

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193

WA.No. 452 of 2015 ()

**-----
AGAINST THE JUDGMENT IN WP(C) 17230/2013 DATED 13-02-2015
-----**

APPELLANT/1ST RESPONDENT :

**-----
LIZY VALSALAN,
WIFE OF VALSALAN ABRAHAM,
AGED 53 YEARS, MEMBER, WARD NO. 4
KEERAMPARA GRAMA PANCHAYAT
KEERAMPARA P.O., KOTHAMANGALAM
RESIDING AT KAIPANAL HOUSE, THATTEKKAD P.O.
KOTHAMANGALAM, ERNAKULAM DISTRICT.**

**BY SENIOR ADVOCATE SRI.K.RAMAKUMAR
BY ADV.SRI.S.M.PRASANTH**

RESPONDENTS/PETITIONER & 2ND RESPONDENT :

- 1. SUJA SALIM
W/O. SALIM RAJAN, AGED 47 YEARS
MUNDEKUDIYIL HOUSE, THATTEKKADU P.O.
PALAMATTOM, ERNAKULAM -686 691.**

- 2. THE KERALA STATE ELECTION COMMISSION
THIRUVANANTHAPURAM-695 001.**

**R1 BY ADVS. SRI.P.MARTIN JOSE
SRI.PPRIJITH
SRI.THOMAS P.KURUVILLA
R2 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 03-06-2015,
ALONG WITH WA. 453/2015 & CONNECTED CASES, THE COURT ON
06-07-2015 DELIVERED THE FOLLOWING:**

Mn

...2/-

WA.No. 452 of 2015 ()

APPENDIX

PETITIONERS' ANNEXURES :

**ANNEXURE A1 : COPY OF THE LETTER DATED 25.2.2015 OF THE SECRETARY,
KEERAMPARA GRAMA PANCHAYAT.**

**ANNEXURE A2 COPY OF THE AFFIDAVIT DATED 9.3.2015 OF THE SECRETARY,
KEERAMPARA GRAMA PANCHAYAT ALONG WITH
ENCLOSURES.**

RESPONDENT'S ANNEXURES : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

W.A.Nos.452, 453, 454, 455,
456 & 457 of 2015

Dated this the 6th day of July 2015

J U D G M E N T

Shaffique, J

These appeals are filed challenging the common judgment dated 13/02/2015 in a batch of writ petitions. Since the issues involved are the same, the appeals are heard and decided together.

2. The common appellant, who was one among the respondents in the writ petitions, filed original petitions before the Kerala State Election Commission (hereinafter referred to as 'the Commission') seeking to disqualify certain members of Keerampara Grama Panchayath inter alia contending that they have voted in a meeting violating the whip issued by the respective political parties and by their action in not complying with the directions of their respective political parties, they have voluntarily abandoned

their membership from their political party.

3. O.P.Nos.37 to 42 were filed by the appellant before the Commission which were disposed of by a common order dated 26/06/2013, whereby the Commission, after evaluating the evidence, allowed the petitions and the respondents in the said original petitions were declared as disqualified from being members of the Panchayath as provided under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act (hereinafter referred to as 'the Act') and that they were also disqualified from contesting as candidates in an election to any local authority for a period of six years from the said date as provided under Section 4 (3) of the Act.

4. The aggrieved parties preferred separate writ petitions before this Court. The learned Single Judge, by common judgment dated 13/02/2015, allowed the writ petitions and set aside the judgment of the Commission. These appeals are filed challenging the said common

judgment. The writ petitioners are commonly referred as the respondents.

5. The short facts involved in these writ appeals disclose as under:

The appellant herein belongs to the political party Indian National Congress (INC). INC contested the election held in October 2010 for Keerampara Grama Panchayath under the coalition of United Democratic Front (UDF). The other constituents of UDF were Kerala Congress (M) [KCM] and Kerala Congress (J) [KCJ]. After elections, INC won 6 seats, KCM 2, KCM (Independent) 1 and KCJ 1. The total number of seats in the Panchayath were 13 and UDF secured 10. Out of the remaining 3, two seats were won by independents and one by Left Democratic Front (LDF).

6. After the election, the appellant was elected as the President of the Panchayath as per the decision of INC and other UDF partners. On 21.4.2012, a no confidence motion was moved against the appellant by certain members of

UDF. The no-confidence motion was tabled for discussion on 08/05/2012. Appellant contended that the District Congress Committee (DCC) involved in the matter and Sri.V.J.Poulose, the District President of INC, issued a direction to all the elected members of INC to abstain from the discussion, as the no confidence motion will be defeated for want of quorum. Similar decision was taken by other political parties of the coalition as well. The decision of the political parties were widely published in newspaper and the decision was made known to all the members of the political party by sending the respective whip, by registered post with acknowledgment due, courier and by affixture. The whip was communicated to the Secretary of the Panchayath in writing, as per Rules. However, the writ petitioners voted in favour of the no-confidence motion on 08/05/2012 and ousted the appellant from the post of President. This, according to the appellant, amounted to the members voluntarily giving up membership from their political party and defying the whip

issued by the political party. It is also alleged that, the no confidence motion was moved without permission from their political party and that the members acted in violation of the instruction of their political party which warrants disqualification.

7. The respondents contended that the decision of the political party not to attend the no confidence motion was not communicated to them and they were not informed about any whip being issued. Therefore, it is contended that mere supporting the no confidence motion or issuing no confidence motion will not amount to voluntarily abandoning membership from the political party.

8. In O.P.Nos.37/2012 and 40/2012, the respondents were members of INC. In O.P.No.38/2012, respondent was member of KCJ, in O.P.No.39/2012, the respondent was a member who contested the election with the support of KCM and in O.P.Nos.41 and 42 of 2012, the respondents were members of KCM.

9. Before the Commission, both sides adduced evidence. The evidence consisted of oral testimony of PWs 1 to 4 from the side of appellant and RWs 1 to 7 from the side of the respondents. The appellant relied upon Exts.P1 to P18 documents and the respondents relied upon Ext.R1 to R5.

10. The respondent in O.P.No.39/2012, who was an independent candidate, with the support of KCM, contended that he was not affiliated to any political party and therefore the question of defection does not arise. The Commission found that he had contested the election as KCM (Independent) under the UDF coalition and therefore the contrary contention was absolutely baseless. He was therefore treated as a member of KCM and continued to be a member of KCM and was bound by the decision and directions of KCM party.

11. After evaluating the evidence, the Election Commission found that the respondents have knowingly

voted against the direction and decision of the political party and they were fully aware of the decision of the political party before voting in favour of the no confidence motion. Commission also found that the whip issued by the political parties were completely ignored by the respondents.

12. The learned Single Judge, after relying upon the judgment of the Division Bench in **Joseph.K.M. v. Babychan Mulangasseri & Others** [2015 (1) KHC 111 (DB)] observed that the facts of the present case being almost similar to the said case held that even though the UDF candidate was ousted from the post of President, they did not get the support of LDF to get the no confidence motion passed and in the absence of any material to show that the support of LDF members were solicited, the writ petitions were to be allowed applying the law laid down in **Joseph.K.M's** case (supra). Accordingly, the common order passed by the Commission was set aside.

13. Heard Sri.K.Ramakumar, learned senior counsel appearing on behalf of the appellant, Sri.S.Sreekumar and Sri.Krishnanunni learned senior counsel appearing for the contesting respondents and Sri.Murali Purushothaman learned counsel appearing for Election Commission. Sri.Murali Purushothaman also placed before us the copies of records relating to the said case.

14. Sri.K.Ramakumar, arguing on behalf of the appellant, submits that the learned Single Judge did not negate any of the findings of the Commission. Reliance was placed only on **Joseph.K.M**'s case (supra) and on a finding that the factual position was the same, the writ petitions were allowed setting aside the judgment of the Commission. It is argued that there is a clear finding by the Commission based on evidence that the political parties had issued whips which were violated by the respondents. Further, the Commission found that the respondents have voluntarily abandoned their membership as they were aware of the

decision of the political party not to participate in the meeting in which no confidence motion was moved. This finding of fact, when it remains as such and undisturbed even by the learned Single Judge, the writ petitions ought to have been dismissed. It is argued that **Joseph.K.M's** case (supra) has no semblance to the facts involved in the present case. In **Joseph.K.M's** case (supra), all the members of the political party wanted removal of the President and no support was obtained by them from any other political party. Further there was no decision by the political party either to support or not to support the no confidence motion. It is in such circumstances that it was found that there is no defection by the members. But, as far as the present case is concerned, no confidence motion was moved by a few of the UDF partners without the consent of the coalition parties. The competent person of the respective political parties have issued whips which were sent by registered post and whip was made known to all

members of the respective political parties. The respondents have acted in violation of the directions issued by the political parties and further they have voted against the President of the Panchayath who was a member of INC. While doing so, they got the support of LDF member as well. Hence such a finding of fact had been entered into by the Commission based on the materials available before it. In the absence of any finding that the conclusion of the Commission is perverse, the learned Single Judge ought not have interfered with the said finding of facts. Learned counsel also relied upon the following judgments in support of his contentions.

i) **Shiny Augustine v. Kerala State Election Commission** [2009(4) KHC 527].

ii) **Faisal.P.A v. K.A.Abdulla Kunhi and Another** [2008(3) KHC 267]

iii) **Dharma Mani v. Parassala Block Panchayat** [2009(3) KLT 29].

iv) **Varghese V.V. and another v. Kerala State Election Commission** [2009(3) KHC 42 (DB)].

v) **Jaison Karakkat v. K.C.Chacko & another** [W.A.No.1854/2014 dated 04/03/2015].

vi) **Nazeerkhan.S v. Kerala State Election Commission** [2009(1) KHC 681 (DB)].

15. On the other hand, Sri.S.Sreekumar, learned senior counsel contended that the whip has not been served on the respondents as admittedly the registered post which was issued on 04/03/2015 was delivered only after the date on which the resolution was tabled. Further, there was no material to indicate that the respondents were aware of the decision of the political party to keep away from the discussion on the no confidence motion on 08/05/2012. It is also pointed out that **Joseph.K.M's** case (supra) clearly applies to the factual circumstances involved in the present case. The respondents did not get the support of any of the LDF members, as the UDF itself had 10 seats. The voting on

08/05/2012 would indicate that only 8 members were present which included the respondents and two others from LDF. Five members were not present. It is therefore argued that there was no material to arrive at a finding that a whip was issued and the respondents were aware of the decision taken by the respective political parties. Sri.Krishnannunni, learned counsel, while supporting the arguments of Sri.S.Sreekumar, further points out that the settled position of law is that moving a 'no confidence motion' against the President will not amount to any defection. In the absence of any decision by the political party, which is communicated to the members of the political party either in favour or against the no confidence motion, no incapacity could be fastened on the respondents to participate in the meeting and support the motion. Further, there is no material on record to suggest that the respondents obtained the support of LDF members to oust the President of the Panchayath.

16. Having regard to the aforesaid rival contentions,

the question to be considered is whether the learned Single Judge was justified in setting aside the order passed by the Election Commission based on the law laid down in **Joseph.K.M's** case (supra).

17. Therefore, before proceeding further, we have to analyse whether there is any factual difference between the cases on hand and **Joseph.K.M's** case (supra). **Joseph.K.M's** case (supra), was in regard to the general elections of 2002 with reference to Manimala Grama Panchayath. Out of the total 15 seats, UDF won 10 seats out of which 5 seats were won by INC candidates, 4 seats by KCM and one seat by Indian Union Muslim League. Out of the remaining five seats, LDF won 3, Bahujan Samaj Party 1 and other by an independent candidate. The respondents in that case were INC candidates. The appellant was elected as President of the Panchayath. Respondents 1 to 3, with the support of other elected members of coalition, moved a no confidence motion which was tabled on 28/07/2011.

They voted in favour of the no confidence motion and ousted the appellant. In that case, contention was urged by the respondents that UDF directed the appellant to resign from the post of President which he disobeyed. Therefore, UDF decided to move a 'no confidence motion' against the appellant. It was signed by all the members of UDF. Direction was given to all members of INC and UDF to support the no confidence motion. The appellant and another member of Congress alone did not vote in favour of the no confidence motion. It was also contended that the DCC president had not issued any direction. Though the Commission found that respondents 1 to 3 were disqualified as they acted against the decision of the Congress Party, on evaluation of the evidence, it was found by the Single Judge (myself) that the Commission had proceeded to consider irrelevant materials to draw an inference that the respondents have defected from their political party and hence set aside the order passed by the Commission. In the

appeal, the Division Bench observed that first of all there was no whip issued in terms of Section 3(1)(a) of the Act which was the finding of the Commission as well. In regard to the finding of the Commission that after the no confidence motion, the first respondent contested for the post of President against the official candidate of Congress Party and respondents 2 and 3 supported him, the Division Bench held that there is total lack of pleadings in the original petition. It was therefore found that any amount of evidence cannot be looked into on a plea which was never put forward in Exts.P3 to P5 in the original petition. The finding is that the pleadings were not sufficient to prove the allegation of disqualification under the Act. In regard to the finding of the Commission that moving a no confidence motion against their own party without the knowledge and consent of Congress party or DCC President amounts to voluntarily giving up membership of the party, it was held that no confidence motion was moved with the support of Kerala

Congress. On facts, it was found that no confidence motion, though moved by respondents 1 to 3 along with five other members of UDF, it was supported by 9 out of 11 members of UDF. There was no material to indicate that no confidence motion was supported by any member of the opposition party and there was no destabilization of power in the Grama panchayath and UDF continued in power. Further from the evidence on record, the Division Bench observed that there was a discussion in the DCC office about removal of the appellant from the post of President and the same was accepted in principle. Such evidence on record was brushed aside by the Commission while accepting the version of DCC President. Therefore, after an evaluation of the materials on record, the Division Bench formed an opinion that the Election Commission had considered the matter based on irrelevant materials and for that reason, the appeal was rejected. It was found that in order to draw an inference that the respondents had voluntarily given up

membership of the political party, there must be concrete proof that they have acted in defiance of any valid direction of the political party. The evidence should be positive, reliable and unequivocal.

18. Therefore, it could be seen that **K.M.Joseph's** case (supra) has been decided based on the factual materials available in the said case and on evaluation of the evidence, especially since the Commission did not rely upon relevant materials whereas it had relied upon irrelevant materials to arrive at such a conclusion.

19. Now, coming to the case on hand, the no confidence motion was moved only by two members of the coalition. There cannot be any dispute about the fact that the political party has taken a decision to abstain from voting. The said decision was taken on 03/05/2012. A whip was also issued. The respective political parties have adduced evidence regarding the same. What remains was whether the said whip was communicated to the

respondents or whether they were aware of the issuance of such a whip, though not served. Existence of the whip cannot be disputed. The only fact remains is whether it was communicated. Secondly, whether the respondents were aware of the whip or had knowledge about such a decision taken by the political party. If either of these factors are proved, Section 3 squarely applies. These facts are not similar to the factual circumstances involved in **K.M.Joseph's** case (supra). In **K.M.Joseph's** case (supra), out of the 10 members of UDF, 8 of them moved the no confidence motion and 9 of them supported it. They did not get the support of any of the LDF members. There was no evidence to prove that the Congress party had taken a decision to vote against the resolution. Here the fact that the competent authority had issued a whip which is valid in law, itself, amounts to a factual difference available in the case. Therefore, we are of the view that the law laid down in **K.M.Joseph's** case (supra) could not have been straight

away applied to the facts of the present case without having considered the materials on record and the factual circumstances involved in the present case. Each case has to be decided on its own facts. If it was just a case where the contention of the appellant was that the respondents have moved the no confidence motion and thereby it amounts to defection, the situation would have been different. In the case on hand, the appellant's definite case is that whip was issued by the competent authority which was served on the respondents, they were aware of the decision of the respective political parties and still they have acted in defiance of the said decision. They also got the support of LDF members.

20. It is therefore apparent that the learned Single Judge did not correctly appreciate the contentions urged in its proper perspective.

21. In fact, the Election Commission had come to a definite finding regarding the validity of the whip, service of

the whip as well as the action of the respondents contrary to the instructions issued by their political parties. This finding of fact has neither been evaluated by the learned Single Judge nor has the learned Single Judge found that the findings are so perverse which require interference by the Court. In the absence of any such findings, it was not proper for the learned Single Judge to have set aside the findings of the Commission.

22. Now let us consider how the Commission has evaluated the materials on record. PW1 is the appellant. PW2 is the DCC President of INC who deposed that he had issued whip to all the Congress members directing them to abstain from the discussion and voting on the no confidence motion. Exts.P5 to P7 are copies of the said directions. He deposed that the said directions were sent through registered post with acknowledgment due and were also affixed in their respective addresses. According to him, they violated the directions issued in the whip. Further it was

stated that the respondents in O.P.No.37/2012 contested to the post of President against the official candidate of Congress Party in the subsequent election held after ousting the appellant. The Commission has placed much reliance on the evidence of PW2. Further, the evidence of RW7, the respondent in O.P.No.37/2012 was analyzed. The Commission held that *"she has categorically admitted in cross-examination that the no confidence motion was moved without consulting with the Congress party. She has also admitted that she did not enquire about the stand of the Congress Party on the no confidence motion. She has further admitted that the direction of the DCC President as per Ext.P6 was to defeat the no confidence motion. To the suggestive question that she was aware of the Congress Party decision not to support the no confidence motion, she has answered in the affirmative meaning thereby that she knew that her party was against the no confidence motion. Further the respondent as RW7 has admitted in cross*

examination that in the subsequent election to the post of President, Gigi Eldos was the official candidate of Congress party and she contested against her and became the President with the support of an LDF member and independents. She has further admitted that the Congress Party had not directed her to contest as President."

23. The Commission further found that on the evidence of PWs 1 and 2 and the admissions of RW7 and the documents mentioned therein, it was clear that respondents in O.P.Nos.37 and 40 had voted in favour of the no confidence motion against the decision and direction of the Congress Party and they were fully aware of the decision that the Congress party was against the said no confidence motion. It was also found that the directions of PW2 were received by the respondents only on 09/05/2012 and 08/05/2012 at 4 p.m respectively as evident from Ext.P12 series. It was observed that the postal articles were sent sufficiently early in their correct address on 04/05/2012.

There is also a finding that "it is seen that the delivery of the postal articles was purposely delayed by the respondents to make it appear that these articles were not received by them before the discussion on no confidence motion." The whip was also sent by courier on 04/05/2012 as evident from Exts.P13 and P13(a). The Commission relied upon the admission of RW7 that the Congress members were aware of the party decision to defeat the no confidence motion moved against the appellant. On this basis, it was found that they have acted against the direction and decision of the Congress party. It was also found that they have got the support of the LDF member.

24. With reference to the evidence against the respondent in O.P.No.38/2012, the Commission relied upon the evidence of the District President of KCJ who was examined as PW4, who gave evidence that the direction at Ext.P16 was sent by post and courier and a copy was given to the Secretary of the Panchayath as Ext.P11. He gave

evidence stating that they have acted against the decision of the party. During cross-examination he submitted that, in the meeting convened by him, the respondent also was present. Further, a whip was affixed at her house. The Commission further found that evidence was available to indicate that whip had been sent well in advance and the receipt of the same was purposely delayed to make it appear that she did not get the direction before the no confidence motion. It was also found that the respondent did not consult or contact the District President or the party leaders to ascertain their stand on the no confidence motion. Hence it was found that the respondent had acted against the decision of KCJ. With reference to other respondents in O.P.Nos.39,41 and 42 of 2012, Commission relied upon the evidence PW3, District President, who deposed that he gave direction to defeat the no confidence motion. Exts.P9, P10 and P11 are the directions which were sent through courier service which is evident from Exts.P13 and P14 series.

Commission took note of the deposition of PW3 that the respondents were also present in the meeting convened for taking a decision regarding the no confidence motion. In fact, it was the members of KCM that the no confidence motion was moved. It is, after an analysis of the entire evidence, that it was found that there was defiance on the side of the respondents in not complying with the directions of the political party. The Commission had placed much reliance on the evidence of PWs 2, 3 and 4 who are the District Presidents of the political parties. Their uncontroverted evidence clearly indicated that the political parties had taken a decision not to support the no confidence motion and whip was also issued. They have also given evidence that the respondents were aware of the decision taken by their political parties. As far as the members of INC are concerned, they did not move the no confidence motion. It was moved by other members of coalition. Therefore, a duty was cast upon to find out the

stand of the political party especially when the no confidence was moved against the member of INC. Further, if the evidence of RW7 can be accepted, there is nothing wrong in the Commission in arriving at a finding that the respondents can virtually admit that they were aware of the decision of the INC. That apart, copy of the whip was handed over to the Secretary of the Panchayath. However, it is argued that RW7 had not admitted any such fact as stated by the Commission. Learned counsel took us through the evidence of RW7. On a perusal of the evidence, it is rather clear that in cross-examination, RW7 admits that she was aware of the decision taken by the Congress party for defeating the no confidence motion. As far as the other members of KCM and KCJ are concerned, evidence of PWs 3 and 4 clearly proves the fact that they were present in the meeting where decision was taken not to support the no confidence motion. When the oral evidence adduced by PWs 2 to 4 coupled with the admission by RW7 were accepted by

the Commission, it cannot be said that the said finding of fact was erroneous or perverse. Hence it was not proper on the part of the learned Single Judge to have set aside the order passed by the Commission purely based on the law laid down in **K.M.Joseph's** case (supra). Under such circumstances, we are of the view that the learned Single Judge ought not to have interfered with the order passed by the Commission which is based on sufficient materials and relevant facts. Jurisdiction of this Court to interfere with such decision making process of the Commission can arise only in situations where the decision is either illegal, which is in violation of the principles of natural justice or the finding of fact is so perverse that no reasonable person can arrive at such a finding. Merely for the reason that a different view is possible on a set of facts, cannot be a reason to arrive at a different finding. If the findings are based on relevant materials, there is no reason for a writ court to interfere with such finding of fact.

23. Another contention urged by the learned counsel for the respondents is that the whip was not issued in a validly constituted meeting. Reference is made to Rule 4 of The Kerala Local Authorities (Disqualification of Defected Members Rules, 2000) which reads as under:

“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) in the case of a member belonging to a political party or a member considered as included therein, it shall be the person authorized from time to time to recommend the symbol belonging to the political party in order to contest the said member in the election. Provided, the above said direction shall be in the letter head and seal of the political party and for the information of the members, the contents therein shall be read over by the member who shall be elected by the members belonging to the political party and the members considered as included in the political party jointly, based on majority from among themselves, and

the direction so read shall be deemed to have given directly to the members. In any case, in the absence of the member elected by majority or if that member refuses, another member belonging to the same party shall read over the said direction.

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 elect for the purpose, on majority basis from among themselves.

(iii) if any dispute arises between the member elected on majority or the concerned political party as mentioned in clause (i), the above said direction given shall be considered as valid.

[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 acknowledgement 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.]

26. In the written statement filed by the respondents, the contention urged is that no whip had been issued or

served. That a whip had been issued is in evidence and presently it is the only contention that it has not been served. No contention has been raised earlier in the written statement to indicate that the procedure to issue whip has not been complied. Therefore, we do not think that the respondents are justified in taking such a contention at this point of time. If they had a case that whip has not been issued in a validly constituted meeting of the political party as envisaged under the rules and the signatory of the whip was not competent to do so, they should have taken such a contention. It is in evidence that District President of the political party is the competent authority to issue whip as he is the person entrusted with the duty to give the official emblem to the candidate. Therefore, the said contention is also without any basis and has to be ignored.

27. One contention that has been specifically urged by the respondents, is that the whip has not been served on them, and the evidence indicates that the whip was served

only after the time and date on which the meeting was held. Rule 4(2) of the Rules clearly indicates that a direction under sub Rule (1) if send by registered post, it shall be done along with acknowledgment due. While effecting service by affixture, it has to be done in the presence of at least two witnesses. Copy of the direction in writing shall also be given to the Secretary. The very purpose of informing the Secretary of such a direction is to ensure proof regarding existence of a valid direction (whip) in terms of Rule 4(1)(i). It is true and as rightly contended by learned counsel for respondents that the reason for sending the direction under Rule 4(1) by registered post acknowledgment due is for the purpose of intimating the direction to the concerned member. But, by not receiving the registered article, the member should not be permitted to circumvent a valid direction. 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. Even assuming that the registered parcel was not received by any of the respondents, in the meeting held on 08/05/2012, the Secretary had informed them about the existence of the whip. The respondents intimated the Secretary that the whip need not be read over during the meeting. These are all additional facts which give an indication that the respondents were aware of the whip issued by the political parties. Further, it is also evident that without the support of LDF and other independent members, it was not possible for the respondents to form a quorum to pass the no confidence motion. When these factual aspects had been taken note of by the Commission and arrived at a clear finding that the respondents were aware of the existence of the whip though not specifically served on them and contrary to such direction, they had acted against the interest of their political party, we do not think that the learned Single Judge was justified in interfering with the said

finding of fact.

28. The law in this regard is well settled. Section 3 of the Act contemplates two situations to disqualify a person on the ground of defection. One is voluntarily giving up membership from the political party and the other, voting in a meeting in violation of a written direction of the political party or coalition. Though both the grounds are distinct and different, a particular cause of action may include factual aspects, which may blend together to form the basis of the two situations. In the case on hand both these factors are alleged and held to be proved by the Commission. In **Shiny Augustine** (supra) it was held that when the bundle of facts on the basis of which the pleading and the attendant evidence rest, essentially shows that, in the proceedings before the Commission, there was material for the Commission to hold that the writ petitioner has become subject to disqualification there is no reason for the Court in exercise of power under Article 226 to interfere. In

Faisal.P.A (supra) it was held that by accepting the nomination by members of the rival coalition it is evident that the petitioner had acted against the directions of his party leadership and that he was arraying himself with the rival coalition which would warrant disqualification. In **Dharma Mani** (supra) it is held that when it is not in dispute that petitioners, being elected as members of INC, had actively participated in the No Confidence Motions moved by the opposition against the President and Vice President, who were also official candidates of the INC, even in the absence of whip the Commission was justified in disqualifying them on the ground that they have voluntarily given up their membership of political party. It is held that disqualification for voluntarily giving up the membership of one's party, is not dependant on the violation of the whip. The intention of the Act is that the member who has violated the whip or has abandoned the membership of the political party to which he belongs shall be disqualified. It is not necessary to hold that

the member has violated the whip in order to hold that he has voluntarily abandoned the membership of his political party. The grounds for disqualification are distinct and are not interlinked. In **Varghese V.V.** (supra) when the members decided to sit as a separate block and voted in favour of the no confidence motion moved by the rival political parties it was held that it amounts to shifting of loyalty. It was further held that, if a member or a 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. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership.

In the light of the aforesaid discussion, we are of the view that the writ appeals are to be allowed. Accordingly, we allow the writ appeals, setting aside the

judgment of the learned Single Judge and the writ petitions stand dismissed.

(ASHOK BHUSHAN, CHIEF JUSTICE)

(A.M.SHAFFIQUE, JUDGE)

jsr