

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

WP(C).No. 17996 of 2014 (Y)

PETITIONER(S):

**P.K.MINI
MEMBER, WARD NO.8, VENGAPALLY GRAMA PANCHAYAT
WAYANAD DISTRICT, PIN:673 121, RESIDING AT "SNEHA HOUSE",
VAVADI, KUZHAMUDI P.O., WAYANAD DISTRICT.**

**BY ADVS.SRI.N.MANOJ KUMAR
SMT.JAYASREE MANOJ**

RESPONDENT(S):

**1. THE KERALA STATE ELECTION COMMISSION,
REPRESENTED BY ITS SECRETARY,
O/O. THE STATE ELECTION COMMISSIONER,
THIRUVANANTHAPURAM-695001.**

**2. P.USMAN,
S/O AMMAD, PANCHARA VEEDU, PUZHAMUDI P.O.
VENGAPALLY, WAYANAD DISTRICT, PIN:673 121
MEMBER, WARD NO.11, VENGAPALLY GRAMA PANCHAYAT.**

R2 BY ADV. SRI.M.SREEKUMAR

R1 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMMISSION

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 17996 of 2014 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE REQUEST NOTICE PRINTED AND CIRCULATED BY THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE DECLARATION OF RESULT OF WARD NO.8 MADE BY THE RETURNING OFFICER OF VENGAPPALLY GRAMA PANCHAYAT.

EXHIBIT P3: TRUE COPY OF THE AFFIDAVIT DATED 1.11.2010 FILED BY THE PETITIONER.

EXHIBIT P4: TRUE COPY OF THE REGISTER KEPT BY THE VENGAPPALLY GRAMA PANCHAYAT UNDER RULE 3(2) OF THE KERALA LOCAL AUTHORITIES (DISQUALIFICATION OF DEFECTED MEMBERS) RULES, 2000.

EXHIBIT P5: TRUE COPY OF THE MEMORANDUM OF O.P.NO.45 OF 2013 FILED BY THE 2ND RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE STATEMENT OF OBJECTION FILED BY THE PETITIONER IN O.P.NO.45 OF 2013.

EXHIBIT P7: TRUE COPY OF THE COPY OF THE SWORN STATEMENT DATED 4.4.2014 OF RW 2, SHRI. ASHRAF E.C.

EXHIBIT P8: TRUE COPY OF THE ORDER DATED 20.6.2014 OF THE KERALA STATE ELECTION COMMISSION IN O.P.NO.45 OF 2013.

RESPONDENT(S)' EXHIBITS : NIL

OKB

True copy

P.A. to Judge

K.HARILAL, J.

W.P.(C) No.17996 of 2014

Dated this the 26th day of October, 2015.

JUDGMENT

The petitioner is the respondent in O.P.No.45/13 on the files of the Kerala State Election Commission, Thiruvananthapuram. The above O.P. was filed by the 2nd respondent herein under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, (for short, 'the Act'), to declare that the petitioner has become disqualified for being a Member of Vengapally Grama Panchayat. The original petition was allowed and now the petitioner stands disqualified for being a member of Vengapally Grama Panchayat as provided by Section 3(1)(a) of the Act. She is also disqualified for contesting as a candidate in an election to any local authorities for a period of six years from the date of order, as provided by Section 4(3) of the Act. The legality, propriety and correctness of the findings whereby the Commission passed the said order allowing the O.P. are under challenge in this writ

petition.

2. The facts, which are necessary to dispose this writ petition can be summarised as follows: In the general election to local authorities held in October 2010, the petitioner contested as an independent candidate supported by United Democratic Front (UDF) from Ward No.VIII of Vengapally Grama Panchayat. The petitioner contested in the said election, as an independent candidate, who belongs to Kerala State Muslim League and she was supported by the UDF and the said fact stands proved by Ext.P2 declaration filed by the petitioner herself. According to Rule 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000, every Panchayat has to keep a register with the details of every member elected to Panchayat as to whether he is a member of any political party or front etc. Ext.P4 is the copy of the said Register, which shows that she belongs to Kerala State Muslim League. After the election, she supported the UDF and one Pushpalatha was elected as the President and the 2nd respondent herein was elected as

the Vice President, on an understanding that the said Pushpalatha will resign from the post within 2½ years and the post of the President will be given to the person from the Indian National Congress and the petitioner will be given the second turn. However, contrary to the understanding, Smt.Pushpalatha did not resign from the post of President after 2½ years and that dispute culminated into a 'no confidence motion' against the President and Vice President and the petitioner voted in favour of the 'no confidence motion' moved against the President and the 2nd respondent. But the motion was defeated. This factual situation brought the 2nd respondent herein before the Commission by filing the aforesaid OP under Section 4 of the Act to disqualify the petitioner.

3. The petitioner filed a detailed statement of objection refuting the contentions of the 2nd respondent and contended that she was an independent candidate who belongs to the Kerala State Muslim League supported by the UDF. Even though she was an effective Member of the Kerala State Muslim League,

the 2nd respondent deliberately suppressed the identity of her political party and misrepresented her as a member of Muslim League and the same was intended to confuse the identity of the Kerala State Muslim League. The petitioner has never been a Member of the political party by name "Indian Union Muslim League" or "Muslim League" and she was not called for any meeting with respect to the discussion of strategy to be adopted by the UDF at the time of 'no confidence motion'. Further, she has specifically denied the averment that a member read over the whip in the meeting and there was, in fact, no direction or whip by a political party by name "Kerala State Muslim League" or "UDF" as regards the manner in which the vote has to be cast in the meeting. Hence the petitioner decided to vote in accordance with her conscience in 'no confidence motion'. The whip allegedly issued by Mr.P.P.A. Kareem was not binding on her, as she was not a member of either "Indian Union Muslim League" or "Muslim League Kerala State Committee". In short, she never abandoned or

voluntarily withdrew her membership for affiliation from her party by name Kerala State Muslim League. Hence she prayed for dismissal of the original petition.

4. P.Ws 1 and 2 were examined and Exts.P1 to P6 were marked on the side of the 2nd respondent. R.Ws.1 and 2 were examined and Ext.R1 was marked on the side of the petitioner. After considering the evidence on record, the Commission passed the impugned order allowing the original petition on a finding that the petitioner was a member of the Muslim League Kerala State Committee at the time of election and thereafter, the said party merged with the Indian Union Muslim League and therefore, the petitioner was bound to act in accordance with the direction issued by the Indian Union Muslim League and she has voluntarily given up the direction and acted contrary to the direction in writing issued by the political party by name "Indian Union Muslim League" to which she belongs.

5. Heard the learned counsel for the petitioner

and the learned counsel appearing for the respondents in extenso.

6. The learned counsel for the petitioner advanced arguments contending that the findings of the Commission are not supported by the evidence on record, either oral or documentary. The sum and substance of the arguments advanced by the learned counsel for the petitioner is that Exts.P2 and P4 obviously show that the petitioner is an independent candidate, who belongs to the 'Kerala State Muslim League' and she was supported by the United Democratic Front (UDF) in which the Kerala State Muslim League was a constituent party. Even though she has never been a candidate of either the Muslim League Kerala State Committee or the Indian Union Muslim League, the Commission went wrong by arriving at a finding that the Kerala State Muslim League and the Muslim League State Committee are one and the same and the petitioner has wrongly stated in Exts.P2 and P4 as Kerala State Muslim League instead of Muslim League Kerala State Committee and after the election,

the Muslim League State Committee merged with the Indian Union Muslim League and thereafter, the petitioner was bound to obey the direction of the Indian Union Muslim League. According to the learned counsel, absolutely there is no evidence to show that the Kerala State Muslim League and the Muslim League Kerala State Committee are one and the same. On the other hand, Ext.P4 Register shows that, at the time of election, there was a party by name "Kerala State Muslim League" and another party by name "Indian Union Muslim League" and that is the reason why the symbol "Ladder" was allotted to the members of the Indian Union Muslim League and "Kannada" was allotted to the petitioner. According to the learned counsel, unless and until it is proved that the Kerala State Muslim League had issued a direction to the petitioner and she voted or abstained from voting contrary to the direction issued by the said party, or the petitioner has voluntarily given up her membership of that party, she cannot be disqualified under Section 3 of the Act. According to the learned counsel, all the findings are

not supported by evidence. But, the Commission went wrong by conjectures and surmises to the effect that the Kerala State Muslim League and the Muslim League State Committee are one and the same political parties and after the merging of the Muslim League State Committee with the Indian Union Muslim League, that party is commonly known as "Muslim League".

7. The learned counsel for the 2nd respondent advanced arguments to justify the findings of the Commission and contended that, even though there is a confusion as regards the identity of the political parties by name "Kerala State Muslim League" and "Muslim League Kerala State Committee", the admitted facts and evidence, on record, would show that the Kerala State Muslim League and Muslim League State Committee are one and the same and after the election, the Muslim League State Committee merged with the Indian Union Muslim League and thereafter, she was bound to obey the direction issued by P.W.2, the District President of the Indian Union Muslim League, to vote against 'no confidence motion'. But she voted

in favour of the no confidence motion. So, she is liable to be disqualified under Section 3 of the Act.

8. The learned counsel for the Election Commission also advanced arguments to justify the findings of the Commission by which the petitioner was disqualified under Section 3 of the Act. According to the learned counsel, the Commission can be justified in finding that the Kerala State Muslim League and the Muslim League Kerala State Committee are one and the same and after the merging of the Muslim League Kerala State Committee with the Indian Union Muslim League, the petitioner was bound to act in accordance with the direction of the Indian Union Muslim League.

9. The question to be considered is, whether there is any illegality, impropriety or unreasonableness in the findings whereby the petitioner is disqualified under Section 3(1) of the Kerala Local Authorities (Prohibition of Defection) Act.

10. Going by the impugned order, it is seen that certain facts are not disputed. Exts.P1 to P4 would show that the petitioner contested in the election as

an independent candidate, who belongs to the Kerala State Muslim League, supported by the UDF. It also stands undisputed that after the election, she supported the candidates who belong to the UDF in the election to the President and Vice President of the Committee and in the 'no confidence motion' she voted in favour of the no confidence motion. The fact that at the time of election, she belongs to the Kerala State Muslim League is proved by Ext.P2 declaration of result of Ward No.VIII made by the Returning Officer of Vengapally Grama Panchayat under Section 80 of the Kerala Panchayat Raj Act, 1994 and Ext.P3 Declaration in Form 2 sworn to by the petitioner as per Rule 3 of the Kerala Local Authorities (Disqualification of Defected Members) Rules. The said fact is further supported by Ext.P4, a copy of the Register kept by the Vengapally Grama Panchayat under Section 3(2) of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000.

11. Going by the pleadings in Ext.P5 original petition, in paragraph No.1, the 2nd respondent has

averred that the petitioner was elected as an independent candidate supported by the Muslim League having affiliation with the UDF. But, in paragraph No.2, it is also averred that in the Register showing political affiliation of the members kept by the Secretary of the Grama Panchayat, the petitioner affirmed that she is an independent member supported by the Indian Union Muslim League. Thus, the basic pleading in the OP is that the petitioner, at the time of election, was a member of the Indian Union Muslim League. But, Exts.P2 to P4 show that she was neither a member of the Indian Union Muslim League nor a member of the Muslim League and, in fact, she was a member of the Kerala State Muslim League.

12. More importantly, Ext.P4 shows that two other members contested in the same election in the same Panchayat as members of the Indian Union Muslim League and they were allotted with the symbol "Ladder"; whereas, the petitioner was allotted with the symbol "Kannada". In the O.P., the petitioner has no case that the Kerala State Muslim League and the

Muslim League Kerala State Committee are one and the same. So, there is no reason or circumstance to suspect the entity of the Kerala State Muslim League as a party, particularly when Exts.P1 to P4 show the existence of such a party. But, going by the findings of the Commission, it is seen that the Commission on a misconception of facts that the Kerala State Muslim League and the Muslim League Kerala State Committee are one and the same and the petitioner has wrongly shown the name of her political party as the Kerala State Muslim League, instead of Muslim League Kerala State Committee, in Exts.P2 to Ext.P4, went beyond the pleadings and erroneously raised a question whether the candidate supported by the Kerala State Muslim League is to be treated as a member belonging to the Indian Union Muslim League, embarked an enquiry thereunder, and arrived at a finding that the petitioner contested as an independent candidate belonged to the Muslim League State Committee and after the election the Muslim League State Committee merged with the Indian Union Muslim League and

thereby, the petitioner was bound by the direction of the Indian Union Muslim League. Needless to say, the said finding of the Commission is not supported by either pleadings in Ext.P5 original petition or any kind of evidence, oral or documentary.

13. Whereas, R.W.2, the President of Kerala State Muslim League, was examined and he has given evidence to the effect that, at the time of election, there was a political party by name "Kerala State Muslim League" in that Panchayat and they have no connection with the "Indian Union Muslim League" or "Muslim League Kerala State Committee" and the said political party was working with a different and distinct entity for the development of the said Panchayat. In short, the Commission has arrived at a finding which was not pleaded or proved by the 2nd respondent in the petition.

14. Merely on the reason that there is no registered political party with the name "Kerala State Muslim League", it cannot be held that it is none other than the Muslim League State Committee, without any

kind of evidence or factual basis, to support the said finding. In the absence of such evidence to show that the Kerala State Muslim League is none other than the Muslim League State Committee, the alleged merger of Muslim League State Committee with the Indian Union Muslim League and the order dated 3.3.2012 of the Election Commission approving such merger are inconsequential and irrelevant factors.

15. When the Kerala State Muslim League had a separate entity, as a political party, unless and until it is proved that the said party had issued a whip or a direction to support the UDF and the petitioner violated the said direction or whip contrary to the said direction, no kind of disqualification can be attributed to the petitioner under Section 3 of the Act. The evidence on record shows that the Indian Union Muslim League has issued a whip to the petitioner to vote against the 'no confidence motion'. Unless and until it is proved that she was elected as a member of the said party by name "Indian Union Muslim League", she has no obligation to obey the said

direction.

16. Going by the impugned order, it is seen that the Commission has arrived at a finding that after the election the Muslim League Kerala State Committee has merged with the Indian Union Muslim League and by virtue of the order passed by the Election Commission, the members of the former Muslim League Kerala State Committee are bound to act in obedience to the direction or whip issued by the Indian Union Muslim League. But, there is no evidence to show that the Kerala State Muslim League and the Muslim League State Committee are one and the same and the Muslim League Kerala State Committee merged with the Indian Union Muslim League. If there is no evidence to show that the petitioner was a member of the Muslim League Kerala State Committee, the said proposition cannot be made applicable to the petitioner. Since the factual findings, from which the Commission has arrived at the findings of defection, are unfounded, the various decisions referred to by the Commission in the impugned order cannot be made applicable to the

instant case. the findings, whereby, the Commission passed Ext.P8 order allowing Ext.P5 original petition, are illegal, arbitrary and unreasonable.

17. To sum up, on an analysis of the evidence on record and the decisions taken thereon by the Commission, I find that the findings of the Commission are not supported by the pleadings of the 2nd respondent in Ext.P5 original petition or evidence available on record. Consequently, Ext.P8 order passed by the Commission/1st respondent will stand quashed and the writ petition is allowed accordingly.

Sd/-
K. HARILAL, JUDGE

okb.