

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936

WP(C) .No. 1423 of 2013 (C)

PETITIONER(S) :-

VIJAYAMMA RAJU, W/O.RAJU, CHAMAKKALAYIL HOUSE,
PANAKKACHIRA, MADUKKA P.O., KOTTAYAM DISTRICT.

BY ADVS.SRI.SHAJI THOMAS
SRI.BINU PAUL
SRI.T.V.VINU

RESPONDENT(S) :-

1. KERALA STATE ELECTION COMMISSION
THIRUVANANTHAPURAM-695001.

2. N.T.YASHODHARAN,
S/O.LATE KESAVAN, THANNIMOOTTIL HOUSE, MADUKKA P.O.
KOTTAYAM DISTRICT-686513.

R2 BY ADV. SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA

R1 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jvt

APPENDIX

Petitioner's Exhibits :-

Ext.P1 :- True copy of the petition in O.P.No.80/2011 dated 18.11.2010 filed by the 2nd respondent.

Ext.P2 :- True copy of the objections dated 15.11.2011 in O.P.No.80/2011 filed by the Writ Petitioner.

Ext.P3 :- True copy of the order dated 29.12.2012 in O.P.No.80/2011.

Ext.P4 :- True copy of the proof affidavit and the deposition of PW1 dated 24.2.2012 in O.P.No.80/2011 before the 1st respondent.

Respondent's Exhibits :- NIL.

//True Copy//

P.A.to Judge

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No.1423 of 2013

Dated this the 5th day of January 2015

J U D G M E N T

Ext.P3 order passed by the Kerala State Election Commission, Thiruvananthapuram disqualifying the petitioner from being a member of Koruthodu Grama Panchayat as provided by Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999, hereinafter referred to as “the Act” and from contesting as a candidate in an election to any Local Authority for six years from the date of the order as provided by Section 4(3) of the Act is under challenge in this writ petition.

2. The petitioner is an elected member of Koruthodu Panchayat. She contested the General election held on 25.10.2010 as a candidate of Communist Party of India (CPI for short), a registered political party and the constituent of Left Democratic Front (LDF for short) from Ward No.XII of Koruthodu Grama Panchayat. The petitioner belongs to Scheduled Caste. The office of President in Koruthodu

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Panchayat is reserved for "Scheduled Caste woman". In the General election, LDF won 5 seats out of total 13 seats in the said Panchayat. Among the 5 seats won by the LDF candidates, 4 seats were secured by the CPM and 1 seat by the CPI. The United Democratic Front (UDF for short) candidates won 7 seats. The Bahujan Samajwadi Party (BSP for short) secured one seat. Though the UDF secured 7 out of 13 seats, all the woman candidates belonging to Scheduled Caste fielded by the UDF were defeated and therefore, the UDF did not sponsor a candidate for the election to the post of President in the aforesaid Panchayat. The LDF sponsored Smt.P.V.Seethamma as their candidate for the post of President in the presidential election held on 8.11.2010. The petitioner herein cast her vote in favour of Smt.P.V.Seethamma and she got all 5 votes of elected members belonging to LDF.

3. The petitioner alleges that as per Rule 7 of the Kerala Panchayat Raj (Election of President and Vice President) Rules, 1995, it is not mandatory that the candidate has to be proposed and seconded by two other members if the post of President is reserved for SC woman. The petitioner alleges that she did not

-: 3 :-

contest to the post of President and she did not file any nomination signed by her. She did not express her willingness to contest in the election and did not seek the support of UDF members either directly or indirectly and nobody proposed her name also. However, in the election held on 8.11.2010, 7 UDF members cast their votes in favour of the petitioner, though she did not file any nomination to contest the post of President. Since all the 7 UDF members cast their votes by writing the name of the petitioner and Smt.P.V.Seethamma has secured the vote of 5 LDF members only, the Returning Officer declared that the petitioner is the President of the Panchayat. The petitioner alleges that she was rather surprised in declaring her elected as the President of the Panchayat. However, her party leaders permitted her to serve as the President of the Panchayat and accordingly, the petitioner sworn as the President of the Panchayat on the same day. Later, the Secretary of the Local Committee of the CPI filed a petition to disqualify the petitioner under the provisions of the Act on the ground that she had voluntarily given up her membership in the party. The first respondent by Ext.P3 order disqualified the petitioner to

continue as member of the Panchayat. It is with this background, the petitioner has come up before this Court.

4. I have heard the learned counsel appearing for the petitioner as well as the learned Standing Counsel for the first respondent Commission and the learned Senior counsel appearing for the 2nd respondent.

5. The argument advanced by the learned counsel for the petitioner is that there is no documentary evidence to prove that the petitioner has filed her nomination in the election to the office of the President and said nomination was proposed and seconded by UDF members. According to the petitioner, the said finding of the first respondent is based on unpleaded facts and not supported by documentary evidence. According to the petitioner, the pleadings in Ext.P1 petition that the petitioner has accepted the support of UDF and she had not objected her candidature etc. still stands only in the realm of allegations and not proved by any positive documentary evidence. It is also argued that the Returning Officer who presided over the meeting held on 8.11.2010 was not examined.

6. The first respondent relied on Ext.P11, which is the

copy of the minutes of the meeting held on 8.11.2010 to elect the President of the Koruthodu Grama Panchayat to hold that the petitioner contested the election against the official candidate of LDF coalition and that her nomination was proposed and seconded by UDF members. It was argued that no such document was produced and marked as Ext.P11 by PWs.1 to 3.

7. However, the learned Standing Counsel for the Election Commission points out that the proceedings shows that on 20.7.2002 the marking of Ext.P11 was objected and the same was overruled and it was marked. The petitioner has not challenged Ext.P11 anywhere. The petitioner who gave evidence as RW1 was cross examined on the point regarding her proposal for the post of President. On a specific question as to whether she had objected to the proposal or not, she pleaded ignorance and stated that she was absent at that time. Exts.P8 and P9 marked before the Commission would indicate that the person who had proposed and seconded was belonging to the UDF faction.

8. The definite case of the 2nd respondent, who moved the Kerala State Election Commission with the election petition

was that the petitioner became disloyal to the party by contesting as a candidate for the post of President against the official candidate of her party and therefore, she has become subject to disqualification under the provisions of the Act. The Election Commission relied on the testimony of RW1, who admitted in cross examination that the candidate for the post of President set up by LDF and CPI was Smt.P.V.Seethamma and she has also admitted that the CPI or LDF did not decide the petitioner as a candidate for the post of President. She further admitted that she received a direction issued by the Secretary of the Taluk Committee of the CPI stating that she should vote in favour of Smt.P.V.Seethamma in the election for the post of President. The petitioner admitted in cross examination that LDF wanted Smt.P.V.Seethamma to become the President of the Panchayat.

9. There is clinching evidence to show that the petitioner never opposed when her name was proposed and seconded. That means, she has consented to be proposed to the post of President. Therefore, she was acting against the decision of the LDF which wanted Smt.P.V.Seethamma to become the President

of the Panchayat. Due to the peculiar circumstances, no member from UDF could become the President. It was at that juncture the LDF decided to propose Smt.P.V.Seethamma for the post of President. The stand taken by the petitioner is that she had obeyed the direction of the LDF and voted in favour of Smt.P.V.Seethamma and therefore, she has not committed any defection. However, the non refusal of the petitioner for being proposed to the post of President has complicated the issue.

10. The Election Commission proceeded to examine whether the act of the petitioner in contesting the election to the post of President against the candidate proposed by the LDF amounted to defection. The Election Commission has gone through the various provisions of the Act as well as the judicial pronouncements in the matter. Relying on the decision of this Court in **Biju.R.S. and others v. Kerala State Election Commission** [2009 (2) KHC 839], the Election Commission came to the conclusion that though the petitioner has not violated the direction issued by the LDF and voted in favour of her opponent to the post of President, she could still be held as having voluntarily given up her membership if by her conduct

she had abandoned her membership of such political party. Relying upon a decision of this Court in W.A.No.2351 of 2005, the Election Commission came to the conclusion that acceptance of the nomination as a candidate to the post of President against the official candidate of her own party would amount to voluntary giving up of membership from said party. It was argued by the learned counsel for the petitioner that unless the 2nd respondent, who was the petitioner before the Election Commission has a specific case that the petitioner by her conduct over a period of time had abandoned her membership of the political party, the petitioner could not be disqualified. But it is settled law that in order to disqualify a member on the ground of voluntarily giving up of membership of the political party the elected member need not resign from the party.

11. In the instant case, though the petitioner voted in favour of her opponent, by offering herself as a candidate she has revolted against the decision of the LDF, which inevitably was an action of shifting of loyalty. Loyalty to one's own party being the norm, any action showing disloyalty to one's own party would amount to defection. As there is clinching evidence in this

case to show that the petitioner has accepted the nomination proposed and supported by the UDF members and became the President with the votes of the UDF members, the petitioner has defected thereby inviting the operation of first limb of Section 3(1)(a) of the Act. The Election Commission, for valid reasons has found that there was no violation of whip coming under the 2nd limb of Section 3(1)(a) of the Act. On a consideration of the entire materials placed on record, this Court is of the definite view that the Election Commission has examined the entire facts in the correct perspective and has arrived at a correct conclusion, which does not call for any interference by this Court in exercise of powers under Article 226 of the Constitution of India.

In the result, this writ petition fails and accordingly dismissed. No order as to costs.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE