President of BJP. He knows the Respondents for the last ten years. Sri. Vinod joined BJP after resigning

from CPM. When he was asked about the party authority to take disciplinary action against a member of booth level committee, which is the lowest in the organizational set up, he replied that the State President is the authority. He stated that the copy of the whip was also given to the Secretary of Grama Panchayat, which is not filed along with the petition. He deposed that the disciplinary action taken against the Respondents by the party is following the prescribed procedure of party construction. He stated that Sri. Vinod was the Ranni Grama Panchayat BJP President only for 3 months from 2022 January and not from 2020 December to till date. He reiterated that he and both the Respondents attended the meeting held on 22.10.2022 at the party office of BJP in Ranni Town. When he was shown the Exhibits-A1 and A2 he affirmed the signatures in the documents are that of the Respondents. He stated that whips directing to abstain from the election of President and Vice President served separately to the Respondents. He stated that Exhibit-A3(a) is the acknowledgement card sent to Grama Panchayat. When he was asked about the service of the whip to the Secretary Grama panchayat he replied that the copy of the whip was given directly and by post to the Secretary. There is no decision by the BJP District leadership or of the BJP Panchayat Committee to support the CPM. The forum to give direction to the BJP Panchayat members is vested with the State, District or Mandalam Committees, not Panchayat Committees. He stated that the Respondents supported not an independent, but the UDF supported independent in the President election.

PW2, the Returning Officer in charge produced the nomination paper and declaration of Sri. Raveendran, member of Ward No.4 marked as Exhibi-X1 and X1(a) and that of Sri. Vinod, member of Ward No.7, marked as Exhibit-X2 and Exhibit-X2(a). The letter given by the BJP State President to allot symbol is marked as Exhibit-X1(b) and the copy of the whip as Exhibit-X1(c).

PW3, Assistant Secretary of Ranni Grama Panchayat who is holding charge of Secretary, Panchayat produced the copy of the Form 2 declaration of Sri. Raveendran marked as Exhibit-X3 and marked copy of the party affiliation register as Exhibit-X3(a), copy of the letter showing the Petitioner has given whip is marked as Exhibit-X3(b). Form 2 declaration of Sri. Vinod is marked as Exhibit-X4(a). He stated that the direction in Exhibit-X3(b) is to abstain from the meeting for the President election on 27.10.2022. Exhibit-X3(b) not showing to whom the whips are issued in cross examination and Exhibit-A1 and Exhibit-A2 are not similar to Exhibit-X3(b).

RW1, the Respondent in OP No.02/2023 has deposed that he has contested and won from Ward No.4 of Ranni Grama Panchayat as official candidate of BJP. He was allotted the official symbol of BJP by the State President and not by the Predecessor of the Petitioner. So the authority to issue whip to him is only the State President and not the District President. He was not given any whip or direction. There was no party meeting on 22.10.2022. In the election for President on 27.10.2022 he voted for an independent as decided by the BJP Panchayat

Committee and BJP Parliamentary Committee. He never joined in UDF as alleged. He is still continuing as BJP member. No intimation was given to the Secretary, Ranni Grama Panchayat regarding the whip. In the cross examination he stated that the affidavit is filed for himself and wished to take evidence from Sri. Vinod, the Respondent in OP No.03/2023. Sri. Vinod resigned his membership of Grama Panchayat on 01.09.2023, since filing of the petition. He decided that the signature shown in the Exhibit-A1 is not signed by him. He stated that he is not supporting LDF or UDF and he obeyed the instructions of BJP Mandalam Secretary. Respondent in OP No.03/2023 has not adduced evidence.

8. The facts of the case would disclose that the petitioner and the respondent were contested and elected as nominees of BJP in the election to the Ranni Panchayat during 2020 December. In the election to the post of President and Vice President of the Panchayat held on 27.10.2022, the respondents voted in favour of UDF candidates instead of abstaining from the meetings defying the whip issued to them by the BJP District Committee President. The respondents, on the other hand, disputed that no whip was served on them to abstain from the election meetings on 27.10.2022.

Evidently this is a case in which the core issue is whether the respondents have defected by voluntarily giving up their membership of a political party and whether the act of their casting vote in favour of the rival front amounts to such a defection as provided under Section

3(1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.

Section 3(1) (a) reads as follows:-

“ 3. Disqualification on ground of Defection.- (1) 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,-

(a) if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting,-

(i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of standing Committee or the Chairman of a standing committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or in a voting on a no-confidence motion against any one of them except a member of a Standing Committee;

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(2) The direction in writing issued for the purpose of clauses (a) and (b) of Sub-section (1) shall be given to the members concerned in the manner as may be Prescribed and copy of such direction in writing

shall be given to the Secretary of the Local Self Government Institution concerned.

(3) Where any dispute arises regarding the direction issued under this section between the political party or coalition concerned and the member authorised in this behalf as prescribed under sub-section (2), the direction in writing issued in this regard by the person authorised by the political party from time to time to recommend the symbol of the political party concerned for contesting in election shall be deemed to be valid.]

Explanation.- For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was [set up or given report] as a candidate for the election”.

The Kerala Local Authorities (Prohibition of Defection) Act 1999 was brought “to prohibit defection among members of local authorities in the State of Kerala and to provide for disqualification of the defecting members for being member of the local authorities”. The prohibition and liability for violating the prohibition are same irrespective of whether they are members of a political party or whether they along with a political party are members of a coalition or whether they are independents forming part of a coalition. The acts sought to be prevented are the same and are governed by the principles enumerated in *Kihoto Hollohan v. Zachillhu and Others* reported in 1992 Supp (2) SCC 651 [1992 KHC 694: AIR 1993 SC 412) whereon the principle ‘loyalty to the parties is the norm and voting against the party is disloyalty’ as stated in

Griffith and Ryle on Parliamentary Functions, Practice and Procedure was referred to for holding "any freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance - nay, indeed its very survival".

Further, the concept 'voluntary giving up the membership' was explained and elucidated in relation to the Act by the Division Bench of Hon'ble High Court of Kerala in *Varghese V.V. and Another v. Kerala State Election Commission and Another* [2009(3) KHC 42 (DB): 2009(3) KLT 1] after considering the issue with reference to the decision of the Hon'ble Apex Court in *Ravi.S.Naik v Union of India* [1994 KHC 633: AIR 1994 SC 1558]. In paragraph 7 the Division Bench held:

"The expression 'defection' as such is not defined in the Act. Probably the expression does not require a definition since the concept is so plain. But the Legislature has left the disqualification to be decided on the defined conduct of the member. We are concerned with the conduct of voluntarily giving up membership in the political party. It is now settled law that in order to attract the disqualification on the ground of voluntary giving up membership in the political party, the elected member need not resign from the party. In Ravi S. Naik v. Union of India, AIR 1994 SC 1558 it was held that voluntarily giving up membership is not synonymous with resignation. Voluntary giving up membership has a wider meaning than resignation as observed by a Division Bench of this Court in Shajahan v. Chathannoor Grama Panchayat, 2002 (2) KLJ 451. In Ravi S. Naik's

case the Apex Court made it clear that "Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs". In *Rajendra Singh Rana v. Swami Prasad Maurya*, 2007 (4) SCC 270 also the Supreme Court held that it is the conduct of the elected members that is to be looked into while considering whether an elected member has become disqualified on the ground of defection based on voluntary giving up membership in the political party. In *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly*, 1996 (2) SCC 353 the Apex Court held that "the Act of voluntary giving up the membership of the political party may be either express or implied". In *Faisal v. Abdulla Kunhi*, 2008 (3) KLT 534 a learned Single Judge of this Court has taken the view that the expression "voluntarily giving up membership of his political party is not to be equated with ceasing to be a member of his party by express resignation; it is to be inferred from the conduct of the member. It was also held therein that the relevant date for deciding the question of disqualification is the date on which the member voluntarily gives up the membership".

Considering all such aspects and the object of the Act the Hon'ble Division Bench in *Varghese case* (supra) held that if a member or group of the elected members of the political party takes a different stand from that of the political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty. Further it was found that the moment one becomes disloyal by his

conduct to the political party, the inevitable inference is that he has voluntarily given up his membership.

On evaluating the instant case, it is evident that the respondents herein were elected to the Ranni Grama Panchayat as official candidates of BJP and filed mandatory declaration under Rule 3(2) of the Kerala Local authorities (Disqualification of Defected Members) Rules 2000 with the Panchayat Secretary to that effect. Thereafter they have defied the party direction to abstain from the meetings held on 27.10.2022 to elect new President and Vice President of Grama Panchayat and voted in favour of UDF nominees. Needless to say, that an action of disloyalty of such nature would amount to voluntarily giving up membership of the particular political party. Therefore the respondent had incurred the disqualification of voluntarily giving up membership in the political party.

The whips were issued to the respondents by the competent authority of the party as evident from the depositions of PW2, Returning Officer, PW3, Assistant Secretary of Grama Panchayat and Exhibits X1, X1(a), X2, X2(a), X1(b) and X1(c).

The respondent, RW1, however, had raised dispute with regard to the existence of whip and the service of the whip by the District President of the party. He contends that State President of the party is the authority to issue whip. Further he contends he voted for an independent in the election for President on 27.10.2022 as decided by the BJP Panchayat Committee and BJP Parliamentary Committee. 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 അംഗത്തിന്റേയോ അതിലുൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗത്തിന്റേയോ കാര്യത്തിൽ പ്രസ്തുത അംഗത്തിന് തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ആ രാഷ്ട്രീയ കക്ഷിയുടേതായ ചിഹ്നം ശുപാർശ ചെയ്യുന്നതിന്, അതതു കാലങ്ങളിൽ, രാഷ്ട്രീയകക്ഷി അധികാരപ്പെടുത്തിയിട്ടുള്ള ആൾ ആയിരിക്കേണ്ടതാണ്. എന്നാൽ മേൽപ്പറഞ്ഞ നിർദ്ദേശം ആ രാഷ്ട്രീയ കക്ഷിയുടെ ലെറ്റർഹെഡിൽ തീയതി വച്ച് ഒപ്പിട്ട് അതിന്റെ മുദ്രയോടു കൂടി 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. [Copy of the direction in writing shall also be given to the Secretary]”.

Rule 4 specifically provides that 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 affixture, it shall be done in the presence of at least two witnesses. Moreover the rule mandates to furnish a copy of whip to the Secretary Grama Panchayat. In the present case, the petitioner has claimed that the whip was served directly to the respondents and they acknowledged with signature and marked as Exhibits A1 and A2 which not disputed by the respondents. The copy is received by the Returning Officer as per Exhibit A3 But the copy of the whip not communicated to the Grama Panchayat Secretary as mandated by the Rule. On an evaluation of the oral evidences and materials on record as above in its entirety, it can be concluded that the the ‘direction in writing’/whip was served directly to the respondents and respondents having a constructive knowledge thereof defied the whip issued to them. Therefore the respondents are liable to be disqualified on account of disobeying the whip under the second limb of Section 3(1) (a).

For the aforementioned reasons the O.P.s are allowed and the Respondent in OP No.02/2023 and OP No.03/2023 are declared as

disqualified to be members of Ranni Grama Panchayat as provided under 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and 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**

- PW1 : Sri. Sooraj V.A.
PW2 : Sri. Salim J.F., Returning Officer
PW3 : Sri. V.S. Satheesan (Assistant Secretary)

Witness examined on the side of the Respondent

- RW1 : Sri. Mandiram Raveendran (M.P. Raveendran)

Documents produced on the side of the Petitioner

- A1 : Copy of the whip dated 22.10.2022 issued by Sri. V.A. Sooraj, President, District Committee, BJP, Pathanamthitta to Sri. Raveendran K.P.
A2 : Copy of the whip dated 22.10.2022 issued by Sri. V.A. Sooraj, President, District Committee, BJP, Pathanamthitta to Sri. Vinod A.S.
A3 : Copy of the letter dated 22.10.2022 to Returning Officer intimating the issuance of whip to BJP members, by Sri. V.A. Sooraj, President, District Committee, BJP, Pathanamthitta
A3(a) : Acknowledgement Card
A4 : Copy of the letter regarding the suspension of Sri. Raveendran K.P. and Sri. Vinod A.S. from the Party membership of BJP, by K. Surendran, State President, BJP

Documents produced on the side of the Respondent

Nil

Documents produced by Witnesses

- X1 : Copy of nomination submitted by Sri. M.P. Raveendran
- X1(a) : Copy of the form for Oath regarding Sri. M.P. Raveendran
- X1(b) : Letter dated 10.11.2020 in connection with symbol allotment by Sri. K. Surendran, State President, BJP
- X1(c) : Copy of the letter intimating the issuance of whip to BJP members by BJP District Committee President to Returning Officer, Ranni Grama Panchayat
- X2 : Copy of the nomination submitted by Sri. Vinod
- X2(a) : Copy of the form for Oath regarding Sri. Vinod A.S.
- X3 : Copy of the declaration in Form No.2 submitted by Sri. Vinod A.S.
- X3(a) : Relevant page of the copy of the Register showing the party affiliation of Sri. Mandiram Raveendran
- X3(b) : Copy of the letter from Sri. V.A. Sooraj dated 22.10.2022 intimating the issuance of whip to BJP members, to Returning Officer, Ranni Grama Panchayat
- X4 : Copy of the declaration in Form No.2 submitted by Sri. Mandiram Raveendran
- X4(a) : Copy of the relevant page of the Register showing the party affiliation of Sri. Vinod A.S.

Sd/-

A. SHAJAHAN

STATE ELECTION COMMISSIONER

//TrueCopy//


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

