

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

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

**Thursday, the 28<sup>th</sup> day of November, 2024**

**O.P. No.32/2021**

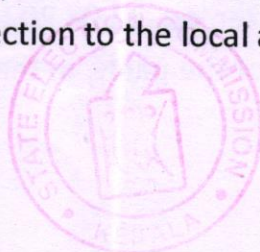
**Petitioner** : Rejo Raju  
S/o Raju Alexander  
Naduvilaparambil  
Seaview Ward  
Alappuzha  
(Member, Ward No.45, Alappuzha  
Municipality)

**(By Adv Sajitha S)**

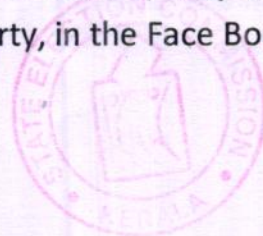
**Respondent** : Ellickal Kunjumon  
S/o Mohammed  
Ellickal Purayidam  
Vattayal Ward  
Alappuzha  
(Member, Ward No.37, Alappuzha  
Municipality)

**ORDER**

1. 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 councilor of Alappuzha Municipality 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 is an elected member of ward No. 45 of the Alappuzha Municipality, belongs to Indian National Congress. The respondent was contested and elected as a councilor of ward No.37 of Alappuzha Municipality as a candidate of Indian National Congress in the General Election to Local Self Government Institutions held in the year 2020. The Alappuzha District Congress Committee President allotted the official symbol of INC "hand" to the respondent for contesting the election. After being elected as a councilor, the respondent had given sworn declaration before the Secretary of the Municipality stating that he is an elected councilor of INC. Based on the said declaration Secretary of the Municipality prepared a Register showing the party affiliation of the respondent as a councilor of INC.
3. There are 52 wards in the Alappuzha Municipality. Out of which INC secured -11, CPI (M)- 23, CPI-9,BJP-3, NCP-1, KC(M)-1, LJD-1, SDPI-1,PDP-1 and independent-1.
4. During the General Elections to the Kerala Legislative Assembly held in April, 2021, INC has fielded Sri. M. Liju as the UDF candidate in the Ambalapuzha constituency. Being a councilor of INC in the Alappuzha Municipality respondent was having a responsibility to support Sri. M. Liju in the election. However, respondent had been widely campaigned against the interest of the INC in general and Sri. M. Liju in particular and had even erected campaign board allegedly portraying Sri. M. Liju in bad light, tarnishing his image and spreading hatred. The DCC General Secretary Sri. Sanjeev Bhatt even filed a complaint before the Police against the erection of such a campaign board. It is learnt that the said campaign board was erected at the instance of the respondent.
5. On getting knowledge of the same, an enquiry was ordered in the said anti-party activities of the respondent and based on the findings that he had committed anti-party activities at the Assembly election, he was placed under suspension. Thereafter the respondent convened a Press Conference at Alappuzha Press Club on 21.08.2021 and made baseless allegations against the party. Thereafter on 22.08.2021, respondent uploaded posts against the said candidate of the party, in the Face Book.

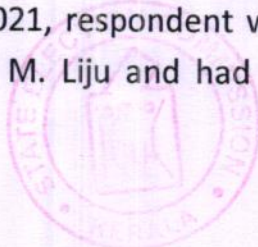


6. Thereafter on 07.10.2021, the respondent accepted the membership of CPI (M) from the State Secretary of CPI (M) political party. The CPI (M) organized a massive function in connection with it at *Ayyankali* Hall, Thiruvananthapuram. Almost all leading visual and print media covered the news and telecasted the same. Petitioner has produced the copy of the *Malayala Manorama* daily and *Deshabhimani* daily in proof of that respondent had joined CPI (M) by accepting membership from CPI (M) leaders. At the time of joining CPI (M) respondent was an elected councilor of Alappuzha Municipality belongs to INC. The above acts of the respondent clearly shows that he had voluntarily abandoned the membership of INC, thereby committed defection and liable to be disqualified under the Kerala Local Authorities (Prohibition of Defection) Act.
7. The respondent's case in brief is that; - Petitioner has no *locus standi* to file the Petition. It is false and incorrect to state that respondent had been campaigning against the UDF candidate in Ambalapuzha constituency during the General Election 2021. Respondent worked in the General Election to the legislative Assembly for the UDF candidate. Respondent has not erected any campaign board portraying the UDF candidate in bad light. It is untrue that DCC General Secretary Sri. Sanjeev Bhatt filed a complaint before the Police against the erection of such a campaign board. The said allegations are levelled because of the personal vendetta of the DCC President to the respondent.
8. During the 2021 General Election to the Legislative Assembly, pitiable failure was faced by UDF in many constituencies, including Ambalapuzha constituency. After the election, without any reason the respondent was suspended from the political party INC. The alleged enquiry against the alleged anti-party activities was totally a biased one. It is untrue that respondent conducted a press conference on 21.08.2021 and made baseless allegations against the political party and published Face Book post against the said candidate of the party on 22.08.2021.
9. It is also false and incorrect to state that respondent accepted the membership of CPI (M) from the State Secretary of the CPI (M) on 07.10.2021. Respondent never joined CPI (M) as alleged. Respondent was



expelled from his political party during the month of August, 2021, without complying the provisions of party constitution and bye-laws. Even after the expulsion from the party the respondent is discharging his duties as a councilor with utmost sincerity and loyalty. Respondent never override any lawful directions (whip) of the party. Respondent never abandoned or voluntarily relinquished the membership of INC.

10. The evidence in this case consists of oral testimonies of PW1 to PW3 and documents Ext.A1 to A3 series.
11. Both sides were heard.
12. The following points arise for consideration, namely;-
  - (i) Whether the petition is maintainable?
  - (ii) Whether the respondent has voluntarily given up his membership from the INC as alleged?
  - (iii) Whether the respondent has committed defection as contemplated under section 3 of Kerala Local Authorities (Prohibition of Defection ) Act ?.
13. Point No. (i) to (iii);- As common questions of law and facts arise for consideration in these points, they are considered together for convenience and to avoid repetition. There is no dispute that petitioner is an elected councilor of ward No. 45 of the Alappuzha Municipality. Therefore as per section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, the petitioner has the necessary *locus standi* to file the petition. Respondent is admittedly a councilor of ward No.37 of the Alappuzha Municipality elected in the General Election to Local Self Government Institutions held in December, 2020. Ext.A1 goes to show that respondent was contested and elected as a councilor of INC, which is a constituent of UDF coalition.
14. Petitioner's case is that during the General Election to the Kerala Legislative Assembly, INC fielded Sri. M. Liju as the UDF candidate in the Ambalapuzha Assembly constituency. Being a councilor of INC in the Alappuzha Municipality respondent was having a responsibility to support and campaign for Sri. M. Liju at the election. However, in the election to Legislative Assembly held in 2021, respondent widely campaigned against the INC and its candidate Sri. M. Liju and had even erected boards and



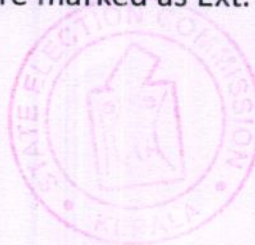
distributed election materials portraying Sri. M. Liju in bad light, tarnishing his image and spreading communal hatred. The DCC General Secretary Sri. Sanjeev Bhatt filed a complaint before the police against the erection of such campaign board.

15. Petitioner examined Sri. Sanjeev Bhatt as PW2, who deposed that after being elected as a councilor of Alappuzha Municipality belongs to INC, respondent has taken a stand in favour of LDF. During the General Election to the Legislative Assembly held in 2021 respondent has taken a stand against INC. Respondent had published election posters that tend to spread communal hatred and he had filed a complaint in this regard before the Police. In the cross examination, PW2 further clarified that such allegations were levelled against the respondent during the 2021 election. He had filed a complaint in this regard before the Alappuzha South Police Station on 13.03.2021 and Police had registered a case against respondent .PW3, who is the Alappuzha South Block Committee President of INC, deposed before the Commission that during the 2021 election respondent had acted against the candidate of INC in Ambalapuzha constituency and published election posters against Sri. M. Liju.
16. On going through the evidence, it appears that there is severe dearth of documentary evidence on the record to support the pleadings. Petitioner has not even produced the copy of complaint dated 13.03.2021 allegedly filed by PW2, FIR registered thereon by Police, notices/posters allegedly circulated by the respondent etc. Petitioner has not even proved the contents of such documents before the Commission through oral evidence. To sum up the testimonies of PW1 to PW3 are not substantiated by any documentary evidence. Further, on going through the cause of action for filing the petition, it appears that petitioner has relinquished the plea based on cause of action arose in April, 2021 in the petition. The said plea is also barred by limitation as prescribed under the rule 4A (2) of the Rules. Therefore the further consideration of it deems unnecessary.
17. Petitioner has a further case that consequent to the alleged anti-party activities in connection with election to the Legislative Assembly, an enquiry was ordered and based on its findings, the respondent was placed under



suspension from the party. Copy of the enquiry report and suspension order are not produced by the petitioner before the Commission. Thereafter the respondent allegedly convened a Press Conference at Alappuzha Press Club on 21.08.2021 and made baseless and false allegations against the party. It is further alleged that on 22.08.2021, respondent published a Face Book post against the candidate of the party.

18. In the objection, respondent denied the above allegations. The alleged Press Conference was conducted on 21.08.2021 and the alleged Face Book post was published on 22.08.2021. However the original petition based on the said causes of action was filed on 08.11.2021. Looking at the provisions of rule 4A (2) of the Kerala Local Authorities (Disqualification of Defected members) Rules, 2000, a petition regarding the disqualification of member shall be filed within 30 days from the deemed disqualification of the member. In the instant case the right to sue first accrued on 21.08.2021 and from the stand point, there is a delay of more than 2 and half months in filing the original petition. Therefore the plea based on cause of action dated 21.08.2021 and 22.08.2021 are also barred by limitation as prescribed under rule 4A of the Rules and hence unsustainable.
19. Moreover petitioner has not adduced any evidence in support of his case that respondent convened a Press Conference on 21.08.2021 and published Face Book post on 22.08.2021 against the party. Therefore the case of the petitioner in this regard is untenable. In *Anitha Baby V Kunjappan Painkily* (2015 KHC 33) the Hon'ble High Court held that infliction of disqualification based on inference or mere oral evidence contrary to the facts obtained from the documentary evidence is impermissible and as such illegal.
20. Another case put forth by the petitioner is that respondent while continuing as an INC councilor of Alappuzha Municipality accepted the membership of the CPI (M) from the State Secretary of the CPI (M) political party on 07.10.2021. On 07.10.2021 CPI (M) has organized a massive function in connection with the same at Ayyankali Hall, Thiruvananthapuram. The news and visuals of the said function was covered by all print and electronic medias. The news with photo reported by *Deshabhimani* daily and *Malayala Manorama* daily on 08.10.2021 are marked as Ext. A2 and A3 series.



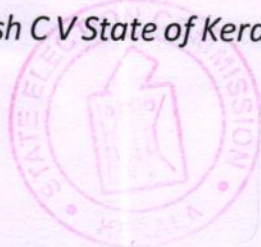
21. It is reported in the *Deshabhimani* daily dated 08.10.2021, along with photo that former congress leader and Chairperson of Alappuzha Municipality Ellikkal Kunjumon and about 50 workers of INC have joined CPI (M) in a function held on 07.10.2021, in the presence of Chief Minister. The same report was also published in the *Malayala Manorama* daily dated 08.10.2021.
22. Admittedly, PW1 to PW3 were not participated in the function held on 07.10.2021 at *Ayyankali* Hall, in which the respondent had allegedly joined CPI (M). Petitioner has not examined any witnesses to prove that on 07.10.2021 respondent had participated in the function and joined CPI (M) political party. It is pertinent to note that petitioner has not examined any reporter or editor of the newspapers to prove the genuineness of the Ext. A2 and A3 news item.

In *Laxmi Raj Shetty and Ors V State of Tamil Nadu* (1988) 3 SCC 319; AIR 1988 AC 1274, the Hon'ble Supreme Court held that

"32.....We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78 (2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein."

In *Samant N Balakrishana V George Fernandez and Ors* (1969) 3 SCR 603, the Hon'ble Supre Court held that " A newspaper report without any further proof of what had actually happended through witnesses is of no value. It is at best a second hand secondary evidence. It is well known that reporters collect information and pass it on to the editor, who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

The dictum laid down by the above Supreme Court judgments are relied on by the High Court in *Prakash CV State of Kerala* ( Judgment dated 15.01.2021



in WP (C) 4756/2017) . The Division Bench of Hon'ble High Court of Kerala observed that

"33. It is now well-settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of statement appearing in Court and deposing to have perceived the fact reported."

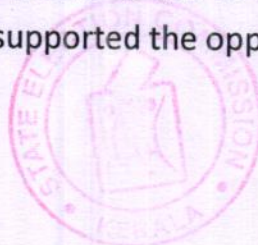
23. In the objection filed by the respondent, he has taken a consistent case that he was expelled from INC during August, 2021 but even thereafter he was discharging his duties as a Councilor belongs to INC with utmost sincerity and loyalty to INC. Respondent never override any directions of whip issued by the party.
24. On going through the pleadings and available evidence on the record, it appears that petitioner has no case that respondent violated any whip or direction issued by his political party INC during his tenure as leader of INC parliamentary party in Alappuzha Municipality or as councilor of Municipality. The petitioner has also no case that respondent has acted in collusion with opposite LDF or acted in unison with LDF or shifted his loyalty to the LDF coalition in any of the affairs of the local authority.

In *Varghese KV @ Thankachan Kanjirakkattu V State Election Commission* (2020 KHC 841 (DB) the Hon'ble High Court observed that

"A distinction has to be drawn as to the conduct which may attract only disciplinary action within the political party and conduct which attract disqualification under the Prohibition Act. If a conduct has no relation or bearing with the membership in a local authority, that may only attract disciplinary action within the party.....

The conduct of a member of a political party in relation to the affairs of the local authority alone has to be considered for disqualification under the Prohibition Act. If a member of a Political Party defies any political directives in relation to the affairs of the local body that amounts to voluntarily giving up of membership of such party."

25. In the present case there is no allegation that respondent being the councilor of the Municipality, has either failed to act in accordance with political directives issued by his party or supported the opposite CPI (M) or LDF in any



manner or by his conduct segregated himself from his political party or coalition.

In *Joseph KM V Babychan Mulangasseri* (2015 (1) nKHC 111 (DB) the Hon'ble High Court held that

"In order to draw an inference that elected members have voluntarily given up membership of the political party, there must be concrete proof that they have acted in defiance of any valid directions of the political party, which should be established by positive, reliable and unequivocal evidence"

26. From the available evidence on the record and in the light of dictum laid down by the aforesaid judgments, it is not possible to say that the respondent has committed any act of defection warranting disqualification under the section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection) Act.

In the result, the original petition is dismissed.

Pronounced before the Commission on the 28<sup>th</sup> day of November 2024



Sd/-

**A. SHAJAHAN**  
**STATE ELECTION COMMISSIONER**

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

**APPENDIX**

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

- PW1 : Rejo Raju  
PW2 : G. Sajeev Bhatt  
PW3 : C.V. Manoj Kumar

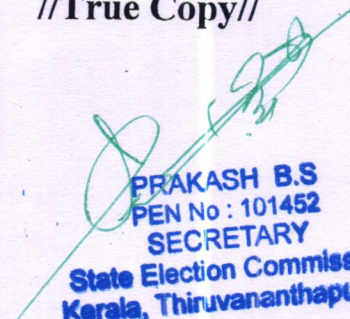
**Documents produced on the side of the Petitioner**

- A1 - Copy of the Register owing the political affiliation of the members of Alappuzha Municipality  
A2 - Copy of the Desabhimani daily dated, 08.10.2021  
A2 (a) - Photo at page No. 1 of Ext. A2  
A2 (b) – News report and photo at page No. 2 of Ext. A2 regarding Ellickal Kunjumon joining CPI (M)  
A3 – Copy of the Malayala Manorama daily dated, 08.10.2021  
A3 (a) – News report @ Page No. 2 of Ext. A3

Sd/-

**A.SHAJAHAN**  
**STATE ELECTION COMMISSIONER**

//True Copy//

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

