

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WP(C).No. 19609 of 2015 (A)

PETITIONER(S):

**P.MUHAMMED, AGED 55 YEARS,
S/O.ABU, NIHAL MANZIL, KUTTAYAD P.O.,
MEMBER, WARD NO.05, VELLAMUNDA GRAMA PANCHAYAT,
WAYANAD DISTRICT.**

**BY ADVS.SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA**

RESPONDENT(S):

- 1. THE KERALA STATE ELECTION COMMISSION,
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE KERALA STATE ELECTION COMMISSION,
L.M.S JUNCTION, PALAYAM, THIRUVANANTHAPURAM - 695 033.**
- 2. C.H.ASHRAF,
S/O.ALI, CHANGARAPAN VEEDU, THARUVANA P.O.,
WAYANAD DISTRICT, MEMBER, WARD NO.15,
VELLAMUNDA GRAMA PANCHAYAT - 670 645, WAYANAD DISTRICT.**

**R1 BY SRI.MURALI PURUSHOTHAMAN, SC
R2 BY ADVS. SRI.ELDHO PAUL
SMT.TESSY JOSE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16-09-2015 ALONG WITH WP(C) 19612/2015 AND CONNECTED CASES,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

WP(C).No. 19609 of 2015 (A)

APPENDIX

PETITIONER(S)' EXHIBITS

**P1 - TRUE COPY OF THE OP NO.14/2014 PREFERRED BY THE 2ND RESPONDENT
BEFORE THE 1ST RESPONDENT.**

P2 - TRUE COPY OF THE OBJECTION DATED 13.05.2014.

**P3 - TRUE COPY OF THE COMMON ORDER DATED 20.06.2015 IN OP NOS.14/2014,
15/2014, 16/2014, 18/2014 AND 19/2014 OF THE 1ST RESPONDENT.**

**P4 - TRUE COPY OF THE AGREEMENT DTD.26.3.2012 BETWEEN VELLAMUNDA
GRAMA PANCHAYAT AND BANASURASAGAR ECO RESORTS.**

**P5 - TRUE COPY OF THE OBJECTION DTD.2.4.2012 PREFERRED BY THE PETITIONER
BEFORE THE PANCHAYAT COMMITTEE OF THE MUSLIM LEAGUE.**

RESPONDENT(S)' EXHIBITS:

**EXT.R2(a): TRUE COPY OF NOTICE FOR MEETING DTD.3.7.2015 ISSUED BY
SECRETARY VELLAMAUNDA PANCHAYATH.**

EXT.R2(b): TRUE COPY OF ATTENDANCE REGISTER OF MEMBERS (RELEVANT PAGE)

//TRUE COPY//

P.S.TO JUDGE

Msv/

V.CHITAMBARESH, J.

WP(C) Nos. 19609, 19612, 19617,
19633 & 19634 of 2015

Dated this the 16th day of September, 2015

J U D G M E N T

The common order of the Kerala State Election Commission disqualifying the petitioners from being members of the vellamunda Grama Panchayat ['Panchayat' for short] are impugned in these writ petitions. The petitioners have been so disqualified under Section 3 (1)(a) of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 ['the Act' for short].

2. The petitioners in W.P.(C) Nos.19609/2015, 19633/2015 and 19617/2015 owed allegiance to the Indian Union Muslim League which is a constituent of the United Democratic Front ['UDF' for short]. The petitioners in W.P.(C) Nos.19612/2015 and 19634/2015 owed allegiance to the Indian National Congress and Kerala Congress which are also constituents of the UDF. The Panchayat was ruled by the UDF which had 13 members whereas the Left Democratic Front ['LDF' for short] had 7 members and there was one independent member in the Panchayat Committee. The President resigned when the no confidence motion moved by the LDF evident by Ext.P2 series was tabled for discussion on

18.2.2014. However the no confidence motion moved by the LDF evident by Ext.P3 series was successfully carried out on 18.2.2014 evident by Ext.P4 minutes obviously with the support of some UDF members. It is alleged that the petitioners belonging to the UDF as well as the sole independent member supported the 7 LDF members in the no confidence motion.

3. The Returning Officer issued Exts.P5 and P6 notices for the conduct of election to the post of the President and Vice President on 14.3.2014 which had fallen vacant due to reasons afore stated. The UDF convened its parliamentary party meeting on 6.3.2014 and its constituent parties were directed to ensure party discipline in the ensuing election. The Indian Union Muslim League, the Indian National Congress and the Kerala Congress (Mani) held independent parliamentary party meetings. The President of the Indian Union Muslim League (PW.2) communicated the whip of the party to the Secretary of the Panchayat evidenced by Ext.P9 receipt. The President of the Indian National Congress (PW.4) communicated the whip of the party to the Secretary of the Panchayat

evidenced by Ext.P17 receipt. The President of the Kerala Congress (Mani) (PW.5) communicated the whip of the party to the Secretary of the Panchayat evidenced by Ext.P22 receipt.

4. The existence of the whip is proved and the further question is as to whether the petitioners were served with the copy of the whip of their party President well before the election. Ext.P7 postal cover shows that the whip sent by the registered post to the petitioner in W.P.(C) No.19609/2015 was returned as unclaimed. Exts.P7(a) copy of the whip as well as Ext.P8 photographs evidencing the affixture of notice on the house of the petitioner in W.P.(C) NO.19609/2015 is sufficient proof of service. Ext.P11(a) acknowledgment shows that the petitioner in W.P.(C) No.19633/2015 received the whip sent by registered post on 10.3.2014. Similarly Ext.P10(a) acknowledgment shows that the petitioner in W.P.(C) No.19617/2014 received the whip sent by registered post on 10.3.2014 itself. Ext.P18 postal cover shows that the whip sent by registered post to the petitioner in W.P.(C) No.19612/2015 was returned as refused and therefore

knowledge can be imputed in law. Ext.P21 postal cover reflected that the whip sent by registered post to the petitioner in W.P.(C) No.19634/2015 was returned as unclaimed. It can therefore be safely concluded that all the petitioners were served with the copy of the whip issued by their party Presidents as to whom they should vote in the election.

5. The UDF fielded Mr.Chaliyadan Mammu (Indian Union Muslim League) to the post of President and Mrs.Sheema Suresh (Indian National Congress) to the post of Vice President as official candidates. But the petitioner in W.P.(C) No.19609/2015 contested against the official candidate as proposed by the petitioner in W.P.(C) No.19634/2015 to the post of President. The petitioner in W.P.(C) No.19612/2015 contested against the official candidate as seconded by the petitioner in W.P.(C) No.19634/2015 to the post of Vice President. Ext.P14 minutes in respect of the election to the post of President reflected that the petitioners and the LDF members voted in favour of the petitioner in W.P.(C) No.19609/2015. Resultantly the petitioner in W.P.(C) No.19609/2015 received 11 votes and was declared

elected to the post of President whereas Mr.Chaliyadan Mammu received only 8 votes. Ext.P15 minutes in respect of the election to the post of Vice President reflected that all the petitioners and the LDF members voted in favour of the petitioner in W.P.(C) No.19612/2015. Resultantly the petitioner in W.P.(C) No.19612/2015 received 13 votes whereas Mrs.Sheema Suresh received only 8 votes much to the chagrin of the UDF which had majority earlier.

6. The finding of the State Election Commission that the petitioners were served with the whip issued by their party President and violated the same is rested on evidence. The petitioners in W.P.(C) Nos.19609/2015 and 19612/2015 even contested against the official candidates put up by their parties and the petitioners in the other writ petitions supported. It was with the active connivance of the petitioners in W.P.(C) Nos.19617/2015, 19634/2015 and 19633/2015 did the official candidates were defeated. The finding that the petitioners are guilty of defection and hence incur disqualification under Section 3(1)(a) of the Act calls for no interference. It necessarily follows that

the petitioners are disqualified for contesting as a candidate in an election to any local authority for a period of six years under Section 4(3) of the Act. There is no error of jurisdiction in the common order of the State Election Commission disqualifying the petitioners and the writ petitions challenging the same lacks merit in the circumstances.

The writ Petitions are dismissed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

nj/19.9.15