

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 4TH DAY OF MARCH 2015/13TH PHALGUNA, 1936

WA.No. 1854 of 2014 ()

AGAINST THE JUDGMENT IN WP(C) 14986/2014 DATED 10-11-2014

APPELLANT/PETITIONER :

**JAISON KARAKKAT
KARAKKAT HOUSE, CHARAL P.O.,
THALASSERY TALUK, KANNUR DISTRICT,
PIN - 670 706.**

BY ADV. SRI.GEORGE POONTHOTTAM

RESPONDENTS/RESPONDENTS :

**1. K.C.CHAKO
KAVUNGAL HOUSE, KOOMANTHODE P.O.,
THALASSERY TALUK, KANNUR DISTRICT,
PIN - 670 706.**

**2. THE STATE ELECTION COMMISSION
REPRESENTED BY THE SECRETARY
THIRUVANANTHAPURAM - 695 001.**

**R1 BY SENIOR ADVOCATE SRI.K.RAMAKUMAR
BY ADVS. SRI.S.M.PRASANTH
SRI.C.DINESH
SMT.ASHA BABU
SMT.AMMU CHARLES
SRI.G.RENJITH
JINNU SARA GEORGE**

R2 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-01-2015, ALONG
WITH WA. 1854/2014 & CONNECTED CASES, THE COURT ON 04-03-2015
DAY DELIVERED THE FOLLOWING:**

Mn

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

W.A.Nos.1854, 1923, 1924, 1925,
1926, 1927,1943, 1944, 1945, 1946
and 1947 of 2014

Dated this the 4th day of March 2015

J U D G M E N T

Shaffique,J

These appeals have been filed by the petitioners in writ petitions which came to be dismissed by the learned Single Judge by common order dated 10/11/2014. Separate writ petitions were filed challenging common order dated 04/06/2014 in O.P.Nos.21 to 32 of 2013 of the Kerala State Election Commission, Thiruvananthapuram (hereinafter referred to as 'the Commission').

2. The original petitions aforesaid were filed before the Commission seeking to disqualify the petitioners from continuing as members of Ayyankunnu Grama Panchayath. The Commission, after evaluation of the materials on record, allowed the original petitions and declared the petitioners as disqualified to continue as members of the Grama

Panchayath under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act (hereinafter referred to as 'the Act'). They were also declared as disqualified for contesting as candidates in any local authority for a period of six years.

3. O.P.Nos.21 to 25 were filed by Sri.Sali Joseph and O.P.Nos.26 to 31 were filed by Sri.K.C.Chacko. The respondents in O.P.No.21/2013 are the respondents in O.P.Nos.28/2013 and 31/2013. The respondent in O.P.No.22/2013 is the respondent in O.P.No.27/2013. The respondent in O.P.No.23/2013 is the respondent in O.P.No.29/2013. The respondent in O.P.No.24/2013 is the respondent in O.P.No.30/2013 and the respondent in O.P.No.25/2013 is the respondent in O.P.No.26/2013. In other words, two original petitions were filed by different persons for declaring the respondents as disqualified under the provisions of the Act.

4. The Commission, having come to a finding that no

valid whip had been issued to disqualify the members for non-compliance of whip, found that the directions issued by the political party was not complied, which resulted in the members voluntarily giving up their membership from the political party and therefore disqualified.

5. The learned Single Judge having re-appreciated the factual circumstances, confirmed the view expressed by the Commission.

6. It is, impugning the judgment of the learned Single Judge, that these appeals have been filed inter alia contending that the materials on record did not warrant disqualification of the members on the ground that they have voluntarily withdrawn their membership from the political party.

7. Sri.George Poonthottam, learned counsel appearing for the appellants, made specific reference to the averments in the original petitions filed before the Commission to contend that there is no averment to indicate

that any of the members had voluntarily withdrawn their membership of the political party, whereas the entire pleadings proceeded on the basis that the members have violated the whip. It is argued that majority of the members of the political party as well as the coalition have moved for a no confidence motion, which by itself, was not enough to disqualify a member on the ground of voluntary cessation from being a member, as has been found by a Division Bench of this Court in **K.M.Joseph v. Babychan Mulangasseri and Others** [2015(1) KHC 111 (DB)]. It is argued that submission of a no confidence motion, by itself, cannot be a ground for treating that a member has become disloyal to the political party and therefore, in the absence of a whip, if the members of a political party and coalition had voted in favour of a no confidence motion, it cannot be characterised as disloyalty to the political party. He also relied upon the judgment of the Supreme Court in **Balachandra L. Jarkiholi and Others v.**

B.S.Yeddyurappa and Others [(2011) 7 SCC 1]

8. On the other hand, Sri.K.Ramakumar, learned senior counsel appearing on behalf of the contesting respondent, contended that though there is no violation of whip, still it is open for the Commission to enquire into the question as to whether the members have become disloyal to the political party. The Commission as well as the learned Single Judge having found so, no ground exist for setting aside the said finding in the appeal. It is argued that sufficient pleading was available to show that the petitioners have become disloyal to the political party. He also relied upon the following judgments.

i) **Varghese.V.V v. Kerala State Election Commission** [2009 (3) KHC 442 (DB)]

ii) **Biju.R.S. and Others v. Kerala State Election Commission and Others** [2009(2) KHC 839]

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

and

iv) **Muhammedkunji.B v. K.Abdulla** [2010(4) KHC 307]

9. Having heard the learned counsel appearing on either side, the issues involved in the above appeals can be formulated as under:

i) Whether there is any pleading in the original petitions filed by the respondents to indicate whether the petitioners have voluntarily given up their membership in the political party.

ii) If there are sufficient pleadings, whether the materials on record are sufficient to prove disqualification.

iii) Whether the petitioners have become disloyal to the political party.

10. The first question to be considered is whether there are sufficient pleadings in the petitions to enable the Commission to arrive at a finding that the petitioners have ceased to be members of the Grama Panchayath. For easy

reference, we are referring to the pleadings produced along with W.P.C.No.14986/2014. Ext.P2 is O.P.No.30/2013 and Ext.P4 is O.P.No.24/2013. In O.P.No.30/2013 (Ext.P2), the facts are disclosed as under:

The petitioner, who was an independent candidate supported by Left Democratic Front (for short 'LDF') and elected in 2010, resigned his membership and joined Indian National Congress (I) (for short 'INC') and contested in the by-election as a candidate of United Democratic Front (for short 'UDF') in the election held in 2013. He was declared elected on 19/02/2013 and sworn in on 26/02/2013. There are 15 elected members in the Panchayath. 12 members of the Panchayath including the writ petitioner submitted a no confidence resolution to remove the President who belongs to INC party, before the authorised officer. On receiving the notice, the authorised officer issued notice dated 21/5/2013 to all the 15 members of the Panchayath proposing to conduct a meeting on 05/06/2013 at 11 a.m in the

Panchayath office. It is stated that there was no decision in the UDF or its constituent parties to move a no confidence resolution against the President of the Panchayath. It is stated that, on the other hand, the decision of the UDF was to oppose and defeat any resolution of no confidence. It is further stated that, whip was given by the President of the Kannur District Congress Committee to all the Panchayath members including the petitioner to be present in the meeting and vote against the no confidence motion. The whip was sent by registered post and served on the petitioner before 05/06/2013. The DCC President was acting in the official capacity while issuing the whip and copies were sent to the Secretary of the Panchayath. It is further pleaded that President read over the whip to the petitioner and other members belonging to his coalition and political parties and therefore all the members including the petitioner were aware of the whip. On 05/06/2013, the resolution was put for voting by the authorised officer and

the petitioner voted in favour of the resolution in violation of the whip given to him. The members of LDF and independent members also voted in favour of the no confidence resolution which was declared as passed by 10 to 4 votes and the President was ousted from the office. In paragraph 8 of the petition, it is stated as under:

“Had the respondent voted in accordance with the whip given to him, the no-confidence motion brought against the petitioner would have been defeated. Thus the respondent is guilty of defection and hence liable to be disqualified in accordance with law. He is not entitled to continue as member of Panchayath and he is liable to be debarred from contesting in elections for the next six years.”

11. A reference to O.P.No.24/2013 filed by Sri.Sali Joseph also will be useful. In the said original petition, it is stated that two years after Sri.K.C.Chacko was elected as the President, some members belonging to UDF became disloyal to the party and moved a no confidence motion

along with LDF members. In the no confidence motion, four members from Congress and two members from Kerala Congress signed along with LDF members. It is further stated that all the Congress members received the whip and four such members including the petitioner defied the whip and voted along with the LDF members and Kerala Congress members. In paragraphs 11 and 12, it is stated as under:

“11. From the above facts it is clear that the respondent has withdrawn from the party in which he contested and elected and also defied the lawful direction given by the DCC President and thus the respondent has voluntarily abandoned her membership from INC and UDF which fielded the respondent as a candidate in the general election. The respondent has voluntarily abandoned or given up his membership in INC and UDF.

12. The respondent is disqualified to continue as a member of Aayyankunnu Grama Panchayath for the reason of violation of whip and abandonment of membership voluntarily. The acts and conduct of the respondent is very clear to the effect that he is disqualified to continue as a member of Aayyankunnu Grama Panchayath and she is liable to be disqualified to contest the election for a period of six years.”

12. From the materials stated above, though there is no specific pleading in O.P.No.30/2013 filed by Sri.K.C.Chacko regarding voluntarily abandoning membership of the petitioner from the political party and coalition, sufficient pleadings are available in O.P.No.24/2013 filed by Sri.Sali Joseph regarding the same. It is, based on the aforesaid pleadings, that the petitioner was given an opportunity to defend the proceedings before the Commission. When the matters were heard together and decided by a common order, the entire pleadings in these cases are to be looked into by the Commission. Therefore, we cannot agree with the submission of the learned counsel for the appellants that the Commission was not justified in considering the question that the petitioners have voluntarily abandoned their membership from the political party.

13. Now, coming to the order passed by the Commission, it proceeded on the basis that there is defiance

of the directions and decision of the political parties and the petitioners voted in favour of a no confidence motion and ousted the President of their own political party and coalition. The Commission relied upon the evidence of PW4, the President of the Kannur District Congress Committee in which he has stated that the no confidence motion was moved without the knowledge of the Congress Party and Kerala Congress (M) and had issued whips to all the Congress members to vote against the no confidence motion. Further, he has stated that, on receiving information regarding the no confidence motion, the UDF leaders convened a meeting of the members and it was decided that the resolution should be defeated. Ext.P5 is the minutes of the said meeting held on 01/06/2013. Seven members of the Panchayath including some of the petitioners attended the said meeting. It is stated that, it is in defiance to the said decision and direction of the Congress party and Kerala Congress (M) that they proceeded to vote

in favour of the no confidence motion. The Commission also relied upon copies of letter dated 24/05/2013 sent by the DCC President, Kannur to the petitioners as Exts.P14 to P18, P21 and P22 to come to the conclusion that the petitioners have not complied with the directions and acted against the directions of the DCC President. Commission also relied upon the evidence of PW5 to show that whip was issued to the respondents in O.P.Nos.28/2013 and 31/2013. The fact that whip was received, is not disputed. RW1's evidence had been extracted by the Commission who had categorically admitted the fact that directions have been issued by the Party President to vote against no confidence motion.

14. Learned Single Judge re-appreciated the factual circumstances and arrived at a finding that the very act of moving a no confidence motion against one's own party is sufficient to hold that he has become disloyal and has voluntarily given up membership. It is further found that the

petitioners, by their conduct, had voluntarily given up membership of their own party and had violated the directions issued by the leadership of the party.

15. Before proceeding further, let us examine the case law relied upon by either side. Learned counsel for the appellants placed heavy reliance on the judgment in **B.S.Yeddyurappa's** case (supra). In that case, 13 members of Bharatiya Janatha party (BJP) expressed their lack of confidence in the Government headed by Sri.B.S.Yeddyurappa who was the then Chief Minister of State of Karnataka. The Governor informed the Chief Minister of having received the said letters and requested the Chief Minister to prove that he continued to command the support of the majority. The Chief Minister submitted an application before the Speaker under Rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 seeking to declare that all the said 13 MLAs elected on BJP tickets had incurred

disqualification in view of the 10th schedule of the Constitution. The Speaker formed an opinion that the MLAs, by their conduct, had voluntarily given up the membership of the party from which they were elected, which attracted disqualification under the 10th schedule. Two of them were exonerated as they retracted from their earlier statement and extended support to the party, the Government and the elected leader. The matter was challenged before the High Court. There was difference of opinion among the Judges. Justice N.Kumar, in a separate judgment, held that when a member of House expresses his no confidence in the leader of a legislature party, such act by itself would not amount to an act of floor crossing. Such an act on the part of the member of the House, would not constitute defection under the 10th schedule. It was found that deserting the leader and deserting the Government is not synonymous with deserting the party. The Chief Justice, by separate judgment, accepted the stand taken by the Speaker. The matter was referred to

a third Judge, who concurred with the view expressed by the Chief Justice. The Supreme Court, after an elaborate consideration of the factual and legal aspects, allowed the appeal setting aside the order of the Speaker disqualifying the appellants from the membership of the House. But, it is relevant to note that, in this case, the no confidence letters were issued by the members of the same party.

16. On the other hand, learned senior counsel appearing on behalf of the respondents mainly relied upon the judgment in **Varghese's** case (supra) in which paragraphs 7 to 9 are relevant which reads as under:

"7. THE Kerala Local Authorities (Prohibition of Defection) Act, 1999 was brought out "to prohibit defection among members of local authorities in the State of Kerala and to provide for disqualification of the defecting members for being members of the local authorities". S. 3 deals with disqualification on the ground of defection. S. 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 authorized by it in this behalf in the manner prescribed, votes or abstains from voting. 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 Prasadmaurya ((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.

8. *However, placing heavy reliance on another Single Bench decision in Naseera beevi v. State Election Commission (2004 (1) KLT 1108), the learned Senior Counsel for the appellants would contend that*

every objectionable conduct does not automatically lead to the inference of voluntarily leaving the political party. In the above case a few members of a political party decided to form a separate group in the "parliamentary party" of that political party and that was informed to the Secretary of the Grama Panchayat. It was in that context the learned single Judge took the view that "there is a distinction between membership in the parliamentary party and the membership in the political party. What has Deen made objectionable under law is the voluntary leaving of the membership in the political party. Leaving the parliamentary party may be a circumstance, which may indicate that the incumbent has left the political party". It is to be noted that the letter of the group was dated 8. 1. 2003 and the No Confidence Motion was on 13. 1. 2003. The members who had decided to sit as a separate block had voted in favour of the no confidence motion moved by the rival political parties and thereafter those members had been removed from the primary membership of the political party on 18. 1. 2003. The petitions for disqualification was filed on 24. 1. 2003 before the State Election commission. A subsequent election to the posts of President and Vice President of the panchayat was held on 7. 2. 2003, wherein the aforementioned members were elected as the President and the Vice President with the support

of the rival political parties. It appears the learned single Judge had omitted to take note of the fact that the conduct of the revolting members was not the letter given to the Secretary to the Grama Panchayat to form a separate block; those members had in fact supported the no confidence motion moved by the rival political parties. Thus the inevitably inferential conduct was the shifting of loyalty. Loyalty to the party is the norm. To vote against the party is disloyalty. It was this principle as stated in Griffith and Ryle on Parliamentary Functions, Practice and procedure which was taken note of by the Supreme Court in the celebrated decision in Kohoto Hollohan v. Zachillhu (1992 Supp. (2) SCC 651). The Apex Court held that "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, indeed, its very survival. " Referring to the object behind the 10th Schedule to the Constitution of India dealing with disqualification on the ground of defection, it was held therein that, "the provision is to curb the evil of political defection motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The only remedy would be to disqualify the member. . . " The Father of

our Nation had foreseen the possibility of such cancerous and endangering tendencies in the practice of democracy and hence only the Mahatma said that politics without principle is a vice. No doubt politics is an art. But the beauty of the art is lost when no value is attached to the art. It is to check erosion of the values in democracy the 10th Schedule to the constitution of India and the Kerala Local Authorities (Prohibition of Defection) Act, 1999 were brought into force. Looking from that angle we find it difficult to agree with the dictum in Naseera Beevi's case. Not only that, there is no party as 'parliamentary party'. That expression only denotes the wing of the elected members of the political party. Therefore, 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 Naseera Beevi 's case the rebel group in the parliamentary wing of the political party concerned had not only formed a separate group, but they had voted in favour of the no confidence motion moved by the rival political party. Thus, by their conduct of being disloyal to the political party in which

they were members and by voting as they pleased independent of the political party's declared policy, they had incurred the disqualification. In view of both factual and legal position as above, the dictum laid in Naseera Beevi's case that leaving the parliamentary party and exercising the right to vote according to the choice of the elected member would not attract the disqualification on the ground of voluntarily giving up membership in the political party is not good law. Hence the same is overruled. We also take note of the fact that the judgment of the single Judge in Naseera Beevi's case had been set aside by the Division bench by judgment dated 13. 7. 2005 in W. A. No. 1127/2004, though on a different ground.

9. The learned Senior Counsel Sri. Ramakumar contends that in modern democracy the elected member is free to vote according to his conscience, in the absence of a specific whip, particularly in view of the modern trends in democracy - intra party groups. We are afraid, the court will not be justified in taking judicial notice of such developments and in re-writing the law. The court shall only analyse the facts and decide the case in accordance with law and upholding the spirit of laws. The law, as it stands now, is unambiguously clear that one has to be loyal to his political party. The situation would be different if the political party itself, taking note of such strange

realities, permits the elected members to cast conscience vote. In such situations the whip itself is for decision by the individual concerned according to his conscience. The Oxford dictionary defines conscience to mean "the part of your mind that tells you whether your actions are right or wrong". In the absence of a specific whip for conscience vote, an elected member, under law, is entitled and liable to cast only a conscious vote, being aware of the consequences of his decision, in terms of S. 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 on disqualification on the ground of defection on account of voluntarily giving up membership in the political party. Conscience vote is hence a matter of express whip in the absence of which an elected member is bound by the policies of his political party and he can cast only a conscious vote. That is nothing but an expected expression of his obligation to the political party and responsiveness to the people, by doing things carefully and correctly and if not the conduct would amount to betrayal of the political conscience which is impermissible under law. According to Harry S. Truman "democracy is based on the conviction that man has the moral and intellectual capacity, as well as the inalienable right, to govern himself with reason and justice". The reason and justice are the two mandates of the conscious vote under S. 3 of the Act. There is no

case that the political party in which they belonged had given them the whip to vote according to their conscience."

17. Further it was argued that the respondents in their evidence had admitted the fact that they were aware of the will of the political party to oppose the no confidence motion. Acting against such instructions amounts to disloyalty which is enough to come to a conclusion that they have voluntarily given up membership from a political party.

18. In the judgment in **K.M.Joseph's** case (supra), the facts disclose that the three members of the political party, Indian National Congress (INC), which is part of United Democratic Front (UDF) Coalition were the respondents. Out of 15 seats in Manimala Grama Panchayath, 10 seats were won by UDF of which 5 seats were won by INC candidates. One among the INC members 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 against the President. Later, it was put to vote and

the President was ousted from that post. Three separate petitions were filed seeking for a declaration that respondents 1 to 3 have disqualified on the ground of defection. The Election Commission found that having moved the no confidence motion against the appellant and voting in favour of the resolution amounted to defection. One among us (myself) who heard the writ petition challenging the order passed by the Election Commission, set aside the said order finding that giving no confidence motion against the member of the same political party would not amount to voluntarily giving up membership of that party. Further, on facts, it was held that there was no material to draw an inference that respondents 1 to 3 have defected from the political party. On appeal, the Division Bench, on a reconsideration of the entire factual and legal aspects, confirmed the said judgment and found in paragraphs 38 and 39 as under:

“38. What constitute defection is deserting the political party and not deserting the leader of that

*political party. An act of a member expressing no confidence in the leader of the political party would not amount to voluntarily giving up of his membership of that political party. Our view in this regard finds support from paragraphs 118 to 122 of the judgment of the Apex Court in **B.S.Yeddyurappa's** case (supra) which we have already quoted in paragraph 30 of this judgment. When a member expressed his no-confidence in the leader of the political party such act by itself would not amount to an act of floor crossing or political disloyalty.*

39. The provisions under the Tenth Schedule of the Constitution and that under the Kerala Local Authorities (Prohibition of Defection) Act are intended to curb unprincipled and unethical political defection. In order to draw an inference that respondents 1 to 3 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. The said giving up of membership should be established by positive, reliable and unequivocal evidence. The fact that a member has voluntarily given up membership of the political party for all intent and purpose so as to incur disqualification under Section 3 of the Act is to be determined on appreciation of materials on record. In the absence of any such proof, the finding in Exhibit P10 order that

respondents 1 to 3 moved the no-confidence motion against their own party without the knowledge and consent of the Congress Party or the DCC President and their above conduct would amount to voluntarily giving up their membership of the party, is per se arbitrary and perverse. Therefore, in our view, the learned Single Judge rightly set aside Exhibit P10 order passed by the State Election Commission."

19. The Division Bench also found that there is no material to prove that the Congress members are bound as per the bye laws of that political party to obey the instructions of DCC President. In that case, the no confidence motion was signed by 8 members of the coalition. On this basis, it is argued that in the present case also, the appellants have only moved a no confidence motion which cannot be termed as defiance to the political party.

20. The learned counsel for the respondents however placed specific reference of the judgment in **Varghese's** case (supra) to contend that this is an instance where a group of the elected members of the political party had

taken a different stand from that of a political party and has acted against the policy of the political party which clearly amounts to disloyalty. When one becomes disloyal by his conduct to the political party, the inference is that he has voluntarily given up his membership. In **Biju.R.S'** case (supra), a learned Single Judge had occasion to consider the question whether three members of Block Panchayath was disqualified on the ground that they supported no confidence motion against the President who belongs to their party. Learned Single Judge held that supporting no confidence motion against the candidate of his own political party even in the absence of whip amounts to voluntarily giving up membership. In that case, the candidates of INC had majority in Parassala Block Panchayath. The petitioners, along with five members belonging to the opposite coalition (LDF), moved a no confidence motion against the President and Vice President who belonged to UDF coalition. In that case, it was held that the official candidates of INC was

defeated with the support of five members of LDF. It was found that, from the conduct of the petitioners in moving the no confidence motion and voting in favour of the said resolution with the support of LDF can draw an irresistible inference that they have voluntarily given up their membership. In **Shiney Augustine's** case (supra), the issue was regarding the election to Vannapuram Grama Panchayath with 16 members. The petitioner was elected as the President. She moved a no confidence motion against the Vice President along with certain others. The Vice President was the member of CPI(M). The learned Single Judge found that the Election Commission was justified in declaring the petitioner to have defected from the political party as she supported the ousting of a member of coalition from the post of Vice President.

21. In yet another judgment in **Mohammed Kunji** (supra), the facts indicated that a no confidence motion was moved against the President of Meenja Grama Panchayath.

They belonged to UDF coalition. No confidence motion was moved along with the members of BJP and they also voted in favour of the resolution along with 4 members of BJP and two members belonging to CPI(M). This Court held that when the petitioners have chosen to unseat the elected President, a member of the same political party to which they belong by allying themselves with political parties opposing their political parties and front, it would amount to voluntarily giving up membership.

22. It is, in the background of these cases cited, that the evaluation of the appeal is to be considered.

23. Apparently, in the present case, no confidence motion was submitted by 12 members of the Panchayath including the appellants. The total number of elected members in the Panchayath was 15. It is therefore apparent that the no confidence motion was signed by the members other than UDF as well. This apparently is an attempt on the part of the appellants to get

the support of another political party for moving the no confidence motion. It is not the case where members of the same political party have moved the no confidence motion for removing their elected leader. In this case, they got the support of the opposite group as well. Further, evidence indicates that they were informed by the the Congress Party in writing, not to support the resolution. Therefore, the facts of the present case are not similar to the factual circumstances involved in **K.M.Joseph's** case (supra). In the present case, even while giving the no confidence motion, appellants had obtained the support of members who are not in UDF coalition. That apart, evidence available on record especially the admission made by RW1 conclusively proves the fact that they have defied the direction of DCC President. The admission of RW1 in his deposition was taken as a substantive piece of evidence to arrive at the conclusion that the appellants have defied the directions of the political party and had carried forward the resolution

with the help of LDF members.

Therefore, in these appeals, the Election Commission and the learned Single Judge were justified in coming to the conclusion that the appellants have become disloyal to the political party by acting against the interest of the political party. Under such circumstances, we do not think that the appellants have made out any grounds to interfere with the judgment of the learned Single Judge and accordingly these appeals are dismissed.

**(ASHOK BHUSHAN,
ACTING CHIEF JUSTICE)**

(A.M.SHAFFIQUE, JUDGE)

jsr

