

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 4175 of 2015 (V)

PETITIONER(S):

**THANKACHI SADANANDAN, AGED 54 YEARS,
W/O.SADANANDAN, SANDHYALAYAM, THURUTHIKKARA P.O.,
KOLLAM DISTRICT-690 540.**

**BY ADVS.SRI.P.B.KRISHNAN
SRI.P.B.SUBRAMANYAN
SRI.SABU GEORGE
SRI.K.PANIL KUMAR (SASTHAMCOTTA)**

RESPONDENT(S):

**1. SAJEEV B,
S/O.BHARGAVAN, RESIDING AT KUZHUVILA, PADINJATTUMMURI,
KUNNATHOOR EAST P.O., KOLLAM DISTRICT-690 540.**

**2. STATE ELECTION COMMISSIONER,
KERALA STATE ELECTION COMMISSION,
CORPORATION OFFICE COMPLEX, LMS JUNCTION, PALAYAM
THIRUVANANTHAPHURAM-695 03.**

R1 BY ADVS. SRI.K.SIJU

SRI.K.VINAYAKUMAR

R2 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE OP NO.61/2014 DATED 28/6/2014 BEFORE THE KERALA STATE ELECTION COMMISSION.**
- EXT.P2. TRUE COPY OF THE WRITTEN STATEMENT IN OP 61/2014 BEFORE THE KERALA STATE ELECTION COMMISSION**
- EXT.P3. TRUE COPY OF FORM 2 OF THE NOMINATION PAPER OF THE PETITIONER MARKED AS EXT.P3 IN OP 61/2014 BEFORE THE KERALA STATE ELECTION COMMISSION**
- EXT.P3(A). TRUE COPY OF THE ENGLISH TRANSLATION OF EXT.P3.**
- EXT.P4. TRUE COPY OF THE ORDER DATED 20/1/2014 IN OP 61/2014 BEFORE THE KERALA STATE ELECTION COMMISSION**

RESPONDENT(S)' EXHIBITS

- EXT,R1(A). THE CERTIFIED COPY OF RELEVANT PAGES REGISTER REGARDING PARTY CONNECTIONS OF MEMBERS AND DECLARATION**
- EXT.R1(B). THE CERTIFIED COPY OF REQUEST OF THE CANDIDATE DATED 8/10/10**
- EXT.R1(C): THE CERTIFIED COPY OF WHIP ISSUED BY THE R1 DATED 6/6/14**
- EXT.R1(D): THE COPY OF AUTHORIZATION GIVEN BY THE LDF DISTRICT CONVENOR TO THE R1 TO ISSUE WHIP**
- EXT.R1(E): THE CERTIFIED COPY OF EXPENDITURE STATEMENT SUBMITTED BY THE PETITIONER BEFORE THE RETURNING OFFICER**
- EXT.R1(F): THE CERTIFIED COPY OF APPOINTMENT OF CHIEF ELECTION AGENT BY THE PETITIONER DATED 7/10/10**
- EXT.R1(G): THE CERTIFIED COPIES OF THE DEPOSITION OF WITNESSES PW1 TO PW7 AND RW1 BEFORE THE STATE ELECTION COMMISSION.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.4175 of 2015

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Dated this the 6th day of August, 2015

JUDGMENT

Under challenge in this writ petition is Ext.P4 order of the State Election Commission in O.P No.61 of 2014.

2. The first respondent has filed the original petition before the second respondent Commission for disqualifying the petitioner as per the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999, in the election to the post of members of Ward No.13 of the Kunnathur Grama Panchayat held on 23.10.2010. The petitioner contested and she was elected. According to the first respondent, though the petitioner offered herself an independent candidate, she had the support of LDF Coalition. According to the petitioner, she contested the election as an independent candidate. However, in the election to the post of the President, the petitioner supported the LDF coalition and the member of the LDF coalition became the President. Later, the post of the President became vacant as the incumbent submitted his resignation.

3. The petitioner alleges that In the subsequent election to the post of the President, she was elected President with the support of

the LDF coalition members. The second respondent Commission on appreciation of facts and evidence allowed the petition filed by the first respondent and declared the petitioner disqualified for being a member of the grama panchayat and from contesting as a candidate in the election to any local authority for a period of six years. This is under challenge.

4. The first respondent has filed a detailed counter affidavit asserting that the petitioner had won the election with the support of the LDF coalition and she continues to support the LDF coalition till the subsequent election to the post of President. In support of their contention, they have produced Exts.R1(a) to R1(g) series also.

5. I have heard the learned counsel for the petitioner, the learned standing counsel for the Kerala State Election Commission and the learned counsel for the party respondent.

6. According to the learned counsel for the petitioner, the second respondent has erred in finding that the petition filed by the first respondent is maintainable. According to the petitioner, the so-called whip was not served on the petitioner and the person, who is alleged to have issued the whip, has no competence to do so. It is also argued that the so called affixture of the notice was not approved.

7. It was pointed out that the learned Commission has erred in finding that Exts.X1(a) and X2 marked before the learned Commission acquire the status of statutory records and simply by disowning the signature contained in the declaration, it is not possible to discard the same. It was also argued that the words 'left front' were added by an interpolation at a later point of time and such alteration does not have the consent of the petitioner. It was also argued that the finding of the Commission that the signature in Ext.X2 is very much similar to the admitted signatures of the petitioner is also erroneous. It was also submitted that the testimonies of PWs.4 and 5 were interested and the learned Commission should not have relied on their testimonies.

8. The definite stand taken by the petitioner is that she contested the election to the local body without the support of any political party. However, the learned counsel for the first respondent would point out that the petitioner after getting elected from the ward as independent candidate with LDF support, has later submitted a declaration in Form No.II under Rule 3(2) of the Kerala Local Authorities (Prohibition of Defection) Rules, 2000 wherein she has stated that she is a member of LDF coalition. The same was placed before the learned Commission for perusal.

9. It was also argued that the Secretary of the Panchayat, who was the authorised officer under the Act and Rules, also prepared Form No.1 under Rule 3(1). It is stated that the petitioner is a member of LDF coalition. It is evident from the records now placed on board that LDF coalition consists of 9 members out of which, 5 were from CPI(M), 3 from CPI and one from RSP. The remaining one member was the petitioner. However, the RSP had left the LDF coalition and there were 8 members in the coalition, including the petitioner.

10. The definite case of the first respondent is that the petitioner voluntarily left the coalition by giving up her membership in the coalition and against the whip issued by the first respondent who contested the election to the post of President on 9.6.2014. Her name was proposed by the UDF and she got elected as the President of the panchayat with UDF support thereby defeating the LDF candidate. Therefore, the learned Commission found that it is a clear case of defection, as pointed out by the first respondent.

12. Though it was strenuously argued that the whip was not made known to the petitioner, there is no specific denial against the pleadings in Ext.P1 regarding issue of whip through affixture. While the Secretary of the panchayat was examined as PW1, she had

produced Exts.X1 and X1(a) which are the relevant pages of the register kept under Form No.1 of Rules and declaration in form No.2 as Ext.X2. Copy of the relevant pages of the register showing the connections of members of political parties and declaration are produced as Ext.R1(a). Ext.R1(b) is the copy of the request of the candidate dated 8.10.2010 and Ext.R1(c) is the copy of the whip issued by the first respondent dated 6.6.2014. Ext.R1(d) is the copy of the authorisation given by the LDF District Convener to the first respondent to issue whip. All these documents were produced before the learned Commission and they were admitted in evidence. The learned Commission, after evaluating these evidence and considering the law applicable, passed the impugned order disqualifying the petitioner. I cannot find any illegality, irregularity and impropriety in the impugned order. Therefore, this Court is of the view that the petitioner is not entitled to succeed.

In the result, the writ petition fails and accordingly, it is dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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