

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 388 of 2015 (W)

PETITIONER :

**THANKAMANI,
D/O MANKUTTY MOOPPAN, AGED 32 YEARS
KOTTAMALA OORU, CHITTER P.O.,
ATTAPADI, PALAKKAD.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT(S) :

- 1. BINDHU SUNNY,
W/O SUNNY, AGED 43 YEARS
PULIKKAKUDIYIL VEEDU, MUNDANPARA
KARARA P.O., ATTAPADI, PALAKKAD – 678581.**
- 2. THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM, RPERESNTED BY ITS SECRETARY
STATE ELECTION COMMISSION, KERALA, THIRUVANANTHAPURAM.**

**R1 BY SENIOR ADVOCATE SRI.RENJITH THAMPAN
BY ADV. SMT.P.RREENA
R2 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29-07-2015,
THE COURT ON 10-08-2015 DELIVERED THE FOLLOWING:**

Mn

...2/-

WP(C).No. 388 of 2015 (W)

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1 A TRUE COPY OF THE PETITION FILED BY THE FIRST RESPONDENT.

**EXHIBIT P2 A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN
 RESPONSE TO THE EXHIBIT P1.**

**EXHIBIT P3 TRUE COPY OF THE ORDER DATED DECEMBER 30, 2014 IN ORIGINAL
 PETITION NUMBER 109-2013.**

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 388 of 2015

Dated this the 10th day of August, 2015.

JUDGMENT

The petitioner who is an elected member from ward No.11 of Attappadi Block Panchayath, has approached this Court challenging Ext.P3 order issued by the Kerala State Election Commission, by which she was disqualified from being a member of Attappadi Block Panchayath as provided under Section 3 (1) (a) of the Kerala Local Authorities (Prohibition of Defection), Act (hereinafter referred to as 'the Act') and for contesting as a candidate in the election to any local authority for a period of six years from the date of the order as provided under Section 4(3) of the Act.

2. The petitioner alleges that the order impugned is against the mandatory provisions of the statute. The petitioner further alleges that provisions of Section 3 (1) (a) of the Act has not been strictly construed by the second respondent while considering the matter. According to the

petitioner, there was no pleading much less any evidence adduced to prove that the person who allegedly issued the whip was competent to do so. The first respondent could not prove by independent evidence that the whip was actually served on the petitioner. There was no legal proof for service of whip. The second respondent erroneously attributed notice and knowledge of the whip on the petitioner and proceeded to hold that she had deliberately absent from the meeting; it is alleged. The petitioner further alleges that the commission has not correctly appreciated the medical records relating to the petitioner. Exts.R2 to R8 are the medical records relating to the petitioner. It is pointed out that Exts. R2 to R4 proves the miscarriage and abortion and Exts. R5 and R6 prove the actual hospitalization on 19.11.2013. The petitioner further alleges that RW2, the doctor who treated the petitioner asserted before the commission that she had only 40% fitness when she was hospitalized. RW1 had specifically stated before the commission that even after the abortion, she had bleeding on 11.11.2013 and thereafter, her condition worsened and due to

fever, tiredness and giddiness she was hospitalized on 18.11.2013, which justifies her absence from the meeting; it is alleged. It is with this background, the petitioner has come up before this Court.

3. I have heard the learned counsel for the petitioner, the learned senior counsel for the first respondent and the learned standing counsel for the Kerala State Election Commission in the matter.

4. Arguments advanced by Mr. Jacob Sebastian, the learned counsel for the petitioner was threefold. Firstly it was argued that, whip was not served on the petitioner. Secondly, it was pointed out that the petitioner was prevented by sufficient cause from appearing for the meeting as she was hospitalised during the relevant period as she suffered a miscarriage in October followed by bleeding. Thirdly, it was argued that the issue of whip has to be specifically proved and there was no pleading in the petition filed before the Election Commission that PW2 had the authority to issue whip. It was further argued by Mr. Jacob Sebastian that the petitioner has

discharged the primary burden of proving the incapability of appearance by summoning the doctor and proving the medical certificate. It was urged that it was the burden was on the first respondent to disprove the same by summoning the hospital records. It was further argued that the State Election Commission should have insisted proof of issue of a whip by the first respondent.

5. In answer to the said submission, Sri. Murali Purushothaman, the learned Standing Counsel for the State Election Commission would submit that in paragraph 6 of Ext.P1 petition before the Election Commission, there are specific pleadings regarding the issue of whip, which was not specifically denied by the petitioner. The averments in paragraph 6 of Ext.P1 is under:

"6. When the Election for the post of President was scheduled, the District Council Secretary of Communist Party of India, Palakkad District had issued a whip to the respondent and other members belonging to the Communist Party of India as provided under Rule 4 of the Local Authorities (Disqualification of

Defected Members) Rules 2000. In the said Whip to the respondent, the District Secretary of the Communist Party of India, Palakkad District Council issued a direction 17/11/2013 in writing with signature and seal in the letter pad of the District Council of the party requiring respondent to vote for the petitioner Smt. Bindhu Sunny of the Left Democratic Front in the Election to the post of President of Attappadi Block Panchayath Committee scheduled to be held on 19.11.2013. The whip under Sub Rule 1 of Rule 4 of the above said Rule was sought to serve directly on the respondent. However, she refused to accept the same. Hence, the whip was affixed in front of the house of respondent in the presence of two witnesses."

6. Though the learned counsel for the petitioner would submit that such pleading is insufficient, I am not inclined to accept the same.

7. The learned senior counsel for the first respondent would submit that the argument advanced by the petitioner cannot be countenanced as this Court is not sitting in appeal over the decision of the Kerala State Election Commission. It was pointed out that detailed discussing are there in the

impugned order regarding the serving of whip and the authority of PW2 to issue the whip. The learned senior counsel invited my attention to paragraph 12 to 15 of the impugned order in support of his arguments. The State Election Commission has observed that it has come out in evidence that there was no time to send the whip by registered post and it was attempted to be served directly which the petitioner who refused to receive and therefore, it was affixed in front of her house.

7. The learned commission did not find any reason to disbelieve the testimony of PWs 1 to 3 regarding the affixture of notice in front of the house of the petitioner. Though the total strength of members were 13 in Attappadi Grama Panchayath, at the time of the non-confidence motion, there were only 12 members, as one member by name Usha K.K. was disqualified by the Commission as per order dated 8.10.2013. Out of the remaining 12 members, six members including the petitioner and the first respondent belonged to LDF coalition and six members were therein the UDF coalition.

Therefore, the total house was divided in the ratio of 1:1 and because of this, the presence of the petitioner was crucial in the meeting. The petitioner knew the date of the meeting and she was well aware of the fate of the non-confidence motion in case of her non-appearance. Because of the petitioner's absence, the member belonged to UDF coalition, Sri. K.Rajan was elected and the petitioner who was the candidate of the LDF was defeated. Therefore, it cannot be said that the learned Election Commission was wrong in observing that the petitioner remained absent in the election in violation of section 3 (1) (a) of the Act.

On consideration of the entire materials now placed on record, this Court is of the view that there is absolutely no scope for interference in the impugned order and therefore, the writ petition fails and accordingly it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

Scl.