

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 21334 of 2014 (N)

PETITIONER:

T.MANIKANTAN NAIR
S/O.THANKAPPAN NAIR, M.K.VILASOM, PULAMTHARA
SANTHIGIRI P.O., THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
SRI.P.C.SASIDHARAN

RESPONDENTS:

1. PALLICKAL NAZEER
WARD MEMBER, WARD NO.9, CHIRATHALAKKAL WARD
MANICKAL GRAMA PANCHAYAT
THIRUVANANTHAPURAM DISTRICT-695589.
2. THE CO-OPERATIVE ELECTION COMMISSION
THIRUVANANTHAPURAM-695001.

R2 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM
R1 BY ADV. SRI.V.M.KURIAN
R1 BY ADV. SMT.ANEESA.E.A
R1 BY ADV. SRI.VINOD RAVINDRANATH
BY GOVERNMENT PLEADER SRI.A.MOHAMMED SAVED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 21334 of 2014 (N)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT-P1: COPY OF THE ORIGINAL PETITION, O.P.NO.3 OF 2013 FILED BY THE
FIRST RESPONDENT DATED 16.01.2013 ALONG WITH EXHIBITS.

EXHIBIT-P2: COPY OF THE OBJECTION FILED BY THE PETITIONER IN O.P.NO.3 OF
2013 DATED 11.03.2013.

EXHIBIT-P3: COPY OF THE ORDER DATED 08.08.2014 IN O.P.NO.3 OF 2013 OF THE
2ND RESPONDENT.

RESPONDENTS' EXHIBITS

NIL

TRUE COPY

P.A.TO JUDGE

ANU SIVARAMAN, J.
= = = = =
W.P.(C).No.21334 of 2014
= = = = =
Dated this the 13th day of July, 2015

JUDGMENT

The writ petition is filed challenging Ext.P3 order issued by the Kerala State Election Commission in a petition filed by the first respondent under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (hereinafter referred to as 'the Act'). The second respondent has issued Ext.P3 order allowing the petition and declaring that the petitioner is disqualified for being a member of the Manikkal Grama Panchayat as provided by section 3 (1)(a) of the Act. The petitioner is also declared as disqualified for contesting as candidate in an election to any local authority for six years as provided under section 4(3) of the Act.

2. The petitioner's case is that he was an elected member of the Manikkal Grama Panchayat having been elected to represent ward No.19. The committee of the Manikkal Grama Panchayat consists of 21 members, 9 of whom (including the petitioner herein) belong to the Indian National Congress and 10 to the LDF, 2 are independent members. The UDF with the support of two

independent candidates had elected Sri.Thankappan Nair as the President of the Panchayat. One of the independent candidates, Smt.Sudharmani was elected as the Vice President and the other independent candidate, Sri.Jayan was elected as the Chairman of the Development Standing Committee. It is stated that ten members belonging to the LDF moved a no-confidence motion against the President and it was passed with the support of the independent candidate Sri.K.Jayan. Thereafter, the LDF moved no-confidence motion against Smt.Sudharmani and the motion was directed to be tabled on 04.01.2013. On 17.12.2012, the election to the post of President was conducted in which the first respondent (the petitioner before the Election Commission) was the candidate of the UDF and Sri.K.Jayan was the candidate having the support of the LDF. It is alleged that Smt.Sudharmani voted in favour of the LDF candidate and Sri.K.Jayan was elected as President of the Panchayat. Therefore, in the no-confidence motion moved against Smt.Sudharmani, the petitioner voted in favour of the motion. Ten LDF members also voted in favour of the motion and the motion stood passed.

3. It is alleged by the first respondent that a whip had been

issued by the Indian National Congress Party and by voting in favour of the no-confidence motion in violation of the whip, the petitioner had voluntarily abandoned his membership from the Indian National Congress thereby committing defection and incurring a disqualification. Ext.P1 petition was therefore moved by the first respondent before the State Election Commission, on which the order impugned has been rendered.

4. We have heard Sr.P.C.Sasidharan, learned counsel appearing for the petitioner. Sri.T.Krishnanunni, learned Senior counsel appearing for the first respondent and Sri.Murali Purushothaman, learned counsel appearing for the second respondent.

5. It is the case of the writ petitioner that his action did not amount to defection or voluntarily giving up of membership in the Indian National Congress since Smt.Sudharmani had expressed her intention to become part and parcel of LDF by voting in favour of Jayan along with LDF members in the election to the post of President of the Panchayat held on 17.12.2012. It was stated that Smt.Sudharmani, in effect became a member of the LDF and that by voting in favour of the no-confidence motion against

Sudharmani, the petitioner cannot be said to have voluntarily given up his membership in the Indian National Congress or to have defected.

6. In Ext.P3, it was found by the Election Commission that the Congress Parliamentary Party had decided to keep away from the no-confidence motion which was tabled for discussion on 04.01.2013. However, the petitioner participated in the meeting and voted in favour of the no-confidence motion. It was held by the Commission that it is clear from Ext.P2 minutes that the petitioner had voted in favour of the no-confidence motion along with LDF members. It was also found that Ext.P3 produced before the Commission was the acknowledgment given by the Secretary of the Panchayat on 04.01.2013 at 10.15 AM regarding the receipt of the direction issued by the DCC President to the nine Congress members.

7. The first respondent, who was examined as PW1 had given evidence in consonance with his petition and had asserted that a whip had been issued on 03.01.2013. It was further stated that the petitioner had participated in the meeting on 03.01.2013 and had made clear his intention to vote in favour of the no-confidence

motion. The DCC President, Thiruvananthapuram, who was examined as PW2 also deposed that he had given direction to all Congress members to abstain from the discussion and voting on the no-confidence which was tabled for discussion on 04.01.2013. It was also brought out that the direction had been served by affixing it on the petitioner's residence.

8. The petitioner gave evidence as RW1. He would state that Smt.Sudharmani had, by voting in favour of the candidate fielded by the LDF in the Presidential election on 17.12.2012, in effect, defected and became part of the LDF and therefore, there was nothing wrong in his having voted in favour of the no-confidence motion moved against the said Sudharmani. He specifically stated that he did not vote against any Congress member and that he was still active in the party and could not be said to have voluntarily given up his membership.

9. The Commission found that the whip issued by the DCC President was proper and contended that it was served on the petitioner by affixture. It was further found that the contention that by voting in favour of Sri.K.Jayan, Smt.Sudhamani is assumed to have defected to the LDF is also not a defence legally available to

the petitioner in the light of the whip issued by the DCC President. The Commission also found that the action of the petitioner in having voted in favour of the no-confidence motion by disobeying the clear directions of the party would amount to voluntarily giving up his membership from the party and therefore he was held to be disqualified on both the counts. In the above view of the matter, the petition filed by the first respondent was allowed and the petitioner was held to be disqualified.

10. The counsel for the petitioner submits that the document produced along with Ext.P1 petition purporting to be the whip issued to him and other members of the party dated 03.01.2013 reads as follows:-

“മാണിക്കൽ മണ്ഡലം കോൺഗ്രസ് കമ്മറ്റിയുടേയും
3.1.2013-ൽ നടന്ന മാണിക്കൽ പഞ്ചായത്തിലെ
കോൺഗ്രസ് (എ) æÍOVÍpðáæ¿ പാർലമെന്ററി പാർട്ടി
യോഗത്തിന്റേയും തീരുമാനം :- 4.1.2013-ൽ മാണിക്കൽ
ഗാമപഞ്ചായത്ത് വൈസ് dÉØßÁaßæÈÄßæø നടക്കുന്ന
അവിശ്വാസപ്രമേയ ചർച്ചയിൽ കൈപ്പത്തി അടയാളത്തിൽ
മത്സരിച്ചു ജയിച്ച അംഗങ്ങൾ ഹാജരാകാതെ വിട്ടു
നില്ക്കണമെന്ന് ഇതിനാൽ നിർദ്ദേശിക്കുന്നു.”

11. It is contended that the instruction therein is only to the members elected under the symbol not to participate in the discussions on the no-confidence motion. It is submitted that there is no direction in the communication to the members to vote or to abstain from voting in the no-confidence motion. It is submitted that since the order of disqualification to be issued by the Election Commission is one having serious civil and penal consequences, all the requirements of the empowering provisions have to be adhered to in full before such an order can be passed. In the above view of the matter, the learned counsel for the petitioner submits that the action of the Commission in having accepted the case of the first respondent without going into the specific wording of the communication issued by the DCC President was completely unjustified and unwarranted. It is further contended that the specific provisions contained in Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Amendment Rules, 2005 regarding the manner of giving of instructions by reading over by a person elected in the meeting has also not been complied with. Learned counsel relies on the decisions of this court in **Chinnamma Varghese v. State Election Commission** (2010

(3)KLT 426), **Babychan Mulangasseri v. State Election Commission** (2013 (3) KLT 633) and **Anita Baby v.Kunjappan Painkily** (2015(1) KLT SN 112 Case No.113) to contend that the circumstances attracting the issuance of an order of disqualification have to be strictly construed.

12. In **Babychan Mulangasseri v. State Election Commission (supra)**, a single Judge of this Court held that the moving of a no-confidence motion against an office bearer of the same party does not amount to voluntarily giving up membership of the political party. It was held by this Court that there should be concrete proof that the member has acted against the directions of the party in question. It was further held that a direction issued by the DCC President which does not amount to a whip as contemplated by law cannot be relied upon by the Election Commission to draw inference that by violating the same, the erring members had defected from the party. The writ appeal taken against this judgment was also dismissed by a Division Bench of this Court by a decision reported in **Joseph K.M. v. Babychan Mulangasseri** (2015(1) KHC 111). Examining the catena of decisions of the Apex Court and this Court on the point, the Division

Bench held that even in the absence of formal resignation, an inference can be drawn from the conduct of the member that he had voluntarily given up his membership in the political party. However, it was held that in order to draw an inference that members have voluntarily given up membership, there must be concrete proof that they have acted in defiance of any valid directions of the political party.

13. In **Chinnamma Varghese v. State Election Commission** (supra) a Division Bench of this Court held that the restrictions imposed on the right of conscience of the member of a local body are required to be enforced strictly in accordance with the tenor of the law. The whip as well as the procedure for its service prescribed by the Rules have to be strictly followed and no disqualification can result if the whip is not one properly issued in strict compliance with the Act and the Rules made thereunder.

14. In the instant case, the alleged whip issued by the DCC President does not direct the members of the Indian National Congress to abstain from voting in the no-confidence motion to be tabled for discussion on 04.01.2013. This is the communication which was admittedly served on the petitioner by affixture on his

residence. The learned counsel has a further contention that in view of the provisions of Rule 4 of the Anti Defection Rules, the whip has to be read over by a person elected from among the members of the Panchayat and the political party at a meeting convened for the purpose. Intimation of such direction is to be communicated to the Secretary of the Panchayat. Only if these steps are complete will a legally binding direction as contemplated by the statute come into existence and it is only the violation of such a direction that can have the consequence of disqualification and deemed voluntary defection. The compliance of the requirements of Rule 4 has not even been pleaded by the 1st respondent before the 2nd respondent, it is submitted.

15. The relevant portions of Section 3 of Kerala Local Authorities (Prohibition of Defection) Act, 1999 read as follows:-

" 3. Disqualification on ground of Defection.

(1) Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act,-

(a) 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;

(b) if an independent member belonging to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorised by the coalition in this behalf in the manner prescribed, votes or abstains from voting,-

(i) in a meeting of a Municipality, in an election of its President, Vice President, a member of a Standing Committee or the Chairman of the 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;

(c) if an independent member not belonging to any coalition, joins any political party or coalition; he shall be disqualified for being a member of that local authority.

(2) The direction in writing issued for the purpose of clauses (a) and (b) of sub-section (1) shall be given to the members concerned in the manner as may be prescribed and copy of such direction in writing shall be given to the Secretary of the Local Self Government Institution concerned.

(3) Where any dispute arises regarding the direction issued under this section between the political party or coalition concerned and the member authorised in this behalf as prescribed under sub-section (2), the direction in writing issued in this regard by the person authorised by the political party from time to time to recommend the symbol of the political party concerned for contesting in election shall be deemed to be valid.

Explanation.--For the purpose of the section an elected member of a local authority shall be deemed to be a member belonging to the political party if there is any such party, by which he was set up as a candidate for the election."

Section 4 reads as follows:-

"4. Decision on question as to disqualification on ground of defection:--(1) If any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this 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.

(2)The State Election 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.

(3) Where the State Election 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."

Rule 4 of the Kerala Local Authorities (Disqualification of Defected Members) Amendment Rules, 2005 reads as follows:-

"4. The manner in which a Political party or Coalition may give direction to its members--(1)If a political party or coalition gives any direction in respect of the casting of vote in an election or in a voting as has been mentioned in clause (a) or clause (b) of section 3, it shall be in writing and such a direction shall be given,—

(i) in the case of a member belonging to a political party or a member considered as included therein, it shall be the person authorized from time to time to recommend the symbol belonging to the political party in order to contest the said member in the election. Provided, the above said direction shall be in the letter head and seal of the political party and for the information of the members, the contents therein shall be read over by the member who shall be elected by the members belonging to the political party and the members considered as included in the political party jointly, based on majority from among themselves, and the direction so read shall be deemed to have given directly to the members. In any case, in the absence of the member elected by majority or if that member refuses, another member belonging to

the same party shall read over the said direction." ";

(ii) xxx xxx xxx xxx

(iii) if any dispute arises between the member elected on majority or the concerned political party as mentioned in clause (i), the above said direction given shall be considered as valid"

(2) While issuing a direction under sub-rule (1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgement due and while effecting it by affixing it shall be done in the presence of at least two witnesses. Copy of the direction in writing shall also be given to the Secretary.

4A. *Petition relating to disqualification.*—(1) Where a question arises as to whether a member of a local authority has become subject to disqualification under the provisions of the Act, the member authorised to give direction to that member under sub-rule (1) of Rule 4 or any other member of the local authority concerned may file a petition before the State Election Commission for taking decision in the matter.

(2) A petition under sub-rule (1) shall be filed within fifteen days from the date on which the member concerned is considered to be disqualified:

Provided that where the petitioner convinces the State Election Commission that there is sufficient reason for having failed to file the petition within the prescribed time limit, it may accept the said petition."

16. Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, contemplates two situations. They are the "voluntary giving up of membership of the political party' and "acting contrary to the direction in writing issued by such political party". The two contingencies are different and distinct and disqualification can result if either of the two situations are adequately proved. The question therefore is whether either of the situations have arisen in the instant

case.

17. The learned Senior Counsel appearing for the 1st respondent and the Standing Counsel appearing for the 2nd respondent, Commission would contend that the scope of interference under Article 226 of the Constitution of India by this Court in decisions of the State Election Commission under the Act is limited and the findings of fact arrived at by the Commission cannot be interfered with. In support of the contention, learned counsel for the 2nd respondent relied on the decision of this Court reported in **Sheo Paul v. Kerala State Election Commission** (2005 KHC 1241) and **Annamkutty v. Baby** [2000(3) KLT 18]. The decisions of this Court in **Mohandas v. State Election Commissioner** (2009(4) KLT 957), **Muhammedkunhi v. Abdulla** (2010(4) KLT 736) and **Dharma Mani v. Parassala Block Panchayat** (2009 (3) KLT 29) were brought to my notice by the learned Senior Counsel appearing for the first respondent. It is further contended that the disloyalty of the petitioner to the party under the symbol of which he was elected to office is writ large in his conduct and even if the whip issued is not in strict conformity with the requirement of the Act and the Rules made thereunder, by refusing to comply with the written directions of the DCC President, petitioner has shown his disloyalty to the party and the 1st limb of Section 3(1)(a) is

attracted. The decision of a Division Bench of this Court in **Surya Prakash v. Kerala State Election Commission** [2015(3) KLT SN 28 (C.No.36)] and in W.A.No.452 of 2015 and connected cases are relied upon by the learned counsel for the respondents.

18. It is contended that the Division Bench has categorically held that when the concerned member is well aware of the directions issued by his party, violation of such directions would amount to giving up of membership even in a case where the whip is not one properly constituted under the Rules. It is also contended that the findings of fact arrived at by the Commission after taking evidence and considering the facts before it are not to be interfered with by this Court under Article 226 of the Constitution of India.

19. Though it is an admitted position of law that a writ court is not expected to venture into a re-appreciation of evidence, the order of the Election Commission is also amenable to judicial review by this Court exercising the powers under Article 226. It is clear from the provisions of the Act and Rules extracted above that the disqualification as provided in the second limb of Section 3(1)(a) can be attracted only if the petitioner has violated the directions issued which are strictly as prescribed in Rule 4. In the instant case, it can be seen from the direction purported to have been issued to the petitioner

itself that there was no specific direction to refrain from voting in the no-confidence motion. The direction was also not one issued in compliance with the provisions of Rule 4 of the Rules. The direction, therefore is not one issued in the manner prescribed as provided in section 3(1)(a). As such, the petitioner cannot be said to have attracted the disqualification contained in second limb of Section 3(1)(a).

20. With regard to the voluntarily giving up of membership in the political party also, there was no sustainable evidence before the Commission to hold that the petitioner had voluntarily given up the membership of such political party. It was contended in the petition filed before the Commission that the petitioner herein had voluntarily given up his membership in the Indian National Congress and had joined the LDF. The petitioner refuted the said allegation in his objection. The thrust of the case of the 1st respondent before the Commission was that by refusing to comply with the directions contained in the alleged whip, the petitioner has acted in violation of directions issued by his political party and that his act amounts to voluntarily given up of membership. The Commission had proceeded on the basis that the violation of the direction issued to him by the

DCC President to abstain from the discussion on the no-confidence tabled on 04.01.2013 had amounted to voluntary giving up of membership in terms of Section 3(1)(a) and in such circumstances, the petitioner could be found to have become disqualified.

21. The Division Bench in **Joseph K.M. v. Babychan Mulangasseri and others** (2015(1) KHC 111) had held that even in the absence of a formal resignation from the party, an inference can be drawn from the conduct of the member that he had voluntarily given up his membership in the political party. In paragraph 36 of the judgment, the factual matrix involved in the cases cited before the bench were summarized which reads as follows:

"36. In paragraphs 22 to 28 of this judgment, we have dealt with in detail, the decisions relied by the learned Senior Counsel for the appellant. In Varghese's case (supra) the writ petitioners who are UDF members supported the no-confidence motion moved by the rival political group LDF. In this case, there was floor-crossing and political disloyalty and the writ petitioner was elected as the Chairperson of Adoor Municipality with the support of rival political party and the ruling political group, i.e., UDF lost power. In Dharma Mani's case (supra) the writ petitioners who are UDF members moved a no-confidence motion against the President and Vice-President of Parassala Block Panchayat along with 5 members of the rival political group LDF and the writ petitioner in W.P.(C) No.337/2009 was

elected as the President of Block Panchayat with the support of LDF. In this case, there was floor-crossing and political disloyalty. Moreover, the ruling political group, i.e., UDF lost power. In Nazeerkhan's case (supra) the writ petitioner who is a UDF member contested to the post of Vice-President against the official candidate of his own party and was elected on the basis of the votes cast in his favour en bloc by the rival political group LDF. In this case, there was floor-crossing and political disloyalty. In Shiney Augustine's case (supra) the writ petitioner who is a LDF member and the President of Vamanapuram Grama Panchayat moved and supported a no-confidence motion against the Vice-President of the Grama Panchayat, joining hands with the members of the rival political group UDF. In this case, there was floor-crossing and political disloyalty. The learned Single Judge upheld the order of the Election Commission disqualifying the writ petitioner on the ground that she had voluntarily given up her membership of the political party. In appeal, the Division Bench of this Court, relying on the judgment in Chinamma Varghese's case (supra) held that, in the absence of proper pleadings and evidence on record the above said finding of the Election Commission cannot be sustained. In Chinamma Varghese's case (supra) the appellant, contested the election as an independent candidate, was admittedly supported by the political party CPI(M), which in turn had a political arrangement with CPI. The rival political group UDF moved a no-confidence motion. The appellant not only signed the no-confidence motion but also voted in favour of said motion, which resulted in the ouster of the President of the Panchayat who belonged to LDF. In this case, there was floor-

crossing and political disloyalty. Moreover, the ruling political group, i.e., LDF lost power. The order passed by the State Election Commission disqualifying the appellant was upheld by the learned Single Judge. In appeal, the Division Bench of this Court set aside the judgment of the learned Single Judge and held that, it is only the specific overt act of voting or abstaining from voting contrary to any written directions issued by the political party on a no-confidence motion that tantamounts to defection. In Muhammedkunhi's case (supra) the writ petitioners who belong to IUML signed a no-confidence motion moved by the rival political group BJP and voted in favour of that motion against the President of Meenja Grama Panchayat along with 4 members of BJP and 2 members of CPI(M) who belong to rival political parties, and the motion was adopted. Another motion was moved against the Vice-President, which was also adopted. There was floor-crossing and political disloyalty. Moreover, the ruling political group, i.e., UDF lost power. Similarly, in Celene Joy's case (supra), the writ petitioners contested in the election to Pampadumpara Grama Panchayat in the ticket of Congress (I) Party. In the election to the post of the President, the writ petitioner in W.P.(C) No.30341/2011 contested against the official candidate of his own party and was elected as the President of the Grama Panchayat. An independent member, who won election by the support of BJP, a rival political party, also voted in his favour. The Commission found that, as borne out by Exts.X1(a) minutes of the Parliamentary Party, the party members sought the opinion of the Congress (I) Party about the candidate to be supported and Ext.X1(b) minutes reflect that the decision of the

Congress (I) Party to support Sreemandiram Sasikumar was intimated to all party members. Therefore, from the conduct of the writ petitioner that they did not vote in favour of the said candidate an inference can be drawn that they have voluntarily given up membership of the political party. Added to this, the writ petitioners were supported by an independent candidate who won election by the support of Bharatiya Janata Party, which is not a constituent of United Democratic Front. In this case also there was floor-crossing and political disloyalty. Therefore, as rightly contended by the learned counsel for respondents 1 to 3, the principle laid down in the aforesaid judgments, which are on entirely different factual matrix, cannot be relied on to arrive at a finding that respondents 1 to 3 have voluntarily given up membership of their political party.

It was further held that incurring of disqualification depends upon the existence of a definite set of facts which are required to be specifically pleaded.

22. In this case, the allegation against the petitioner is that he had aligned with the L.D.F. in voting in the no-confidence motion against an independent candidate, Smt. Sudharmani. There was no pleading that the said candidate was a member of the coalition formed by the INC. The 1st respondent had no case that apart from the whip allegedly issued by the D.C.C. President, the petitioner had any obligation to abstain from voting in the no confidence motion against

Smt. Sudharmani since she was not a member of the INC or of any coalition of which INC was a party. The specific case of the petitioner that she was a person who had voted in the election of President against the official candidate of the INC was also not disputed. In the decisions cited by the learned counsel for the respondents also, the facts were that alleged defectors had voted against members of their own party or coalition and had later contested and been elected to positions with the support of the rival coalition. Such contentions are conspicuous by their absence in the instant case. The petitioner here has not derived any advantage by his having voted in the no-confidence motion to oust the independent member. It is not pleaded that he has aspired for or obtained any favour from the L.D.F. or that he has aligned with them. He had, as a matter of fact, continued as a member of the Indian National Congress and is said to be holding responsible positions in the organisation even now. After finding that the direction issued to the petitioner was not one within the confines of Section 3 or Rule 4, I have no hesitation to hold that the finding of the Commission to the effect that the petitioner had voluntarily given up his membership which is based on the direction issued by the DCC President is unsustainable.

23. The finding of the Commission that the petitioner, by taking

a different stand from that of the political party to which he belongs, has been disloyal to his party, which leads to the inevitable inference that he has voluntarily given up his membership in the said party, is not sustainable. The petitioner has not voted in a no-confidence motion against any member of his party. He was not issued with the direction to abstain from voting in the no-confidence motion. He has continued as a member of his party and has been allowed to do so by the party also.

In the above circumstances, I find that the findings contained in Ext.P3 cannot be sustained and the same is therefore set aside and the writ petition is allowed. There will no order as to costs.

Anu Sivaraman, Judge

sj