

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 10TH DAY OF JULY 2015/19TH ASHADHA, 1937

WP(C).No. 4944 of 2015 (P)

PETITIONER(S):

1. SANDEEP M.T., MEMBER, WARD NO.54,
PANANCHERRY GRAMA PANCHAYAT,
RESIDING AT MALAYAM COLONY, POOVANCHIRA,
THRISSUR DISTRICT.
2. ROY K. DEVASSY,
MEMBER, WARD NO.5, PANANCHERRY GRAMA PANCHAYAT,
RESIDING AT KOLKUNNIL HOUSE, PATTIKKAD P.O.,
THRISSUR DISTRICT.
3. K.P.CHACKOCHAN,
MEMBER, WARD NO.9, PANANCHERRY GRAMA PANCHAYAT,
RESIDING AT KOLLIYOTTIL HOUSE, VAZHUKKUMPARA,
CHUMANNAMANNU P.O., THRISSUR DISTRICT.
4. ROSILY @ SHEEJA BINU,
MEMBER, WARD NO. 8, PANANCHERRY GRAMA PANCHAYAT,
RESIDING AT VALAYIL HOUSE, VANILYAMPARA P.O.,
THRISSUR DISTRICT.
5. ELIYAMMA @ SUSEELA RAJAN,
MEMBER, WARD NO. 21, PANANCHERRY GRAMA PANCHAYAT,
RESIDING AT PLAVILAYIL HOUSE, KANNARA P.O.,
THRISSUR DISTRICT.
6. SAKUNTHALA UNNIKRIISHNAN,
MEMBER, WARD NO.16, PANANCHERRY GRAMA PANCHAYAT,
RESIDING AT POONTHITHODIYIL HOUSE, KANNARA P.O.,
THRISSUR DISTRICT.
7. SINDHU SURESH,
MEMBER, WARD NO. 1, PANANCHERRY GRAMA PANCHAYAT,
RESIDING AT THUPPALI HOUSE, PATTIKKAD P.O.,
THRISSUR DISTRICT.

BY ADVS.SRI.K.RAMAKUMAR (SR.)

SRI.S.M.PRASANTH

SRI.C.DINESH

SRI.G.RENJITH

SMT ASHA BABU

SMT AMMU CHARLES

SMT JINNU SARA GEORGE

msv/

WP(C).No. 4944 of 2015 (P)

RESPONDENT(S):

1. THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM - 695 001.
2. SRI.P.V.PATHROSE,
S/O.VARGHESE, MEMBER, WARD NO. 17,
PANANCHERRY GRAMA PANCHAYAT,
RESIDING AT PULIMOOTTIL HOUSE, KANNARA P.O.,
THRISSUR - 680 652.
3. THE PANANCHERRY GRAMA PANCHAYAT,
PANANCHERRY, KANNARA P.O., THRISSUR DISTRICT - 680 652,
REPRESENTED BY ITS SECRETARY.

* ADDITIONAL R4 TO R12 IMPEADED

4. C.M.DAMODARAN, MEMBER WARD NO.10,
PANANCHERY GRAMA PANCHAYATH,
RESIDING AT CHELLARY HOUSE,
CHUVANNAMANNU P.O., THRISSUR.
5. V.C.SUJITH, MEMBER, WARD NO.20,
PANANCHERY GRAMA PANCHAYATH,
RESIDING AT VELUTHEDATHU PARAMBIL,
T.K.R.ROAD, KOTTALA P.O., THRISSUR.
6. ANNIE JOY, MEMBER, WARD NO.3,
PANANCHERY GRAMA PANCHAYATH,
RESIDING AT AKKARAPADIKKARAN,
PATTIKAD P.O., THRISSUR.
7. SHYBA KABEER, MEMBER, WARD NO.7,
PANANCHERY GRAMA PANCHAYATH,
RESIDING AT KOTTEKKATUPARAMBIL,
NEELIPARA, VANIYAMPARA P.O., THRISSUR.
8. AMBIKA CHIDAMBARAN, MEMBER, WARD NO.12,
PANANCHERY GRAMA PANCHAYATH,
RESIDING AT KOLLAMKUDIYIL,
KANNARA P.O., THRISSUR.
9. K.V.JOSE, MEMBER, WARD NO.11,
PANANCHERY GRAMA PANCHAYATH,
RESIDING AT KADASSERI HOUSE,
KANNARA P.O., THRISSUR.

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- 10. SAVITHRI SADANANDAN, MEMBER, WARD NO.2,
PANANCHERY GRAMA PANCHAYATH,
RESIDING AT PUTHENPURAYIL HOUSE,
PATTIKKAD P.O., THRISSUR.**
- 11. V.A.MOIDEEN, MEMBER, WARD NO.13,
PANANCHERY GRAMA PANCHAYATH,
RESIDING AT PANANCHERY VILLAGE,
PANANCHERY, THRISSUR.**
- 12. SHYLAJA VIJAYAKUMAR, MEMBER, WARD NO.22,
PANANCHERY GRAMA PANCHAYATH,
RESIDING AT CHAMBILLY HOUSE,
PATTIKKAD P.O., THRISSUR.**

*** ADDITIONAL R4 TO R12 IMPEADED AS PER ORDER DTD.19.6.2015
 IN IA.3551/2015.**

**R1 BY SRI.MURALI PURUSHOTHAMAN, SC
R2 BY ADVS. SRI.P.B.KRISHNAN
 SRI.SABU GEORGE
R3 BY ADV. SRI.A.C.DEVY
R4-R12 BY ADVS. SRI.P.C.SASIDHARAN
 SRI.ARAVINDA KUMAR BABU T.K.**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
19-06-2015 THE COURT ON 10-07-2015, DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE PETITION DT. 22.3.12 FILED BY THE 2ND RESPONDENT AGAINST THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.
- P2 - TRUE COPY OF THE PETITION DT. 22.3.12 FILED BY THE 2D RESPONDENT AGAINST THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT.
- P3 - TRUE COPY OF THE PETITION DT. 22.3.12 FILED BY THE 2ND RESPONDENT AGAINST THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT.
- P4 - TRUE COPY OF THE PETITION DT. 22.3.12 FILED BY THE 2ND RESPONDENT AGAINST THE 4TH PETITIONER BEFORE THE 1ST RESPONDENT.
- P5 - TRUE COPY OF THE PETITION DT. 22.3.12 FILED BY THE 2ND RESPONDENT AGAINST THE 5TH PETITIONER BEFORE THE 1ST RESPONDENT.
- P6 - TRUE COPY OF THE PETITION DT. 22.3.12 FILED BY THE 2ND RESPONDENT AGAINST THE 6TH PETITIONER BEFORE THE 1ST RESPONDENT.
- P7 - TRUE COPY OF THE PETITION DT. 22.3.12 FILED BY THE 2ND RESPONDENT AGAINST THE 7TH PETITIONER BEFORE THE 1ST RESPONDENT.
- P8 - TRUE COPY OF THE OBJECTION DT. 15.6.12 FILED BY THE 1ST PETITIONER BEFORE THE 1ST RESPONDENT.
- P9 - TRUE COPY OF THE OBJECTION DT. 22.6.12 FILED BY THE 2ND PETITIONER BEFORE THE 1ST RESPONDENT.
- P10 - TRUE COPY OF THE OBJECTION DT. 22.6.12 FILED BY THE 3RD PETITIONER BEFORE THE 1ST RESPONDENT.
- P11 - TRUE COPY OF THE OBJECTION DT. 22.6.12 FILED BY THE 4TH PETITIONER BEFORE THE 1ST RESPONDENT.
- P12 - TRUE COPY OF THE OBJECTION DT. 22.6.12 FILED BY THE 5TH PETITIONER BEFORE THE 1ST RESPONDENT.
- P13 - TRUE COPY OF THE OBJECTION DT. 22.6.12 FILED BY THE 6TH PETITIONER BEFORE THE 1ST RESPONDENT.
- P14 - TRUE COPY OF THE OBJECTION DT. 22.6.12 FILED BY THE 7TH PETITIONER BEFORE THE 1ST RESPONDENT.
- P15 - TRUE COPY OF THE WHIP DT. 07.3.12 ISSUED TO THE 1ST PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P16 - TRUE COPY OF THE WHIP DT. 07.3.12 ISSUED TO THE 2ND PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.

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- P17 - TRUE COPY FO THE WHIP DT. 07.3.12 ISSUED TO THE 3RD PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P18 - TRUE COPY OF THE WHIP DT. 07.3.12 ISSUED TO 4TH PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P19 - TRUE COPY OF THE WHIP DT. 07.3.12 ISSUED TO THE 5TH PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P20 - TRUE COPY OF THE WHIP DT. 07.3.12 ISSUED TO THE 6TH PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P21 - TRUE OCPY OF THE WHIP DT. 07.3.12 ISSUED TO THE 7TH PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P22 - TRUE COPY OF THE WHIP DT. 12.4.12 ISSUED TO THE 1ST PETITIONER BY THE DCC PRESIDENT ALONG WITH THE ENGLISH TRANSLATION.
- P23 - TRUE COPY OF THE WHIP DT. 12.4.12 ISSUED TO THE 2ND PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P24 - TRUE COPY OF THE WHIP DT. 12.4.12 ISSUED TO THE 3RD PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANASLATION.
- P25 - TRUE COPY OF THE WHIP DT. 12.4.12 ISSUED TO THGE 4TH PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P26 - TRUE COPY OF THE WHIP DT. 12.4.12 ISSUED TO THE 5TH PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P27 - TRUE COPY OF THE WHIP DT. 12.4.12 ISSUED TO THE 6TH PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P28 - TRUE COPY OF THE WHIP DT. 12.4.12 ISSUED TO THE 7TH PETITIONER BY THE DCC PRESIDENT ALONG WITH ITS ENGLISH TRANSLATION.
- P29 - TRUE COPY OF THE COMMON ORDER DT. 11.2.15 PASSED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 4944 of 2015

Dated this the 10th day of July, 2015

J U D G M E N T

The petitioners, who are the elected members of the Panacherry Grama Panchayath in Thrissur District, are challenging Ext.P29 common order passed by the Kerala State Election Commission in OP Nos.14/2012, 16/2012, 17/2012, 18/2012, 19/2012, 20/2012 & 21/2012, disqualifying the petitioners for being members of the Panacherry Grama Panchayath as provided under Section 3(1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act and declaring them as disqualified for contesting as candidates in an 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 petitioners were sponsored by the Indian National Congress in the election to the local bodies held in October, 2010 and the panchayath has 23 wards in all.

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The United Democratic Front, of which the Indian National Congress is a party, on its own won 13 wards while nine by the Left Democratic Front and one by the Kerala Congress (M), which is also other United Democratic Front. The 2nd respondent, Shri.P.V.Pathrose, representing Ward No.17 was elected President of the panchayath in October, 2010. The petitioners allege that after the said person became the President, there arose difference of opinion among the constituents of the UDF on various issues. The congress members, therefore, on their own moved a No Confidence Motion with the knowledge of the party. No whip was issued on behalf of the party by anybody duly authorized; it is alleged. The motion was carried. Disappointed at the turn of events, the 2nd respondent herein filed seven petitions before the State Election Commission against the petitioners herein on the ground that they voted in favour of the No Confidence Motion. The petitioners herein submitted their objections to all the petitions. The petitioners allege

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that in spite of the aforesaid materials on record, the Election Commission has, in a thoroughly illegal and irregular manner, found that the petitioners have committed defection by voluntarily giving up membership, and their conduct attracts defection. Accordingly, by a common order in all the petitions, the Election Commission has disqualified them. According to the petitioners, the order of the State Election Commission is thoroughly vitiated and discloses errors of law apparent on its face; and the same, therefore, is liable to be interfered with. Hence, this writ petition.

3. Arguments have been heard.

4. Mr.K.Ramakumar, the learned senior counsel for the petitioners, inviting my attention to the decision of a Division Bench of this Court in **Joseph** v. **Babychan** [2015 (1) KHC 111], would submit that the impugned order discloses patent errors of law apparent on the face of the record as it is clearly in contravention of the aforesaid decision. Relying on the aforesaid decision, it is

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argued that No Confidence Motion moved against a particular President does not amount to expression of no confidence in the party. It was argued that out of 14 elected members of the UDF, eight have supported the motion. The aforesaid eight members did not seek or solicit the support of the opposition. It was pointed out that on the previous day, the President had sent a resignation letter sensing lack of confidence and this fact was not properly noted by the Election Commission. It was argued that though the learned Election Commission found that the principles of **Joseph**'s case (cited supra) applies, it was distinguished on the ground that the members, who voted in favour of the No Confidence Motion in that case, did not seek the vote of any member of the rival political parties. The learned senior counsel would argue that here also, the petitioners did not seek or solicit the votes of the LDF, but, the LDF, on its own, decided to vote in favour of the No Confidence Motion. According to the learned senior counsel, it was an

independent decision by that political alliance and not at the instance of the petitioners. The decision in **Joseph's** case (cited supra) cannot be distinguished on the aforesaid ground; and therefore, the same should have been followed by the Election Commission; so submitted the learned senior counsel. It was further argued that the Commission failed to notice that the petitions were filed on the ground of violation of the whip; and it is only the violation of the whip that is projected as voluntarily giving up of membership from the Indian National Congress. It was argued that the whip stated to have been issued was not served or read in the meeting of the panchayath as required under the Rules; and the Commission has, in an earlier case, held that non-reading of the whip, that is prescribed under the Rule, will militate against the validity of the whip; and the whip, therefore, is not proved. The learned senior counsel stressed on the point that in the absence of whip, voting in favour of the No Confidence Motion will not amount to

voluntarily giving up of membership from the Indian National Congress. The definite case of the petitioners is that they have never acted contrary to the interest of the party.

5. Mr.P.B.Krishnan, the learned counsel for the 2nd respondent, invited my attention to para 15 of Ext.P9, which is the copy of objection filed by the 2nd petitioner herein before the Commission. What is stated therein is that as directed by the political party member of Congress, except three, moved No Confidence Motion against 2nd respondent. The learned Commission, in para 14 of the impugned order, observed that it is clear from the records that the petitioners herein have moved No Confidence Motion against the 2nd respondent without the consent or knowledge of the DCC Present, who is admittedly the competent person to take decision and give direction in respect of voting on a No Confidence Motion against the President or Vice President belonging to Congress Party. The learned Commission made a

reference to Rule 4(1) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, which deals with the manner, in which the political party may give directions to its members. The learned Commission, on valid reasons, found that the DCC President is the person, who is competent to recommend symbol to the members contesting in local bodies belonging to Congress party. Therefore, it was rightly observed that the directions of the DCC President is to be treated as the decision of the party in so far as it relates to voting in favour of the President, Vice President etc. or on a No Confidence Motion. Among the members of the existing panchayath, 13 members belonging to Congress party including the petitioners herein moved a No Confidence Motion against the President and voted in favour of the No Confidence Motion and ousted the 2nd respondent from the post of President. The case of the 2nd respondent before the Election Commission was that the petitioners herein have moved No Confidence Motion

without seeking permission from the Congress party and they have voted in favour of the No Confidence Motion disobeying the decision and direction of the DCC President. The learned Election Commission, on evidence, found that a meeting was convened at the DCC Office on the previous day of consideration of the No Confidence Motion; and the DCC President, who was present in the said meeting held on 07.03.2012, prepared Ext.P15 whip in the presence of all the Congress members. It is crucial to note that the same is practically admitted by the witnesses examined on the side of the petitioners herein before the Commission. The case of the 2nd respondent is that the whip given by the DCC President was served to the respondents by affixture. Therefore, it cannot be said that the petitioners were not aware of the whip issued by the DCC President. Therefore, the learned Commission came to the conclusion that the petitioners herein moved the No Confidence Motion without the consent of the political party. I see no justifiable reason to discharge

the said findings on facts.

6. It is settled law that if a member becomes disloyal to the party, the presumption that follows is that he has committed defection. The petitioners, having voted in favour of the No Confidence Motion along with the LDF members to oust the President belonging to their own party against the decision of the DCC President, is nothing, but, an act, disloyalty to the party, which would constitute defection on the ground of voluntary giving up of membership from the party. It is true that in **Joseph's** case (cited supra), it was found by this Court that in the absence of floor crossing or shifting of political loyalty to any rival political party or coalition, it cannot be said that the elected members have voluntarily given up their membership of that political party. In the aforesaid case, the members have voted in favour of the No Confidence Motion against the President belonging to their own party without aligning with any member of the rival political parties. Therefore, it was held that the said members

have not voluntarily given up their membership from the party. In the instant case, the petitioners have aligned with the nine members belonging to LDF coalition and only with their support, the No Confidence Motion was carried. Therefore, this Court is of the definite view that the learned Election Commission is perfectly justified in distinguishing the fact situation in the present case.

On a consideration of the entire materials now placed on record, this Court is of the definite view that the petitioners are not entitled to the relief as sought for.

Therefore, the writ petition fails; and accordingly, it is dismissed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-