

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

THURSDAY, THE 29TH DAY OF OCTOBER 2015/7TH KARTHIKA, 1937

WP(C).No.20257 of 2015 (F)

PETITIONERS :

1. K. CHENTHAMARA,
PRESIDENT, CHITTOOR BLOCK PANCHAYAT,
NATTUKAL P.O – 678 583, CHITTOOR, PALAKKAD.
2. SANTHINI.S.,
VICE PRESIDENT AND CHAIRPERSON,
STANDING COMMITTEE (FINANCE),
CHITTOOR BLOCK PANCHAYAT, NATTUKAL P.O – 678 583,
CHITTOOR, PALAKKAD.
3. SURESH BABU.M.,
CHAIRMAN, STANDING COMMITTEE (DEVELOPMENT),
CHITTOOR BLOCK PANCHAYAT, NATTUKAL P.O – 678 583,
CHITTOOR, PALAKKAD.
4. A.PETER BABU,
MEMBER, CHITTOOR BLOCK PANCHAYAT,
NATTUKAL P.O – 678 583, CHITTOOR, PALAKKAD.
5. K.MARAGATHAM,
MEMBER, CHITTOOR BLOCK PANCHAYAT,
NATTUKAL P.O – 678 583, CHITTOOR, PALAKKAD.

BY ADVS.SRI.M.K.DAMODARAN (SR.)
SRI.P.K.VIJAYAMOHANAN
SRI.SOJAN MICHEAL
SRI.GILBERT GEORGE CORREYA
SRI.NISHIL.P.S.
SRI.ANTONY ROBERT DIAS

RESPONDENTS :

1. THE KERALA STATE ELECTION COMMISSION,
REPRESENTED BY THE SECRETARY,
OFFICE OF THE STATE ELECTION COMMISSION,
CORPORATION OFFICE COMPLEX, L.M.S JUNCTION,
THIRUVANANTHAPURAM – 695 033.

WP(C).No. 20257 of 2015 (F)

2. M.P.VEERENDRAKUMAR,
PRESIDENT, SOCIALIST JANATHA (DEMOCRATIC), V.J.LANE,
A-28, VELLAYAMBALAM, SASTHAMANGALAM P.O.,
THIRUVANANTHAPURAM – 695 010.
3. THE CHITTOOR BLOCK PANCHAYAT,
REPRESENTED BY ITS SECRETARY, NATTUKAL P.O – 678 583,
CHITTOOR, PALAKKAD.

BY SRI.MURALI PURUSHOTHAMAN, SC, Kerala State Election Commission
R2 BY ADV. SRI.G.S.REGHUNATH
R2 BY ADV. SRI.JACOB SEBASTIAN
R3 BY ADV. SMT.SHAMSEERA. C.ASHRAF

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13-10-2015,
THE COURT ON 29-10-2015 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS :

- EXT.P1 – TRUE COPY OF THE COMMUNICATION DT.4.9.13 OF THE 2ND RESPONDENT TO THE FIRST PETITIONER.
- EXT.P2 – TRUE COPY OF THE REPLY DT.18.9.13 GIVEN BY THE FIRST PETITIONER TO THE 2ND RESPONDENT.
- EXT.P3 – TRUE COPY OF THE COMMON ORDER DT. 08.1.13 IN OP Nos.150 TO 154 OF 2011 OF THE STATE ELECTION COMMISSION ON THE PETITIONS FILED BY K.GOPALASWAMI.
- EXT.P4 – TRUE COPY OF THE LETTER DT. 16.10.13 ISSUED BY THE 2ND RESPONDENT TO THE FIRST PETITIONER.
- EXT.P5 – TRUE COPY OF THE LETTER DT. 22.10.13 ISSUED BY THE PRESIDENT, PALAKKAD DISTRICT COMMITTEE, SOCIALIST JANATHA (DEMOCRATIC) TO THE PETITIONERS.
- EXT.P6 – TRUE COPY OF OP No. 96/2013 DT. 06.11.13 FILED BY THE 2ND RESPONDENT BEFORE THE STATE ELECTION COMMISSION AGAINST THE FIRST PETITIONER.
- EXT.P7 – TRUE COPY OF THE OBJECTION DT. 15.1.14 FILED BY THE 5TH PETITIONER IN OP No.100/2013 BEFORE THE STATE ELECTION COMMISSION.
- EXT.P8 – TRUE COPY OF THE AFFIDAVIT AND PETITION DT. 10.2.14 IN IA No. 30/2014 IN OP 97/2013, FILED BY THE 2ND PETITIONER BEFORE THE STATE ELECTION COMMISSION.
- EXT.P9 – TRUE COPY OF THE COMMON ORDER DT. 30.6.15 IN OP Nos.96/2013 TO 100/2013 OF THE 1ST RESPONDENT STATE ELECTION COMMISSION.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K. NARENDRA, J.

W.P.(C)No.20257 of 2015

Dated this the 29th day of October, 2015

JUDGMENT

The petitioners have filed this writ petition seeking a writ of certiorari to quash Ext.P9 common order dated 30.6.2015 of the Kerala State Election Commission, the 1st respondent herein, in O.P.Nos.96 of 2013 to 100 of 2013. They have also sought for a declaration that obedience of the whip issued by the competent authority under the Constitution of the party, rather than the autocratic and monarchic order issued by the President of the party, can never be interpreted as being disloyal to the party to attract the disqualification under clause (a) of sub-section (1) of Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (hereinafter referred to as 'the Act').

2. The petitioners herein are members of Socialist Janatha (Democratic) party (hereinafter referred to as 'SJ(D) party'). The 2nd respondent herein is the President of SJ(D) party. The 2nd respondent filed O.P.Nos.96 of 2013 to 100 of 2013 before the Kerala State Election Commission (hereinafter referred to as 'the

Commission') under Sections 3 and 4 of the Act, read with Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000 (hereinafter referred to as 'the Rules') to hold that the petitioners herein have ceased to be members of Chittoor Block Panchayat and they are liable to be disqualified for being members of the Block Panchayat. The further relief sought for in those applications is a declaration that the petitioners herein are disqualified to contest in any local body election for a period of 6 years. A copy of O.P.No.96 of 2013 filed against the 1st petitioner is on record as Ext.P6. A copy of the objection filed by the 5th petitioner herein in O.P.No.100 of 2013 is on record as Ext.P7.

3. The common case of the 2nd respondent herein in the petitions filed before the Commission is as follows; The petitioners herein are members of SJ(D) party and the 2nd respondent herein is its President, who is competent to recommend symbol for members of SJ(D) party. Accordingly he recommended symbol for the petitioners herein while contesting the election as candidates of SJ(D) party. The Indian National

Congress (INC) and SJ(D) party were the constituents of the coalition by name United Democratic Front (UDF). Out of the 14 wards in Chittoor Block Panchayat, INC and SJ(D) won 5 seats each and thus the UDF coalition secured absolute majority. The petitioners herein submitted Form 11 declarations, declaring their political affiliation as members of SJ(D) party. While so, on 19.11.2011 the petitioners herein successfully moved a no-confidence motion against the then President of Chittoor Block Panchayat, with the support of the members of the left Democratic Front (LDF) and thereafter the 1st petitioner herein is the President of Chittoor Block Panchayat. One K.Gopalaswamy, who is a member of INC filed O.P.Nos.150 of 2011 to 154 of 2011 against the petitioners herein before the Commission. The said petitions were dismissed for the sole reason that, Gopalaswamy who filed those petitions is not competent to issue any direction or whip to the petitioners herein, since he is neither a member of SJ(D) party nor the person who recommended symbol for them while contesting the election. The 2nd respondent would also contend that, the petitioners herein supported the said

no-confidence motion without his knowledge and consent. While so, on 4.9.2013, the 2nd respondent herein, who is the leader of the SJ(D) party and whip, issued a whip by registered post to the 1st petitioner herein calling upon him to resign from the post of President of Chittoor Block Panchayat, as authorised by the party based on the decision taken by its State Committee on 29.8.2013. He accepted the said notice and issued a reply dated 18.9.2013 raising false allegations. He has not complied with the directions given by the 2nd respondent herein. On 16.10.2013 the 2nd respondent herein issued another whip by registered post calling upon the petitioners herein to vote positively to support the no-confidence motion scheduled to be held on 24.10.2013 at Chittoor Block Panchayat Office, convened by the Secretary of the District Panchayat, Palakkad. But to utter dismay of the 2nd respondent, other leaders and workers of SJ(D) party, the petitioners herein voted against the no-confidence motion moved on 24.10.2013 and thereby violated the directions and whip issued by the 2nd respondent herein and that too without the consent of the party and without any intimation to the party

leaders. The said conduct of the petitioners herein is a clear case of violation of the provisions contained in the Act and they are liable to be disqualified for being members of Chittoor Block Panchayat. Moreover, they have violated all the moral principles and cheated the voters of the constancy. Their acts and conducts are against the interests of the SJ(D) party, in which they contested and elected to the Block Panchayat, its workers and leadership. Their acts, omissions, conducts and statements amount to voluntarily giving up of the membership of SJ(D) party, by wilfully neglecting the interest of the party. By the aforesaid acts, they incurred disqualification under the provisions of the Act and they are not entitled to continue as members of Chittoor Block Panchayat, any further.

4. The common case of the petitioners herein in the objections filed before the Commission is as follows; The petitioners herein are members of SJ(D) party. But the averment that the State President of SJ(D) party recommended symbol to them is not true and there is no provision in the bylaw enabling the State President to recommend symbol to a candidate

contesting in the Panchayat election. The District President of SJ (D) party was elected and he gave symbol to the petitioners herein to contest the election. Out of 14 wards of Chittoor Block Panchayat, SJ(D) party secured 5 seats. SJ(D) party is an independent political party and they contested the election soliciting votes from the public on their own policies and programmes. The people in the Panchayat accepted the policies of SJ(D) party and elected 5 persons in the Block Panchayat. In the year 2010, the SJ(D) party and the SJ(D) Parliamentary party of Chittoor Block Panchayat decided to elect a Congress member as the President of the Block Panchayat and the 5th petitioner herein was directed to give whip to all SJ(D) party members, as he is the Parliamentary party leader of SJ(D) Chittoor Block Panchayat. Moreover, the District President of SJ(D) Palakkad District has also given whip to all SJ(D) members with respect to the political decision taken by the SJ(D) party in obedience to the party decision. All the members of SJ(D) party voted in favour of Congress candidate during 2010. The then President of Chittoor Block Panchayat ignored the SJ(D) members, as there was clear

discrimination in allotting the funds, with an intention to cause severe damage to SJ(D) party. The unit committees of SJ(D) party complained several times to the Panchayat Committee of SJ(D) party. The Palakkad District Committee of the SJ(D) party after detailed discussion directed the Parliamentary party of SJ(D) Chittoor Block Panchayat to move no-confidence motion against the then president of the Block Panchayat. All the SJ(D) party members in obedience to the decision taken by the party signed and successfully moved the no-confidence motion against the then President. Even though petitions were filed before the Commission by a Congress member, alleging defection against all SJ(D) members of Chittoor Block Panchayat, the same was dismissed on the reason that there is clear political decision with respect to the no-confidence motion moved against him. Thereafter, the Parliamentary party leader of SJ(D) was selected by the Palakkad District Committee to contest the President election, for which whips were issued by the District President of SJ(D) to vote in favour of the SJ(D) nominated candidate. After the dismissal of petitions by the Commission, the Congress

members purposely submitted a notice of no-confidence motion against the Parliamentary party leader of SJ(D), with a view to canvass the SJ(D) party members and to make split in the party. The SJ(D) Political party discussed the movement of Congress party in the locality and found that their intention is malafide and all factions of SJ(D) party unanimously decided to oppose the no-confidence motion for which whips were issued by the District Committee President and the Parliamentary party whip of SJ(D) Chittoor Block Panchayat. In the meantime, the 2nd respondent herein, without any legal basis and without any discussion sent letters to support the no-confidence motion moved by the Congress members against the Parliamentary party leader and the whip of SJ(D) party. The said matter was discussed in all factions of Palakkad District and a political decision was taken by the party to oppose the no-confidence motion unanimously by the SJ(D) members. The said decision was also communicated to the State Committee. On 23.10.2013 all party leaders and SJ(D) Block Panchayat members convened a meeting and in the said meeting it was informed that the political decision taken by the

Palakkad faction has to be implemented for the sake of party and that was informed to the State Committee by the District Committee and got approval. The petitioners herein acted only as per the directions of the party and they never violated the directions of the party as alleged in the petition. Therefore, they are not liable to be disqualified for being the members of Chittoor Block Panchayat and the allegation that, they have violated all the moral principles and cheated the voters in the constancy is only to harass them. The petitioners herein never voluntarily abandoned membership from the party as alleged by the 2nd respondent herein and they never acted against the interest of the party. Therefore, there is no cause of action for the petitions and they are liable to be dismissed.

5. Before the Commission, the 2nd respondent herein was examined as PW1 and PWs.2 and 3 were examined and Exts.P1 to P28 were marked on his side. On the side of the petitioners herein, the 1st and 3rd petitioners herein were examined as RWs.1 and 2 respectively and RWs.3 to 6 were examined and Exts.R1 to R2(b) were marked on their side. Exts.X1 to X4(b) were marked

through witnesses.

6. The Commission vide Ext.P9 common order dated 30.6.2015 allowed O.P.Nos.96 of 2013 to 100 of 2013, concluding that the 2nd respondent herein is a person who is competent to issue 'direction in writing' to the petitioners herein for exercising the vote favourably or unfavourably or to abstain from voting. The 2nd respondent herein, in his capacity as the State President of the SJ(D) party and who had recommended symbol to the petitioners herein while contesting in the election had issued whip directing them to vote in favour of the no-confidence motion. But, the petitioners herein, by defying the said direction voted in favour of the no-confidence motion with the help of LDF members and the said motion was defeated. Thus the petitioners herein had become disloyal to the SJ(D) party by defying the direction issued by the party in respect of resigning from the post of presidentship as well as voting on the no-confidence motion against the direction of the party and subjected to disqualification for being members of Chittoor Block Panchayat, as provided under clause (a) of sub-section (1) of

Section 3 of the Act. Accordingly, the petitioners herein were declared as disqualified for being members of Chittoor Block Panchayat, as provided by clause (a) of sub-section (1) of Section 3 of the Act and they were also declared as disqualified for contesting as candidates in the election to any local authorities for a period of 6 years from the date of order, as provided under sub-section (3) of Section 4 of the Act. It is aggrieved by the said common order passed by the Commission, the petitioners are before this Court in this writ petition seeking various reliefs.

7. On 7.7.2015, this Court granted an interim order to the effect that, the operation of Ext.P9 order shall be kept in abeyance on condition that the petitioners shall not be entitled to vote on any of the proceedings and they shall not hold any post under the Chittoor Block Panchayat. On 3.8.2015, this Court granted another interim order to the effect that, the election to the post of President and Vice President of Chittoor Block Panchayat scheduled to be held on 4.8.2015 shall stand adjourned till 10.8.2015 and the said interim order was later

extended from time to time.

8. A counter affidavit has been filed by the 2nd respondent contending, inter alia, that since Ext.P9 order passed by the Commission under Section 4 of the Act is final and conclusive on facts, the interference of this Court under Article 226 of the Constitution of India is very limited. The 2nd respondent contended further that, the reasoning of the Commission in Ext.P9 order is neither perverse nor patently illegal warranting an interference by this Court.

9. Heard arguments of the learned Senior Counsel for the petitioner, the learned Standing Counsel for the 1st respondent Kerala State Election Commission, the learned counsel for the 2nd respondent and also the learned counsel for the 3rd respondent Block Panchayat.

10. The sole issue that arises for consideration in this writ petition is as to the legality or otherwise of Ext.P9 order passed by the Kerala State Election Commission.

11. It is not in dispute that, the petitioners were elected as members belonging to SJ(D) party in the general election held in

October, 2010, from various wards of Chittoor Block Panchayat, and the 2nd respondent is the President of SJ(D) party. Exts.P8, P13, P17, P21 and P25 are the declarations given by the petitioners, as provided under sub-rule (2) of Rule 3 of the Rules, in which they have affirmed that, they are members belonging to SJ(D) party. It is also indicated therein that, SJ(D) party and Indian National Congress (INC) are the political parties in the UDF coalition. Ext.P9 is the copy of the register maintained by the Block Secretary in terms of sub-rule (1) of Rule 3 of the Rules, which would also indicate that, the petitioners belong to SJ (D) party under UDF coalition. Ext.X1 is the original register maintained by the Secretary of the Block Panchayat.

12. The 2nd respondent, who was examined as PW1, has deposed that, he is the President of SJ(D) party and that he is the person competent to recommend symbol for the members of SJ(D) party. PW1 has also deposed that, he had recommended symbol to the petitioners while they contested in the general election held in October, 2010, from various wards of Chittoor Block Panchayat. Exts.P10, P14, P18, P22 and P26 are the copies

of the letters given by PW1 to the Returning Officer of the Block Panchayat recommending the symbol of SJ(D) party, namely 'Tree'. The original of these records were marked as Ext.X2 series, through PW3, who was the Returning Officer of Chittoor Block Panchayat. The aforesaid documents prove beyond any doubt that, the 2nd respondent had recommended the symbol 'Tree' to the petitioners in the general election held in October, 2010 and they contested the election under the said symbol and became members of the Block Panchayat.

13. The learned Senior Counsel for the petitioners would contend that, there is nothing in Ext.P28 constitution of the SJ(D) party to show that, the State President is the person competent to recommend symbol to the candidates contesting in the election to the local bodies. According to the petitioners, it was the District President of SJ(D) party, who was authorised to recommend symbol to the candidates and accordingly, the then Palakkad District President of SJ(D) party had recommended symbol to them. The Palakkad District President of SJ(D) party, who was examined as RW3 has deposed that, Sri.Thajudeen was

the District president of SJ(D) party when the petitioners had contested in the election to Chittoor Block Panchayat and that, RW3 was the then District Secretary of SJ(D) party. However, during cross examination, RW3 pleaded ignorance to the suggestive question as to whether the person who is competent to recommend symbol to the candidates is the person competent to issue the whip. RW3 added that, in SJ(D) party symbol is usually recommended by the District President. To another question as to whether PW1 had recommended symbol to the petitioners, while they contested in the election held in October, 2010, RW3 answered that it was the District President who had recommended symbol to them.

14. The 1st and 3rd petitioners, who were examined as RWs.1 and 2 respectively, have stated that the then District President of SJ(D) party had recommended the symbol while contesting in the election held in October, 2010. However, to a suggestive question put to RW1 that Ext.P10 shows that PW1 had recommended symbol to him, his answer was that he does not clearly know about Ext.P10. The 3rd petitioner as RW2 has also

deposed that, the District President had recommended symbol to him while contesting in the election. However, as rightly noticed by the Commission, Ext.X2 series make it explicitly clear that, PW1 who is the President of SJ(D) party had recommended symbol to the petitioners while they contested in the election held in October, 2010.

15. As per clause (iva) inserted to Section 2 of the Act, by Act 6 of 2013, with effect from 17.1.2012, 'direction in writing' means a direction in writing, signed with date, issued to a member belonging to, or having the support of, a political party, by the person authorised by the political party from time to time to recommend the symbol of the said political party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting. A reading of clause (iva) of Section 2 of the Act makes it explicitly clear that, the person authorised by the political party from time to time to recommend the symbol of the said political party for contesting in election is the person competent to issue direction to such member for exercising the vote favourably or unfavourably or to abstain from

voting. Similarly, clause (a) of sub-section (1) of Section 3 of the Act speaks about direction in writing issued by the political party to which one belongs or by a person or authority authorised by it in this behalf in the manner prescribed.

16. In the petitions filed before the Commission, the specific case pleaded by PW1 is that, he is the President of SJ(D) party, who is competent to recommend symbol for its members and accordingly, he recommended symbol for the petitioners while contesting as candidates of SJ(D) party in the election held in October, 2010. The documents on record would also show that, PW1 who is the State President of SJ(D) party had recommended symbol to the petitioners. In such circumstances, the finding of the Commission in Ext.P9 order that, 2nd respondent herein is the person who is competent to issue 'direction in writing' to the petitioners herein for exercising the vote favourably or unfavourably or to abstain from voting, cannot be termed either perverse or patently illegal, warranting an interference of this Court under Article 226 of the Constitution of India.

17. The finding of the Commission in Ext.P9 order is that, the 2nd respondent, in his capacity as the State President of the SJ(D) party, had issued whip directing the petitioners herein to vote in favour of the no-confidence motion. But, the petitioners herein, by defying the said direction, voted against the no-confidence motion with the help of LDF members and the said motion was defeated.

18. In the petitions filed before the Commission, the case pleaded by PW1 is that, on 4.9.2013 PW1 had issued a whip by registered post to RW1 calling upon him to resign from the post of President of Chittoor Block Panchayat, as authorised by the party based on the decision taken by its State Committee on 29.8.2013. RW1 accepted the said notice and issued a reply dated 18.9.2013 raising false allegations. RW1 has not complied with the said direction given by PW1. On 16.10.2013, PW1 issued another whip by registered post calling upon the petitioners to vote positively to support the no-confidence motion scheduled to be held on 24.10.2013. However, the petitioners voted against the no-confidence motion moved on 24.10.2013 and thereby

violated the directions and whip issued by PW1 and their said conduct is a clear case of violation of the provisions contained in the Act and they are liable to be disqualified for being members of Chittoor Block Panchayat.

19. Per contra, in the objection filed before the Commission, the petitioners contended that, the Congress members purposely submitted a notice of no-confidence motion against RW1. The SJ(D) Political party discussed the movement of Congress party in the locality and found that their intention is malafide and all factions of SJ(D) party unanimously decided to oppose the no-confidence motion for which whips were issued by the District Committee President and the Parliamentary party whip of SJ(D) Chittoor Block Panchayat. In the meantime, PW1, without any legal basis and without any discussion sent letters to support the no-confidence motion moved by the Congress members against RW1. The said matter was discussed in all factions of Palakkad District and a political decision was taken by the party to oppose the no-confidence motion unanimously by the SJ(D) members. The said decision was also communicated to

the State committee. On 23.10.2013, all party leaders and SJ(D) Block Panchayat members convened a meeting and in the said meeting it was informed that the political decision taken by the Palakkad faction has to be implemented for the sake of party and that was informed to the State Committee by the District Committee and got approval. Therefore, the petitioners would contend that, they had acted only as per the directions of the party and the Parliamentary party and never violated the directions of the party as alleged in the petition. As such they are not liable to be disqualified for being members of Chittoor Block Panchayat.

20. PW1 has deposed that, he had directed RW1 to resign from the post of President and after repeated directions in this regard, he had issued Ext.P1 letter directing RW1 to resign from that post. In Ext.P1 letter it has been stated that, RW1 became the President with the help of the members of the rival Political party and as such he should resign from that post. It has also been stated in Ext.P1 that, the State Committee of SJ(D) Party, which met on 29.8.2013 decided that RW1 should resign from the

post of President and that, the said committee had authorised PW1 to issue Ext.P1 letter. RW1 has admitted that, he had received the original of Ext.P1 and his explanation is that, it was sent by PW1 under the influence of Congress Party. Ex.P2 is the reply given by RW1 to Ext.P1. RW1 has deposed that, immediately on receipt of Ext.P1, the SJ(D) Parliamentary party convened on 11.9.2013 discussed the issue and decided that RW1 need not resign and the same was approved by the Niyojakamandalam Committee and also by the Palakkad District Committee.

21. PW1 has deposed that, he had issued whip to the petitioners directing them to vote in favour of the no-confidence motion moved against RW1, which was tabled for discussion on 24.10.2013. Exts.P3, P11, P15, P19 and P23 are the whips and Exts.P4, P12, P16, P20 and P24 are the postal acknowledgments of the same. Ext.P5 is the copy of the whip given to the Secretary of the Block Panchayat and Ext.P6 is its postal acknowledgment. RW1 has admitted that PW1 had sent a letter to support the no-confidence motion moved by the Congress members against him.

However, they had opposed the no-confidence motion based on the decision of the Niyojakamandalam Committee and the Palakkad District Committee of SJ(D) party and also on the basis of the direction in writing given by the then Palakkad District President of SJ(D) party. RW3, the Palakkad District President of SJ(D) party has deposed that, he had issued Ext.X3 whip to the petitioners and they had acknowledged the same by way of endorsing on its back side and that they had only complied with his direction.

22. As rightly noticed by the Commission, RW3 is not a person competent to issue whip to the members of SJ(D) party. RW3 has also not produced any records authorising him to issue such directions in writing to the members of Chittoor Block Panchayat. The Commission has also noticed that, the Palakkad District Committee as well as the Niyojakamandalam Committee of SJ(D) party was supporting the stand of the petitioners and they had decided to oppose the no-confidence motion moved against RW1. As evident from Ext.R2 minutes book, the Parliamentary Party of SJ(D) Chittoor Block Panchayat had

unanimously decided to oppose the no-confidence motion. The fact that, the Palakkad District Committee of SJ(D) party had decided to oppose such no-confidence motion is also clear from Ext.X4 minutes of that committee.

23. Though the case pleaded by PW1 in the petitions filed before the Commission was that, as authorised by the party based on the decision taken by its State Committee on 29.8.2013 he had issued a whip by registered post to RW1 on 4.9.2013, calling upon him to resign from the post of President of Chittoor Block Panchayat, which was followed by another whip on 16.10.2013, calling upon the petitioners to vote positively to support the no-confidence motion scheduled to be held on 24.10.2013, PW1 has not chosen to produce any documents to show that such a decision was taken by the State Committee either on 29.8.2013 or thereafter. On the other hand, the specific stand taken in the objections filed by the petitioners is that, PW1, without any legal basis and without any discussion, sent letters to support the no-confidence motion moved by the Congress members against RW1.

24. In **Union of India v. Ibrahim Uddin and another (2012 (8) SCC 148)** the Apex Court reiterated that, generally, it is the duty of the party to lead the best evidence in his possession, which could throw light on the issue in controversy and in case such material evidence is withheld, the Court may draw adverse inference under Section 114(g) of the Evidence Act, 1872 notwithstanding, that the onus of proof did not lie on such party and it was not called upon to produce the said evidence.

25. The 2nd petitioner has filed I.A.No.30 of 2014 in O.P.No.97 of 2013 seeking an order to direct PW1 to produce before the Commission various documents including the minutes of the State Committee of the SJ(D) party for the period from 7.8.2010 to 31.12.2013. The learned Standing Counsel for the Commission, on instructions, would submit that pursuant to an order passed by the Commission in the aforesaid interlocutory application, PW1 produced the constitution of the SJ(D) party and also its registration certificate. However, PW1 has not chosen to produce the minutes of the State Committee of the SJ(D) party for the period from 7.8.2010 to 31.12.2013. The Commission, in

such circumstances, ought to have drawn adverse inference, as provided under clause (g) of Section 114 of the Evidence Act, 1872, against PW1 for withholding such crucial document and concluded that, the whip issued by PW1 is not supported by any decision taken by the State Committee of the SJ(D) party, either on 29.8.2013 or thereafter.

26. In **Nazeerkhan S. v. Kerala State Election Commission (2009 (1) KHC 681)**, a Division Bench of this Court held that, a Court exercising power under Article 226 of the Constitution of India in proceedings, wherein a challenge is mounted against the order passed by the State Election Commission, is only expected to act in judicial review of the order impugned and not to approach the same as an Appellate Court.

27. The claim of PW1 that the SJ(D) party has authorised him to issue Exts.P1, P3 and P5 whips is only his own assertion and not supported by any evidence on record, either oral or documentary. Article XXII of Ext.P28 Constitution of SJ(D) party provides that, the President shall preside over the meetings of the State Council and State Executive. The said Article provides

further that, the President shall exercise all the powers of the State Executive, when it is not in session. However, the State Executive at its next meeting shall ratify such decision taken by the President. The said Article also provides that, the President shall represent the party on all occasions. Article XXXII of the Constitution deals with functions of committees, which provides that, the State Council shall decide the policies and programmes of the party, issue directions to the State Executive for implementation of the decisions so taken. It shall also decide upon the matters submitted by the State Executives for ratification from time to time. Similarly, the State Executive shall, apart from the routine affairs of the party, implement and carry out the programmes based on the policies of the party and the decisions of the State Council, and also give directions to the lower units from time to time. In the objections filed before the Commission, the specific stand taken by the petitioners is that, the letters sent by PW1 directing them to support the no-confidence motion moved against RW1 is without any legal basis and without any discussion in the party. However, the claim of

PW1 that the SJ(D) party has authorised him to issue Exts.P1, P3 and P5 whips is not supported by any evidence on record, either oral or documentary, in order to show that PW1 has acted in accordance with the provisions under Ext.P28 Constitution of SJ (D) party. In the absence of any such material, the finding of the Commission in Ext.P9 order that, PW1 in his capacity as the State President of the SJ(D) party, had issued whip directing the petitioners to vote in favour of the no-confidence motion, but, they defied the said direction and voted in favour of the no-confidence motion, is perverse and patently illegal, warranting interference of this Court under Article 226 of the Constitution of India.

28. The further finding of the Commission in Ext.P9 order is that, the petitioners herein defied the direction issued by PW1 and voted in favour of the no-confidence motion with the support of LDF members and the said motion was defeated and thus they had become disloyal to the SJ(D) party and subjected to disqualification for being members of Chittoor Block Panchayat, as provided under clause (a) of sub-section (1) of Section 3 of

the Act.

29. Section 3 of the Act deals with disqualification on the ground of defection. As per clause (a) of sub-section (1) of Section 3 of the Act, if a member of a local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting, (i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of a Standing Committee or the Chairman of a Standing Committee; or (ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee or the Chairman of the Standing Committee; or in a voting on a no-confidence motion against any one of them except a member of a Standing Committee; he shall be disqualified for being a member of that local authority.

30. Section 4 of the Act deals with decision on question as

to disqualification on ground of defection. As per sub-section (1) of Section 4 of the Act, if any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of the Act, a member of that local authority or the political party concerned or a person authorised by it in this behalf may file a petition before the State Election Commission for decision. As per sub-section (2) of Section 4, the Commission shall, after making such enquiry as it deems necessary, decide whether such member has become subject to such disqualification or not and its decision thereon shall be final. Going by sub-section (3) of Section 4, where the Commission decides that a member has become subject to disqualification under sub-section (2), he shall cease to be a member from the date of such decision and shall be disqualified for contesting as a candidate in an election to any local authority for six years from that date.

31. In **Ravi S. Naik v. Union of India (1994 Supp (2) SCC 641)** the Apex Court examined the scope of the words 'voluntarily giving up membership' and it was held that they are

not synonymous with 'resignation' and have a wider connotation.

Paragraph 11 of the judgment reads thus;

"**11.** The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs."

32. Later, a Constitution Bench of the Apex Court in **Rajendra Singh Rana v. Swami Prasad Maurya (2007 (4) SCC 270)** approved the dictum laid down in Ravi S. Naik's case (supra). Paragraph 49 of the judgment reads thus;

"49. Clearly, from the conduct of meeting the Governor accompanied by the General Secretary of the Samajwadi Party, the party in opposition and the submission of letters requesting the Governor to invite the leader of that opposition party to form a Government as against the advise of the Chief Minister belonging to their original party to dissolve the assembly, an irresistible inference arises that the 13 members have clearly given up their membership of the BSP. No further evidence or enquiry is needed to find that their action comes within paragraph 2

(1)(a) of the Tenth Schedule. "

33. In **Joseph K.M. v. Babychan Mulangasseri and others (2015 (1) KHC 111)** a Division Bench of this Court (in which I was a party) held that, though the expression 'defection' is not defined in the Act, it has to be understood as to mean that a member who has violated the whip or has voluntarily given up the membership of the political party to which he belongs shall be disqualified. Further, the grounds for disqualification under the first and second limbs of clause (a) and clause (b) of sub-section (1) of Section 3 of the Act are distinct and are not interlinked. Para.18 of the judgment reads thus;

"18. The expression 'defection' as such is not defined in the Act. But the Legislature has left the disqualification to be decided on the defined conduct of the member. Going by Section 3 of the Act, a member can be disqualified if he has 'voluntarily given up' the membership of the political party to which he belongs or acts in defiance of a whip or direction issued by that political party. The intention of the Legislature is that, a member who has violated the whip or has voluntarily given up the membership of the political party to which he belongs shall be disqualified. Therefore, the disqualification for voluntarily giving up the membership of the political party to which one belongs is

not dependent on any violation of the whip. It is not necessary to hold that the member has violated the whip in order to conclude that he has voluntarily given up the membership of the political party to which he belongs. Therefore, grounds for disqualification under the first and second limbs of clauses (a) and (b) of sub-section (1) of Section 3 of the Act are distinct and are not interlinked.”

34. In **Sadashiv H.Patil v. Vithal D.Teke and others (2000 (8) SCC 82)**, a Three-Judge Bench of the Apex Court held that, a finding as to disqualification has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with democratic procedure of constituting a local authority. Looking at the penal consequences flowing from an elected Councillor being subjected to disqualification and its repercussion on the functioning of the local body, the provisions have to be construed strictly. Para.14 of the judgment reads thus;

“**14.** A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to

be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected Councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section 7 of the Act."

35. In Joseph's case (supra) this Court held that, in order to draw an inference that elected members have voluntarily given up membership of the political party, there must be concrete proof that they have acted in defiance of any valid directions of the political party, which should be established by positive, reliable and unequivocal evidence. Para.39 of the judgment reads thus;

"39. The provisions under the Tenth Schedule of the Constitution and that under the Kerala Local Authorities (Prohibition of Defection) Act are intended to curb unprincipled and unethical political defection. In order to draw an inference that respondents 1 to 3 have voluntarily given up membership of the political party, there must be concrete proof that they have acted in defiance of any valid directions of the political party. The said giving up of membership should be established by positive, reliable and

unequivocal evidence. The fact that a member has voluntarily given up membership of the political party for all intent and purpose so as to incur disqualification under Section 3 of the Act is to be determined on appreciation of materials on record. In the absence of any such proof, the finding in Ext.P10 order that respondents 1 to 3 moved the no-confidence motion against their own party without the knowledge and consent of the Congress Party or the DCC President and their above conduct would amount to voluntarily giving up their membership of the party, is per se arbitrary and perverse. Therefore, in our view, the learned Single Judge rightly set aside Ext.P10 order passed by the State Election Commission."

36. In **Chinnamma Varghese v. State Election Commission of Kerala (2010 (3) KLT 426)** a Division Bench of this Court held that, incurring of the disqualification under any one of the contingencies under Section 3 of the Act depends upon the existence of a definite set of facts, which are required to be specifically pleaded before they are sought to be proved to establish the allegation of disqualification under the Act.

37. In the petitions filed before the Commission, it is alleged that, on 19.11.2011 the petitioners successfully moved a no-confidence motion against the then President of Chittoor Block

Panchayat, with the support of the members of the LDF and thereafter RW1 is the President of the Block Panchayat. Later, on 4.9.2013, PW1 issued a whip to RW1 calling upon him to resign from the post of President of Chittoor Block Panchayat, as authorised by the party based on the decision taken by its State Committee on 29.8.2013. Since RW1 failed to comply with the direction contained therein, PW1 issued another whip on 16.10.2013, calling upon the petitioners to vote positively to support the no-confidence motion scheduled to be held on 24.10.2013. But the petitioners voted against the no-confidence motion moved on 24.10.2013 and thereby violated the directions and whip issued by PW1. Therefore, it is alleged that, their acts, omissions, conducts and statements amount to voluntarily giving up of the membership of SJ(D) party, by wilfully neglecting the interest of the party and by the aforesaid acts, they incurred disqualification under the provisions of the Act.

38. As I have already noticed, though PW1 is the person who is competent to issue whip to the petitioners, the claim of PW1 that the SJ(D) party has authorised him to issue Exts.P1, P3

and P5 whips is not supported by any evidence on record, either oral or documentary. PW1 has also not produced any documents to show that, the whip issued by him is supported by any decision taken by the State Committee of the SJ(D) party, either on 29.8.2013 or thereafter. In spite of the order passed by the Commission in I.A.No.30 of 2014 in O.P.No.97 of 2013, PW1 has not chosen to produce the minutes of the State Committee of the SJ(D) party for the period from 7.8.2010 to 31.12.2013. In the absence of any reliable material to show that, the whips issued by PW1 are as authorised the SJ(D) party, it cannot be concluded that the petitioners defied the direction issued by PW1 and voted in favour of the no-confidence motion. Though it is alleged in the petitions that, the acts, omissions, conducts and statements of the petitioners would amount to voluntarily giving up of their membership in the SJ(D) party, PW1 has deposed that, the petitioners have never given up their membership in the SJ(D) party and that they are still ardent followers of the party. PW1 has also stated that, the SJ(D) party has neither taken any disciplinary action against the petitioners nor expelled them from

the party and that, no recommendation has been made at the party level to take any action against them.

39. The Tenth Schedule to the Constitution of India as well as the Kerala Local Authorities (Prohibition of Defection) Act, 1999 were brought into force in order to check erosion of the values in democracy. The Tenth Schedule to the Constitution deals with disqualification on the ground of defection of a member of either House of the Parliament and that of a member of the Legislative Assembly or the Legislative Council of a State. The constitutional validity of the Constitution (Fifty-second Amendment) Act, 1985, in so far as it seeks to introduce Tenth Schedule to the Constitution was under challenge before a Constitution Bench of the Apex Court in **Kohoto Hollohan v. Zachillhu (1992 Supp (2) SCC 651)**. In the said judgment, the Apex Court observed that, "the object underlying the provisions in the Tenth Schedule is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the member of either House of

Parliament or of the State Legislature who is found to have defected from continuing as a member of the House, on the grounds of disqualification specified in paragraph 2 of the Tenth Schedule." The Apex Court observed further that, "a political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance-nay, indeed, its very survival.

Paragraphs 43 and 44 of the judgments read thus;

"43. Parliamentary democracy envisages that matters involving implementation of policies of the Government should be discussed by the elected representatives of the people. Debate, discussion and persuasion are, therefore, the means and essence of the democratic process. During the debates the Members put forward different points of view. Members belonging to the same political party may also have, and may give expression to, differences of opinion on a matter. Not unoften the views expressed by

the Members in the House have resulted in substantial modification, and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of Parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines.

44. But a political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance-nay, indeed, its very survival. Intra party debates are of course a different thing. But a public image of disparate stands by Members of the same political party is not looked upon, in political tradition, as a desirable state of things. Griffith and Ryle on "Parliament, Functions, Practice and Procedure" (1989 Edn. page 119) say:

"Loyalty to party is the norm, being based on shared beliefs. A divided party is looked on with suspicion by the electorate. It is natural for members to accept the opinion of their Leaders and Spokesmen on the wide variety of matters

on which those Members have no specialist knowledge. Generally Members will accept majority decisions in the party even when they disagree. It is understandable therefore that a Member who rejects the party whip even on a single occasion will attract attention and more criticism than sympathy. To abstain from voting when required by party to vote is to suggest a degree of unreliability. To vote against party is disloyalty. To join with others in abstention or voting with the other side smacks of conspiracy."

40. In **Varghese v. Kerala State Election Commission (2009 (3) KLT 1)** a Division Bench of this Court held that, if a member or a group of the elected members of the political party takes a different stand from that of the political party as such, and acts against the policies of the political party in which they are members, it is nothing but disloyalty. The moment one becomes disloyal by his conduct to the political party, the inevitable inference is that he has voluntarily given up his membership. The Division Bench declared that, the dictum laid in *Naseera Beevi v. State Election Commission* (2004 (1) KLT 1108) that leaving the parliamentary party and exercising the right to

vote according to the choice of the elected member would not attract the disqualification on the ground of voluntarily giving up of membership in the political party is not good law. Paragraphs 9 and 10 of the judgment read thus;

"9. The learned Senior Counsel Sri. Ramakumar contends that in modern democracy the elected member is free to vote according to his conscience, in the absence of a specific whip, particularly in view of the modern trends in democracy-intra party groups. We are afraid, the Court will not be justified in taking judicial notice of such developments and in rewriting the law. The Court shall only analyse the facts and decide the case in accordance with law and upholding the spirit of laws. The law, as it stands now, is unambiguously clear that one has to be loyal to his political party. The situation would be different if the political party itself, taking note of such strange realities, permits the elected members to cast conscience vote. In such situations the whip itself is for decision by the individual concerned according to his conscience. The Oxford dictionary defines conscience to mean 'the part of your mind that tells you whether your actions are right or wrong'. In the absence of a specific whip for conscience vote, an elected member, under law, is entitled and liable to cast only a conscious vote, being aware of the consequences of his decision, in terms of Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act,

1999 on disqualification on the ground of defection on account of voluntarily giving up membership in the political party. Conscience vote is hence a matter of express whip in the absence of which an elected member is bound by the policies of his political party and he can cast only a conscious vote. That is nothing but an expected expression of his obligation to the political party and responsiveness to the people, by doing things carefully and correctly and if not the conduct would amount to betrayal of the political conscience which is impermissible under law. According to Harry S. Truman 'Democracy is based on the conviction that man has the moral and intellectual capacity, as well as the inalienable right, to govern himself with reason and justice'. The reason and justice are the two mandates of the conscious vote under Section 3 of the Act. There is no case that the political party in which they belonged had given them the whip to vote according to their conscience.

10. Indisputably the writ appellants, who were elected to the Municipal Council as official candidates of the Indian National Congress and having continued so in the Council, have voted in favour of the No Confidence Motion moved by the rival political parties on 21.4.2008 and by the said conduct they had incurred the disqualification of voluntarily giving up membership in the political party. "

41. In the case on hand, Ext.P7 is the copy of the minutes of the meeting which discussed the no-confidence motion. The said minutes shows that the petitioners, who contested the

election as candidates of SJ(D) party, under UDF coalition consisting of INC and SJ(D), and elected as members of Chittoor Block Panchayat, opposed the no-confidence motion moved against RW1 and the same was defeated with the support of LDF members. RW1 has deposed that, they had opposed the no-confidence motion based on the decision of the Niyojakamandalam Committee and the Palakkad District Committee of SJ(D) party. The Commission has also noticed that, the Palakkad District Committee and the Niyojakamandalam Committee of SJ(D) party were supporting the stand of the petitioners herein to oppose the no-confidence motion moved against RW1. The Parliamentary Party of SJ(D) Chittoor Block Panchayat had unanimously decided to oppose the no-confidence motion, as borne out from Ext.R2 minutes book. Similarly, the Palakkad District Committee of SJ(D) party had also decided to oppose the no-confidence motion, as borne out from Ext.X4 minutes. Though RW1 relied on Ext.X3 whip issued by RW3, who is the Palakkad District President of the SJ(D) party, RW3 has not produced any records authorising him to issue such directions in

writing to the members of Chittoor Block Panchayat. Therefore, the Commission in Ext.P9 order concluded that, RW3 is not a person competent to issue whip to the members of SJ(D) party.

42. The learned Senior Counsel for the petitioners would contend that, after the no-confidence motion moved on 19.11.2011 against the then President of Chittoor Block Panchayat, which was the subject matter in O.P.Nos.150 of 2011 to 154 of 2011 covered by Ext.P3 judgment of the Commission, the SJ(D) party is no more a part of UDF coalition. However, the petitioners have no such case in the objections filed before the Commission and there is nothing on record to indicate that the SJ (D) party left UDF coalition in Chittoor Block Panchayat, either before or after the no-confidence motion moved on 19.11.2011. Similarly, there is nothing on record to indicate that the SJ(D) party formed part of LDF coalition in Chittoor Block Panchayat, either before or after the aforesaid no-confidence motion. On the other hand, Ext.X1 register maintained by the Secretary of the Block Panchayat in terms sub-rule (1) of Rule 3 of the Rules makes it clear that the petitioners contested the election as

candidates belonging to SJ(D) party under UDF coalition. In the absence of any decision taken by the SJ(D) party in accordance with the provisions contained in Ext.P28 Constitution, the contention that, the SJ(D) party is no more a part of UDF coalition in Chittoor Block Panchayat can only be rejected.

43. It is trite law that, disqualification for voluntarily giving up the membership of the political party to which one belongs is not dependent on any violation of the whip. As such, it is not necessary to hold that the member has violated the whip in order to conclude that he has voluntarily given up the membership of the political party to which he belongs. In the case on hand, indisputably the petitioners, who were the elected members of SJ (D) party in Chittoor Block Panchayat under UDF coalition opposed the no-confidence motion moved against RW1 and defeated the said motion with the support of LDF members. It is nothing but an act of disloyalty and the moment the petitioners become disloyal to the Political party by their conduct in defeating the no-confidence motion with the support of the opposite faction, namely the LDF, the inevitable inference is that

they have voluntarily given up their membership in the SJ(D) party.

44. In that view of the matter, the Commission cannot be said to have committed an illegality in arriving at a conclusion that the petitioners herein have become disloyal to the SJ(D) party and as such subjected to disqualification for being members of Chittoor Block Panchayat, as provided under clause (a) of sub-section (1) of Section 3 of the Act. The moment the petitioners become disloyal to the Political party by their conduct in defeating the no-confidence motion with the support of the LDF they have voluntarily given up their membership in the SJ(D) party.

45. When the conclusion made by the Commission in Ext.P9 order cannot be said to be illegal, the consequential declaration made by the Commission disqualifying the petitioners for contesting as candidates in the election to any local authorities for a period of 6 years from the date of order, as provided under sub-section (3) of Section 4 of the Act, also cannot be said to be illegal.

In the result, the writ petition fails and the same is dismissed. No order as to costs.

Sd/-
ANIL K.NARENDRA,
JUDGE

dsn

True copy

P.S. to Judge