

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

WP(C).No. 16597 of 2013 (Y)

PETITIONER:

**K.P. VARKEY,S/O.PAILY,
KOLAMBEL HOUSE, KEERAMPARA VILLAGE,
KEERAMPARA P.O, KOTHAMANGALAM TALUK (MEMBER,
WARD NO.6, KEERAMPARA GRAMA PANCHAYATH,
KEERAMPARA P.O.,KOTHAMANGALAM , PIN-686 691)**

**BY SRI.T.KRISHNAN UNNI,SENIOR ADVOCATE
ADV. SRI.C.DILIP**

RESPONDENTS:

- 1. THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM.**
- 2. LIZY VALSALAN, W/O.VALSALAN ABRAHAM,
KAIPANAL HOUSE, THATTEKKAD P.O.,
KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN-686 691
(MEMBER WARD NO.4, KEERAMPARA GRAMA PANCHAYATH,
KEERAMPARA P.O., KOTHAMANGALAM, PIN-686 691)**

**R1 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM
R2 BY SRI.K.RAMAKUMAR,SENIOR ADVOCATE
ADVS. SRI.S.M.PRASANTH
SRI.M.MANOJKUMAR (CHELAKKADAN)
SMT.SMITHA GEORGE
SMT.G.ASHWINI
SMT.ASHA BABU**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 22/01/2015, ALONG WITH WPC.NO. 17228/2013 AND CONNECTED
CASES, THE COURT ON 13-02-2015 DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1:- TRUE COPY OF THE O.P NO.40/2012 DTD 21/5/2012 FILED BY THE 2ND RESPONDENT AGAINST THE PETITIONER
- EXT.P2:- TRUE COPY OF THE OBJECTION DTD 27/8/2012 FILED BY THE PETITIONER
- EXT.P3:- TRUE COPY OF THE WHIP DTD 3/5/2012 ISSUED BY THE PRESIDENT OF ERNAKULAM DISTRICT CONGRESS COMMITTEE.
- EXT.P4:- TRUE COPY OF THE POSTAL ENVELOP DTD 8/5/2012
- EXT.P5:- TRUE COPY OF THE LETTER DTD 5/3/2012 ISSUED BY THE PRESIDNET OF ERNAKULAM DISTRICT CONGRESS COMMITTEE SUSPENDING THE PETITIONER
- EXT.P6:- TRUE COPY OF THE ORDER DTD 26/6/2013 PASSED BY THE IST RESPONDENT IN IA NO.90/2013 IN OP NO.40/2012
- EXT.P7:- TRUE COPY OF THE ORDER DTD 26/6/2013 PASSED BY THE IST RESPONDENT IN OP NO.40/2012

RESPONDENT(S)' EXHIBITS

- EXT.R2(A): COPY OF THE NOTICE DATED 15/5/2013 PUBLISHED BY THE PETITIONER.
- EXT.R2(B): COPY OF THE LETTER DATED 17/5/2012 SENT BY THE THEN SECRETARY OF THE KEERAMPARA GRAMA PANCHAYATH
- EXT.R2(C): COPY OF THE PETITION DATED 03/4/2012 SUBMITTED BY THE 2ND RESPONDENT TO THE DEPUTY DIRECTOR OF PANCHAYATS, ERNAKULAM
- EXT.R2(D): COPY OF THE NEWS ITEM PUBLISHED IN THE MADHYAMAM DAILY DATED 2/4/2012
- EXT.R2(E): COPY OF THE FIRST INFORMATION REPORT REGISTERED BY THE KOTHAMANGALAM POLICE ALONG WITH COMPLAINT OF ONE LEELA THOMAS

WP(C).No. 16597 of 2013 (Y)

- EXT.R2(F): COPY OF THE COMPLAINT DATED 28/8/1998 SUBMITTED BY THE WIFE OF THE PETITIONER.
- EXT.R2(G): COPY OF THE RESOLUTION DATED 22/9/98 PASSED BY THE KEERAMPARA GRAMA PANCHAYAT COMMITTEE
- EXT.R2(H): COPY OF THE COMPLAINT DATED 27/3/12 SUBMITTED BY ONE JAIMON ELIYAS.

/TRUE COPY/

P.A.TO.JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

**W.P.(C) Nos. 16597, 17228, 17229,
17230, 17231 & 17232 of 2013**

Dated this the 13th day of February, 2015

J U D G M E N T

The common order dated 26.06.2013 passed by the Kerala State Election Commission (hereinafter referred to as, "the Commission") in OP Nos.37/2012 to 42/2012 (both inclusive) is under challenge in these writ petitions.

2. The original petitions were filed by one Smt.Lizy Valsalan, who is arrayed as 2nd respondent in WP (C) No.16597/2013 and as 1st respondent in other writ petitions, under Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act (hereinafter referred to as, "the Act") against the petitioners herein, who were members of Keerampara Grama Panchayath, for declaring that they, having committed defection, are disqualified to be the members of the panchayath. There was a further prayer for a declaration that these petitioners are disqualified to contest in any election to

the local bodies for a period of six years.

3. During the election to Keerampara Gram Panchayath held in October 2010, the coalition of United Democratic Front (UDF) secured 10 seats out of 13 seats in the panchayath. The party respondent in these writ petitions, who launched the original petitions before the Commission, contested the election from Ward No.IV of the panchayath as the official candidate of Indian National Congress, which was one of the parties in the UDF coalition. As UDF coalition secured 10 seats out of 13 seats, she was elected as the President of the panchayath.

4. The petitioner in WP(C) No.16597/2013 was the returned candidate from Ward No.VI, he being the official candidate of Indian National Congress. OP No.40/2012 before the Commissioner was filed against him. The petitioner in WP(C) No.17228/2013 was elected from Ward No.II as the official candidate of Kerala Congress (M) Group, which was in the UDF coalition. OP No.41/2012 before the Commission was filed against him.

The petitioner in WP(C) No.17229/2013 was the returned candidate from Ward No.X, she being the official candidate of Kerala Congress (M) Group. OP No.42/2012 before the Commission was filed against her. The petitioner in WP(C) No.17230/2013, against whom OP No.37/2012 was filed before the Commission, was declared elected from Ward No.V. She was the official candidate of the Indian National Congress (I). The petitioner in WP(C) No.17231/2013 was the official candidate of the Kerala Congress (Jacob) Group, which also formed part of UDF coalition and she was the returned candidate from Ward No.VII. OP No.38/2012 was filed against her. The petitioner in WP(C) No.17232/2013 was the returned candidate from Ward No.VIII. He contested the election as an independent candidate with the support of Kerala Congress (M) Group, which was under the UDF coalition. OP No.39/2012 was filed against him.

5. In the petitions filed before the Commission, the party respondent alleged that the petitioners herein and

some other members, who are not in good terms with her, moved a no confidence motion against her and out seated her from the post of President. According to her, this move was without the permission of the political parties under whose ticket, the petitioners contested the election. According to her, the parties, which formed the UDF coalition, had taken a firm decision that she should not be removed from the post of President. She further pointed out that on receipt of the notice on the no confidence motion, the Block Panchayath Secretary issued notice stating that the motion will be tabled for discussion on 08.05.2012. The District President of the India National Congress as well as the other political parties, which formed UDF coalition, issued direction on 03.05.2012 to the respective members belonging to their parties to abstain from voting in favour of the no confidence motion and to defeat the same. She alleges that all the petitioners were fully aware of the said decision. However, in gross defiance of the said direction, the petitioners moved the no confidence motion

on 08.05.2012 and ousted the party respondent from the post of President. Thus, according to the party respondent, the petitioners have voluntarily abandoned their membership from the respective political parties defying the whip of the President of the parties, to which they belonged.

6. In the counter affidavits, similar contentions were taken by all the petitioners herein. They challenged the maintainability of the original petitions. They admitted that the party respondent was elected as the parliamentary party leader. However, she, as the President, was administering the panchayath against the views of the general public and was not obeying the lawful directions of the parliamentary party and other members. The corruption and monopolistic actions of the party respondent were informed to the district level leaders of the political parties of the UDF and all had warned her to desist from the illegal activities. However, she continued with her atrocities and corrupt practice; and accordingly, no confidence motion was moved

against her. It was pointed out that the inaction and nepotism of the President went without control; and therefore, the political parties consented and conceded to move a no confidence motion against her. They denied the allegation that the District Presidents of the respective political parties had given any written direction to them to defeat the motion. They took the stand that they were not served with any notice by any political parties and they have never disobeyed any decision of the political parties. Therefore, they contended that they have not committed defection and not liable to be disqualified as prayed for.

7. The Commission permitted both sides to adduce their evidence. Accordingly, on the side of the party respondent, PWs 1 to 4 were examined and Exts.P1 to P18 were marked. On the side of the petitioners, RWs 1 to 7 were examined and Exts.R1 to R5 were marked.

8. After considering evidence, it was found by the Commission that the petitioners, by their conduct of out seating the party respondent from the post of President

by casting vote in favour of the no confidence motion, have voluntarily given up their membership as provided under Section 3(1)(a) of the Act, and thereby, have become subject to disqualification as provided under the Act. Accordingly, the petitioners herein were declared as disqualified for being the members of Keerampara Grama Panchayath as provided under Section 3 of the Act; and they were disqualified for contesting as candidates in any election to any local authorities for a period of six years from the date of Ext.P7 order as provided under Section 4 (3) of the Act. This order is under challenge.

9. Counter affidavits have been filed by the party respondent as well as the State Election Commission, justifying their stand and supporting the decision of the Commission.

10. I have heard Mr.T.Krishnanunni and Mr.S.Sreekumar, the learned senior counsel for the petitioners; Mr.K.Ramakumar, the learned senior counsel for the party respondent; and Mr.Murali Purushothaman, the learned Standing Counsel for the Commission.

11. Admittedly, the party respondent was the elected President of the Keerampara Grama Panchayath. The party respondent and the petitioners have contested the election to the local body under UDF banner. However, subsequently, a no confidence motion was moved against the party respondent in these writ petitions, who was holding the post of President, on the allegation of unbridled exercise of power as well as corruption. The party respondent, who launched the petitions before the Commission, would allege that on receipt of notice of no confidence motion, all the petitioners were directed by the District Presidents of the respective political parties to abstain from voting in favour of the no confidence motion. However, the petitioners did not obey the same; and accordingly, the party respondent was out seated. The Commission has accepted her case on the basis of the evidence and found that all the petitioners have voluntarily given up their membership of their respective political parties. To prove the case of the party respondent that there was a clear

direction from the District Presidents of the respective political parties, to which the petitioners belonged, PWs 2 to 4, who were the District Presidents of the respective political parties, were examined. PW2 is the President of the District Committee of the Indian National Congress; PW3 is the District President of the Kerala Congress (M) Group; and PW4 is the District President of the Kerala Congress (Jacob) Group.

12. Mr.S.Sreekumar, the learned senior counsel for the petitioners, would argue that none of these witnesses had a case that they were authorized to issue election symbol or they had issued election symbol to any of the petitioners. Therefore, according to the learned senior counsel, the directions alleged to have been sent by the witnesses to the petitioners, are not valid directions as contemplated under the Act and Rules.

13. It is an admitted fact that direction under the Rules can be issued only by such a person authorized by the political parties to issue election symbols. Rule 4(1) of the Kerala Local Authorities (Disqualification of

Defected Members) Rules, 2000, provides that if a political party or coalition gives any direction in respect of the casting of vote in an election or in voting as has been mentioned in Clause (a) or Clause (b) of Section 3, it shall be in writing. It reads as follows;

“ഒരു രാഷ്ട്രീയ കക്ഷിയിൽപ്പെട്ട അംഗത്തിന്റെയോ അതിൽ ഉൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗത്തിന്റെയോ കാര്യത്തിൽ, പ്രസ്തുത അംഗത്തിനു തെരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി രാഷ്ട്രീയ കക്ഷിയുടേതായ ചിഹ്നം ശുപാർശ ചെയ്യുന്നതിനു അതാതുകാലങ്ങളിൽ അധികാരപ്പെടുത്തിയ വ്യക്തി ആയിരിക്കുന്നതാണ്. എന്നാൽ മേൽപ്പറഞ്ഞ നിർദ്ദേശം രാഷ്ട്രീയ പാർട്ടിയുടെ ലെറ്റർ ഹെഡിലും സീലിലും ആയിരിക്കേണ്ടതും അതിലെ ഉള്ളടക്കം അംഗങ്ങളുടെ അറിവിലേക്കായി പ്രസ്തുത രാഷ്ട്രീയ കക്ഷിയിലെ അംഗങ്ങളും രാഷ്ട്രീയ കക്ഷിയിൽ ഉൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗങ്ങളും ചേർന്ന് തങ്ങൾക്കിടയിൽ നിന്ന് ഭൂരിപക്ഷ അടിസ്ഥാനത്തിൽ തെരഞ്ഞെടുക്കപ്പെടുന്ന അംഗം വായിച്ചു കേൾപ്പിക്കേണ്ടതും അപ്രകാരം വായിക്കപ്പെടുന്ന നിർദ്ദേശം അംഗങ്ങൾക്ക് നേരിട്ട് നൽകിയതായി കരുതപ്പെടേണ്ടതുമാണ്. ഏതെങ്കിലും സംഗതികളിൽ ഭൂരിപക്ഷത്താൽ തെരഞ്ഞെടുക്കപ്പെടുന്ന അംഗത്തിന്റെ അഭാവത്തിലോ ആ അംഗം വിസമ്മതിക്കുന്നുവെങ്കിലോ അതേ പാർട്ടിയിൽപ്പെട്ട മറ്റൊരംഗം പ്രസ്തുത നിർദ്ദേശം വായിക്കേണ്ടതാണ്.”

14. The Commission, in the impugned order, does not say that the second limb of Section 3(1)(a) of the Act in relation to violation of whip is attracted. On the other hand, the following reasons are pointed out by the Commission to hold that the act of the petitioners

amounted to disloyalty;

(a)The evidence of the District Presidents of the political parties would substantially prove that their decision was to defeat the no confidence motion and the petitioners had acted against that decision.

(b)The petitioners, admittedly, did not obtain any permission from their political parties to move the no confidence motion.

(c)In the objection filed by the petitioners, it is only stated that they were not aware that the District Committee was against the no confidence motion.

15. The definite stand taken by the petitioners is that the no confidence motion was issued with the consent of the political parties, to which they belonged. It was argued that there is no evidence to show that direction was served on the petitioners and after receiving the direction, the petitioners have acted in contravention of the direction contained therein.

16. Mr.S.Sreekumar, the learned senior counsel for the petitioners, further pointed out that the finding of the

Commission that the delivery of the postal article was purposefully delayed by the petitioners, is not supported by any evidence. It was pointed out that in election cases, the pleadings and evidence shall be construed strictly; and the Commission has misdealt with the evidence; and the findings are not based upon any evidence.

17. It was pointed out by Mr.Krishnanunni that the finding that the members including the petitioners herein were aware of the decision of the political parties to abstain from the no confidence motion, is incorrect. It was pointed out that neither the Act nor the Rules contemplate any constructive notice, but, only actual notice served on the petitioners. It was pointed out that the Act and Rules have to be strictly adhered to before impeaching an elected candidate.

18. Mr.K.Ramakumar, the learned senior counsel for the party respondent, per contra, would submit that the parameters for interference under Article 226 of the Constitution of India are well settled to be reiterated. It

was argued that no averments are there in the writ petitions warranting the exercise of extra ordinary jurisdiction. It was argued by Mr.K.Ramakumar that even on merits, the petitioners have no case to make out. It was further argued that the petitioners were issued with a whip by the Presidents of the District Committee of the respective parties; and it is this whip, that the petitioners have violated, which entails them with disqualification under the Act. It was pointed out that the petitioners had admitted before the Commission that they have violated the direction of the political parties and voted in favour of no confidence motion. This is a clear defection under the Act; it was argued. The allegation regarding the maladministration by the party respondent was also denied by the learned senior counsel. It was argued that the Commission, after examining all available materials, has found that there was violation of the whip, thereby, the petitioners voluntarily given up their membership of the parties, to which they belonged; and accordingly, they were disqualified. It was also argued

that even if no valid whip is issued, carrying no confidence motion against another party member and voting in favour of such motion would amount to voluntary giving up of membership. Reliance was placed on the decision in **Shiny Augustine v. Kerala State Election Commission, Thiruvananthapuram & Another** [2007 (4) KHC 527].

19. In answer to the aforesaid argument, Mr.S.Sreekumar and Mr.Krishnanunni would submit that an act of a member expressing no confidence in the leader of the political or legislative party, would not amount to voluntary giving up of his membership of the political party. In support of the argument, they have invited my attention to a decision of the Division Bench of this Court in **Joseph K.M. v. Babychan Mulangasseri & Others** [2015 (1) KHC 111 (DB)]. In that case, certain original petitions were filed before the Commission by respondents 1 to 3 in the writ appeal. They, who were elected members of Manimala Grama Panchayath and

belonging to Indian National Congress, which was a part of UDF coalition, moved a no confidence motion against the President of the Grama Panchayath to oust him from the post of the President without the permission of the parliamentary party or the political party. Respondents 1 to 3, in gross defiance of the direction issued by the parliamentary party, moved and voted in favour of the no confidence motion and out seated the President of their own party. Consequently, Congress lost power in the panchayath. Respondents 1 to 3 contended that while holding the post of the President of Manimala Grama Panchayath, the appellant acted against the interest of the people of the Grama Panchayath, Congress Parliamentary Party and UDF; and both the parties directed him to resign from the post, which he refused, and continued as President. Accordingly, the parliamentary party and UDF decided to move a no confidence motion against him, which was signed by respondents 1 to 3, who are members of Congress and five other members of UDF. All UDF members and

Congress members except the appellant and one Valsala, voted in favour of the no confidence motion. However, the UDF was still in power in the panchayath. The Commission disqualified the respondents as they have moved no confidence motion against which, writ petitions were filed. The learned Single Judge allowed the writ petition holding that the respondents cannot be disqualified on the ground of defection. It was against that, the writ appeal was filed. Dismissing the writ appeal, the Division Bench observed that what constitutes 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 voluntary giving up of his membership of that political party. In support of the said view, reliance was placed on a decision of the apex court in **Balchandra L. Jarkiholi v. B.S.Yeddyurappa** [2011 KHC 4509], in which it was observed that when a member expresses his no confidence in the leader of a political party, such act by itself would not amount to an

act of floor crossing or political disloyalty. (See para 36, 37 and 38 of the judgment.)

20. The facts in the present situation is almost similar to the aforesaid case. It is true that the party respondent, who was a UDF candidate, was out seated from the post of President. The party respondent has no case that the petitioners herein have sought support of members belonging to LDF to get no confidence motion passed. The conduct of the petitioners would have amounted to defection if the support of the opposite faction, i.e., LDF group, had been solicited expressly or impliedly by the petitioners. Implied soliciting could be inferred if the petitioners were so sure that the motion would be passed only with the support of the opposite faction. Such things may happen when the majority of party or coalition in power is only marginal. Here, the UDF had secured 10 seats out of 13. Probably, the LDF members also might have voted in favour of the no confidence motion. That does not mean that the petitioners solicited the support of the LDF members.

Even subsequent to the out seating of the party respondent, the UDF coalition remained in power as in **Joseph K.M.**'s case (cited supra). Therefore, in the light of the aforesaid decision, the petitioners are entitled to succeed.

In the result, the writ petitions are allowed. The common order dated 26.06.2013 in OP Nos.37/2012 to 42/2012 [Ext.P7 in WP(C) No.16597/2013, Ext.P9 in WP(C) Nos.17228/2013, 17229/2013, 17231/2013 & 17232/2013 and Ext.P11 in WP(C) No.17230/2013] is hereby quashed. Resultantly, the petitioners shall be put to the original position, in which they would have continued had the impugned order has not been passed.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-